This paper is excerpted from a longer one on the 1794 Treason Trials, which includes more in-depth preliminary material, more information on the Hardy trial, and analyses of the Horne Tooke and Thelwall trials.

A New Definition of Treason: The 1794 Treason Trials

Introduction

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

The French Revolution introduced new ideas of popular political power which spread quickly in England. Despite the terrific twists and turns of the French Revolution and the connection between this violence and their own plans for reform, radical reformers in England continued to push for universal suffrage and annual parliaments. In 1794, the momentum and energy of the reformers came to be perceived as a threat to the stability of the English government. The Government arrested the leaders of the movement and tried them for treason, partly out of a desire to silence the threat absolutely and partly out of a fervent belief that the threat directly endangered the government. In this endeavor, however, the Attorney General, Sir John Scott, had to redefine treason away from an attack on the person of the king to
an attack on an abstract definition of government. Although this legal footwork did not succeed and the defendants were declared not guilty of treason, the trials made apparent a great shift in political foundations away from the king as the embodiment of the state, and towards a state comprised of the king and legislative bodies that also had to be protected.

**The Case for Treason**

Attorney General Sir John Scott, in his dedication to protecting the king, faced the difficult challenge of redefining treason, especially in the light of a similar case in Scotland. In 1793, reformers Skirving, Margarot, and Gerrald had been convicted of sedition for planning and attending a supposedly revolutionary convention. As historians Barrell and Mee summarize, “law officers were faced with the problem of arguing that what it had been no more than sedition to do late in 1793, it was now high treason merely to plan to do in 1794.”¹ Contrary to Hardy’s supposedly treasonous plans for a convention, the Edinburgh Convention, which did take place, was considered mere sedition. After the crown’s failure in the 1794 cases, many questioned why Scott and the prosecution charged the men for treason rather than the less serious, and more easily proven, charge of sedition. In his autobiographical book of anecdotes, Lord Eldon, previously known as Sir John Scott, said that the Warrants of Commitment for Trial “treated [the accused] as Parties committed on account of High Treason.”² Scott continued, “As Attorney General, and the public prosecutor, I did not think myself at Liberty in the indictments to let down the Character of the Offense.”³ Scott also described the predicament he found himself in regarding the debate between sedition and treason. If he tried the accused for sedition, he ran the risk of exposing treasonous evidence that would result in acquittal for the misdemeanor crime. The only way to prevent this acquittal for sedition would be to present only such evidence as proves sedition and withholding the more dangerous evidence. Scott objected to this idea because he felt bound to “the great Object of satisfying the Kingdom as to the real Nature of the Case…”⁴ In a treason case, Scott knew he would be able to lay the whole evidence before a jury, which he saw as the only way to make the country fully acquainted with the dangers presented by the persons and societies accused.
Scott saw the danger represented by these men as so great that it appeared to him “more essential to securing the public safety that the whole of their Transactions should be published, than that any of these Individuals should be convicted.” These statements represent Scott’s perspective from thirty years after the acquittals of Hardy, Horne Tooke, and Thelwall, and we can assume that his reliance on the public response and understanding had been impacted by the generally conservative swing in public opinion during the Napoleonic Wars. Nevertheless, his statements do communicate a deep and abiding fear of the actions and potential outcomes from these men and their reform societies. Scott’s perspective suggests that the Government saw this as their opportunity to crush a threat and to thwart further radical escalation. The decision to try the accused of treason was thus motivated out of intense fear of the radical threat rather than an examination of the evidence and precedence.

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

1) Death: by compassing and imagining the death of the king, queen and/or prince, or by killing and murdering the Chancellor, treasurer, Justices of one Bench or another in their places doing their offices;
2) Violation: carnally to know the king’s consort, or queen, the king’s eldest daughter unmarried, or the prince’s wife;
3) Levying war against the king;
4) Adhering to the king’s enemies within the realm, or without, and declaring the same by some overt act;
5) Counterfeiting of the Great Seal, the Privy Seal or the king’s coin
6) Bringing into the realm counterfeit money to the likeness of the king’s coins.

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

Thus, the prosecution defined the crime of high treason by an act of 1352 under Edward III, and focused specifically on two definitions of treason provided there: it is treason to ‘compass and imagine’ the death of the king, and it is treason to ‘levy war’ against the king. To prove this intention, the prosecution had to prove that the defendant had committed some overt act which manifested that intention. Treason as an attempt to levy war against the king could mean either armed insurrection, as the prosecution desperately hoped to connect through Robert Watt and the possession of weapons, or encouraging an overthrow of either the king or his government, which the law officers now attempted to define as actions intended “to achieve some reformation in the law, or to ‘reform’ or ‘new-model’ the government.” To prove treason, therefore, the prosecution would aim to prove a conspiracy of the reform societies to usurp the powers of the Legislature, which they would then have to tie to a direct threat to the body of the King.

The Trial against Thomas Hardy

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

Eyre continues,

In securing the person and authority of the King from all danger, the monarchy, the religion and laws of our country are incidentally secured; that the constitution of our government is so framed, that the imperial crown of the realm is the common centre of the whole; that all traitorous attempts upon any part of it are instantly communicated to that centre, and felt there; and that, as upon every principle of public policy and justice they are punishable as traitorous attempts…”

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

After Eyre’s opening, Scott stood to deliver the indictment of the actions and crimes of Mr. Hardy. He opened, however, with an examination of treason, somewhat countering Eyre’s admonition to leave off from questioning legal definitions. After clearly explaining treason according to the Edwardian statute, Scott extended this definition to include conspiring with foreigners to invade the kingdom or conspiring to “oblige him to alter his measures of government, or to compel him to remove evil counselors from him, are…deeds proving an intent to do that treason.” Before proceeding to the evidence, Scott then discussed the planned Convention of 1793 in the light of this extended definition of treason. He defined the convention as “a convention of the people, claiming, as such, all civil and political authority, proposing to exercise it by altering the government, otherwise than by acts of the present constituted legislature, otherwise than by those statutes, according to which the King has sworn at the hazard of his life to govern.” Given these two definitions, Scott concludes “it appears to me to follow necessarily on the part of all who took a step to assemble it, that they are guilty of conspiracy to depose
the King…” Scott acted out of a belief that any challenge to the government was a threat to the stability of that government, and could therefore be construed as treason.

After thus establishing the prosecution’s aim in the case, Scott proceeded to detail the crimes committed by Hardy over the past five years. He emphasized connections to the French, both in stylistic mimicry and in correspondence. He incorporated evidence of the mimicry of the French National Assembly at the Edinburgh Convention, after arguing that the Edinburgh Convention was admissible as evidence because it was part of a greater conspiracy. Scott acknowledged the tension resulting from citing the Scottish Sedition Trials, but bypassed this concern by stating, “if they had been tried for high treason, they would have had no right to complain…” According to Scott, therefore, Hardy’s trial can be seen as the correct approach to such treasonable practices and therefore not a contradiction of the Scottish Sedition Trials.

Scott’s opening speech lasted over nine hours, at a time when treason trials were expected to be concluded in one day. The prosecution did not begin presenting evidence until evening and even that presentation was complicated by the need to prove Hardy’s handwriting on each document. The length of the prosecution’s presentation may have been detrimental in the end. All previous trials for high treason had been concluded in a single day, and this protracted trial may have communicated to the jury that there was no treason. “Jurists believed that treason should ‘stand out,’” Barrell and Mee explain, “should be established by clear and obvious proofs, not by elaborate concatenations of evidence that required lengthy interpretation or by complicated legal arguments.” Despite this danger, the prosecution spent several days presenting a great mass of documentary evidence attempting to prove there was a conspiracy to overthrow the government, either by supplanting Parliament or threatening the king, and that Hardy was complicit in this conspiracy.

The prosecution was granted great leeway in the admissibility of the material presented, including documents which Hardy had never seen or read. Upon defense lawyer Thomas Erskine’s objection to the admission of a note from Thelwall, Scott protested, “all the acts of Mr. Thelwall, or any other person against whom we have given evidence, fit to be submitted to the Jury or their accession to the general
plan of the conspiracy, is clearly evidence against every man charged with that conspiracy…”18 The evidence was declared admissible, but this issue of law, whether papers or statements unrelated to the defendant but suggestive of a wider conspiracy could serve as evidence against the defendant, would resurface later that same day. Erskine objected to the admission of a personal letter between Margarot and Martin, which, if admitted, might have communicated an animosity towards the king. Erskine argued that the only evidence that can be permitted is that which proves the direct and overt threat to the king, in other words treason, which is at issue in the indictment. In the end, the court concluded that the Crown was not restricted to calling evidence relating to documents which Hardy had written, or were found in his possession, or to words which were spoken in his presence; they could now range over the whole field of the alleged conspiracy, and call evidence on matters of which the defendant had no knowledge, over which he had had no control, and to which he had never given his consent or approbation.19 Thus the prosecution aimed to prove that there was a conspiracy to overthrow the constitution, which by extension amounted to a treasonous act against the person of the king.

The second goal for the prosecution was to connect this conspiracy to possession of weapons or potential military uprisings. One of the crucial testimonies, that of the spy Groves, connected the LCS and Thomas Green with the purchase of small conteaux secrets. When the prosecution presented evidence like this, Erskine and the defense first aimed to prove the evidence inadmissible or irrelevant. That would often fail, in which case Erskine aimed to undercut the value of the evidence. In the case of Thomas Green, Erskine’s cross-examination asked to see a sample knife that Green sold, and upon seeing it asked “You had no intention to cut throats with it, I hope?” and Green replied, “Never.”20 He further discussed the possible uses of the knives and intimated that he, himself, would like to purchase such a useful tool, which brought a laugh from the crowd.

After four days of presentation by the prosecution, Erskine stepped up to deliver the defense. His opening speech lasted seven hours and began with an address to the jury, declaring his hope that they could negotiate “the labyrinth of matter laid before you, a labyrinth in which no man’s life was ever before involved, in the annals of British Trial, nor indeed in the whole history of human justice or
injustice.” He then refocused the case on the issue of treason. He agreed with Scott that there was a central legal issue to the case, but argued that the legal issue was incredibly clear cut. He focused on the indictment for treason, “the Prisoners did maliciously and traitorously conspire, compass, and imagine, to bring and put our Lord the King to death.” Erskine addressed the issue of conspiracy, but emphasized that such a conspiracy requires intent. His passionate argument requires a long excerpt:

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

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

The core of Erskine’s argument revolved around hard facts. He examined the Edinburgh Convention and scoffed at the idea of any military potential, concluding “there had been raised, in the first session of this parliament, £15, from which you must deduct two bad shillings.” Clearly, with such limited funding, the convention did not aim to wage war on Parliament. He remarked on the prosecution’s attempts to paint a picture of armed insurrection, and reminded them of Green, who openly admitted that he kept his knives, which the prosecution presented as evidence of weaponry, in a storefront window. As for the plans for the Convention, Erskine quoted heavily from the Duke of Richmond’s letter to Colonel
Sharman and suggested that if such a Convention was imagined, it did not go beyond the plans set forward by Richmond, plans which were supported by the government ten years ago. Erskine laid into the prosecution’s evidences, such as references to the trial of Watt in Scotland, of whom Hardy had no knowledge. Sick throughout the trial, Erskine grew increasingly frail and hoarse as his speech continued, until he was leaning against a desk and whispering urgently at the end.27 After his speech, the courtroom erupted in applause and Eyre retired the case for the night.

Presentation of evidence for the defense consisted mostly of confirmations of Hardy’s character and vows that planned reforms or conventions did not possess any plans for military revolution. Erskine called the Duke of Richmond to the stand to verify his letter and his reform intentions in 1783, namely to call a convention, or a meeting of the minds, to discuss two key parliamentary reforms: universal suffrage and annual parliaments. Though the duke had recanted his reformist agenda by 1794, he confirmed that his original letter was indeed the same letter that the defendant quoted.28 The final major legal question of the trial revolved around whether the defense could present evidence to demonstrate the innocent intention of the accused. Legal historian Alan Wharam suggests that Erskine raised this question as a trap for the prosecution, as an opportunity to bring forward all other instances of treason cases, which were so different from the one at hand because the older acts of treason were much more aggressive and apparent. The prosecution’s argument was that evidence which was wholly unrelated to both the defendant and a possible conspiracy was inadmissible; the Duke of Richmond’s testimony as well as any evidence suggesting the Convention had legal intentions would fall under this category. Eyre allowed the question, the Duke of Richmond’s testimony remained, and Erskine concluded the defense’s presentation.

On the seventh day of the trial, Eyre delivered the conclusion of this unprecedented case, summarizing oral testimonies and evidence. Once again, he dismissed the idea that the trial centered around a new legal question, declaring that “conspiracy to depose the King is evidence of compassing and imagining the death of the King,” and thus the old definition of treason sufficed to serve as the central question for the case.29 At the same time, Eyre’s summation of the trial appeared to favor the prosecution, as he argued that it seemed obvious that the reformers desired to achieve a convention for republican
ideals. He charged the jury with deciding, first, if the convention and the reform ideals remained within acceptable loyalty to “the Constitution of the Country, as established in the King, Lords, and Commons.”

This definition of government including King, Lords, and Commons, in a way redefined treason to include acts against Parliament. Eyre also addressed the question of Hardy’s involvement and whether he can be condemned for the actions or intentions of an entire movement, but concluded, “there is no cruelty or hardship whatever in making the principal accountable for the conduct of the agent, in construing the language of the agent to be the language of the principal.” The ultimate question for the jury, according to Eyre, was not whether Hardy set out to fulfill Richmond’s goals, but whether he deviated to a more criminal bent later.

Eyre’s directions to the jury was that their “proof ought to be clear and convincing… it may consist of a train of circumstances such as shall leave no doubt in your minds.” The jury retired for a three hour span before returning with a not guilty verdict, upon which Hardy replied, “My fellow countrymen I return you my thanks,” and Eyre thanked the jury for their labor before closing the court.

This verdict was returned on November 5, 1794 after an eight-day trial. Outside of the courthouse, children were building bonfires to celebrate Guy Fawkes Day. As Wharam notes, the outlook did not look good for the defense while the jury deliberated. Thomas Hardy’s name was already linked with famous traitors. The prosecution, meanwhile, were preparing more arrests, “800 it was said, and 300 warrants were already made out and signed, ready to be executed.” The not-guilty verdict thus came as a surprise to most of the court. As Hardy records in his memoirs, the verdict was met with loud shouts of applause, and “like an electric shock, or the rapidity of lightning, the glad tidings spread through the whole town, and were conveyed much quicker than the regular post could travel, to the most distant parts of the island, where all ranks of people were anxiously awaiting the result of the trial.” As Hardy celebrated his release, the court turned to the case against Horne Tooke.
The Aftermath

Although Hardy, Horne Tooke, and Thelwall were ultimately declared not guilty, and all of their fellows were released without trial, in many ways the 1794 Treason Trials did signal the death of the radical reform movement. The Government’s response in 1795, after the conclusion of the trials, was quick and decisive. Lord Grenville introduced the Treasonable Practices Bill to the House of Lords on November 6, 1795. This bill recognized Erskine’s skillful defense that the courtroom could not legislate a new definition of treason by modifying the law of treason so as to bring within its scope any who ‘compassed or devised’ the death, bodily harm, imprisonment or deposition of the King, who exerted pressure on him to change his measures or counsels, who plotted to assist foreign invaders, or to intimidate or overawe both houses or either house of Parliament, whether such intention was expressed, as hitherto, by over act, or by speech or writing.37

The bill also included a provision whereby those who incited the people to hatred or contempt of the king, the established government, or constitution were liable to first the penalties of a high misdemeanor and, on a second conviction, to seven years’ transportation. This expanded definition of treason resulted from the recognition in the 1794 trials that the state had expanded beyond the king.

The Seditious Meetings Act was specifically designed to kill off any remaining reform societies. It gave discretionary control to local magistrates to limit or prohibit meetings of over fifty people convened specifically “for the discussion of public grievances or for the consideration of any petition, remonstrance or address to King or Parliament bearing on the ‘alteration of matters established in Church or State.’”38 Pitt hoped that these bills would, by limiting the expression of political dissent, render unnecessary the forced suppression of reform societies. Ultimately, the reform societies would be effectively, at least temporarily, silenced. Part of this was due, however, to continuing warfare against France and total loss of the French as a model for popular reform. In the end, many of the reforms the societies called for, including the restructuring of boroughs and the redistribution of seats in Parliament, would be enacted in the 1832 Reform Bill.
By that time, however, it was apparent that Parliament and the ministers ran the government as representatives of the people. Forty years earlier, that transition was not yet complete. George III was not yet mad and his reign had seen an increase of the king’s power. Despite this, however, it was clear that the state no longer resembled the Edward’s fourteenth-century kingdom. The Treason Trials highlighted this transition as well as the failure, thus far, of the legislature to catch up to reality. Without a written constitution, the British government was in many ways defined by show. When Pitt’s spies discovered potential treason, he passed the information back to the king so he could announce arrest warrants and the need for inquiries to Parliament. Without the hard lines provided by a constitution, the Government relied on show to consolidate and represent power in times of transition so that they could later address the issues through the Legislature. This abstract definition of government works for the show; the metaphorical crown can encompass king, legislature, and government. However, as the Treason Trials demonstrated, law requires hard-lined definitions; government must explicitly include Parliament in order for a convention which could usurp Parliament to constitute treason.

By highlighting this shortcoming in the unwritten constitution, the Treason Trials and subsequent legislation in many ways added to the constitutional framework. By acquitting the defendants, the juries recognized that the legal definition of treason was outdated, but perhaps they also recognized that the power of the state had moved to Parliament and, by extension, to the people. The lasting legacy of the Treason Trials is not the reform that the defendants preached- that would have to wait forty years or more. Rather, the legacy is the recognition that the definition of the state had shifted away from the king to include Parliament. Ultimately, this consolidation of state power in Parliament would pave the way for the increased representation of the people that Hardy, Horne Tooke, and Thelwall urged.
2 Lord Eldon’s Anecdote Book, 55.
3 Lord Eldon’s Anecdote Book, 55-56.
4 Lord Eldon’s Anecdote Book, 56.
5 Lord Eldon’s Anecdote Book, 56.
6 Qtd in Lisa Steffen, Defining a British State: Treason and National Identity, 10, as the summation of the 1352 law of treason by Sir Edward Coke, Lord Chief Justice of the Court of King’s Bench in the early seventeenth century.
10 Ibid, vol 2, 8.
11 Ibid, vol 2, 11.
12 Ibid, vol 2, 11-12.
13 Ibid, vol 2, 49.
15 Ibid.
16 Alan Wharam, The Treason Trials, 1794, 153.
18 Ibid, vol 2, 354.
19 Alan Wharam, The Treason Trials, 1794, 154.
25 Ibid, vol. 4, 188.
26 Qtd. in Alan Wharam, The Treason Trials, 1794, 169.
27 Alan Wharam, The Treason Trials, 1794, 171.
28 Alan Wharam, The Treason Trials, 1794, 176.
30 Ibid, vol. 5. 422.
31 Ibid.
32 Ibid, vol. 5. 441.
33 Ibid, vol. 5. 415.
34 Ibid, vol 5, 444.
35 Alan Wharam, The Treason Trials, 1794, 191.
36 Qtd. In Alan Wharam, The Treason Trials, 1794, 192.
37 Albert Goodwin, The Friends of Liberty, 387.
38 Albert Goodwin, The Friends of Liberty, 388.
Bibliography


*Journal of the House of Commons, 1794*. vol. XLIX.


