Political trials and the suppression of popular radicalism in England, 1799-1820

The Napoleonic Wars and their aftermath were an intense but challenging period in the development of the parliamentary reform movement in Britain. The revival of working-class participation in the democratic movement and a wider range of tactics and types of collective agitation created new challenges for local and national authorities. The locus of activity shifted away from London, in particular to the economically-depressed industrial regions of the North and Midlands, where the rapidly populating towns lacked political representation. The new Hampden clubs drew up petitions to government on the "mass platform", huge open meetings addressed by local and national speakers on a stage.[1] These mass meetings were, for both local and national authorities, a revolutionary threat on a different scale from the radical principles contained in pamphlet literature. Legislation introduced from 1799 onwards against corresponding societies and trades combinations sought to suppress the mass platform movement, with specific acts against seditious meetings passed in 1795, 1817 and 1819.[2] At times of more specific threat, in the aftermath of the Irish Rebellion between 1799 and 1801 and then during the winter of 1816-17, when mass meetings at Spa Fields in London organised by the republican Spenceans descended into rioting, the government looked to other legislative means. The Suspension of Habeas Corpus acts of 1799 and 1817 enabled the Home Secretary to issue direct arrest warrants against suspect radical activists without promise of trial. Samuel Bamford, leader of the radicals of Middleton, Lancashire, commented in his autobiography about the situation in 1817:

> King's messengers did arrive: Government warrants were issued; and the persons they mentioned were taken to prison. A cloud of gloom and mistrust hung over the whole country. The suspension of the Habeas Corpus Act was a measure the result of which we young reformers could not judge, save by report, and that was of a nature to cause anxiety in the most indifferent of us. The proscriptions, imprisonments, trials, and banishments of 1792 were brought to our recollections by the similarity of our situation to those of the sufferers of that period. It seemed as if the sun of freedom were gone down, and a rayless expanse of oppression had finally closed over us.[3]

For Bamford and his fellow radicals, their imprisonments without trial were evidence of government corruption that traduced rights and principles established by Magna Carta. At least their predecessors in the 1790s could seek to defend their principles and protest their

innocence at the bar; those detained under direct warrant from the Home Secretary had no such recourse to what they regarded as a fundamental constitutional right: to be tried by jury.[4]

The loyalist reaction to popular radicalism was severe, but it was never total nor tyrannical. This chapter examines the difficulties of prosecuting and bringing individuals to trial for political offences in this period as well as during some of the trials that took place. It first analyses the decision-making process between the Home Office and the government's law officers, the Attorney and Solicitor General, whose records lie in a series of pre-prosecution correspondence now in the National Archives.[5] The term state trial suggests a more centralised and government-led process of repression of popular radicalism than it was in practice. Historians of political movements in this period understandably focus on the radical leaders tried at the King's Bench, and whose state trials became well known through pamphlet literature and self-publicity.[6] But the reality for many radical leaders was closer to home. Provincial reformers usually faced a battle working through the complex layers of the local justice system in their home town and county: the bench of local magistrates and the county quarter sessions and special assizes. And it was these authorities who arguably were the most "loyalist": there are reams of correspondence in the Home Office archives from magistrates, mayors, clergy and other local elites concerning their anxious desire to suppress popular radicalism and trades agitation, all illustrating how much the workings of the state operated from below.[7] The second part of this chapter examines the trial of the "Thirty Eight" Manchester radicals at Lancaster assizes in June 1812 to demonstrate the mutable definitions of treason, sedition and processes of justice in the theatre of the court.

I

Prosecution for seditious libel had been one of the main legal tools of repression of the radical public sphere in the 1790s. But as seen in the cases of the London Corresponding Society members Thomas Hardy and John Horne Tooke in 1794, several high-profile state trials for treason floundered over legal technicalities and the immense difficulty of proving the seditious intent of words.[8] The rise of bold and vocal defence lawyers such as Thomas Erskine, who defended many of the leading radicals, also meant that the courtrooms became a theatre where battles were fought over semantics and the linguistic intent of speeches and texts rather than proving the criminality of the actions.[9] The trials of the radical publishers William Hone and T. J. Wooler in late 1817 became a further important arena where prosecutors found it difficult to define seditious libel and the defence lawyer exercised skill in

picking holes in the ambiguities of language. As Philip Harling has argued, "the Home Office lacked the institutional means to embark on a policy of wholescale prosecution" against large demonstrations addressed by confident but linguistically careful orators.[10] Furthermore, the battles of popular politics had moved off the page and into action onto the mass platform. In March 1817, following the Spa Fields riots and an attack on the Prince Regent's coach, Home Secretary Lord Sidmouth issued a circular letter instructing magistrates to imprison anyone suspected of seditious libel. Wooler was arrested in May 1817 and charged on several counts relating to articles in his radical newspaper the *Black Dwarf*. Hone was arrested a week later on charges of publishing blasphemous libels. Wooler's and Hone's acquittals at the King's Bench again tested the efficacy of this sort of political trial as a means of repressing the democratic movement.[11]

As evidence for the declining trend in prosecution for seditious libel, Harling examined the crown rolls of the court of King's Bench, which included seventy-three indictments and one hundred and sixty-six *ex officio* informations (a summons filed by the Attorney General that required the accused to appear in court) for seditious and blasphemous libels recorded between 1790 and 1832.[12] Here it is instructive to compare his findings with evidence from the previous step in the process before the prosecutions even got to court. The first step often lay with local authorities such as justices of the peace and mayors of towns, who expressed their suspicions about individuals and forwarded pamphlets and newspapers that they deemed seditious or libellous to the Home Office.[13] The Home Secretary would then pass on the relevant information to the Attorney General and Treasury Solicitor for their opinion on whether or not to prosecute by *ex officio* information.[14] The decision to take a more direct route than prosecuting through the county or special assizes was not taken lightly. The Treasury Solicitor, recruited from the practising bar from 1806 onwards, was responsible for briefing counsel in state prosecutions for treason and sedition. The Attorney General and his deputy the Solicitor General were the main legal advisors to the government, and could commence proceedings by *ex officio* informations laid in the King's Bench. This process in effect by-passed both committal proceedings and the grand jury, but it also passed the costs on to the government.[15] Hence it was in the local magistrates' financial interest to secure a government prosecution, while conversely the Home Secretary would seek to pass the case back to the county unless there was a perceived direct threat to the state.

The Treasury Solicitor's papers at the National Archives contain multiple volumes of "opinion books" in which their decisions were recorded.[16] Table 9.1 shows a summary of the balance of decisions made by the law officers in relation to first, whether there was evidence

of seditious libel or behaviour, and secondly, whether it would be enough to bring the accused to trial at the King's Bench.

Date range of Treasury Solicitor's "opinion book"	Decision: prosecute through *ex officio* information	Decision: extracts are libellous but no opinion on prosecution	Decision: not enough evidence to prosecute, or referred to indictment at the quarter sessions	Decision: extracts are not libellous	Decision: referred to prosecution for seditious assembly or trade combination	Total
1808-10	0	0	0	0	0	0
1812	6	0	5	5	0	21
1813-15	2	0	2	1	1	6
1816	0	0	1	0	3	4
1817	0	0	2	1	2	5
1818-19	1	0	3	1	0	5
1819-20	4	13	7	5	0	29
Total	13	13	20	13	6	70

Table 9.1. Decisions made by law officers recorded in "opinion books", 1808-20. Source: TNA, TS 25/3, 5-8, 2034-5, Treasury Solicitor's papers.

Seventy cases were put before the law officers and recorded in the opinion books, in amongst hundreds of other types of legal enquiries.[17] The low figure is not surprising, and indeed reflect Harling's findings of a relatively small number of cases that parallel the general pattern of waves of interest in prosecuting the reform movement. While Harling calculated peaks of indictments and *ex officio* informations in 1810, 1817, 1820 and 1821, the precursory step in the process of the Home Office consulting with the law officers about the potential to prosecute peaked in 1812 (twenty-one cases) and 1819-20 (twenty-nine cases). It usually took months to gather evidence and bring individuals to trial, while those arrested under the 1817 Suspension of Habeas Corpus Act did not need to go through the intermediary processes of a magistrate's warrant and quarter sessions, so also were not reflected here. Not all the law officers' recommendations were followed by the Home Office; but as Harling notes, even when cases were brought to King's Bench, in 1808-12 the sentencing rate for libel was only twenty per cent; and even at the height of repression in 1817-22, only thirty-eight per cent of those prosecuted were tried, convicted and sentenced to prison.[18] Notably, none of the decisions made in 1812 in favour of prosecution was for seditious libel, but rather

for taking illegal oaths, unlawful assembly or fomenting "tumult and disturbance" during the Luddite machine-breaking agitation, especially in Lancashire.[19] The revival of the democratic movement from 1816 onwards then pushed the government into seeking to prosecute radical printers and orators once more.[20] The *Chronicle*, *The People* and *Sherwin's Political Register* were examined for seditious libel, but again, although the law officers considered for example the latter a "mischievous publication", none was considered a likely case for prosecution.[21]

The opinion books also reveal the complex and often ambiguous decisions taken by all parties concerned about whether to prosecute at all. The problematic definition of seditious libel caused the greatest doubts about the potential for successful prosecution. In 1813-15, cases of seditious libel were considered collectively against the newspapers, *Morning Chronicle*, *Statesman*, *Examiner* and the *Carlisle Journal*, but the law officers dismissed them, noting the "difficulty and much delicacy in stating and proving the real facts necessary to explain libels". By contrast, they recommended prosecution of the *Nottingham Review* for publishing a threatening letter signed by "General Ludd", which they felt would inspire a revival of the Luddite movement in the East Midlands.[22] Harling argues that this shift of focus reflected the change of ministry. Whereas in 1808-11, Spencer Perceval's government saw the radical press as a significant threat to "Church-and-King" values, by contrast, from 1812 until the end of the Napoleonic wars, Lord Liverpool was concerned more with the maintenance of public order.[23] Yet even in 1812, the law officers advised against prosecution of some of the Luddites for lack of evidence.[24] And indeed, many of the enquiries about the possibility of prosecution were from concerned local magistrates, particularly those in the Luddite regions, which the Home Office appears to have simply forwarded directly to the law officers and then returning their verdict.

The risks inherent in trying radicals publicly was further weighed up against cost. Even the less prominent trials racked up large bills. For example, James Parr, a Chelsea pensioner, was indicted at Chester assizes in spring 1819 for sedition for speaking at a mass platform meeting at Stockport. The bill of indictment cost the Treasury eighteen pounds, three shillings and sixpence. Further costs mounted as the local authorities sent constables to the Chelsea hospital to arrest Parr. John Lloyd, the deeply loyalist solicitor and clerk to the magistrates of Stockport, then noted, "On bail being tendered, attending to enquire into the sufficiency and to administer oaths before the Justice to Thomas Stubbs and Thomas Rickle [sic], who notwithstanding they had sworn it they were not really worth the money and had attempted to deceive me as to their places of residence". Together with other legal expenses

and the forty miles' journey to Chester, Lloyd also claimed for money to retrieve witnesses for the prosecution, including two pounds to "witness Lowe having removed into Liverpool, sending thence to find him". In total, he claimed for thirty-four pounds, five shillings and eightpence.[25] At the trial, however, the Attorney General announced he did not want to prosecute the case further, and would agree to discharging Parr on a recognizance of one hundred pounds, which was agreed.[26]

The decision not to prosecute at King's Bench was also taken in order not to excite further agitation. The Libel Act of 1792 gave the jury the right to decide whether a publication could have provoked a breach of the peace. The offending passages would be read in open court and newspapers covered the legal proceedings in depth.[27] In October 1818, for example, therefore, the law officers, S. Shepherd and R. Gifford, advised that the printer of a radical handbill not be prosecuted because "we very much doubt whether it could be made the subject of prosecution and as the spirit of combination amongst the workmen in this part of the County has apparently subsided a prosecution now instituted (and particularly if it failed) might rather tend to revive rather than extinguish it".[28] They also based their opinions on the likelihood of whether a Jury could be convinced of a pamphlet's "libellous nature", which they knew would be a risky gamble, not least because of the slippery definition of libel.[29] Nevertheless, the financial and mental impact upon the prisoner as he waited between the filing of informations and trial was severe, whether or not the accused was eventually found innocent.[30]

Concern mounted about the potential of radical orators stirring up gullible audiences to revolution through their words and actions on the mass platform rather than in print of pamphlets. Significantly, as Lisa Steffen and Michael Lobban have argued, political trials began to widen the definitions of treason and sedition, although this shift was effected in part because of the difficulties of ensuring conviction as it was by intent.[31] The government increasingly sought to try radical leaders for seditious conspiracy to "overthrow the constitution" rather than directly attacking the king. The first notable trial on these grounds was of seven members of the Manchester Constitutional Society, headed by Thomas Walker, in 1794. But the men were acquitted because the case for the prosecution relied solely on the evidence of a discredited witness.[32] The 1795 trial of the members of the Sheffield Society for Constitutional Information, Henry Redhead Yorke, Joseph Gales and Richard Davison, also sought to prosecute them on a charge of seditious conspiracy, explicitly in relation to their speeches at a mass public meeting in Sheffield.[33] Treason and sedition were therefore associated in the loyalist (and Whiggish) formula with the state and parliament rather than

solely its monarchical head. This broader conception of the state as parliament was employed in the trials that followed, especially of the United Irish republicans in 1799 and of the conspirator Colonel Despard in 1803.[34] The postwar revival of mass demonstrations and "risings" solidified this broader definition of treason as encompassing threats to parliament as well as, or indeed instead of, the monarch. The trials of the Spencean republicans for their involvement at Spa Fields in 1816, the instigators of the Pentrich "rising" in Derbyshire in 1817, Henry Hunt and the Peterloo radicals, and the Cato Street conspirators in 1820 furthered this process. Charles Weatherill, defence lawyer for the Spencean James Watson, for example, complained during the trial that the crown lawyers "have therefore, skilfully enough, put in four treasons, in order to perplex the subject, and to obtain by confusion which they could not obtain by distinctness and precision". Although faced with a litany of government witnesses, Weatherill and the main defence witness Henry Hunt convinced the jury to find Watson not guilty and the prosecution of the other Spenceans was consequently dropped.[35]

The post-Peterloo period marked the greatest level of government prosecution of radicals on a variety of charges. Local authorities were perturbed about the wave of radical propaganda and sought to prosecute newspapers and printers for libelling the Manchester magistrates and the government. The special commissions of *oyer et terminer* for high treason declined in number and frequency, prosecutions for seditious libel continued but with a fluctuating success rate, while charges for seditious conspiracy and disturbing the peace with intent against the constitution increased.[36] Fifty informations and indictments for libel were filed at King's Bench in 1819 to 1820. Their targets included Richard Carlile, publisher of the *Republican*, who was sentenced to six years in Dorchester gaol; and radical MP Sir Francis Burdett and the Spencean Unitarian minister Robert Wedderburn for denouncing the authorities for their actions at Peterloo. The prosecution rate for libel rose to its highest level of around fifty per cent, which Harling attributes to a more determined policy by the law officers of targeting small publishers.[37] The evidence from the opinion books show that this was just the outcome of a much larger process of sifting potential cases. The law officers, faced with a bulging post-sack of printed material sent from across the country, decided that trying each case that ended up before them would be overwhelming and risked too many acquittals. Their general advice was that the smaller cases would better prosecuted locally as indictments at quarter sessions rather than taken to the King's Bench. For example, John Hockley was apprehended on 21 August 1819 on the Strand outside the Crown and Anchor pub, carrying a placard advertising a meeting to be held at the venue concerning "Massacre in

Manchester by the Yeomanry Cavalry and the Magistrates". The law officers recommended a quarter sessions indictment for inciting disturbance.[38] There were nearly a hundred prosecutions at the assizes, from high profile reformers such as Henry Hunt at Lancaster for seditious conspiracy for his leading part at Peterloo to provincial radical leaders involved at the protest meetings and various "risings" that occurred from the autumn of 1819 to spring 1820.[39] As Malcolm Chase has noted, the success of Lord Liverpool's ministry in containing the democratic movement lay less in the "big ticket" sentences passed on high profile treason cases like the Cato Street conspirators in 1820 than on the participation of local authorities over the longer period in bringing lesser offenders to trial on a range of minor charges for conspiracy and inciting disturbance.[40]

II

The watchword of the early nineteenth-century democratic movement in Britain was liberty. The language of constitutionalism was integral to the radicals' challenge to the state's definitions of treason and sedition. They did not contest the state through Paineite republicanism, but rather used the language and the tools of the British legal system, calling for the rights of the subject through reference to Magna Carta and the rights of the accused through opposition to packed or special juries. Political trials – more so than debates conducted within the reform petitions, demonstrations, pamphlets and newspapers – were therefore a litmus test for assuring liberty in an era of repression. Radicals came to view prosecutions of their peers as evidence of how the state was unconstitutional and the legal system was corrupted.[41] The decision over whether the defendants were "seditious" or not, whether they could have access to constitutional freedoms or not, did not end in words or censorship but in the choice between freedom and imprisonment or execution. The trials in effect were a microcosm of the state, its powers, and the varying levels of agency or leeway that radicals could conduct within them. Radicals did not oppose the use of open juries, that is, chosen among all eligible freeholders by the Assizes, because they saw juries as representative institutions essential to ensuring the liberty of the citizen. They attempted to foster a representative space within the courtroom, to defeat the government within their own terms of the long traditions of individual liberties of the citizen within the law.[42]

Many of the radicals facing trial were highly concerned about the packing of juries and the use of special juries. Their fears sprang not just from the fact that this process seemed to seal their fate but also from their adherence to the constitutional principle of a fair and

uncorrupt trial as encapsulated, as they saw it, in Magna Carta.[43] When prosecution was decided by the law officers by *ex officio* information, trial at King's Bench was by special jury. The jurors were selected by the Treasury Solicitor from a special list of men of higher social status, and in practice this meant that those selected were likely to be more favourable towards the government and prosecution. Horne Tooke had made allegations of jury packing at his 1794 trial, the issue was raised in the House of Commons in 1809, and Wooler alleged in 1817 that a small group of "guinea men" paid regularly by the government biased the jury's decisions in favour of the government.[44] Following more open criticism of the system by Jeremy Bentham in 1821, Robert Peel's government eventually passed a Juries Act in 1825, which meant that the jurors in London and Middlesex were to be selected by ballot rather than from the closed list.[45] Yet the special juries at county assizes remained chosen by the Crown, and composed of gentry and aristocrats.[46] A key difference between the metropolitan reformers -- many of whom were able to persuade the jury of their innocence and secure acquittal -- and the provincial radicals, was one of class. The social gap between the propertied judge and jurors and the working-class defendants was much more evident in provincial trials at quarter sessions and special assizes.. Although Hone and Wooler contested a corrupt and packed jury, the political and legal culture of London nevertheless enabled more room for manoeuvre. As Epstein notes, by contrast, elsewhere, "radicals could not as easily reproduce such triumphs where lists of special jurors were restricted to esquires of the county".[47]

The "ultra-radical" John Bagguley of Manchester, who had been arrested for giving a seditious speech at a reform meeting in September 1818, was imprisoned under direct warrant from the Home Secretary under the 1817 Suspension of Habeas Corpus Act. Informed that he was to be tried by special jury, Bagguley became acutely concerned about its potential to be packed and therefore weighted against him. He had clearly read Wooler's editorials in the Black Dwarf on the subject and his pamphlet, *An Appeal to the citizens of London against the alledged lawful mode of packing special juries* of 1817. Bagguley immediately wrote to Wooler to seek confirmation that all freemen could serve on special juries. Wooler replied that they were eligible, "though for their own purpose, the agents of the Crown always make a point of confining the number to their own party which they think themselves more likely to make sure of among the Baronets and Esquires which they accordingly chuse". He advised Bagguley, "The Decision of the Judges that the Master of the Crown Office had a right to select or pack special juries is illegal; and was given only to get rid of a dilemma as the readiest way I would advise you to object to the mode, to insist upon your jury being farely

[sic] chosen out of the list of the whole body of the freeholders of the Country".[48] Bagguley also sought the opinion of Sir Charles Wolseley of Staffordshire, who was also attracting the local authorities' attention for his speeches at radical demonstrations (and who would be arrested and tried for seditious conspiracy at Chester assizes in April 1820).[49] His reply reflected the difference in class between the two men. Whereas Wooler was defiant on political prisoners' constitutional rights to a freeholder jury, Wolseley retorted that just because gentry chosen by the county featured did not mean that the jury was partial:

> I am sorry to find that you have such an objection to "Baronets" and "Esquires" to tell you the truth I see very little difference between them and the "merchants". In all the Special Jury cases that I have had any knowledge of they have generally been composed of what are called County Gentlemen – but commonly there are not more than three or four who attend the Summons and then the rest of the Jury are made up of the common jurymen – this may be the case with the Jury that is to try you.
> p.s. were you not aware that every man has a right either Plaintiff or Defendant to Demand a Special Jury – a Special Jury is consequently something above a common jury.[50]

Bagguley was tried along with his two fellow Mancunian radicals Samuel Drummond and John Johnston for sedition and conspiracy at the Chester spring assizes in April 1819. Bagguley used the court as an arena for his complaints, not least being imprisoned for nine months under the Suspension of Habeas Corpus Act and the huge bail placed on the men of one thousand pounds each, which was clearly meant to ensure they stayed imprisoned.[51] Drummond challenged that they were guilty of two counts of "inciting the people to hatred and contempt of Government and Constitution of your Country" and of seditious conspiracy against the government. He called on the Attorney General to try them on the separate indictment. Johnston took the trial as a stage to express his emotions against the hardships they had experienced in prison, and boldly addressed the judge: "My Lord, I mean to say, in plain words, that we have not had a fair trial. [After the prisoner had uttered these words, he struck the rail of the bar very violently]". The Chief Justice was adamant about the guilt of the men, arguing that the Macclesfield reform meeting at which the radicals spoke was not intended to petition parliament for reform:

> Its real object was to incite the people to disaffection and to take up arms against the government … you advised them to establish what you called a National Convention which was to usurp the place of Parliament and its laws … one step more and your offence would have amounted to High Treason.

They were sentenced to two years' imprisonment and the huge amount of five hundred pounds sureties each for good behaviour on their release.[52]

Bagguley, Johnston and Drummond were fiery orators, much to the consternation of the moderate reformers such as Samuel Bamford, who realised the danger inherent in taking such a tactic.[53] They were well experienced in haranguing crowds about the need for democratic reform (indeed Bagguley's inflammatory speeches in particular were the reason he attracted the attention of the local authorities and was arrested), and hence he felt no qualms in using the court as another arena in which to vent his rage at the system. The final section of this chapter demonstrates the role of local authorities and loyalist attitudes in shaping the outcomes and also the difficulties of securing prosecution because, despite packed juries, adherence to the letter of the law and adherence to the ideal if not always the reality of a fair trial persisted.

III

The trial of the Thirty Eight radicals of Manchester at Lancaster Assizes in August 1812 marked a significant turning point in the development of the provincial reform movement. Led by the small manufacturer and veteran reformer John Knight, a group of Manchester radicals revived a society to petition for parliamentary reform. Hearing rumours that the deputy constable, Joseph Nadin, was about to arrest them at their original meeting place of the Elephant Inn, they adjourned to the Prince Regent's Arms for a second meeting on 11 June 1812. Samuel Fleming, an Irish weaver and former member of Colonel Silvester's militia, informed the boroughreeve and constables of their intentions. Nadin, backed by a band of soldiers, entered the room and arrested the men on a charge of administering an illegal oath to Fleming. Following examination at the New Bailey court house in Salford, the prisoners were sent to Lancaster Castle to await trial at the next assizes.[54]

The trial began at eleven o'clock in the morning of 27 August, and lasted fourteen hours in total, with the final verdict made about one in the morning of the next day.[55] The formal indictment was made against William Washington and Thomas Broughton. The

Attorney General decided to make a joint charge against all thirty-eight men, stating it would be too repetitive to try them all separately.[56] The radicals were defended by Henry Brougham MP, leading member of the "Mountain" wing of opposition Whigs, and two other sympathetic lawyers, and were financially supported by Major Cartwright, the Liverpool polymath William Roscoe, and other sympathetic middle-class reformers.[57]

The trial was widely covered in the newspapers as it occurred in the middle of the Luddite machine-breaking agitation. The local authorities were desperate to clamp down on all forms of working-class collective action and attempted to associate radicalism with Luddism, and hence charged the radicals under the 1799 act against taking illegal oaths, rather than for treason.[58] The address by the Attorney General, Mr Park, to the Lancaster jury asserted that the authorities intended the trial to be "of considerable use to the public". He felt that the impact of the trials of dozens of Luddites at special assizes in Lancaster, York and Chester a few months previously had been short-lasting, not least because the defendants "usually conduct themselves with decorum [so] there is not that sensation produced on the mind which one would wish should be felt". Park believed that this performance by the Luddites at their trials, and the considerable sympathy expressed for them at their executions, meant that "a good deal of the impression which such trials were intended to have on the public mind was destroyed".[59]

The early nineteenth-century trial was not a neutral or unchanging process, but consciously contained elements of theatre and performance. The trial process formed the basic script and narrative that had to be followed in the right order, but there was room for improvisation and response, and the outcome was not predictable. There was humour and tragic drama, enacted not just by the performers of the defence, prosecution and jury, but also often a large audience who watched and participated.[60] Regency radicals were well aware of the potential to exploit the dramatic elements of the trial process, and played on the emotions of the jury and the audience. The rise of defence lawyers heightened the appetite for drama and made the trial appear – in the narrative at least – as able to be swayed by individual performances as much as by juridical interpretation of the law and evidence. Printed versions of the trials therefore read like a theatre script, transcribing the boos and the huzzas of the audience and, as Kevin Gilmartin notes, were therefore "narrative constructions" in themselves. In bringing the political trial to a wider audience, radical publishers thus extended the "radical counter public sphere", enabling the message of radical principles and the heroics of those on trial to reach a wider reading audience in an era when the laws of seditious libel were used against those on trial and radical literature.[61]

John Knight published two versions of the trial proceedings, with an extensive introduction outlining the context of the case and the radicals' innocence. He alleged that deputy constable Joseph Nadin had attempted to frame them. Nadin, already notorious in Manchester as the "thief catcher", became the *bête noire* of the radical movement. At their earlier presentation in front of the magistrates at the New Bailey court, Nadin "became very active in arranging the prisoners about the bar". Knight claimed that Nadin did this as a means of indicating to the informer Fleming which radical (William Washington) he wished him to identify as the instigator of the illegal oath. It became clear that Fleming did not recognise Nadin's chosen target:

> [Nadin] was heard to ask Fleming whether he knew Washington? Fleming replied he did not: Nadin then pointing to Washington said, "That is him, in the striped waistcoat and spotted handkerchief; swear to him first". Washington immediately appealed to the magistrates, but no notice being taken, he repeated his appeal, when Nadin was ordered to be removed away from Fleming; who then swore that Washington had administered to him and two others, an unlawful oath, about 10 o'clock on the evening of the 11th June.[62]

Knight noted that Nadin's subterfuge was made even more obvious when Fleming made a farcical case of mistaken identity:

> On being requested to point out one of the persons, he fixed upon a turnkey belonging to the New Bayley, named William Evans. He was then asked by the magistrates if he was sure that was the man, and he replied "yes I am sure". Mr Dunstan, governor of the New Bayley, who was in the court, now said that was impossible for he could prove Evans had not been out of the New Bayley that night. As however Evans the turnkey sat in the very place into which Nadin had pertinaciously attempted to force me during his arrangement beforementioned, until ordered to desist.

Perhaps Knight further played up Nadin's character as bogeyman in the minutes of the Lancaster trial, but it is likely that the cross-examination by defence lawyer Mr Williams indeed followed the lines recorded in the pamphlet:

Q. (Williams) Your face is pretty well known at Manchester, there is no man so well known.

A. (Nadin) I do not think there is.

Q. People are much alarmed at seeing you in the night time.

A. If their deeds are not evil, they have no cause to be alarmed.

Q. You are continually going about to take men up and of course you are very notorious?

A. Yes.[63]

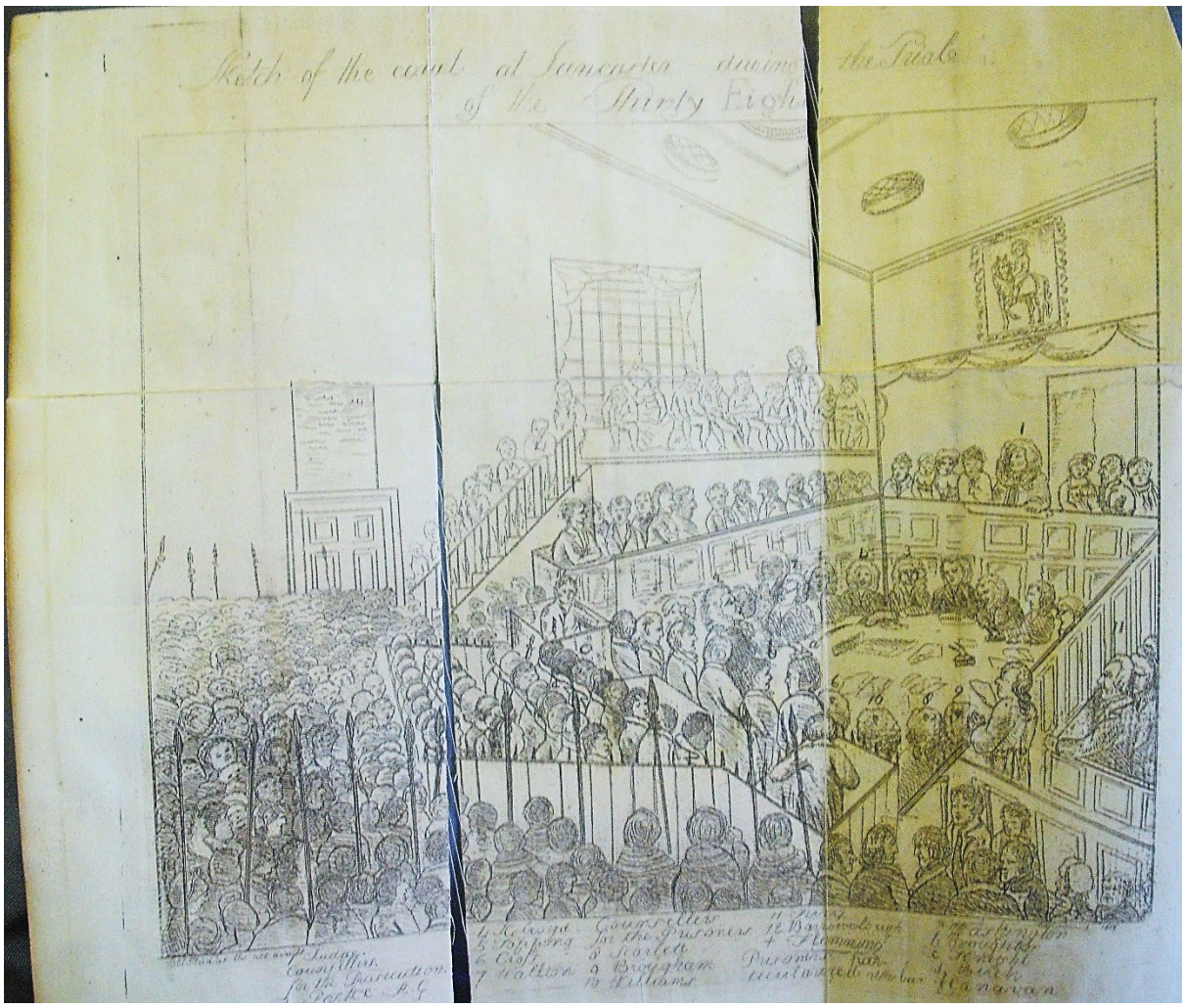

Fig. 9.2. Sketch of Lancaster Assizes, in *The Trial at Full Length of the Thirty Eight Men from Manchester* ... (J. Plant, Sickle Street, Manchester, 1812), Working-Class Movement Library, Salford.

The sketch included in *The Trial at Full Length of the Thirty Eight Men* is a rare example of an interior scene of a provincial trial in this period. It was included in the proceedings to show the positioning of each of the defendants and to identify the informer Fleming, whose name is underlined in the key underneath the drawing and who is pictured standing in the gallery directly above the dock, grinning and looking towards the judge. The counsel for the prosecution stood directly in front of the prisoners. William Washington is sketched in the dock answering questions. The picture also indicates how the trial excited huge popular interest, with the audience packed in to watch, behind the defendants and in the direct view of the judge, onto the staircase and windowsill, and even women sitting right next to the judge. The authority of the judge and jury were symbolically demonstrated in their positioning at a higher level, but this difference of height also physically influenced the ways in which the defendants and lawyers interacted with them, the latter having to look up to address them. Notably in this case, the lawyers' table was lower, illustrating how the rise of the defensive lawyer was still inhibited or shaped by their physical positioning within the court.[64]

Though the theatre and spatial positionings of the court were meant to enforce the hierarchy and severity of the law, historians agree that this did not result in the weight of authority being solely on the part of the prosecution. The courtroom enabled interaction and participation from all sections of the process, enabling the expression of dissent from the defendants and the audience. The public gallery in particular was retained as an essential part of the scrutiny of the law's legitimacy, and enabled the crowd to express their views and attempt to influence judgements.[65] This was beginning to change, but not yet. Julienne Hanson notes the spatial aspects of the trial process, in relation both to the "lawscape" of the court building and to the rules governing the wider social body. In the early nineteenth century, the courtroom was the site where justice was "managed" and "administered" publicly, with most of the processes of the trial taking place in one room. By the end of the nineteenth century, by contrast, the management of the trial had been separated into different spatial sections, including separate entrances, a jury room, police cells and interview rooms, with the court functioning only where decisions made elsewhere were "published" publicly. Increased concern for "practical security, but also to prevent contamination between the criminal, citizen and those officiating at the ritual process" pushed forward these developments in trial process and spaces.[66] Lancaster assizes court in 1812 fits the earlier model in which all participants in the trial, including the audience, were still in close proximity to each other and the elements of the trial took place mostly in one space. The

prosecution was obviously concerned about the radicals' potential to sway the jury by words and looks. This also included the sympathetic audience. The trial report noted how "the Attorney General requested that javelin men might be placed round the Bar to keep the people off and prevent them from speaking to the prisoners, which was accordingly ordered".[67] But the defence was also keenly aware of the attempts of the prosecution to influence the witnesses by similar means. One of the defence lawyers requested that the witnesses on both sides be ordered to leave while evidence was given about Fleming's involvement.[68] The role of body language in shaping the trial's progress and interpretation of the evidence was evident in Brougham's sardonic retort to Park's accusation that he was trying to influence the jury:

> I am not saying anything: I am sitting with my back to the Jury and am not armed, as the learned Attorney General is with the power of making a long address to the Jury. He is not only anticipating what he thinks we may say, but what he knows we have not the power to say. He interprets my looks – he expresses surprise and distrust, and then turns round and applies to your lordship. This is not a case in which the Attorney General ought so to conduct himself.[69]

The radicals were acquitted after the Manchester magistrate Colonel Sylvester acknowledged in his examination that he had instructed Nadin to send Fleming to the meeting to be asked to be "twisted in", and the witnesses of the defence each contradicted Fleming's evidence.[70] E. P. Thompson pointed out that the decision of the judge (Baron Wood) and jury demonstrated that "Britain was not a police state", and that the law officers were "well aware that conviction was not automatic".[71] Archibald Prentice, who later became a pro-reform journalist in Manchester, recalled in his 1851 memoir about the positive impact that the acquittal of the Thirty Eight had on the radical movement: "like the acquittal of Thomas Walker and John Horne Tooke, certainly tended to keep alive some feeling of confidence in a trial by jury as a safeguard of personal liberty".[72] He nevertheless noted the financial and psychological impact of the case: "an expensive trial (although the money was found by middle-class men …) and a long imprisonment previous to trial no doubt operated in the way of intimidation". This view again reflects how the "reign of terror" was more about the fear of arrest and the consequences of prosecution than the actual number of prosecutions.[73] In some senses, the trial of the Thirty Eight was an anomaly among the other cases brought to court in 1812-19, as it was the only one where the evidence for the prosecution was based on

one informer's testimony, which as previous trials had shown, was never a good basis for success. The law officers ensured that in all the other cases brought to court were limited to overtly criminal acts such as frame-breaking and robbery of arms, and kept any evidence about political sedition in the background.[74]

IV

The case of the Thirty Eight occurred at the turning point when prosecutions of political radicals began to shift away from seditious libel towards conspiracy and seditious assembly. Local and national governments became more concerned about the potential for working-class collective action in industrialising areas of Britain to instigate revolution more than the textual contents of pamphlets and newspapers. Political trials in this period widened the definition of treason to include threats to parliament as well as the monarch, and after the Peterloo Massacre and the Six Acts that followed, seditious conspiracy included intent to provoke riot and tumult against the constitution.[75] Nonetheless, as illustrated in the law officers' opinion books, the Tory governments of the era often took great care to ensure that cases were prosecutable with some chance of success, and they were usually highly sensitive to the liberties guaranteed by the process that could be exploited by clever lawyers and argued by the radicals themselves. The extent of repression was limited. It was limited by the law. It was limited by the processes of the law. It was limited by widely-held principles of an unwritten constitution. Though radicals accused the government of corruption, law makers and enforcers nevertheless respected the right to petition and to a fair trial, at least in theory if not always in practice.

The government responded to periods of heightened political agitation such as 1799-1801 and 1817-18 with suspension of habeas corpus legislation, showing how the state trial could never guarantee success for the prosecutors and during crises it was easier to arrest under direct warrant and keep the prisoners under lock and key without the opportunity for them to air their views in an open court. Radicals treated trials as battles about the constitution, with their grievances drawn from the language of Magna Carta as tutored by Major Cartwright and T. J. Wooler. They were therefore especially aggrieved by the suspension of habeas corpus acts, which appeared to remove their constitutional rights to a fair trial, and the use of special juries which to them was proof of government corruption. The impact of loyalist repression was real and significant, but because it appeared so unpredictable rather than because it was total in any way. Moreover, government repression

was channelled by the way in which power was distributed between central and provincial authorities. The main organs of law and order lay in the magistrates' offices and the county court rooms rather than in the Home Office. The actions of local authorities were also highly significant in bringing radicals to the assizes in the first place, using spies and informers, intimidation and overtly anti-radical and indeed anti-working class statements in court and in the press. The Thirty Eight would not have been prosecuted had it not been for the zeal of deputy constable Joseph Nadin to root out all remaining "Jacobins" in Manchester, his determination proven again in August 1819 when he arrested the orators on the field of Peterloo. Power was personal. The personal interactions and the uneven balance of power between defendants and prosecution within the court room played a large part in determining the outcomes of the trials.

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[2] Jennifer Mori, *Britain in the Age of the French Revolution, 1785-1820* (London, 2000), 101.

[3] Samuel Bamford, *Passages in the Life of a Radical* (Manchester, 1849), ch. VI.

[4] See Paul Halliday, *Habeas Corpus From England to Empire* (Cambridge MA, 2010).

[5] The National Archives (hereafter TNA), Treasury Solicitor's Papers, TS 25, law officers' opinion books; Home Office Domestic Correspondence, HO 48.

[6] Jon Mee, *Print, Publicity, and Popular Radicalism in the 1790s: The Laurel of Liberty* (Cambridge, 2016), 105

[7] TNA, Home Office Domestic Correspondence, HO 42 and HO 52; Home Office out-letter books, HO 41.

[8] Kevin Gilmartin, *Print Politics: The Press and Radical Opposition in Early Nineteenth-Century England* (Cambridge, 1996), 115-20; Jon Mee, *Treason, Seditious Libel, and Literature in the Romantic Period*, Oxford Handbooks Online (New York, 2016).

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[11] James Epstein, *Radical Expression: Political Language, Ritual and Symbol in England, 1790-1850* (Oxford, 1994), 41; Harling, "Law of libel", 128; Gilmartin, *Print Politics*, 115-20.

[12] Harling, "Law of libel", 108, using TNA, KB 28/351-523, King's Bench, crown rolls, 1790-1832.

[13] TNA, HO 41 and HO 42, Home Office correspondence out and in-books.

[14] Epstein, *Radical Expression*, 39.

[15] David Bentley, *English Criminal Justice in the Nineteenth Century* (London, Hambledon Press, 1998), 84.

[16] TNA, TS 25/3, 5-8, 2034-5, Treasury Solicitor's papers, law officers' opinion books, 1808-20.

[17] There are about a dozen more cases recorded within the general Home Office correspondence (TNA, HO 41, HO 42) that were either not sent on to the law officers or do not include decisions.

[18] Harling, "Law of libel", 109-110.

[19] TNA, TS 25/5-6, law officers' opinion books, 1812-15.

[20] Harling, "Law of libel", 125.

[21] TNA, TS 25/7, 8, law officers' opinion books, 1816, 1817-18.

[22] TNA, TS 25/6, law officers' opinion book, 1813-15.

[23] Harling, "Law of libel", 125.

[24] TNA, TS 25/5, law officers' opinion book, 1812.

[25] TNA, HO 42/191/135, expenses bill from John Lloyd of Stockport, 23 November 1819.

[26] *Globe*, 6 September 1819.

[27] Harling, "Law of libel", 110.

[28] TNA, TS 25/2034, f. 231, 19 October 1818.

[29] TNA, TS 25/2034, f. 232, 19 October 1818.

[30] Harling, "Law of libel", 112.

[31] Lisa Steffen, *Defining a British State: Treason and National Identity, 1608-1820* (Basingstoke, 2001), p. 7; Steve Poole, *The Politics of Regicide in England, 1760-1850:*

Troublesome Subjects (Manchester, 2000); John Barrell, *Imagining the King's Death: Figurative Treason, Fantasies of Regicide, 1793-1796* (Oxford, 2000).

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[36] James Fitzjames Stephen, *A History of the Criminal Law of England, vol 2* (1883, reprint Cambridge, 2014), 378.

[37] Harling, "Law of libel", 126.

[38] TNA, TS 25/2035, f. 174, 2 September 1819.

[39] Harling, "Law of libel", 126; Malcolm Chase, *1820: Disorder and Stability in the United Kingdom* (Manchester, 2013), p. 208; *The Republican*, 15 October 1819; *The Trial of Sir Francis Burdett, Bart. for a Seditious Libel* (London, W. Myers, 1820); *The Trial of the Rev. Robt Wedderburn ... for Blasphemy ... edited by Erasmus Perkins* (London, W. Mason, 1820).

[40] Chase, *1820*, 208-9.

[41] Epstein, *Radical Expression*, 35.

[42] Ibid., 35.

[43] Gilmartin, *Print Politics*, p. 115; E. P. Thompson, *Whigs and Hunters: the Origin of the Black Act* (Harmondsworth, 1975), 263.

[44] Harling, "Law of libel", 117; T. J. Wooler, *An Appeal to the citizens of London against the alledged lawful mode of packing special juries* (London, 1817).

[45] Bentley, *English Criminal Justice*, 90-2.

[46] Epstein, *Radical Expression*, 64; *Black Dwarf*, 21 and 28 April 1818.

[47] Epstein, *Radical Expression*, 60.

[48] TNA, HO 42/185/289, Wooler to Bagguley, 2 April 1819.

[49] TNA, TS 11/1071, King vs Wolseley and Harrison, Chester Spring Assizes, 1820.

[50] TNA, HO 42/185/293, Wolseley to Bagguley, 2 April 1819.

[51] *Chester Courant*, 27 April 1819. The revived reform societies in Stockport, Hull, Manchester and Oldham raised subscriptions for the bail money, but could not succeed in the strained economic circumstances of working-class support: *Black Dwarf*, 3 January 1819.

[52] *Chester Courant*, 27 April 1819.

[53] Samuel Bamford, *Passages in the Life of a Radical* (Manchester, 1849), 24-5.

[54] J. R. Dinwiddy, "Luddism and politics in the Northern counties", in J. R. Dinwiddy, *Radicalism and Reform in Britain, 1780-1850* (London, Hambledon Press, 1992), pp. 384-5; TNA, HO 40/1/451, Milne to Litchfield, 17 June 1812.

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[57] Frances D. Cartwright, *The Life and Correspondence of Major Cartwright,* 2 vols (London, Henry Colburn, 1826), II: 34-7; Manchester Archives, BR F 324.942733, Shuttleworth scrapbook, fo. 8, Walker to Shuttleworth, 21 August 1812.

[58] *The Trial at Full Length*, 22.

[59] Ibid., 20.

[60] Epstein, *Radical Expression*, 32; David Lemmings (ed.), *Crime, Courtrooms and the Public Sphere in Britain, 1700-1850* (Farnham, 2012), 2.

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[63] Ibid., 126.

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[66] Julienne Hanson, "The architecture of justice: iconography and space configuration in the English law court building", *Architecture Research Quarterly*, 1 (1996), 50-9.

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[68] *The Trial at Full Length*, 31.

[69] Ibid., 42-3.

[70] Dinwiddy, "Luddism and politics", 385.

[71] Thompson, *The Making of the English Working Class*, 579.

[72] Archibald Prentice, *Historical Sketches and Personal Recollections of Manchester* (Manchester, 1851), 81.

[73] Ibid.

[74] Thompson, *The Making of the English Working Class*, 577.

[75] Lobban, "From seditious libel to unlawful assembly", 323.