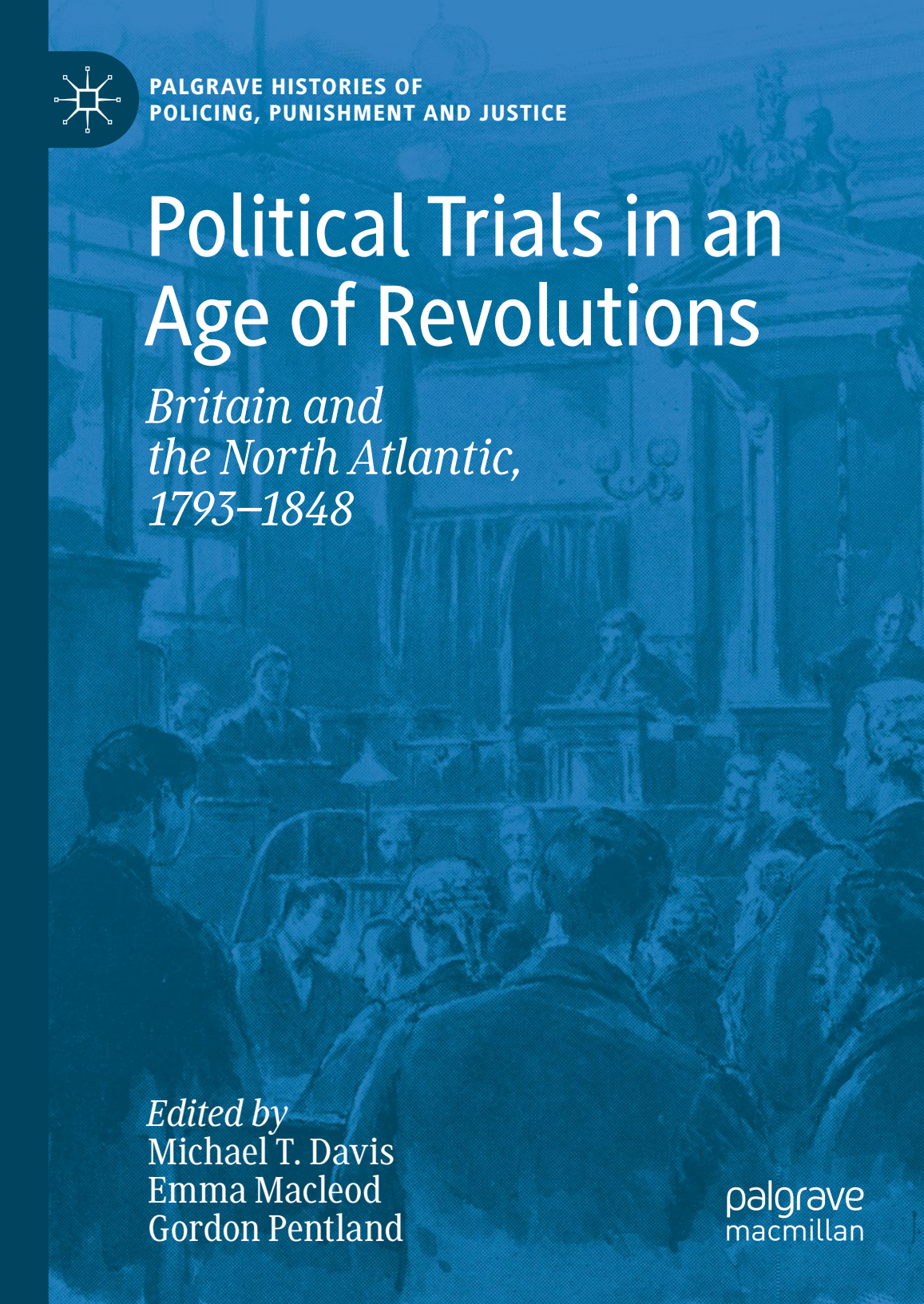

PALGRAVE HISTORIES OF
POLICING, PUNISHMENT AND JUSTICE

Political Trials in an Age of Revolutions

Britain and the North Atlantic, 1793–1848

Edited by
Michael T. Davis
Emma Macleod
Gordon Pentland

palgrave
macmillan

Palgrave Histories of Policing, Punishment and Justice

Series Editor
David G. Barrie
University of Western Australia
Crawley, Australia

Since the 1960s, studies of police, punishment and the courts have been an integral and popular part of historical scholarship, and have followed in the historical trajectory of a more expansive criminal justice apparatus around the world. This international book series aims to examine and debate some of the most pressing issues and problems in the field, and to stimulate new directions in research. It will showcase the work of both emerging and leading scholars of the social, cultural and institutional histories of police, punishment and the judicial sphere, and welcomes work grounded in various disciplines including criminology, sociology, history, law, legal history and political science.

More information about this series at
http://www.palgrave.com/gp/series/15080

Michael T. Davis • Emma Macleod
Gordon Pentland
Editors

Political Trials in an Age of Revolutions

Britain and the North Atlantic, 1793–1848

palgrave
macmillan

Editors
Michael T. Davis
School of Humanities, Languages
and Social Science
Griffith University
Southport, QLD, Australia

Emma Macleod
Faculty of Arts and Humanities
University of Stirling
Stirling, UK

Gordon Pentland
School of History, Classics and Archaeology
University of Edinburgh
Edinburgh, UK

Palgrave Histories of Policing, Punishment and Justice
ISBN 978-3-319-98958-7 ISBN 978-3-319-98959-4 (eBook)
https://doi.org/10.1007/978-3-319-98959-4

Library of Congress Control Number: 2018961424

Cover Design by Fatima Jamadar

This Palgrave Macmillan imprint is published by the registered company Springer Nature Switzerland AG
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

Foreword

The repressive response of the British state to the rise of a popular radical movement in the age of revolutions has in recent years attracted the interest of a wide range of social, cultural, literary and legal historians. Alongside detailed studies of the major 'show trials' of this era – particularly the trials of the leaders of the London Corresponding Society, charged with high treason in 1794 – scholars have also begun to explore what a much larger range of trials can tell us. Looking at such trials, we can learn a great deal not only about the tools of legal repression used by the state, but also about the social spaces in which radicalism operated, and the ways in which they were regulated. Since the courtroom was a central venue in the public sphere, trials also give great insight into understanding the language and ideology of radicals. For it was often in these trials of political language – or in post-trial pamphlets, lectures or newspapers – that political ideas were debated directly between those who wanted to maintain the established order and those who wished to subvert it. Political trials did not simply put in question what those who had been accused of sedition intended by their words or actions: it gave space for rival interpretations of the constitution. As a consequence, such trials were not simply the means by which a repressive state could silence its opponents. As numerous historians have shown, they were also venues in which radical culture could find expression. If political trials were means through which the state sought to exert its power over its opponents, and

in ways in which the odds were often highly stacked against defendants, there remained enough uncertainty in the law for the crown's legal claims to be contested, enough ambiguity in the constitution for its political claims to be disputed, and enough cultural space for the accused to appeal to the emotions of a wider public.

The set of essays collected here enrich our understanding of the political and cultural context in which these trials took place. They also show a more nuanced view of the politics of repression than has sometimes been taken. Several of the essays presented here illustrate the complex factors at work in determining whether to prosecute at all. Not only were there risks in putting radicals on trial publicly, but there were also factors of cost to be taken into account. As Katrina Navickas shows, since it was the Home Office which footed the bill for ex officio informations, it needed to be careful in selecting which trials to take on and which to leave to local prosecutors. Small scale prosecutions at local level could be more effective than high profile trials with severe sentences; and the Law Officers in London were therefore assiduous in sifting which cases to prosecute. Officials in London were also wary of mounting trials which might have the effect of increasing unrest, rather than dampening it, as Steve Poole shows in his study of the prosecution of Reform Bill rioters of 1831. In the event, it was often local politics which was determinative. James Epstein's study of the trials of William Winterbotham in 1793 show how this Dissenting minister had already made enemies of local elites in the very loyalist city of Plymouth, before facing two prosecutions for seditious spoken sermons in a very hostile courtroom environment. Winterbotham was convicted by jurors who believed implausible witnesses, in spite of having the support of the trial judge.

Historians of the radical movement and the repressive reaction of the state to it often focus their attention primarily on the response of the English courts, with the Scottish trials of men like Maurice Margarot and Joseph Gerrald being invoked only to demonstrate the blunt brutality of Scots law and the bias of its judges in contrast to the legality of the English courts, which allowed Thomas Erskine to secure the famous treason acquittals in 1794. One of the virtues of this volume is the amount of attention it devotes to Scottish perspectives, revealing a more complicated, and more interesting picture than is sometimes perceived. Lindsay

Farmer sets the scene by outlining the Scottish law of sedition in the era between its first use in 1793 and its final use against Chartists in 1849. He demonstrates that it was the early trials – including those of Margarot and Gerrald, who were sentenced to fourteen years' transportation to Australia – which established sedition in Scots law. The offence was only subsequently given proper legal definition by treatise writers, initially from the Tory jurist, Baron David Hume. Farmer shows that treatise writers in the era of the French Revolution and Napoleonic wars took an expansive view of sedition, but that by 1832, writers had begun to lay a focus on violence and illegal means. As in England, the legal concept of sedition was modified as concepts of political participation changed. Comparing the English and Scottish trials of the 1790s, Emma Macleod seeks to call into question the traditional dismal view of the record of the Scots judiciary, especially Lord Braxfield, a view which rests in no small part on the verdict of the Whig Henry Cockburn, who was hardly an impartial witness. As she shows, there were high levels of conviction for sedition on both sides of the border. In other respects, as well, the records of the two systems were not dissimilar: not only are there examples of English judges who could be as biased as the Scots, but Scots law offered defendants some procedural advantages denied to the English. Whether in England or Scotland, political trials in this era, she argues, cannot be seen simply as blunt efforts to suppress the views of those who opposed the government, as some historians have assumed. Rather, those in authority who saw a revolution unfolding across the Channel into a Reign of Terror perceived a real danger of similar outcomes in the activities of the radicals. But in conducting their trials, the authorities remained constrained by legalism. Indeed, she suggests that the sentences of transportation imposed on the 'Scottish martyrs' should also be seen in the wider context of debates over the place of this punishment in the Scottish penal system.

A number of the essays in this collection focus on the wider political or cultural uses of the trials. David G. Barrie and Joanne McEwan show how central the press was in presenting contested interpretations of the political trial in Scotland in the 1790s. Sedition trials attracted particular attention, with mainstream and radical newspapers giving competing narratives of the trial for wider public consumption. In this context, the

radical press was able to present an image of justice which ran counter to the narrative which the courts wished to see disseminated. This could both put the impartiality of the system in question – as it did in 1794, when press reporting of Braxfield's handling of cases helped generate parliamentary debates on the state of the Scottish criminal justice system – and it could also help to construct an image of martyrs. Nor was it only the radical press which could make use of trials for its own purposes. As Gordon Pentland shows, Scottish Whig lawyers, who were in effect excluded from political power in Edinburgh, were able to use their position as defence counsel in post-war political trials, to put forward their own vision of liberty and to attack Tory ideas and institutions. Instead of forwarding the radical agenda of those accused of sedition, they reinterpreted their actions in the light of Whig ideology. In this way, a trial could become a venue for Whig, rather than radical, counter-theatre. However, he also shows that if the political trial was a form of theatre, it was not under the control of any particular party. Just as the Whigs might seek to use the trial as a forum to present their vision, so the mainstream and radical press were able to present their own counter narratives. Indeed, the uses which could be made of trials by a radical press were so dangerous that post-war governments began to doubt the utility of prosecuting such cases, while judges sought to restrict the reports which could be circulated.

The very public nature of the trial forum is also emphasised in Michael Davis's essay on the noise and the emotions of political trials. As he reminds us, if the state wished to use the trial to communicate its own messages, it was constrained by the fact that communication was not a one-way process. The courts needed their audience but the audience did not always take the message intended. Political trials became scenes of emotion – as all trials were – with tears wept at capital convictions and joy expressed at acquittals. However, the emotion of the public presented a threat to political trials, raising the spectre of the threatening mob. In this context, the judges were ever keener to impose discipline and order on the court. At the same time, political trials could also, as Martyn Powell reminds us in his study of Irish cases, be 'intimate settings' with a political culture in their own right. Those on trial, and those who tried them, were often members of networks created by family, education or

profession, which might lead to displays of emotion and personal reflections on the backgrounds of the participants. Alongside political differences, these trials might reveal betrayals of friendship or intimacy, with emotional ramifications. Trials and executions could thus be venues for very personal expressions of emotions as well as those pitched at posterity. The emotional impact of the trials is also highlighted in Nancy E. Johnson's chapter, which shows how William Godwin, Charlotte Smith and Mary Wollstonecraft gave narrative life to the abstract concepts discussed in trials, revealing a tyranny supported by law running through all social relations, while Thomas Holcroft drew on his experiences as an awaiting-trial political prisoner in Newgate to reveal the lasting human damage of the trials.

The volume also puts these British experiences in a wider context, with chapters which explore developments overseas. Barry Wright's article summarises the history of political trials in British North America before confederation in 1867. Although the political challenges faced by the authorities in Canada were different from those faced by the authorities in London, they often used similar tools, such as the suspension of habeas corpus, an Alien Act and a Sedition and Alien Act. But Canada – like Ireland, but unlike England or Scotland – also saw extensive use of Martial Law courts in 1837–38. Jack Fruchtman relates the history of Aaron Burr's treason trial of 1807, unravelling the personal and political animosities and ambiguous ambitions which pay behind this trial, and showing how Chief Justice Marshall's strict legalism frustrated Thomas Jefferson's attempt at a successful political prosecution. If these chapters show analogous proceedings in other jurisdictions in the common law tradition, perhaps the most striking place of comparison is France, discussed in Michael Rapport's essay on the Revolutionary Tribunal which sat during the Terror in 1793–94. The contrast between 'Pitt's Terror' and Robespierre's is stark. Where England saw fewer than 200 treason or sedition trials in the 1790s, the Parisian tribunal sent 2639 people to the guillotine in less than eighteen months. Nor was it a court of *law*, being a court of revolutionary justice, tasked with hastening the transformation of France into a Jacobin republic. As such, it sought to engage with public opinion, by disseminating information widely about its proceedings. Its function was not merely to punish counter-revolutionaries, but also to

educate the public, preparing them for life in a republican society. If the British authorities had ambitions that their political trials should have an educative effect, they remained much more constrained by the culture and practice of the rule of law in how far this could be achieved, as was evident from Erskine's triumphant defence of 1794. Equally, there seems to have been much less room for the public to express dissatisfaction with the process in France than in England. In both countries, in the end, the repressive operation of the courts rested on public acquiescence – whether of the Parisian popular movement or the popular loyalism in England. Nonetheless, it seems clear that the language of law and constitutionalism in England – contested and ambiguous as it might have been – provided parameters which set definite limits to repression, and which provided points of departure of which political opponents could make use. The essays presented here open up new perspectives on the nature and culture of these trials in a number of ways. Read together, they present connections, comparisons and contrasts which open up new paths of study in this very fertile field.

Department of Law, The London School of Economics and Political Science
London, UK

Michael Lobban

Contents

Notes on Contributors

David G. Barrie is Associate Professor of History at The University of Western Australia. His recent publications include *Sin, Sanctity and the Sister-in-Law: Marriage with a Deceased Wife's Sister in the Nineteenth Century* (2018), and (with Susan Broomhall) *Police Courts in Nineteenth-Century Scotland. Volume 1: Magistrates, Media and the Masses* (2014) and *Volume 2: Boundaries, Behaviours and Bodies* (2014).

Michael T. Davis is Senior Lecturer in the School of Humanities, Languages and Social Science at Griffith University. His latest publications are *Crowd Actions in Britain and France: From the Middle Ages to the Modern World* (2015) and (edited with Gordon Pentland) *Liberty, Property and Popular Politics: England and Scotland, 1688–1815* (2015).

James Epstein is Professor of History at Vanderbilt University, Nashville, Tennessee. His most recent book is *Scandal of Colonial Rule: Power and Subversion in the British Atlantic during the Age of Revolution* (2012). He is currently completing a book of essays, co-written with David Karr, entitled *The Secret Purpose of the Heart: British Jacobin Politics in the Age of Revolution*.

Lindsay Farmer is Professor of Law at the University of Glasgow. He is the author of *Criminal Law, Tradition and Legal Order* (1997) and, most recently, *Making the Modern Criminal Law: Criminalization and Civil Order* (2016).

Jack Fruchtman is Professor of Political Science and Director of the Program in Law and American Civilization at Maryland's Towson University where he

has taught since 1978. He has written, edited, or annotated eleven books, including studies of Benjamin Franklin, Helen Maria Williams, Thomas Reid, Richard Price, Joseph Priestley, Thomas Spence, and Thomas Hardy. His publications include *The Political Philosophy of Thomas Paine* (2009) and *American Constitutional History: A Brief Introduction* (2016).

Nancy E. Johnson is an Associate Dean of the College of Liberal Arts & Sciences and a Professor of English at the State University of New York at New Paltz, where she has taught eighteenth-century British Literature and contemporary literary theory. She is the author of *The English Jacobin Novel on Rights, Property and the Law: Critiquing the Contract* (2004); editor of *Impassioned Jurisprudence: Law, Literature and Emotion, 1760–1848* (2015); scholarly editor of *The Court Journals and Letters of Frances Burney, 1790-June 1791, vol. VI* (forthcoming); and editor of *Mary Wollstonecraft in Context* (forthcoming). She has also published articles on various intersections of law and literature, including essays on narratives of the London Treason Trials of 1794 and Elizabeth Barrett Browning's poetry and child labour laws.

Michael Lobban is Professor of Legal History at the London School of Economics and Political Science. His works include *The Common Law and English Jurisprudence, 1760–1850* (2001); *White Man's Justice: South African Political Trials in the Black Consciousness Era* (1996); and *A History of the Philosophy of Law in the Common Law World, 1600–1900* (2007).

Emma Macleod is a Senior Lecturer in History at the University of Stirling. She is the author of *A War of Ideas: British Attitudes to the Wars Against Revolutionary France, 1792–1802* (1998) and *British Visions of America, 1775–1820: Republican Realities* (2013). She is working on a comparative study of the political trials of the 1790s in the North Atlantic world, and co-editing the correspondence of James Wodrow and Samuel Kenrick (1750–1810) with Martin Fitzpatrick and Anthony Page.

Joanne McEwan is a Research Assistant and short-term research fellow with the ARC Centre of Excellence for the History of Emotions (CHE), based at The University of Western Australia. Her research focuses on gender, family and criminal justice history in eighteenth- and nineteenth-century Britain, and she was formerly a Research Associate for the Australian Research Council Discovery Project, 'Prosecution, Punishment and Print in Enlightenment Scotland', led by David G. Barrie. She has published chapters on living arrangements, domestic violence and child murder, and is the editor (with Pamela Sharpe) of

Accommodating Poverty: The Housing and Living Arrangements of the English Poor, c.1650–1850 (2011) and (with Philippa Maddern and Anne Scott) *Performing Emotions in Early Europe* (2018).

Katrina Navickas is Reader in History at the University of Hertfordshire. She is author of *Protest and the Politics of Space and Place, 1789–1848* (2015) and *Loyalism and Radicalism in Lancashire, 1798–1815* (2009). Her research interests centre around popular politics in northern England, particularly the historical and spatial geographies of protest.

Gordon Pentland is Reader in History at the University of Edinburgh. He has published widely on the political and cultural history of Britain and Scotland since the French Revolution. His most recent book (edited with David Brown and Robert Crowcroft) is the *Oxford Handbook of Modern British Political History, 1800–2000*.

Steve Poole is Professor of History and Heritage at the University of the West of England, Bristol and the Director of the University's Regional History Centre. His research focusses on protest movements and criminality in the long eighteenth century and his most recent book (with Nick Rogers) is *Bristol From Below: Law, Authority and Protest in a Georgian City* (2017). Other publications include 'The Politics of Protest Heritage, 1790–1850', in *Remembering Protest in Britain, 1500–1850: Memory, Materiality and Landscape*, ed. C. Griffin and B. McDonagh (2018); 'For the Benefit of Example: Crime Scene Executions in England, 1730–1830', *A Global History of Execution and the Criminal Corpse*, ed. R. Ward (2015); and *John Thelwall: Radical Romantic and Acquitted Felon* (2009).

Martyn Powell is Professor of History and Head of the School of Humanities at Bristol University. A specialist in eighteenth-century Irish political and social history, his publications include *Britain and Ireland in the Eighteenth-Century Crisis of Empire* (2003), *The Politics of Consumption in Eighteenth-Century Ireland* (2005), *Piss-Pots, Printers and Public Opinion in Eighteenth-Century Dublin* (2009), *Clubs and Societies in Eighteenth-Century Ireland*, edited with James Kelly (2010), and many articles and essays. He is currently working on an edition of the political works of Richard Brinsley Sheridan for Oxford University Press.

Mike Rapport is Reader in Modern European History at the University of Glasgow, where he is convenor of Learning and Teaching and specialises in the French Revolution, its international impact, and nineteenth-century European

history. He has written five books: *Rebel Cities: Paris, London and New York in the Age of Revolution* entitled *The Unruly City* in North America (2017); *The Napoleonic Wars: A Very Short Introduction* (2013), *1848: Year of Revolution* (2008), *Nineteenth Century Europe, 1789–1914* (2005) and *Nationality and Citizenship in Revolutionary France: The Treatment of Foreigners, 1789–1799* (2000). With Ben Marsh, he edited *Understanding and Teaching the Age of Revolutions* (2017). He is now working on space and place in revolutionary Paris and on a concise history of Europe. He volunteers with Guide Dogs for the Blind and lives in Stirling, Scotland.

Barry Wright is Professor of Law and History at Carleton University, Ottawa, Canada. He is an editor of the Canadian State Trials series (most recently with Eric Tucker and Susan Binnie eds, *Canadian State Trials Volume 4: Security, Dissent and the Limits of Toleration in War and Peace, 1914–39* published in 2015). His broader research concerns British colonial criminal law reform in the nineteenth century. His recent publications include "Macaulay's India Law Reforms and Labour in the British Empire" in *Legal Histories of the British Empire: Laws, Engagements and Legacies*, ed. Shaunnagh Dorsett and John McLaren (2014), pp. 218–33; and "Macaulay's India Penal Code and Codification in the Nineteenth Century British Empire", *Journal of Commonwealth Criminal Law*, 2 (2012): 25–50.

Abbreviations

Cockburn, *Examination*	Henry Cockburn, *An Examination of the Trials for Sedition which have hitherto occurred in Scotland*, 2 vols (Edinburgh, 1888).
State Trials	Thomas Jones Howell (ed.), *A Complete Collection of State Trials and Proceedings for High Treason and other Crimes and Misdemeanours*, 33 vols (London, 1809–1828).
ODNB	*Oxford Dictionary of National Biography* (Oxford, 2004–).

1

Introduction: Political Trials in an Age of Revolutions: Britain and the North Atlantic, 1793–1848

Michael T. Davis, Emma Macleod, and Gordon Pentland

I

> My lords, I know that what has been done these two days will be rejudged;- that is my comfort, and all my hope.[1]

The defendants in many of the political trials of the "age of revolutions", whether speaking for themselves or through professional counsel, were confident that they would appear as protagonists in later histories. They

M. T. Davis (✉)
School of Humanities, Languages and Social Science, Griffith University, Southport, QLD, Australia
e-mail: m.davis@griffith.edu.au

E. Macleod
Faculty of Arts and Humanities, University of Stirling, Stirling, UK
e-mail: e.v.macleod@stir.ac.uk

G. Pentland
School of History, Classics and Archaeology, University of Edinburgh, Edinburgh, UK
e-mail: Gordon.pentland@ed.ac.uk

M. T. Davis et al. (eds.), *Political Trials in an Age of Revolutions*, Palgrave Histories of Policing, Punishment and Justice, https://doi.org/10.1007/978-3-319-98959-4_1

were not to be disappointed. The challenge for those placed on trial was to situate themselves and their own plights within a relevant history of liberty – British, English, Scottish, Irish, or universal – and historical narratives were the most common feature of defences. They carried with them, as did Skirving's failed defence above, an appeal to posterity which was taken up by later lawyers, activists, politicians, and historians.

As extraordinary moments within the lives of states, political trials have always attracted attention. The collections of *State Trials* that developed in Britain from the early eighteenth century were of course partly designed as legal textbooks. More importantly, however, they were national histories, textual monuments that rehearsed a long-range history of liberty and challenges to it explicitly through the medium of political trials. Key episodes around which that narrative developed and on which this volume pivots and much of the relevant scholarship has focused are the notorious rash of state trials for treason and sedition in England and Scotland in 1793–4. By labelling these and the other trials examined in this volume as "political" it is not intended to downplay the political dimensions of other (indeed, by some definitions, of *all*) criminal trials. Certainly, for a trial to be "political" may not require that it have an explicitly partisan quality, or that it garner extraordinary levels of public interest, or that its content and outcomes expressly involve contests over the distribution of power within the state.[2] Many of the trials considered in this volume, however, embodied all three of these qualities. It is difficult to explain the significance of these trials for contemporary audiences or their enduring attraction to later generations without these qualities.

The trials of the 1790s were almost immediately central to a number of partisan narratives about politics and the state, which were crafted in accounts of the trials themselves as well as in Parliament and other institutions and through the proliferating print culture of the late eighteenth and early nineteenth centuries. Most obviously for radicals and for opposition Whigs, they were evidence of the veracity of their critiques. For loyalists, ministers, and the Crown successful verdicts were evidence of the substance of their arguments that the state needed to defend itself via the law. Even acquittals, while carrying the cost of bolstering the radical cause by apparent ministerial defeat, carried benefits for the state. The acquittal of Thomas Hardy in 1794, for example, underlined Thomas

Erskine's plea to the jury: "let us not follow the example of that which we deplore in another country".[3] By serving "to set up her happy constitution, the strict letter of her guardian laws, and the proud condition of equal freedom, which her highest and lowest subjects ought equally to enjoy" acquittals might be personally embarrassing for ministers, but served wider loyalist arguments, which were prominent within its efforts to persuade the lower orders, about the freedom preserved by British laws.[4]

Partisan interpretations and uses of political trials were not, of course, novel phenomena in the 1790s.[5] During and after the "age of revolutions" these uses continued to develop. There is now a rich historiography of commemoration and memorialisation of the victims of political trials. It reveals, among other things, the contested interpretations of political trials in subsequent decades. The "martyrs" of the Scottish courts in the 1790s, for example, became the focus of pan-British efforts at commemoration after the 1830s, but Whigs, household suffrage campaigners, and Chartists all imbued them with different significance.[6] Similarly, the comparative visibility of different defendants has ebbed and flowed depending on the needs of and contests between the commemorators themselves: Chartists, liberals, socialists and nationalists have all selected different points of emphases within political trials and sought to commemorate accordingly.[7] The nature of the source materials has frequently supported this proliferation of perspectives. The famous speech from the dock of Robert Emmet became a classic statement of republican Irish nationalism, but exists in over seventy versions supporting a range of interpretations.[8] That so many different groups have sought to establish "ownership" of the political trials does speak volumes about their significance.

Needless to say, partisan narratives have never been especially interested in providing detailed histories or analyses of the events themselves. Alongside the trials, however, the kinds of sources on which later historians might work were being produced. The huge volume of trial reports should not, of course, gull the historian into believing that he or she has reliable access to what was said and done during political trials. Accounts were often published with partisan purposes and their publishers and publication histories were frequently entangled with the events they

described. The single most-cited source in this volume, for example – Cobbett's, later Howell's, *Complete Collection of State Trials* – was begun in 1809 under the auspices of Thomas Bayly Howell and the prolific journalist and radical William Cobbett. It was to defray part of his own legal expenses and hefty fine after his seditious libel trial in 1810 that Cobbett signed this project over to the Howells.[9]

Part of the rationale for the *State Trials* was that the prosecutions of Hardy and others had major implications for the application of public law. Perhaps unsurprisingly it was lawyers who were most qualified to attempt and most forward in producing more substantial investigations of the trials, both detailing particular trials and using them to furnish analyses of different varieties of political crime. Lawyerly accounts were not, of course, devoid of partisanship. Another much-cited volume in the essays that follow, Henry Cockburn's *Examination of the Trials for Sedition that have hitherto occurred in Scotland*, was part legal treatise, part Whig propaganda.

Modern historical accounts of these political trials can be dated to the post-war period. E. P. Thompson's *Making of the English Working Class* was, of course, pivotal in both establishing Britain during the "age of revolutions" as a site for creative historical scholarship and in affording political trials an important place in his narrative of a developing and politicising working class. At the risk of oversimplifying a rich and complex scholarship (whose complexities are, however, grappled with in many of the essays that follow), historians have been attracted to political trials in general and to specific celebrated trials, in order to answer two broad sets of questions.

The first regards the scope, scale and nature of both political crime and of government efforts to police and punish it in the 1790s and after. Histories that have looked at political trials in the round, either in the 1790s or across longer periods, have revealed a good deal. The caricature of "Pitt's Terror" was an early focus of this kind of research.[10] Thompson had pointed out that political trials carried both opportunities and costs for ministers: "Persecution, we know, is a two-edged weapon".[11] Efforts to reveal the sharpness of both edges have given us a much more nuanced understanding of political trials across the period.[12] Such investigations have also quantified and explained the changing nature of political crime,

as the unreliable and blunt weapons of treason and seditious and blasphemous libel trials were increasingly (but not completely) replaced with public order offences as a means of defending the state from internal enemies.[13]

Overall, the development of this more complex account has seen the relative downgrading of coercion and persecution as blanket explanations for the chequered history of radicalism across this period. This has largely been done, however, without rescuing Pitt and his ministers from charges of deliberately exaggerating the nature of the radical threat, sponsoring alarmist reactions to it, and manipulating the legal process in their efforts to restrain it. Nonetheless, both the extent and the efficacy of flat legal repression in the "age of revolutions" is now very much more debatable. The proliferating histories of loyalism following on from H. T. Dickinson's lucid treatment of the phenomenon have focused on political trials as only one part of an economy of political reaction that focused on persuasion at least as much as it did on coercion.[14]

The second set of questions aims more at recovering the meanings of the trials. Pioneering cultural historians (or social historians who had taken a cultural turn) were especially drawn to the performative and linguistic dimensions of political trials. Trials have been explored as crucial political sites, rare and illuminating moments when the state and its critics entered into direct, creative, and often noisy confrontation. Historians of radicalism have focused on the complex opportunities they afforded – through ideologically motivated defence speeches, processions to the court, and the exploitation of the relationship between trials and the press – to challenge the claim to dominance which lay at the centre of legal language, ritual and spaces.[15]

This work has multidisciplinary origins, but much of it is relevant to Olivia Smith's brilliant treatment of the period between the French Revolution and Peterloo as involving a prolonged conflict over language.[16] Some of this work has, of course, addressed the issues sketched above. One of the key ways, for example, in which trials were "double-edged" lay in the state's inability to fix securely the spectacle and language involved. The treason trials have a privileged place here. As widely-reported and focal moments, the language and events around them have been anatomised to provide insights not only into the reshaping of treason law in

this period, but also into the redefinition of the state, what allegiance to it meant and, in John Barrell's monumental work, into the entire cultural history of the 1790s.[17]

The work outlined above has established political trials in Britain and elsewhere as key sites for the exploration of politics in the "age of revolutions". While some of this work has looked at political trials in the round across comparatively long periods, scholarship has tended to coalesce around a few key, well-documented and long-celebrated trials. With notable exceptions, little effort has been made to recover and connect trials across different parts of the four nations, let alone to connect them to trials beyond "the isles". In that sense, the historiography of political trials still bears the imprint of the more partisan uses to which it has been put. In particular, political trials remain locked into essentially "national" histories of liberty.

II

The approaches taken by the essays in this volume seek to build on this existing body of work on political trials in the "age of revolutions". They broaden the investigation beyond the ten most commonly discussed cases (the five sedition trials in Scotland in 1793–4, the two treason trials in Edinburgh in September 1794, and the three treason trials in London in autumn 1794); they explore more deeply the legal contexts of the prosecutions; and they suggest the value of studying political trials in this era in comparative contexts. Even a preliminary attempt by Emma Macleod, below, to compare the best-known English and Scottish trials of 1793–4 demonstrates that the different legal contexts not only of each national jurisdiction, but also of each charge under the law involved a significant variety of criminal justice procedures. When a wider view is taken, and trials heard by English magistrates, military courts, prosecutions outside Britain, cases tried during the early decades of the nineteenth century, and evolving definitions and the liminality of the laws of sedition and treason are also considered, the complexity of the systems with which prosecutors and defendants had to deal becomes very apparent.[18]

While this volume does not constitute an explicitly comparative study of political trials in the "age of revolutions", it does begin to work towards that aim by recognising the common resort to political prosecutions in this very intense and agitated few decades following the eruption of crowd intrusion into elite politics in France in 1789 and swiftly by extension elsewhere in Europe and beyond, despite the difficulties this tactic caused for governments, let alone for defendants. While the contrast between "Robespierre's Terror" and "Pitt's Terror" is a common one in the historiography, the extent of the similarity of the issues raised by the political prosecutions for the authorities even in France and Britain is in fact also striking, as are elements of the political culture of state trials across all of these chapters.

By placing varied samples of political trials from this period – across six decades and five legal jurisdictions – alongside one another in the thirteen essays in this book, a number of themes emerge very clearly. The essays presented here demonstrate that the agency of the many actors involved in the process of political prosecutions was multivalent, contested, and not fully within the control of the authorities. As Ron Christenson suggests, "political trials are creative, placing before society basic dilemmas which are clarified through the trial …. But trials are not chess games which proceed according to exact rules, rigorous though the rules of evidence may be."[19] Many of the essays in this collection explore how the "rules" of political trials were inverted, interpreted or reinterpreted by various audiences. This was true even in Revolutionary France, at the height of the Terror, where, as Mike Rapport shows, the relationship of the revolutionary dictatorship with public opinion was crucial and complex. During the trial of the Girondins on 23–30 October 1793, the eloquence of the defendants caused Antoine Fouquier-Tinville, the public prosecutor of the Revolutionary Tribunal, such anxiety that five days into the hearings he solicited the intervention of the Convention, which passed a law limiting all proceedings to three days.[20]

These decades were an age of counter-revolutions as much as of revolutions and several contributors explore counter-revolutionary actors, practices, and limitations. Barrell argued convincingly that in Britain the crime of high treason was reinvented in the 1790s.[21] In this volume, Lindsay Farmer shows here that the Scottish courts also invented the

crime of sedition – as opposed to the more specific existing crimes of seditious conspiracy, seditious riot, and seditious libel – in that decade, while Gordon Pentland and Katrina Navickas explore the redefinition of political crimes in the 1810s and 1820s. The power of national politicians over and within the legal process was both substantial and frustratingly incomplete. Local officials – magistrates and mayors – were often essential to the creation of a case. Judges, who had so much power over so much of the process, were, nevertheless, not infrequently disobeyed by juries or spectators. They had their suitability questioned in open court by defendants, so that they themselves were in some sense assessed at the bar of public opinion, as were the trials themselves by the public galleries, the crowds in the streets outside the courtrooms, the press, debates in Parliament, literary representations and memoirs, biographies and autobiographies.

The roles of intention, context, emotions, memory, imagination, transparency, and the transience of the spoken word were all not only next to impossible to capture, characterise, define and judge (although, of course, prosecutors, judges and juries did all of these things); they also gave agency to defendants, witnesses, spectators and the press as well as to the more obviously powerful actors in the law courts – the judges, lawyers, and juries. The personal power of charisma and character inside the courtroom could be significant. Even while the defendants William Skirving and Maurice Margarot must have been aware that, following the trials of Thomas Muir and Thomas Fyshe Palmer, they had very little chance of being acquitted in Edinburgh in January 1794, they seized a temporary form of agency by refusing to accept professional legal representation and conducting their own defences. This tactic may not have had any positive impact on the outcome of their trials, but, like their publication of their own authorised versions of the trial proceedings in pamphlet form to compete with "official" publications, it did shape their content and the reception of their travails elsewhere in Britain. Meanwhile, the legal process, which the authorities dared not press beyond certain limits, afforded defendants and their legal teams the floor to make some extraordinary pronouncements and to place judges, the most senior prosecutors in the country, and on occasion the Prime Minister himself, in exceptionally awkward positions.

Trials for treason and sedition, where the stakes were high, seized headlines and drew comment from all perspectives in the highly-strung domestic and international political atmosphere of the "age of revolutions". The relationship between state prosecutions and public opinion was crucial, and the trials continue to arouse some remarkably strong feelings even now, just as they did for contemporaries and several of the essays in this volume examine the legacy of political trials in public opinion. Media reports were integral to constructing narratives of truth and justice, but the definitions of these concepts were not fixed and trials could be conducted as much in public opinion as they were in the courtroom. As Jens Meierhenrich and Devin O. Pendas point out:

> While the audience that matters most in the immediate term is typically the one that sits in judgment (judges or jurors or both), there may well be other audiences that matter as much or even more in the long term, audiences outside the courtroom. This is particularly true in political trials, where the fate of the defendant is often secondary to the "success" of an ideological message. It is entirely possible, in a political trial, to lose one's case and win the battle for public opinion.[22]

Some trials in the "age of revolutions" – such as the prosecutions of the Scottish Martyrs in the 1790s – clearly demonstrate how the enduring legacy of political trials might not be the one intended by the state. The state might have written the script but not all the actors in or observers of political trials necessarily followed that script.

Representations of the trials in general and of defendants, judges and politicians in particular, appeared in direct propaganda, in newspaper reports (which could themselves become the occasion of further sedition trials). Such source material makes the historian's role in approaching these trials fascinating but hazardous. Thomas Slaughter remarked of the law of treason in the new United States of America:

> … direct evidence of the Framers' understandings of the treason clause is revealing and significant, but more tantalizing than definitive. We must try to tease as much information as possible from a variety of imperfect sources – shorthand notes of deliberations, anonymous newspaper essays,

> unverifiable reminiscences, opinions circulated for public consumption and intended to affect a political outcome, and second-hand reports, in addition to a scattering of attributable private writings.[23]

There is a similarly delicate task to be undertaken to understand perceptions of the law and representations of the political trials in this era. The question of prejudication can be levelled at actors and spectators from all sides. Interpretation disguised itself, more or less successfully, in narrative, both reportage and imaginative. Both defendants and witnesses were cast as treacherous Roman Catilines in different circumstances. Political principles were (as ever, but vibrantly here) coloured in representation of the trials by the vagaries of memory, personal interest, class advantage, partisan impulse, local context, the commercial imperative, religious conviction, and literary choice. Gaps in all the various forms of record and account constitute a powerful form of negative representation. Multiple layers of competition and hostilities were created between commentators, agendas and across borders. Similarly, the effects of the prosecutions rippled out beyond the lives and careers of the central participants to affect various constituencies – families, friendships, local communities, Dissenting communities, the radical diaspora, the political public at large, and even the British literary imagination.[24]

III

Given the pervasive and entrenched nature of political trials during the "age of revolutions" – at least in perception, if not in reality – they provide a wide window through which to view the period. What can be learned from these trials? What do they tell us about the "age of revolutions", how do they inform our understanding of the legal as well as political culture of the time, and which areas might be the most fruitful focus for future research? On one level, the political trials examined in this collection clearly demonstrate how the law functioned in a normative way to regulate and repress transgressive political behaviour. In times of heightened political anxiety, those members of society identified as deviant and dangerous opponents are increasingly prosecuted as part of a

process of norm promotion.[25] The political trials from the late eighteenth century to the mid-nineteenth century were no exception and, in many ways, conform with what is seen as the partisan purpose of political trials in general. As Eric Posner states:

> A political trial is a trial whose disposition – that is, usually, a finding of guilt or innocence, followed by punishment or acquittal, of an individual – depends on an evaluation of the defendant's political attitudes and activities. In the typical political trial, a person is tried for engaging in political opposition or violating a law against political dissent, or for violating a broad and generally applicable law that is not usually enforced, enforced strictly, or enforced with a strict punishment, except against political opponents of the state or the government.[26]

Indeed, the political trials of the "age of revolutions" were fundamentally what Meierhenrich and Pendas refer to as "destructive trials"[27] which sought to eliminate those members of society who advocated liberty, political rights and challenged the status quo. The trials can be understood as "reactive 'law solutions'" that form an integral part of moral panics and an essential means for states to deal with moral threats.[28] As coercive laws that responded to raised concerns about radicalism and dissent increased from the late eighteenth century into the nineteenth century, there was naturally a commensurate rise in the number of prosecutions for political crimes.

Some of those prosecutions – such as the treason trials in London in 1794 – were akin to show trials and intended to be exemplary and retributive justice, exposing the villainous plots and evil intentions of political opponents. Such trials were not only "destructive", they were also didactic. They captured public attention, excited alarmism and entertained in equal measure. In the "mediatised" world that existed by the end of the eighteenth century, the consumption of newspaper reports of political trials was a means by which the public were educated about the law as well as politics, about their political rights, obligations and legal consequences of transgression. Examining the extent to which prominent political trials were reported as well as the patterns and differences in