

**“I rise, in my own defence”:
Character, the courtroom and radical address in
British writing, 1792-1824**

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Abstract

This thesis examines how British radical character was represented in the Romantic period. It takes as its starting-point two sets of changes in how character was understood at this time. In literary history, critics recognise that the late eighteenth and early nineteenth centuries were a time of transition for fictional characters: readers increasingly valued those who had an appearance of a deep interiority, over the more transparently-meaningful characters typical in the earlier eighteenth century. Similarly, in legal history, a shift was underway in how character evidence was used in criminal courts, from a focus on local reputation and social standing to more modern ideas about criminal responsibility. Scholars recognise that both changes were uneven, however, with older approaches to character persisting well into the nineteenth century. This thesis reads these two uneven transitions alongside each other, in the context of the period's many political prosecutions. Beginning with the 1792 trial of Thomas Paine for *Rights of Man* and finishing with the 1824 trial of John Hunt for publishing Lord Byron's *Vision of Judgment*, I consider how radicals defended their characters, inside and outside court. Examining the trials and writings of Paine, John Thelwall, William Godwin, Peter Finnerty, William Hone and Byron (the latter something of an outlier from this activist tradition), the thesis argues that readers and juries alike were expected to "read" character with increasing care. An address to an imagined reader, hostile or sympathetic, was embedded in radical self-defences, whether written specifically for a courtroom or not. Moreover, a high proportion of prosecuted radicals were writers or publishers, and their defences blur the boundaries between legal and non-legal registers. The thesis proposes that the legal meanings of character are an essential context for understanding how character was represented in a range of non-legal writings of the Romantic period.

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Declaration

I declare that this thesis is a presentation of original work and I am the sole author. This work has not previously been presented for an award at this, or any other, University. All sources are acknowledged as references.

Introduction

In the opening pages of Walter Scott's *Heart of Mid-Lothian* (1818), an excitable barrister holds forth on the pleasure to be gleaned from reading trials and criminal narratives. Novels have become tediously familiar, he complains, with even their most sensational "characters or incidents" now dully conventional. "But," he goes on, "not so in the real records of human vagaries – not so in the State-trials, or in the Books of Adjournal, where every now and then you read new pages of the human heart, and turns of fortune far beyond what the boldest novelist ever attempted to produce from the coinage of his brain!"¹ Legal cases are worthy competitors of the novel, for they offer something genuinely "new." The barrister announces his plan to publish his own collection of Scottish criminal cases, and, hoping to convince his companions of the merit of the project, he conjures for them the rich variety of experiences which might have been contained within the walls of Edinburgh's tolbooth over its history:

Since that time how many hearts have throbb'd within these walls ... Do you suppose any of these deep, powerful, and agitating feelings can be recorded and perused without exciting a corresponding depth of deep, powerful, and agitating interest? – O! do but wait till I publish the *Causes Célèbres* of Caledonia, and you will find no want of a novel or a tragedy for some time to come.²

The barrister's passion for reading trials is eccentric, but it serves as an introduction to (and perhaps justification of) the criminal themes of Scott's novel: the Porteous riots of 1736 and the trial of the fictional Effie Deans for infanticide. The scene is equally valuable for its representation of how readers may have approached trial literature historically. To read a legal case, Scott's barrister claims, is to encounter "new pages of the human heart." On one level, this suggests that the "human heart" is described in legal documents, and its experiences recorded there. But it also implies that the heart can be read like a book, and has pages which can be perused; even that criminal records *are*, in some sense, the records of the heart. It suggests that an intimate, transparent communication is possible between a reader of sensibility and the subject of a legal case. The force of that imagined reader response is rather unsettling. The barrister assumes that to read about the "deep, powerful, and agitating feelings" of criminal defendants will provoke a "corresponding" affective response in the reader. By engaging her imagination as she reads, the reader participates in the "indignation" and "racking anxiety" of

¹ Walter Scott, *The Heart of Mid-Lothian*, ed. Alison Lumsden and David Hewitt (Edinburgh: Edinburgh University Press, 2004), 15.

² *Ibid.*, 16.

falsely-convicted prisoners in Edinburgh's tolbooth, to the point that their emotional crises become her own.³

This thesis is concerned with the role that trial literature played in the context of political prosecutions during the Romantic period, and in particular with how radicals defended and represented their characters for public consumption, within both the courtroom and the tribunal of public opinion. Even allowing for comic exaggeration in Scott's sketch, trial literature did cede power to its audiences, who, like juries, could read and reread the evidence presented to the court, passing their own judgment. Scott's set-piece in *The Heart of Mid-Lothian* is far from being wholly fanciful (he was himself an advocate); trial literature was mined for its thrilling elements as well as consulted for political information, as John Barrell and Jon Mee explain:

There was an avid readership for trial proceedings throughout the eighteenth century, for whom they formed a sub-genre, taking its place with last dying speeches, confessions and breathless accounts of lives of crime. Even the bulky 1730 collection of *State Trials*, intended primarily for students of Law, presented itself as retailing "Instruction and Entertainment."⁴

As a genre, trial literature sat between those two camps of Instruction and Entertainment. This uncertain status was still more apparent in political trial literature, which functioned both as an intervention in political debates and as sensational reading material; indeed, some publishers sold both political trials and trials for adultery.⁵ It is difficult to track exactly how political trials were read, but it is likely that reading them, like attending them, was often a sociable activity. Trial accounts, whether published in standalone pamphlets or newspaper reports, were probably read aloud and shared in reading groups and reform societies. Popular reform societies such as the London Corresponding Society modelled themselves on book clubs: both types of group sought to promote political information and knowledge of current affairs among their members, goals which trial literature was strongly positioned to support.⁶ However, controversial trials were often available in competing versions, so that no editions can be considered "unmediated transcriptions of what went on in court."⁷ Radical defendants were all too aware of this potential for mediation through print, and many embraced the opportunity for a public platform; at his 1819 trial for blasphemous libel, the freethinking publisher Richard Carlile read out the whole

³ Ibid., 16.

⁴ John Barrell and Jon Mee, "Introduction," in *Trials for Treason and Sedition, 1792-1794*, ed. John Barrell and Jon Mee (London: Pickering & Chatto, 2006), 1:xxxvi.

⁵ Ibid., xxxvi-xxxvii.

⁶ Jon Mee, *Print, Publicity and Popular Radicalism in the 1790s: The Laurel of Liberty* (Cambridge: Cambridge University Press, 2016), 7-8, 27.

⁷ Barrell and Mee, "Introduction," xxxvi.

of Thomas Paine's *Age of Reason* in his defence, then sold the trial report in cheap editions as a means of further disseminating Paine's work. When the government tried to prosecute his wife Jane for this, she obtained a copy of the criminal information against her, which contained the blasphemous passages in question, and published that too.⁸

Character defences formed an important part of this rich backdrop of trial literature. Defence statements made at the trials of radicals were sometimes published on their own, if the case was high-profile or the speaker renowned: there was a healthy market for the speeches of the celebrated Whig barristers Thomas Erskine and John Philpot Curran, while the speeches of defendants whose cases generated particular public interest, such as Joseph Gerrald in 1794, were excerpted in standalone editions.⁹ The survival of this subgenre of trial literature indicates that readers admired and enjoyed defences as polemical tours de force, noteworthy in their own right. The 1790s also saw the appearance of a further small but significant subset of undelivered defence speeches – never delivered, Barrell and Mee explain, “either because a case was dismissed, as with [Thomas] Holcroft; or the case itself never came on, as with Charles Pigott; or the case was taken out of the hands of the defendant (as with John Thelwall).”¹⁰ Holcroft's *A Narrative of Facts, Relating to a Prosecution for High Treason* (1793), Pigott's *Persecution. The Case of Charles Pigott* (1793), and Thelwall's *The Natural and Constitutional Right of Britons to Annual Parliaments, Universal Suffrage, and the Freedom of Popular Association* (1795) were all written in the expectation that the author would be defending himself in court, so all three address themselves to the “Gentlemen of the Jury”; in the event, they were addressed only to the court of the public, in print.

The imperative to present a legalistic self-defence was evident not only in courtroom speeches, nor even only in speeches that were originally intended to have been delivered in court, such as Thelwall's *Natural and Constitutional Right* (which is discussed in Chapter 1). It also emerged in texts that never went anywhere near a courtroom, but which allowed radicals to defend themselves before the jury of the public, often after formal proceedings had closed, and sometimes long afterwards. These publications are as diverse as Thomas Fyshe Palmer's 1797 *A Narrative of the Sufferings of T. F. Palmer* (considered in Chapter 2), Peter Finnerty's 1810 article “Lord Castlereagh and Mr. Finnerty” (Chapter 3), and William Hone's 1824 *Aspersions Answered* (Chapter 4). Texts such as these demonstrate the ongoing anxiety of many reformers to clear their name and convince the public of their good characters in a legalistic fashion, even when their prosecutions were past. More generally, the language of criminal process is

⁸ Philip Harling, “The Law of Libel and the Limits of Repression, 1790-1832,” *The Historical Journal* 44, no. 1 (2001), 126-27.

⁹ Barrell and Mee, “Introduction,” xxxvii.

¹⁰ *Ibid.*, xxxviii.

dispersed in much radical writing of the period, so that a sense of legal pressure – and particularly, for my purposes, pressure upon character – works its way into a range of different kinds of writing, even those which were not at risk of prosecution or which did not explicitly discuss the law. The dispersal of the language of the courtroom runs through the whole thesis, from the early 1790s (where it is perhaps most stark in William Godwin’s 1794 novel *Caleb Williams*) to the mid-1820s, when I argue that it provides a context for understanding Lord Byron’s approach to character, in his later poetry. The discursive boundaries of the criminal law were extremely porous, and non-specialist discourses bled into the language of the courtroom, just as legal experiences went on to be reshaped in non-legal writings. This movement between the legal and non-legal was accentuated by the fact that a large proportion of prosecuted radicals were writers or publishers, since it was these who were targeted by the libel laws – the main tool for suppressing political dissent. Therefore, I read legal defence speeches alongside a mixture of undelivered defences and statements of personal vindication, autobiographical writings, political pamphlets, journalism, poetry, fiction, satire, character sketches, and correspondence. The defensive reflex by which radical writers attempted to shape, justify, account for, and protect their characters was central not only to the sensational appeal of trial literature described by Scott, but also to the way in which many of those writers came to understand their place in the republic of letters.

Character

The vindication of character was at the heart of radical self-defence. Character was (as it remains) a legal category, with evidence of good or bad character playing a role in the procedures of criminal justice. But the defendants whose cases make up the following chapters were all writers, publishers, or “men of letters,” and to speak of “a character” is also to speak of the imaginary people of fiction, poetry and drama. This thesis maps those functions of character onto one another, understanding it as a jointly legal- and literary-historical category. Little scholarship has investigated character in this way, even though both fields recognise that transitions were taking place in how character was used and imagined, by readers, authors, juries, defendants and lawyers. In tracing how these played out in radical defences of the Romantic period, I am indebted to the work of two scholars in particular. In the history of the novel, Deidre Lynch has challenged the critical commonplace that characters became round and interiorised in the Romantic period. Lynch disputes the assumption that those changes were inevitable, instead finding all characterisation (including the “deep,” Romantic kind) to be bound up with changing socio-economic contexts. Meanwhile, in criminal trials, the late eighteenth century saw character evidence lose its pivotal function, as the courts increasingly privileged questions of capacity and intention, directing attention to issues around mental ability, insanity, criminal responsibility and volition. However, Nicola Lacey has argued for the

piecemeal unevenness of this transition, and the ongoing usefulness of character in helping the courts to appraise defendants. These two transitions in character, examined by Lynch and Lacey, overlap with each other, as well as with broader changing conceptions of selfhood and identity that historians have mapped over a similar period.¹¹ These developments were uneven, since multiple ways of representing character could coexist, often within a single trial or text. Nonetheless, in both novels and criminal justice, a character moved from being understood as, generally speaking, a social actor, recognisable to readers or jury through the external markers of status, role, and behavioural traits, to the representation of an inner life which is “more than the sum of its parts.”¹² In both, character demanded newly skilful reading, and brought new challenges to writers addressing a judging audience.

The character of the defendant was at the heart of early eighteenth-century criminal proceedings. Convincing the jury of one’s good character was often essential for securing a favourable verdict, and witnesses would be called to testify to a defendant’s local reputation, “habits of life,” social status and occupation.¹³ Lacey explains that the courts understood character to be more or less of a piece with conduct: “The operative assumption ... was that the defendant’s conduct exhibited or expressed bad character: this was a holistic judgment of wrongful conduct and dangerousness rather than today’s supposed analytical separation of (external) conduct from (internal) ‘*mens rea*’” (*mens rea* being the guilty state of mind or criminal intent).¹⁴ The courts were interested not in a defendant’s psychology, but in his or her character as it could be discerned from “surface appearances” and “external markers”: these were key to how a defendant’s responsibility for a crime was evaluated.¹⁵ Character evidence had to be general rather than specific, as Erskine explained in his defence of Thomas Hardy for treason in 1794:

You cannot, when asking to character, ask about what has A. B. C. told you about this man’s character, no, but what is the general opinion concerning him. Character is the slow spreading influence of opinion, arising from the deportment of a man in society; as a man’s deportment, good or bad, necessarily produces one circle

¹¹ See for instance Dror Wahrman, *The Making of the Modern Self: Identity and Culture in Eighteenth-Century England* (New Haven, CT: Yale University Press, 2004).

¹² Deidre Lynch, *The Economy of Character: Novels, Market Culture, and the Business of Inner Meaning* (Chicago: University of Chicago Press, 1998), 127.

¹³ J. M. Beattie, *Crime and the Courts in England, 1660-1800* (Oxford: Clarendon Press, 1986), 440.

¹⁴ Nicola Lacey, *Women, Crime, and Character: From Moll Flanders to Tess of the D’Urbervilles* (Oxford: Oxford University Press, 2008), 23; “*mens rea*, n.,” *Oxford English Dictionary Online*, March 2019, Oxford University Press, <http://www.oed.com/view/Entry/116511?redirectedFrom=mens+rea>.

¹⁵ Nicola Lacey, *In Search of Criminal Responsibility: Ideas, Interests, and Institutions* (Oxford University Press, 2016), 37; Lacey, *Women, Crime, and Character*, 40.

without another, and so extends itself till it unites in one general opinion; that general opinion is allowed to be given in evidence.¹⁶

Notwithstanding the centrality of character evidence in eighteenth-century criminal proceedings, the concept of “character” itself was not clearly defined in the legal literature. The main rule was that the prosecution could not introduce evidence of a defendant’s bad character unless the defendant had already brought evidence of their good character, in which case countering evidence was allowed in rebuttal. This was not because judges were worried that evidence of bad character would prejudice the jury against the defendant (that argument did not emerge until the early twentieth century); rather, they thought that this kind of evidence might surprise the defendant unfairly, and be irrelevant to the case in question.¹⁷ Yet the rule was defined by its exceptions: character was such an essential part of criminal evidence that defendants would almost always assert their good character if they could find suitable witnesses, making themselves vulnerable to countering evidence from the prosecution.¹⁸

By the early- to mid-nineteenth century, the rules on character began to be encoded more clearly in legal doctrine.¹⁹ Stricter evidential rules developed, and the old reliance on character evidence gradually gave way to more technical notions of capacity, intention, and criminal responsibility. It was increasingly felt that judges and juries could not accurately evaluate character by relying on the “world of surfaces” alone.²⁰ Lacey explains:

[A]s rules of evidence began to be formalized, doubts arose about the reliability and legitimacy of evidence of bad character ... The relatively static, predictable world in which reputation or known qualities of status were regarded as reliable indicators of credibility – either of witness testimony, or of a not guilty plea – was being displaced by an increasingly individualistic world.²¹

These changes reflected the demands of an increasingly mobile society in which defendants were less well-known within their communities, making their “credibility” harder to gauge. The courts moved away from the older focus on the externals of character, and towards a newer

¹⁶ Barrell and Mee, *Trials for Treason and Sedition*, 5:44.

¹⁷ Mike Redmayne, *Character in the Criminal Trial* (Oxford: Oxford University Press, 2015), 94; John H. Langbein, *The Origins of Adversary Criminal Trial* (Oxford: Oxford University Press, 2003), 191.

¹⁸ Langbein, *The Origins of Adversary Criminal Trial*, 196.

¹⁹ See Redmayne, *Character in the Criminal Trial*, 93; John R. Spencer, *Evidence of Bad Character*, 2nd ed. (Oxford: Hart Publishing, 2009), 2; T. P. Gallanis, “The Rise of Modern Evidence Law,” *Iowa Law Review* 84 (1999), 523.

²⁰ Lacey, *Women, Crime, and Character*, 37.

²¹ Nicola Lacey, “The Resurgence of Character: Responsibility in the Context of Criminalization,” in *Philosophical Foundations of Criminal Law*, ed. R. A. Duff and Stuart Green (Oxford: Oxford University Press, 2011), 159.

focus on the interior life: from appraisals of “externally manifested character” to “internally engaged capacity.”²² This went hand in hand with a new role for medical, psychological, and forensic experts in the courts.

Crucially, however, these changes were piecemeal and uneven. Lacey believes that appraisals of character persisted in trials well into the nineteenth century; indeed, were never wholly eliminated. It took time for the courts to devise new methods to evaluate defendants’ interior lives: a “collapse of the world of credit does not entail a collapse of reliance on external markers of credibility,” Lacey comments.²³ Throughout the eighteenth century and into the nineteenth, “practices of criminal judgment remained trained on character, albeit in senses which were modulating significantly over time.”²⁴ This assessment runs counter to the traditional assumption that character was historically excluded from English courts. On the contrary, Lacey argues persuasively that this was never wholly true.²⁵ She interprets the late eighteenth and nineteenth centuries as a “period of transition from the status-based world of credit to a more psychological assessment of credibility via an interim reliance on external markers of reputation.”²⁶ In other words, the criminal courts were moving towards an appraisal of defendants that was primarily about individual psychology, rather than rank or reputation; but the transition into this new approach was accompanied by an ongoing dependence upon character’s external signs. Character in the criminal court was therefore recognised as both exterior and interior: both outward stamp and the “pages of the human heart.” In the legal cases explored in this thesis, courts simultaneously attended to the external markers of defendants’ characters and tried to probe their inner lives. Character witnesses do not make a regular appearance, perhaps partly because some radicals preferred to celebrate their allegedly criminal activity as a badge of honour (good character). Character witnesses were also probably scarce because formal character evidence – in the sense of witnesses speaking to an individual’s reputation – was declining across the board. (The good characters of witnesses were occasionally questioned or discredited in these trials, but because witnesses’ characters were governed by different evidentiary rules, the limitations of space mean that they receive less attention here.) “Character” itself was far from disappearing, however, particularly as it might be more loosely understood. It continued to figure prominently in trials, especially in defence speeches, which quite often sought not only to vindicate the speaker’s good character, but also

²² Lacey, *Women, Crime, and Character*, 25.

²³ *Ibid.*, 40.

²⁴ *Ibid.*, 52.

²⁵ Spencer, *Evidence of Bad Character*, 1-2; Lacey, “The Resurgence of Character,” 152.

²⁶ Lacey, *Women, Crime, and Character*, 40.

to attack the character of the prosecutor, whether in the person of the Attorney General, or in the figures of government ministers collectively.

In the earlier eighteenth century, character was understood to be basically fixed. First-time felons were often branded on the thumb, evidence that they had been granted “benefit of clergy” so that, if convicted again, they would not escape capital punishment a second time.²⁷ Branding was a permanent imprint of bad character on the body; one meaning of character is, after all, a “stamp.” Lacey writes about what she calls “character responsibility,” the idea that in effect, “a judgment of criminal responsibility was a judgment of bad character.”²⁸ Yet the belief that character could be reformed was an important underpinning of nineteenth-century criminal justice. In the later eighteenth century, John Howard pressed for the moral benefits of sobriety and cleanliness in prisons, and made the humanitarian case for prisoners’ moral reformation.²⁹ By the 1830s, there was an increasing expectation that people should work to improve their characters. Martin Wiener finds: “Character signified not so much certain fixed and externally validated standards of behavior, like aristocratic honor or the plebeian standard of neighborliness, but rather a psychological state in which the passions were habitually mastered by reflection, the pressures of the present controlled by the perspective of the future.”³⁰ Self-mastery, personal discipline and bodily restraint were fundamental to the early Victorian approach to character formation, with criminal activity thought to indicate “a fundamental character defect stemming from a refusal or an inability to deny wayward impulses or to make proper calculations of long-run self-interest.”³¹ The law and penal system became geared around “character-building,” an agenda which it was hoped could effect wider social improvement.³² Michael Meranze explains:

[R]eformers and officials believed that social problems could best be contained through the transformation of individual character, that individual character could best be transformed through the careful supervision of individual regimen, and that

²⁷ Langbein, *The Origins of Adversary Criminal Trial*, 193.

²⁸ Lacey, *Women, Crime, and Character*, 19.

²⁹ John Howard, *The State of the Prisons in England and Wales, With Preliminary Observations, and an Account of Some Foreign Prisons* (Warrington, 1777).

³⁰ Martin J. Wiener, *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830-1914* (Cambridge: Cambridge University Press, 1990), 38.

³¹ *Ibid.*, 46.

³² *Ibid.*, 53.

the supervision of individual regimen could best take place within an environment where time and space were carefully regulated.³³

This is a view of personal character as malleable and open to development, particularly when facilitated by the controlled environments of penal institutions, including solitary confinement.

The movement toward these disciplinary models of punishment, troubling as it may seem through a Foucauldian lens, was driven by liberal reformers seeking the more humane treatment of offenders. “Discipline was not contrary to the spread of liberal institutions and values,” Meranze emphasises: “it was a central element in it.”³⁴ In that respect, it was partly owing to the successes of the reform movement that character came to be trained on an idea of flexible, individual psychology. The early Victorian conviction that individual character could be developed in this way was essentially middle-class, pitched, as Wiener notes, “against the fecklessness of both rioting plebeians and gambling and dueling aristocrats.”³⁵ In both respects, the idea that character is amenable to reform ties in with the ideologies of those writers and activists whose trials I explore, almost all of whom were middle-class, often self-consciously so. At the same time, most of these political prisoners made strenuous efforts to distinguish themselves from ordinary criminals: as Gerrald lamented at his trial, his “company” henceforth would be that of “thieves, felons, and murderers.”³⁶ These defendants would hardly have accepted the idea that they might be reformed through their punishment, but the human capacity for improvement was at the heart of Godwin’s remark in *Political Justice* that “[w]hat is born into the world is an unfinished sketch, without character or decisive feature impressed upon it.” “[I]t is impression that makes the man,” Godwin wrote, picking up the meaning of character as inscription or stamp: indeed, “the excellencies and defects of the human character, are not derived from causes beyond the reach of ingenuity to modify and correct.”³⁷ Godwin’s position has a radical and levelling drift, Andrea Henderson notes, since it shows “how a context-based model of identity can be used to displace a more essentialist and hierarchical one.”³⁸ His faith in

³³ Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835* (Chapel Hill, London: Published for the Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 1996), 4.

³⁴ *Ibid.*, 14.

³⁵ Wiener, *Reconstructing the Criminal*, 41.

³⁶ [Joseph Gerrald,] *The Defence of Joseph Gerrald, on a Charge of Sedition [...] To Which Is Prefixed a Sketch of His Character, Written by a Friend* (London, [1794]), 43.

³⁷ William Godwin, *Political and Philosophical Works of William Godwin*, ed. Mark Philp, vol. 4, *An Enquiry Concerning Political Justice: Variants*, ed. Philp (London: Pickering & Chatto, 1993), 21-22, 24.

³⁸ Andrea K. Henderson, *Romantic Identities: Varieties of Subjectivity, 1774-1830* (Cambridge: Cambridge University Press, 1996), 62.

the improbability of character is similar to the commitment to good moral character that we will see emerging in writings by middle-class radicals such as Thelwall and Hone.



Figure 1: James Gillray, “Evidence to Character; – Being, a Portrait of a TRAITOR, by his Friends and by Himself.” London, 1798. British Museum, Online. Licensed under CC BY-NC-SA 4.0.

Character had a special role to play in political trials. At trials for treason, especially, character testimony could be of decisive importance, as James Gillray’s print “Evidence to Character; – Being, a Portrait of a TRAITOR, by his Friends and by Himself” slyly suggests (Figure 1). The print shows Arthur O’Connor at his treason trial in 1798, with a copy of the United Irish newspaper the *Press* in his pocket (the paper for which Finnerty briefly served as publisher, as we see in Chapter 3), and his witnesses lining up to give testimony, including Erskine and Charles James Fox. Lacey points out that courts have paid renewed attention to character during periods of political and economic instability: for instance, new ideas about criminal types (famously elaborated by Cesare Lombroso) developed in the pressured climate at the end of the nineteenth century, while our own time has seen a “resurgence” of character-based thinking in

relation to terrorism.³⁹ In the period after the French revolution, fears about “Jacobins” and the demonisation of “Tom Paine” suggest a similar reversion to typology, as Chapter 1 explores. More than this, though, political trials of the period could place an enormous pressure on character even when they did not resort to types. Treasonous or seditious offences were framed in terms of public disorder and disruption to the social contract, and consequently entailed an interrogation of the defendant’s status, profession, and local reputation: the older meanings of character. But the political pressure on character was not only associated with external signs and markers. Character in its newer sense was about individuality, personal disposition, and moral integrity, ideas which came under equal pressure in political trials, since they foregrounded questions about the proper extent of individual autonomy and the purity (or impurity) of an individual’s intentions.

The Scottish jurist Lord Henry Cockburn, reflecting at some years’ distance on the Scottish sedition trials of 1793-94, argued that character has a unique function in political cases:

[T]here are cases – and sedition is one of them – in which, even in ascertaining the fact to be tried, and while the matter is still before the jury, the wickedness or the goodness of the accused does not merely aggravate or alleviate the offence, but forms a part, and a principal part, of its legal essence. And if this be so true that, even on the question of guilty or not, evidence of good character is receivable and material, how much stronger are its claims when the period arrives for the exercise of discretion in determining the punishment?⁴⁰

In political cases, Cockburn concludes that character evidence does not simply “aggravate or alleviate” a crime, but actually helps to determine whether one was committed at all. The defendant’s character – their “wickedness” or “goodness” – is “a principal part” of the very “legal essence” of such a crime. Political offences are, Cockburn implies, of a different category.

Radical activism of the period had a theatrical quality which seems peculiarly appropriate to the courtroom. The performativity of radical culture, with its symbolic gestures, speeches, toasting, and songs, was heightened during trials, with their “pomp and ritual spectacle, compelling stories, suspense and pathos, polished rhetoric and occasional humor.”⁴¹ Judith Pascoe, for instance, has written about the theatricality of the 1794 treason trials, with their “costumes and

³⁹ Lacey, “The Resurgence of Character,” 172-73.

⁴⁰ Lord Henry Cockburn, *Examination of the Trials for Sedition Which Have Hitherto Occurred in Scotland* (Edinburgh: David Douglas, 1888), 2:95.

⁴¹ James Epstein and David Karr, “Playing at Revolution: British Jacobin Performance,” *The Journal of Modern History* 79, no. 3 (2007), 521.

poses adopted by proponents of both sides, [and] the consciousness of an audience which colors every public move.”⁴² Published accounts of trials are themselves rather stagey: lists of jurors and lawyers resemble *dramatis personae*, and cross-examinations are presented in a scripted format. But if the experience of attending a trial was theatrical, character defences in court (and interrogations of character by the prosecution) pressed beyond the surface appearances, social roles, and audience interaction typical of eighteenth-century drama.⁴³ While there is a natural alliance between the courtroom and the theatre, it only takes us so far in understanding how radical character was interrogated in court. James Epstein and David Karr note that radical trials in the 1790s were overshadowed by the prosecution’s anxiety that Jacobin performance concealed a “secret,” revolutionary intention. This, the government feared, was

disclosed not by their formal statements, but through gestures and symbolic practices that, while seemingly unguarded, were in truth purposefully designed to seduce the unwary. ... [S]uch gestures provided the key to reading and comprehending the true meaning of reformers’ constitutional addresses, meetings, and conventions.⁴⁴

The government’s belief in a hidden revolutionary agenda was central to both the English treason trials of 1794 and the Scottish sedition trials of 1793-94, explored in Chapters 1 and 2. Courts scrutinised the external markers of the “Jacobin body” – Hardy’s pockmarked face, Maurice Margarot’s “puny” frame, Gerrald’s unpowdered hair – for evidence of French allegiance.⁴⁵ The trials disclosed an anxiety about the relationship between appearance and what lay within, between external signs of character and its true stamp; the question of how to read character accurately proved recurrent, and the courts sought to plumb character’s depths.

Literary historians have long recognised that around the turn of the nineteenth century, characters in novels began to change. If earlier eighteenth-century characters were identifiable by generic type, social status and behavioural traits, Romantic-period characters were more often valued for their appearance of complex interiority and depth. Critics have traditionally understood this transition in terms of a developing sophistication, a maturing from “flat” to “round,” to borrow E. M. Forster’s terms – as if, Lynch writes, “round characters [were] inside flat characters all along, signaling frantically to get out.”⁴⁶ Lynch has issued an influential

⁴² Judith Pascoe, *Romantic Theatricality: Gender, Poetry, and Spectatorship* (Ithaca, NY: Cornell University Press, 1997), 34.

⁴³ See Lisa A. Freeman, *Character’s Theater: Genre and Identity on the Eighteenth-Century English Stage* (Philadelphia: University of Pennsylvania Press, 2002).

⁴⁴ Epstein and Karr, “Playing at Revolution,” 507.

⁴⁵ *Ibid.*, 510. On costume and radical character, see also Pascoe, *Romantic Theatricality*, 41-42.

⁴⁶ Deidre Lynch, *The Economy of Character*, 123.

challenge to this account, objecting that “it is a bit too neat” to suppose that character’s “rounding” should take place just “as novels come to be full participants in the history of freedom and democratic revolutions, [in] an overarching story of progress that sees the state ultimately acknowledge the claims, worth, and singularity of the individual.”⁴⁷ Instead, Lynch argues against the notion of character as inevitably “representational.” Detaching “the history of character” from “the history of the individual,” she asks what might be gained “if we cease to think of the character as ... the expressive analogue to ourselves,” and instead attend to the ways in which characterisation responds to readers’ socio-economic needs.⁴⁸ For Lynch, all characters require “reconnect[ing]” to “social processes,” even those Romantic-period examples whose “inner meanings and psychological depths” seem to insulate them most thoroughly from the conditions of their production.⁴⁹ Lynch is interested in how changing economic conditions were reflected in changing patterns of characterisation over the long eighteenth century. By the Romantic period, the newly deep “inner lives” of characters were a means by which readers could secure cultural capital “within an economy of prestige,” helping them to navigate the growing market for novels by “distinguish[ing] their own deep-feeling reception of texts from other readers’ mindless consumption.”⁵⁰

One of the strengths of Lynch’s study is her recognition that novelistic character has developed in parallel with a range of “adjacent discourses,” not just the marketplace contexts which are the focus of her book.⁵¹ The legal understanding of character is one such “adjacent discourse,” I believe, although the interactions between criminal and other understandings of character have been surprisingly absent from much scholarship; an exception is Lacey’s analysis of female criminal character in novels and trials of the eighteenth and nineteenth centuries.⁵² Character was an important part of criminal procedure throughout that period, but the politically suspicious and prosecutorial climate of the Romantic period meant that radical character came under new pressures of scrutiny in the period roughly 1792-1824 – and this at a moment when ideas about character in fiction and poetry were undergoing their own changes. Tracing the new approaches to character into the mid-nineteenth century, Lynch remarks that readers were increasingly thinking about novelistic characters in a manner that, “if it were addressed to real rather than imaginary beings, we would classify as an interrogation of the other’s sincerity.”⁵³ The interrogation of sincerity is precisely what was at stake in these political trials, where the

⁴⁷ Ibid., 127.

⁴⁸ Ibid., 1-2.

⁴⁹ Ibid., 6.

⁵⁰ Ibid., 6, 19.

⁵¹ Ibid., 11.

⁵² Lacey, *Women, Crime, and Character*.

⁵³ Lynch, *The Economy of Character*, 253.

defendant's character was probed and scrutinised, by the court and themselves, for evidence of guilt or innocence. The pressure on writers to defend their characters in criminal courts, together with the disproportionate scrutiny that the law of libel placed on writers, prompted many to turn to "deep" characterisation. Yet radical character was not only about an investment in the interior life. It sometimes looked back to older eighteenth-century character types, as well as forward; it could be surface-oriented as well as deep, simple as well as complex, and is often legible and illegible at the same time. Lynch employs a phrase, the "pragmatics of character," which captures the ways in which character could be useful to writers in different ways, at different moments.⁵⁴

An idea of a reader – sympathetic, discerning, unreliable, or hostile – was almost always present in radicals' representations of their own characters. Just as the jury was required to read and reread the defendant's character, so too were the imagined addressees of the radical defence speech (who, as we shall see, included readers outside the courtroom, readers in posterity, God, and even the speaker themselves) invited to engage in close and repeated reading. Lynch describes the growing value that early nineteenth-century readers placed on their ability to read with care and skill. She cites *Pride and Prejudice* as a novel which illustrates with special clarity that "the truth of a letter" (or another text) "is situated beneath or beyond the face of the page," so that "character cannot be known at first sight."⁵⁵ The defence speeches in this thesis do sometimes represent an idea of the writer/speaker's character as unknowable, or at least as elusive to the unskilful reader. But this position tends to coexist uncomfortably with the requirement to convince the addressees of the writer's innocence. The extent to which a writer's character was presented as legible or elusive depended partly on how far they were hopeful of acquittal, and how far they were writing from a position of defeat and self-preservation. Radical character defences could work simultaneously to "detach one person from another" – that is, the writer from the audience – and to "reinvent the terms of their fellowship."⁵⁶ For all their invitations to deep reading and public appraisal, these defences often highlight character's isolation and difference within a hostile world, as well as aspiring toward its sociable communion with a sympathetic public. That reflects character's function as both subjective and social, defined by both the individual's experience of an interior life and their community.

To talk about "character" in the writings of this period is to deal with a slippery category. Legal and fictional models of character were both on uneven trajectories of change, and were used in messy, inconsistent ways. The OED lists fifteen wide-ranging definitions of "character," between them capturing marking, engraving, stamp, sign, handwriting, print, inscription, cipher,

⁵⁴ Ibid., 9.

⁵⁵ Ibid., 131.

⁵⁶ Ibid., 13, 264.

trait or feature, peculiar quality, personality, “moral constitution,” the features or face which identify someone, social position, rank, public capacity, account of a person’s qualities (as in a character sketch), employer testimonial, reputation, person in fiction or drama, stage part, type of person, and eccentric or unusual person.⁵⁷ The vast majority of references to “character” in the late eighteenth century, including in legal writings, incorporated several shades of meaning, and shifted between the literal and the figurative. As J. Hillis Miller points out:

In any given use of the word there is likely to be a constant somewhat enigmatic play back and forth among these various functions of the word ... The possibilities of meaning in a word always exceed its context and shimmer to some degree with the other possibilities, as the mind follows one strand after another of the spiderweb of interconnected meanings.⁵⁸

In the courts, the older meanings of “character” (mark on the page, handwriting, print) often bled into the newer senses of reputation or personality. Even the misspelling of a defendant’s name on a criminal indictment could force a trial to collapse, although appeals on this point were not always successful, as Thomas Fyshe Palmer found to his disappointment when the spelling of his name in the indictment as “Fische” was accepted by the court.⁵⁹ Similar appraisals of textual character occurred at Finnerty’s 1797 trial in Dublin, when his defence counsel tried to destabilise the connection between the man who had signed himself “Peter Finerty” at the stamp office, and the man at the bar who now swore that was his name.⁶⁰ Conversely, when in 1794 Holcroft handed himself in to the courts for treason, the Lord Chief Justice, Sir James Eyre, tried to warn him against the step through a series of strong hints. Was Holcroft sure, Eyre asked, that he could identify himself as “the person standing indicted by the name of Thomas Holcroft”? The point was that to surrender himself as the indicted “Thomas Holcroft” would imply a consciousness of guilt. “I do not know how many persons there may be by the name of Thomas Holcroft,” Eyre cautioned, unhooking name from identity, and helpfully (for Holcroft) disentangling the “character” of the name inscribed in the indictment from the “character” of Holcroft the individual.⁶¹ These shifting relationships among name, handwriting and identity – all versions of “character” – recall Hillis Miller’s remark that “[t]o

⁵⁷ “character, n.,” *Oxford English Dictionary Online*, March 2019, Oxford University Press, <http://www.oed.com/view/Entry/30639?rskey=4fZJBP&result=1&isAdvanced=false>.

⁵⁸ J. Hillis Miller, *Ariadne’s Thread: Story Lines* (New Haven, CT: Yale University Press, 1992), 56, 60.

⁵⁹ [Thomas Fyshe Palmer,] *The Trial of the Rev. Thomas Fyshe Palmer, Before the Circuit Court of Justiciary, Held at Perth [...] With an Appendix* (Edinburgh, 1793), 24.

⁶⁰ [Peter Finnerty,] *A Report of the Trial of Peter Finerty, Upon an Indictment for a Libel. By William Ridgeway, Esq. Barrister at Law* (Dublin, 1798), 22-24.

⁶¹ John Barrell, *Imagining the King’s Death: Figurative Treason, Fantasies of Regicide, 1793-1796* (Oxford: Oxford University Press, 2000), 315.

interpret someone's character (handwriting) is to interpret his character (physiognomy) is to interpret his character (personality) is to interpret his character (some characteristic text he has written), in a perpetual round of figure for figure."⁶² Character needs to be seen not as a sealed category, but as a fluid concept, criss-crossing between different registers and spheres.

The courtroom

The extent of government repression of radicalism during this period has been subject to debate, with historians devoting much attention both to the numbers of prosecutions for libel offences and to other forms of legal and extra-legal harassment, including the use of punitive financial penalties and detentions without trial.⁶³ Philip Harling is surely right to conclude that although the law of libel was "enforced fitfully, sporadically, and not very effectively," and with low sentencing rates, the government's inconsistent approach to prosecutions actually helped to make the law "a formidable instrument of harassment, if ultimately not an efficient instrument of repression."⁶⁴ Harling emphasises the ways in which radical publishers were intimidated through the use of various informal tools at the authorities' disposal, even in cases which never came to trial or which saw the defendant acquitted. Meanwhile, on the government's side, the libel laws were proving an increasingly difficult weapon to wield against political unrest. They were impossible to enforce systematically; libel trials were unwelcome advertisements for the libels themselves; and high-profile cases could embarrass the government, owing to the difficulty of fixing a "seditious meaning" to a publication.⁶⁵ Hone's three acquittals for blasphemous libel in 1817 are probably the most famous embarrassments of the period, but even a successfully convicted radical could be a thorn in the side of the state, as Finnerty shows in Chapter 3. The complications in enforcing the law of libel meant that the government was forced to devise new approaches to controlling political dissent, and Michael Lobban demonstrates that after the Peterloo massacre in 1819, crown lawyers began to focus more on the management of public spaces than on the restraint of communication: on "the threat to public order caused by the manner of expressing ideas rather than ... the ideas in themselves."⁶⁶

⁶² Hillis Miller, *Ariadne's Thread*, 58.

⁶³ For a concise summary of these debates, see Michael T. Davis, Emma Macleod, and Gordon Pentland, "Introduction: Political Trials in an Age of Revolutions: Britain and the North Atlantic, 1793-1848," in *Political Trials in an Age of Revolutions: Britain and the North Atlantic, 1793-1848*, ed. Michael T. Davis, Emma Macleod, and Gordon Pentland (Basingstoke: Palgrave Macmillan, 2019), 4-5. See also Clive Emsley, "An Aspect of Pitt's 'Terror': Prosecutions for Sedition During the 1790s," *Social History* 6, no. 2 (1981), 155-84; and Steve Poole, "Pitt's Terror Reconsidered: Jacobinism and the Law in Two South-Western Counties, 1791-1803," *Southern History* 17 (1995), 65-87.

⁶⁴ Harling, "The Law of Libel and the Limits of Repression," 108-11.

⁶⁵ *Ibid.*, 120.

⁶⁶ Michael Lobban, "From Seditious Libel to Unlawful Assembly: Peterloo and the Changing Face of Political Crime c1770-1820," *Oxford Journal of Legal Studies* 10, no. 3 (1990), 307.

The shift to a public order view of political crime did not take place overnight, though, and 1819 also saw a jump in the number of libel prosecutions, mostly all for a select few publications.⁶⁷

The libel laws were the government's principal tool for suppressing political opposition. At the close of the eighteenth century, England enjoyed a reputation for a free and unfettered press, because except in the theatre, pre-publication censorship had not been in place since the lapsing of the 1695 Licensing Act. However, the scope for post-publication censorship, through libel prosecutions, was considerable. The law had its origins in the idea that libels on private individuals could cause breaches of the peace, by whipping up the victim's family to revenge.⁶⁸ Seditious libel extended this to the state, by assuming that "libelling the king or the state would provoke tumult and dissension on a public scale"; blasphemous libel was similarly designed to protect the established Church of England, as a component part of the state, from defamation.⁶⁹ In practice, the government's pursuit of radical publishers and booksellers did not always observe a great deal of difference between seditious and blasphemous libel: both could be highly political, and the choice of charge was often based on what a jury was thought more likely to convict for (as we will see in the trials of Hone). Libel was a crime against "character": whether the personal character of an individual, or that of the state or established church. At John Hunt's 1824 trial for publishing Byron's poem *The Vision of Judgment*, the prosecution did not even make it clear whether Hunt was being charged with seditious or personal libel. Most of the libel cases investigated here concern criminal prosecutions, but it was also possible to bring a civil action for libel against an opponent, by suing for damages – something Finnerty attempted with mixed success, as we see in Chapter 3.

In Scotland, the crime of seditious libel did not exist: the Scottish "martyrs" convicted in 1793-94 were prosecuted for sedition. It is important not to elide such differences: law, as Lindsay Farmer reminds us, is shaped by political territories, and its "powers and competences are spatially distributed."⁷⁰ Most of the case studies in the following chapters are concerned with the English criminal law, as it was administered in London. However, the Scottish sedition trials which are the subject of Chapter 2 were conducted under a system entirely distinct from the English; and Chapter 3 includes a trial that took place in Ireland, which was under English jurisdiction with a few important distinctions. In these Scottish and Irish cases, concerns played out in court around questions of national identity, Britishness, and the proper relationship with

⁶⁷ Ibid., 327-28.

⁶⁸ Edward Coke, "Scandalous Libels (Case of)," in 77 Eng. Rep. 250 (1378-1865) (1605), 251.

⁶⁹ Barrell and Mee, "Introduction," xiii-xiv.

⁷⁰ Lindsay Farmer, *Criminal Law, Tradition and Legal Order: Crime and the Genius of Scots Law* (Cambridge: Cambridge University Press, 1997), 2.

English law. Comparisons with England and the English system, implicit or explicit, were never far from the surface, although it varied as to what Englishness, Irishness and Scottishness were made to mean, and how far England was held up as a model of liberality versus how far its influence was resented. In his essay “Of National Characters,” David Hume suggested that thanks to England’s apparently greater social and religious diversity, “the ENGLISH, of any people in the universe, have the least of a national character; unless this very singularity may pass for such.”⁷¹ Hume presents the English as a neutral yardstick, an attitude which was both reflected and resisted in the Dublin and Edinburgh courts.

Criminal cases were often sites of political debate in this period, especially in the trials of radicals. It has to be recognised that “the law” was not a self-contained entity, independent of political pressures. Indeed, the law was heavily scrutinised by reformers and loyalists alike, its interpretation and application were debated, and it was frequently pressed into the service of competing ideologies. For instance, radical defendants sometimes stressed their entitlement to be treated according to principles of legal equality, although there was little legal basis for such a demand. “*All men are equal in the eyes of the law*”, insisted Finnerty in 1811.⁷² “Equality” was a loaded word, impossible fully to extricate from its association with French Jacobinism or seventeenth-century levelling.⁷³ Although radical commentators sometimes assumed that the legal concept of “equality before the law” was a constitutional one, it had not been enshrined in the 1688 Bill of Rights.⁷⁴ The late seventeenth century had seen a series of debates on a possible role for greater equality within criminal justice, culminating in more “just and equal” treatment for treason defendants after 1696; but outside of treason cases, eighteenth-century judges did not deem equality before the law an important principle.⁷⁵ Its invocation by radicals was significant in the sense that it may have helped to shift ground in favour of the defendant, and towards more consistent (“equal”) application of the law, but it did not reflect a pre-existing reality in the law’s provision. Something similar can be said of reformers’ objections to the use of *ex officio* informations to initiate prosecutions. *Ex officio* informations (charges issued literally “out of the office” of the Attorney General) allowed the government to bypass the role of the grand jury, which would normally be tasked with finding an indictment against a defendant. This meant that prosecutions could come to trial much faster, which was justified in seditious libel cases “by the claim that it was necessary to initiate a prosecution as fast as

⁷¹ David Hume, “Of National Characters,” in *Essays Moral, Political, and Literary*, ed. Eugene F. Miller, rev. ed. (Indianapolis: Liberty Fund, 1985), 207.

⁷² [Peter Finnerty,] *Case of Peter Finnerty, Including a Full Report of All the Proceedings Which Took Place in the Court of King’s Bench Upon the Subject [...]* (London, 1811), 45.

⁷³ See Epstein and Karr, “Playing at Revolution,” 505.

⁷⁴ See for example [Finnerty,] *Case of Peter Finnerty*, v.

⁷⁵ Langbein, *The Origins of Adversary Criminal Trial*, 89-90.

possible, to prevent the breaches of the peace which the alleged libel might otherwise occasion.”⁷⁶ Cases brought by *ex officio* information were heard by special juries, who met a higher property threshold than regular juries and were of a higher social status. As we shall see in Chapter 4, many reformers considered *ex officio* informations to be despotic and even illegal, and it is true that they were often used to disadvantage and harass radical defendants, but they had been made lawful for libel prosecutions in 1807, in a bill introduced by Vicary Gibbs.⁷⁷ Although crown lawyers and judges sometimes stretched the rule of law, it was important that they were seen basically to adhere to it.

Lawyers took on an increasingly prominent role in criminal trials over the course of the eighteenth century. This drastically altered the format of trials and the nature of the criminal defence, as the “free-form inquiry” of the earlier century was replaced by a highly organised process structured around “meeting and then defeating” the prosecution’s evidence.⁷⁸ The greater role for lawyers was not formalised until 1836, when legislation was passed which entitled those accused of felonies to full defence counsel; defence counsel had already been permitted in trials for misdemeanours (less serious offences), of which libel was one. Lawyers brought more technical arguments into court, especially since the early nineteenth century also saw greater emphasis laid on the rules of evidence. Even in political cases, in which a principled defence of a client might be expected, defence counsel would often focus first on uncovering technical flaws in the indictment. In trials for libel (as a misdemeanour), the defence was allowed to address the jury only once, meaning that either counsel or the defendant could speak. This forced an uncomfortable choice onto some radical defendants, who tended to take an enthusiastic interest in the details of their case. Finnerty, on being told in 1811 that “a defendant may either speak by his counsel or by himself, but not by both,” replied, “[t]hen, my lord, I must undertake myself the conduct of the cause.”⁷⁹ His lawyer sat in silence for the rest of the trial.

On the whole, political defendants shared Finnerty’s wish for a high degree of autonomy, and often made their defences either entirely alone or with limited help from lawyers. “I rise, in my own defence,” said Thomas Muir as he prepared to defend himself on a charge of sedition.⁸⁰ Since many defendants were not only non-lawyers but also writers, their preference for defending themselves worked to blur the boundaries between the legal and non-legal discourses

⁷⁶ Barrell and Mee, “Introduction,” xlv.

⁷⁷ David A. Kent and D. R. Ewen, eds., *Regency Radical: Selected Writings of William Hone* (Detroit: Wayne State University Press, 2003), 195.

⁷⁸ Langbein, *The Origins of Adversary Criminal Trial*, 313.

⁷⁹ [Finnerty,] *Case of Peter Finnerty*, 14.

⁸⁰ [Thomas Muir,] *The Trial of Thomas Muir, Younger, of Huntershill [...] A New Edition, Corrected* (London, 1793), 57.

at play in the courtroom. At his 1794 trial for sedition in Edinburgh, Gerrald refused representation from the Whig advocate Henry Erskine, on the basis that Erskine would have insisted on handling the defence by himself. When the case came to trial, Gerrald's judges demanded that he have legal representation, because he was English and unfamiliar with Scottish law; but Gerrald still delivered his defence statement alone. His independence came at a price, for his conviction and transportation to Botany Bay brought about his death from consumption two years later. It was with some difficulty that Henry Erskine's brother Thomas, who secured acquittals for the treason defendants in 1794, persuaded his client Thelwall not to deliver a defence speech at his trial. On the other hand, those political defendants who accepted full defence counsel sometimes regretted their lost autonomy. Palmer, who in 1793 handed over control of his defence to a lawyer, resented what he saw as the latter's poor management of his case. He wrote to his fellow-convict Thomas Muir, "I am now convinced that had I followed your advice and employed none it would have been infinitely better. They are all traitors."⁸¹

The growing prominence of lawyers also worked to diminish the role of the judge. Judges had historically acted as "counsel for the accused" (for example, by helping a defendant to examine witnesses), but this was growing less common by the late eighteenth and early nineteenth centuries. According to Langbein, judges were willing to retire to the "high ground above the fray," for their withdrawal "reduced their exposure to outside criticism for the conduct of those few trials that would inevitably be controversial or notorious."⁸² At the trials of Finnerty (1810-11) and Hone (1817), both highly controversial, Lord Ellenborough refused the defendants legal advice, even though they were unrepresented. "The Court has too much to do, to become the advisers of all persons who may consider themselves aggrieved," he told Hone. "If we were to give you advice, then every subject in the realm might come here to know what he was to do."⁸³ This was an about-turn from the practice of the earlier eighteenth century. High-profile radical trials like Hone's and Finnerty's were the exception rather than the norm, but it is probable that the reluctance of judges to advise defendants was driven partly by the public criticism those kinds of cases attracted.

The reduced role of the judge was tied up with a belief in the importance of the autonomy of juries. In criminal trials, the judge was considered qualified to decide questions of law, and the jury questions of fact. In libel cases, that had originally meant that the jury was only supposed to consider two questions: was the defendant the publisher of the alleged libel, and did the

⁸¹ Thomas Fyshe Palmer to Thomas Muir, 16 September 1793, JC26/1793/1/6/3, National Archives of Scotland, Edinburgh.

⁸² Langbein, *The Origins of Adversary Criminal Trial*, 314.

⁸³ William Hone, *The Reformists' Register, and Weekly Commentary*, vol. 1, *From February 1, 1817, to July 19, 1817* (London, 1817), 553.

words in the libel correspond with the meaning that was glossed in the information or indictment? Jurors were not thought qualified to judge if the publication was libellous, since this was a matter of law, not fact. Therefore, if they concluded that the answers to the two questions were both “yes,” jurors were obliged to find a guilty verdict, even if they did not consider the publication to be libellous. This position, known as the “Mansfield doctrine” (named after Lord Mansfield, who famously expressed it, but did not develop it himself), came under scrutiny in a series of debates and landmark cases during the 1770s and 80s. Uncooperative juries would sometimes find verdicts such as “guilty of publishing only,” in an attempt to get around the restriction.⁸⁴ The law was reformed in 1792, when Fox’s Libel Act legislated that the jury, not the judge, was to decide if a publication was libellous. Many reformers celebrated the Act for its assertion of the right of juries to make their own decisions on libels, without being obliged to follow the judge’s opinion. In fact, judges were still allowed to give their opinion, and often did so stridently, to the defendant’s detriment; and many juries still followed the bench’s opinion deferentially.⁸⁵ Nevertheless, reformers continued to praise the trial by jury as a central pillar of English liberty, owing to the jury’s symbolic status as the representative of “the people” in court. The idea of the jury has a prominent place in radical defences of the period, and awareness of a jury – whether legal or figurative – is present in a range of non-legal writings, too, as writers attempt to defend themselves before an imagined audience that is discerning, judging, and by turns both hostile and sympathetic.

Radical address

The crime of libel was premised on the risk that a publication could create a volatile, violent response in its readers, leading to a breach of the peace. The criminality or innocence of an alleged libel was decided by what lawyers called its “tendency”: the consequences, or possible consequences, of its publication. The doctrine of tendency had been codified in Sir Edward Coke’s landmark commentary of 1605, *De libellis famosis*, which stated that a libel, by “incit[ing]” the victim’s family “to revenge” themselves on the perpetrator, inevitably “tends to quarrels and breach of the peace.”⁸⁶ By the late eighteenth century, tendency was recognised to stretch well beyond the risk of private arguments, and encompassed any possible breakdown in public order which might follow from libels against the government (seditious) or established Church (blasphemous). It was a slippery concept, though, for it found criminality in probable or even possible, rather than proven, outcomes of publication. Kevin Gilmartin notes that tendency was “easier to prove than effect,” since by finding only hypothetical outcomes, it could be very

⁸⁴ Barrell and Mee, “Introduction,” xvi.

⁸⁵ On Fox’s Libel Act, see for example *ibid.*, xiii-xviii; and Lobban, “From Seditious Libel to Unlawful Assembly,” 310-21.

⁸⁶ Coke, “Scandalous Libels (Case of),” 251.

elastic.⁸⁷ Tendency demanded that a publication's whole context be considered: price, circulation, and above all audience. In 1792, the second part of Paine's *Rights of Man* was singled out for prosecution because of its cheap price. Erskine, defending Paine *in absentia*, quoted some remarks of Lord Loughborough on the importance of context: "the purpose and the direction may give a different turn to writings whose common construction is harmless, or even meritorious," Loughborough had said, citing a biblical phrase – "To your tents, O Israel" – which would become criminal if circulated by "a mischievous person" within an unruly crowd.⁸⁸ Here, an unreliable audience is considered responsible for the bad tendency, transforming the text from scripture to libel. As Paul Keen explains, "the growing numbers of people who could read – and who, more dangerously, appeared eager to read – but who could not be trusted as readers, meant that it was precisely the dissemination of ideas which ensured the author's potential criminality."⁸⁹ Private or restricted circulation was normally acceptable, whereas cheap and widespread circulation could make a publication criminal. Thus, Godwin's *Political Justice* was priced beyond the reach of poorer readers and was exempt from legal action, while the inexpensive second part of Paine's *Rights of Man*, circulated with the help of the reform societies, was not.

In libel trials, it was common for defendants to argue that what mattered most was not the tendency of a publication, but their intention in publishing it. Barrell explains that this stress upon intention was a recurring theme in Erskine's career, "relentlessly repeated" by him in political trials throughout the 1780s and 90s. Erskine insisted, Barrell says, "that the question of guilt or innocence in any criminal trial depends not simply on whether or not a defendant performed the act alleged to be criminal, but also on the intent with which the act was committed." He also argued, against proponents of the Mansfield doctrine, that a defendant's intention was a matter of fact, not law, and hence was for juries to decide.⁹⁰ In Chapter 4, we will see tendency and intention discussed at length at Hone's trials, with the Attorney General and judge maintaining that the tendency of Hone's liturgical parodies was criminal, and Hone insisting that his intention was innocent. In taking this stance, Hone was adding his voice to a legal debate of some decades' duration.⁹¹ It was not that prosecutors and judges were uninterested in the intention of an author or publisher, but they absorbed it into the tendency of the publication. W. H. Wickwar explains that while "criminal intention" was technically

⁸⁷ Kevin Gilmartin, *Print Politics: The Press and Radical Opposition in Early Nineteenth-Century England* (New York: Cambridge University Press, 1996), 119.

⁸⁸ Barrell and Mee, *Trials for Treason and Sedition*, 1:171.

⁸⁹ Paul Keen, *The Crisis of Literature in the 1790s: Print Culture and the Public Sphere* (New York: Cambridge University Press, 1999), 68.

⁹⁰ Barrell, *Imagining the King's Death*, 347.

⁹¹ See *ibid.*, 346-53.

recognised as “the test of criminality,” the legal notions of “constructive malice” or “presumptive intent” meant that “a reckless indifference to the possible ill consequences of publication was construed into an evil intention.”⁹² The judge at Finnerty’s 1797 trial commented that the court must assume that a publisher “*knows* what he *does*, and that he *intends* to do what he actually *does* ... if the publication does in fact calumniate and defame, may it not with equal justice be inferred from the libel, that he published it with an intent to calumniate and defame.”⁹³ Intention is collapsed into tendency, with neither term having a particularly concrete definition in the courts of the period. Moreover, eighteenth-century courts were not interested in a defendant’s psychological state or capacities, and *mens rea* did not exist in today’s forms (although, as we have seen, this was beginning to change in the nineteenth century). As Lacey argues, even the “[c]ulpability requirements such as having acted ‘maliciously’, ‘wickedly’, or ‘feloniously’,” which feature in the lists of charges found on indictments, “were far from equating to the psychological and capacity-based requirements of *mens rea* – literally, a guilty mind – with which we are now familiar.”⁹⁴

The debate over tendency and intention created problems for how the respective responsibilities of author and reader should be interpreted. If authorial intention is absorbed into a text’s tendency, then the author is irretrievably complicit in its social reception, responsible even for unforeseen or hostile readings. But if tendency is cut loose from authorial intention, the author’s responsibility shrinks in importance in comparison with that of the reader. In a 1797 essay, “Of Choice in Reading,” Godwin examined the relationship between what he called the “moral” and the “tendency” of a work. Godwin defines the “moral” as the “ethical sentence to the illustration of which the work may most aptly be applied”: the ethical point which a work seems to illustrate. Different readers of the same work may infer different morals from it, which may also differ from the author’s own view of the moral – just as the moral that is provided at the end of one of Aesop’s fables could be “one of the last inferences that would have occurred to you,” the reader. The “tendency,” meanwhile, is “the actual effect” that a work “is calculated to produce upon the reader.” This will vary according to “the various tempers and habits of the persons by whom the work is considered.” Indeed, the tendency of a work “depends much less upon its real contents, than upon the temper of mind and preparation with which we read it.”⁹⁵ Books have less power to corrupt their readers than is often supposed, therefore, for “[e]very thing depends

⁹² W. H. Wickwar, *The Struggle for the Freedom of the Press 1819-1832* (London: George Allen & Unwin Ltd, 1928), 19-20.

⁹³ [Finnerty,] *A Report of the Trial of Peter Finerty*, 103.

⁹⁴ Lacey, *Women, Crime, and Character*, 23; Nicola Lacey, “In Search of the Responsible Subject: History, Philosophy and Social Sciences in Criminal Law Theory,” *The Modern Law Review* 64, no. 3 (2001), 137.

⁹⁵ William Godwin, “Of Choice in Reading” (from *The Enquirer*), in *Political and Philosophical Works of William Godwin*, vol. 5, *Educational and Literary Writings*, ed. Pamela Clemit, 137-39.

upon the spirit in which they are read. He that would extract poison from them, must for the most part come to them with a mind already debauched.”⁹⁶ Godwin argues, in effect, that readerly interpretation matters: the ethical implications of a work are the reader’s responsibility. Language and narrative can generate meaning beyond an author’s control, and texts often slip free from the limitations of authorial intention. “If the moral be invented first, the author did not then know where the brilliant lights of his story would fall,” Godwin argues.⁹⁷ Readers bear responsibility for “extract[ing]” the “brilliance” or “poison” of the text.

Tilottama Rajan has suggested that Godwin’s essay sets forth what she calls his “divinatory hermeneutics.” Godwin’s idea of “tendency” is historically contingent: it is “an inter-subjective and historically developing significance, generated by the interaction of intention and its representation and subsequently of the text and its reading.” Godwin, Rajan suggests, sees reader responses to the text unfolding into the future, and “imposes a teleological direction on the history of reception, consistent with his own notions of perfectibility.” In this way, the meaning of a text ultimately awaits discovery by “a prophetic reader”; this is a powerful commitment to the redemptive capacity of future readers, on Godwin’s part.⁹⁸ Mee has added to Rajan’s analysis the importance of grounding these concerns about authorial responsibility and textual (mis)interpretation within Godwin’s own sociable and conversational reading practices.⁹⁹ More than this, though, Godwin’s choice of the word “tendency” adds a strong legal subtext to his account of reading. Although he does not mention the legal meaning of “tendency,” the word’s frequent appearance in contemporary libel trials means that he could hardly have failed to notice its criminal significance. Viewed from that perspective, Godwin’s idea of “tendency” seems to offer a means by which a text could ultimately be freed from legal judgment. Tendency may be found only with “great difficulty,” Godwin says: a task beyond the scope of the courts, perhaps. As if to safeguard fellow-authors from legal judgment, he is careful to detach authorial intention from a text’s social ramifications: “It is by no means impossible, that the books most pernicious in their effects that ever were produced, were written with intentions uncommonly elevated and pure.”¹⁰⁰ Similarly, authors are often “superlatively ignorant of the tendency of their own writings,” because to find “the genuine tendency of a book, is a science peculiarly abstruse.”¹⁰¹ Godwin’s thorny definition of tendency problematises

⁹⁶ Ibid., 141.

⁹⁷ Ibid., 138.

⁹⁸ Tilottama Rajan, *The Supplement of Reading: Figures of Understanding in Romantic Theory and Practice* (Ithaca, NY: Cornell University Press, 1990), 168-69.

⁹⁹ Jon Mee, *Conversable Worlds: Literature, Contention, and Community 1762 to 1830* (Oxford: Oxford University Press, 2011), 146.

¹⁰⁰ Godwin, “Of Choice in Reading,” 140.

¹⁰¹ Ibid., 137.

the efforts of lawyers to fix a text's meaning, while the dignified representation of the writer's intention frees him or her from legal responsibility. At the same time, Godwin elevates tendency to be "the only thing worthy of much attention."¹⁰² While this might seem to be granting too much to crown lawyers, Godwin's faith in the interpretive powers of the future reader – in the ability of future readers to retrieve the text from misreading – proposes a way through the present climate of legal persecution, redeeming the idea of tendency without ceding the social importance of the work that writers do.

Godwin's belief that meaning develops historically recalls Hans Robert Jauss' theory of reception history, although Jauss does not ascribe a teleological direction to reception as Godwin does. For Jauss:

A literary work is not an object that stands by itself and that offers the same view to each reader in each period. It is not a monument that monologically reveals its timeless essence. It is much more like an orchestration that strikes ever new resonances among its readers and that frees the text from the material of the words and brings it to a contemporary existence.

Jauss stresses the "dialogical" nature of any given work. Its meaning emerges over time, according to the "horizon of expectations" brought to bear by different readers, at different moments, on their reading.¹⁰³ Jauss understands the work to have a historically unfolding "social function"; at the same time, he says, it may be many years before audiences are able to receive the work, since it can require "a long process of reception to gather in that which was unexpected and unusable within the first horizon."¹⁰⁴ Jauss is talking here about the formation of literary canons, but his analysis is also suggestive of the ways in which political defence speeches in the Romantic period anticipated future vindication, by a sympathetic readership. As William Skirving told Edinburgh's High Court of Justiciary at his sentencing in 1794, "I know that what has been done these two days will be rejudged; – and that is my comfort, and all my hope."¹⁰⁵ Skirving looks forward to his acquittal by the tribunal of posterity, committing himself to the prospect that his case will be re-read and "rejudged," its "new resonances" struck out. Future readers, Skirving believes, will be able to interpret freshly what had been (to borrow Jauss' phrase) "unexpected and unusable" to the Scottish High Court of Justiciary in 1794.

¹⁰² Ibid., 139.

¹⁰³ Hans Robert Jauss, *Toward an Aesthetic of Reception*, trans. Timothy Bahti, introduced by Paul de Man (Brighton: The Harvester Press, 1982), 21-22.

¹⁰⁴ Ibid., 39, 35.

¹⁰⁵ [William Skirving,] *The Trial of William Skirving, Secretary to the British Convention* [...] (Edinburgh, [1794]), 168.

If defence speeches frequently anticipated future redemption by the sympathetic readers of posterity, these were far from the only intended addressees. Defence speeches began with the imperatives of the courtroom, and the desire for transparent communication with the jury of one's peers. It was a trope of the genre to appeal to the integrity of the jury, and sometimes, defendants would explicitly develop an ideological contrast between time-serving judge and honourable jury. As Hone told his jurors: "His lordship presides in this court, but not to try me. You are my judges; you are to try me; and to you I willingly submit my case."¹⁰⁶ Defendants were also speaking to the crowd assembled in court to hear the case. Hone reprimanded those assembled at his 1817 trials for their cheering and booing, although this may partly have been a rhetorical strategy that actually helped to cement a connection with his audience; many political defendants would surely have welcomed such encouraging audience participation. Next, and outside the courtroom, political defendants addressed those readers who would buy published copies of their trials or defence statements. Defendants often aspired to an intimacy with their audiences, presenting their characters as transparently legible to the thoughtful reader. This has much in common with Tilottama Rajan's idea of the "supplement of reading," whereby the reader is invited "to bridge the gap between conception and execution, and to supply a unity not present in the text."¹⁰⁷ As the following chapters show, however, readers were not always sympathetic, and the exercise of their creative agency regarding the writer's character could be unwelcome. As Rajan says, "in transforming the reader from recipient to supplement, the author renounces his authority over the reader. Actual readers do not necessarily follow the roles prescribed for them within texts."¹⁰⁸ Perhaps with that in view, some defendants preferred to address themselves to posterity or to God: as we will see, the defences of Muir and Skirving in 1793-94 (and, to an extent, Hone in 1817) took inspiration from Protestant martyrology in ways which helped to make possible their public reception as "martyrs" after the event. Lastly, there is an important sense in which political defence speeches were addressed not only to real and imagined audiences, present and future, but also to the speaker themselves. Finnerty was putting his own self-respect on the record when he exclaimed to the court in 1811, "was it calculated that any time or consideration would induce me to compromise my character ...? What a mistaken calculation!"¹⁰⁹ Radical address expanded outwards in widening circles, from the jury to the crowd in the courtroom, to a wider reading public, to posterity, and to God, before often contracting inwards again, in an address to the speaker himself.

¹⁰⁶ [William Hone,] *The Three Trials of William Hone, for Publishing Three Parodies* [...] (London, 1818), 90.

¹⁰⁷ Rajan, *The Supplement of Reading*, 2.

¹⁰⁸ *Ibid.*, 2.

¹⁰⁹ [Finnerty,] *Case of Peter Finnerty*, 26.

In his 1811 poem “Politics and Poetics,” Leigh Hunt conjures his impression of a disconnect between the “fearful” business of political activism and legal prosecutions on the one hand, and the allure of poetry on the other.¹¹⁰ We encounter Hunt seated at his desk, toiling to digest political pamphlets and harassed by the Attorney General, who lurks behind him, “Pale, periwigg’d, with itching hands, / A goblin, double-tailed, and cloak’d in black, / Who while I’m gravely thinking, bites my back.”¹¹¹ The poet’s muse succeeds for a time in banishing political concerns, and he enjoys brief respite in the “fairy glade” of a “poetic nook.”¹¹² Before long, however, his political cares have returned, and Hunt concludes the poem with a reflection on the vital work of those who give up their own “darling liberty” in order “to keep others free.”¹¹³ The poem is revealing for the binary distinction that Hunt draws between “politics” and “poetics.” Politics is sickly and morbid; poetry, life-giving and restorative. The political pamphlets piled on the poet’s desk are “as ... a heap of dead,” out of which a copy of Homer barely “shows his living head.”¹¹⁴ Political and legal anxieties lead directly to illness, as the poet suffers from the “Blue Daemon” of depression, nightmares, and headaches – these last brought on specifically by the “courts” and the perusing of legal reports.¹¹⁵ Indeed, it is the law that deals the final death blow to Hunt’s poetic muse. When the Attorney General delivers his “*fourth* snap of threat’ning vengeance” (glossed by Hunt as the government’s fourth prosecution against himself and his brother John), the poet’s “Muse herself turns pale; / Freedom and fiction’s self no more avail; / And lo! my Bow’r of Bliss is turn’d into a jail!”¹¹⁶ The degeneration of the bower into a dungeon anticipates, in reverse, Hunt’s decoration in 1813 of his prison cell as a Spenserian bower.¹¹⁷ Within the logic of the poem, it cements the relationship between legal prosecutions and the stifling of the poetic imagination.

Hunt’s poem not only establishes a dichotomy between poetic and political writing; it also identifies the act of writing itself as a potentially hazardous activity, because of the risk of hostile misreading. The poet’s “table spread with fearful books” is a place of danger,

¹¹⁰ Leigh Hunt, “Politics and Poetics, or The Desperate Situation of a Journalist Unhappily Smitten with the Love of Rhyme,” in *The Selected Writings of Leigh Hunt*, ed. Michael Eberle-Sinatra and Robert Morrison, vol. 5, *Poetical Works, 1801-21*, ed. John Strachan (London: Pickering & Chatto, 2003), 10, line 10.

¹¹¹ *Ibid.*, 11, lines 37-39.

¹¹² *Ibid.*, 12-13, lines 103, 89.

¹¹³ *Ibid.*, 13, lines 141-42.

¹¹⁴ *Ibid.*, 10, lines 18-19.

¹¹⁵ *Ibid.*, 10-11, lines 28, 34.

¹¹⁶ *Ibid.*, 13, lines 135-38.

¹¹⁷ Nicholas Roe, “Leigh Hunt’s Track of Radiance,” in *Leigh Hunt: Life, Poetics, Politics*, ed. Nicholas Roe (London: Routledge, 2003), 3.

overlooked by the Attorney General and his “harpy” assistants.¹¹⁸ Hunt is anxious that his writing will be misread, for the lawyers will manipulate the meaning of his work, and “turn whate’er I write, / With their own venom, into foul despite.”¹¹⁹ His writings risk distortion by malicious readers from the moment pen is put to paper. However, a note to the poem qualifies Hunt’s ghoulish portrait of the then Attorney General, Vicary Gibbs: “He was much esteemed, I believe, in private, and was a great reader of novels.”¹²⁰ Hunt’s note disentangles Gibbs’ public and private characters, and it cites Gibbs’ reading of novels (with the implication of his rich imaginative life) as indicative of good personal character. Towards the end of the poem, Hunt invokes John Thelwall: “O for a dose of Thelwall, or of poppy!” he begs, amid a torrent of “Judicial slaps.”¹²¹ Partly, this invocation of Thelwall demonstrates Hunt’s awareness of his own radical heritage, and a desire to fit into a tradition that he traces back to the 1790s. But Hunt’s note describes Thelwall as a man who has been resented by reformers for having abandoned politics. That Thelwall is a “dose” of medicine, akin to opium, suggests that Hunt seeks in Thelwall’s (perceived) abandonment of political life a possible remedy for the diseased world of political action. The poet seeks a narcotic or forgetful effect in the older reformer; even, perhaps, a wish to follow in Thelwall’s footsteps by turning away from politics. That tension between political engagement and poetic retirement in Hunt’s career has been explored by Gilmartin, who has written about how Hunt’s “powerful desire to escape the rigors of opposition sheds light on the inherent tensions of that position.”¹²² Possibly Hunt was also thinking of Thelwall’s 1801 *Poems Chiefly Written in Retirement*, whose theme of retirement away from politics, to rural scenes and poetic pursuits, mirrors his own preoccupations in the poem.

“Politics and Poetics” is suggestive of a growing disciplinary divide between political and poetic registers of writing. With the Attorney General constantly at Hunt’s back, ready to misread “whate’er I write” and “pounce”, the “poetic nook” comes to look less like a classic poetic retreat than a position of basic personal security. It would be too neat to attribute the disciplinary segregation of “literature” from political or legal writing wholly to the repression of writers during this period, not least because the origins of that division predate it.¹²³ However, Hunt’s poem does suggest a correlation between the legal pressures experienced by radical writers of the Romantic period and the isolation of poetic writing from the rest of the republic of

¹¹⁸ Hunt, “Politics and Poetics,” 10-11, lines 10, 40.

¹¹⁹ *Ibid.*, 11, lines 42-43.

¹²⁰ *Ibid.*, 310.

¹²¹ *Ibid.*, 13, lines 128, 130.

¹²² Gilmartin, *Print Politics*, 197.

¹²³ See for example Barrell, *Imagining the King’s Death*, 13.

letters. Crucially, Hunt is anxious about the risks of misinterpretation by unsympathetic readers, in the figures of the Attorney General and his assistants: fear of reader hostility forces the poet into retreat. The radical response to the imagined reader's autonomy is one of alarmed defensiveness here, rather than optimistic communication.

In trying to link legal and literary histories of character, this thesis aims to be interdisciplinary; but to call it that means to risk missing that the disciplinary boundaries in question are relatively recent, and indeed, only started to come into being around this period or soon afterwards. Keen has highlighted the political nature of early Romantic-period efforts to define "literature." Such definitions are still relevant to how we approach Romantic-period studies today, Keen argues, "not least because those struggles [over the meaning of "literature"] found their partial resolution in the development of the academic discipline of English Literature, which is today the subject of various theoretical challenges that aim at redrawing the boundaries between the disciplines."¹²⁴ The period around the turn of the eighteenth and nineteenth centuries saw a rift widen between imaginative, aesthetic writings on the one hand, and other types of writing – political, legal, scientific, historical, philosophical, and so on – on the other. In fact, in the period we call Romantic, far from "literature" being understood (as it is today) primarily as poetry or fiction, these were actually sometimes excluded from the scope of "the literary."¹²⁵ The scholarly "law and literature" movement, which emerged in universities in the 1970s, has helped to expand our understanding of the relationship between literary studies and the law, but it has also tended to assume that the two categories are self-evidently distinct, ignoring their historical blurring. Some law-and-literature theorists have argued that legal and literary studies have been brought together by a mutual lack: literary critics are supposedly attracted to the law because of the institutional marginalisation of their subject and the law's promise of greater social relevance, while legal scholars are drawn by the possibility of a greater humanistic dimension to their work.¹²⁶ Yet in the late eighteenth and early nineteenth centuries, "literature" was not remotely divorced from social concerns; and legal practice was strongly influenced by the study of rhetoric and humanistic thought, as Erskine's crafted courtroom performances as a man of sensibility, considered in Chapter 1, make plain. That humanistic dimension of legal process in the eighteenth and nineteenth centuries has received growing attention in the last few years from historians of different backgrounds: the courtroom is recognised as an important

¹²⁴ Keen, *The Crisis of Literature in the 1790s*, 1-2.

¹²⁵ *Ibid.*, 3-4, 6.

¹²⁶ For examples of this argument, see Martin A. Kayman, "Law-and-Literature: Questions of Jurisdiction," *REAL: Yearbook of Research in English and American Literature* 18, Law and Literature (2002), 1-20; Richard A. Posner, *Law and Literature: A Misunderstood Relation* (Cambridge, MA: Harvard University Press, 1988); and Julie Stone Peters, "Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion," *PMLA* 120, no. 2 (2005), 442-53.

performative space, while new scholarship has also highlighted the role of emotions within court proceedings and the justice system.¹²⁷

This thesis maps a tradition of radical defences of character. Political defences of this sort were not new to the Romantic period; a number of radicals, including Thelwall, looked back to seventeenth-century Whigs for their models of political heroism, with Algernon Sidney, John Hampden and Lord William Russell providing particular inspiration.¹²⁸ However, political defences began to be articulated in new ways during the 1790s, and over the next thirty years a distinctive body of defences were delivered and published, many of which cross-referenced one another and were self-consciously aware of their place within a particular tradition. Whether or not one takes radicals' claims about "Pitt's terror" to be realistic, the fact that they perceived themselves to be under unprecedented levels of legal persecution is, in itself, important.¹²⁹ Chapters 1 and 2 consider a series of overlapping, high-profile trials in England and Scotland in the early 1790s, and investigate how ideas about British radical character were developed, represented, attacked and defended, both at those trials and in non-legal writings later into the decade. The writings produced around these trials highlight the importance of networks across different parts of Britain to the reform movement, a theme which is further developed in Chapter 3, on Peter Finnerty. Finnerty is an understudied writer and publisher, whose career contained an intriguing mixture of character as both stereotype and eccentric, respectable and unrespectable, defensive and litigious. William Hone cut a more reputable figure at his trials for blasphemous libel in 1817, the subject of Chapter 4. Hone's character defences, both in court and over the years afterwards, were inflected by a heritage of Protestant self-scrutiny and martyrology; they suggest that old-fashioned models of character remained useful for some radical defendants, alongside more modern emerging notions such as intention. The final chapter considers Lord Byron: perhaps something of an outlier, in the context of an activist tradition of character defences going back to the 1790s. Byron's production of character – gloomy and mysterious, deep but illegible – had been crucial to his celebrity and to his commercial success throughout his career. However, when his poems began to be scrutinised in the law courts after 1819, this Byronic self-consciousness about character came to absorb some of the legal and political concerns seen in preceding chapters. Byron had long wanted to find his

¹²⁷ See for instance Epstein and Karr, "Playing at Revolution," 495-530; Michael T. Davis, "The Noise and Emotions of Political Trials in Britain During the 1790s," in Davis, Macleod and Pentland, *Political Trials in an Age of Revolutions: Britain and the North Atlantic, 1793-1848*, 137-62; and Amy Milka and David Lemmings, "Narratives of Feeling and Majesty: Mediated Emotions in the Eighteenth-Century Criminal Courtroom," *The Journal of Legal History* 38, no. 2 (2017), 155-78.

¹²⁸ See Thomas Keymer, "Poetics of the Pillory: English Literature and Seditious Libel 1660-1820" (seminar paper, Centre for Eighteenth-Century Studies Research Seminar, University of York, 26 February 2019). Keymer's forthcoming book of the same title will explore politically-motivated prosecutions of writers across the long eighteenth century.

¹²⁹ See for example Emsley "An Aspect of Pitt's 'Terror'," 174.

place within an oppositional rollcall of Whig heroes, and in the later years of his life his approach to character was inflected by a new sense of legal pressure.

In Book X of William Wordsworth's 1805 *Prelude*, the poet looks back on the Terror in France and recollects his "miserable" nightmares of that period, during which "I scarcely had one night of quiet sleep." He describes his "ghastly visions" of, among other horrors,

... long orations which in dreams I pleaded
Before unjust tribunals, with a voice
Labouring, a brain confounded, and a sense
Of treachery and desertion in the place
The holiest that I knew of – my own soul.¹³⁰

In a climate of legal and political pressure, both in France and at home, the courtroom (the "unjust tribunal") becomes a defining motif in how the poet understands the world and his own place within it. The need for self-defence is urgent, as the exhausting "long orations" suggest; but it is telling that the poet's pleading is for the benefit not of others, but himself. The "treachery and desertion" has taken place within "my own soul": he seeks vindication at the bar of his own conscience, rather than that of a formal court. Wordsworth's tribunal of the soul is suggestive of the ways in which legal pressures were internalised by many reform-minded writers in this period; the language of the courtroom and of self-defence runs throughout this thesis, even in texts which were not subjected to legal scrutiny. But the passage is also significant because of how it shows the poet coping with the necessity of defending his character. Called upon to defend himself, he invites the plumbing of his deepest self by readers, at the very moment that he makes it impossible to read, since, in a process of sublimation, he invokes the "holiest" mystery of the "soul." A range of competing impulses is at play in Wordsworth's handling of his own character here: defending, attacking, evading, exposing, sanctifying, criminalising. This thesis is concerned with the diverse, often contradictory ways in which radical and reformist writers of the Romantic period sought to understand, represent and defend their characters; and it seeks to understand the legal imperatives that shaped those non-legal formations.

¹³⁰ William Wordsworth, "The Prelude (1805)," in *William Wordsworth: The Major Works*, ed. Stephen Gill (Oxford: Oxford University Press, 2008), 542, canto 10, lines 372-83.

Thomas Paine, William Godwin and John Thelwall: “the importance of character in the present crisis”

“While the characters of men are forming, as is always the case in revolutions, there is a reciprocal suspicion, and a disposition to misinterpret each other.”¹ So wrote Thomas Paine in the first part of his *Rights of Man*, in 1791. This chapter looks at how ideas about radical character were formed, attacked, (mis)interpreted and defended, in England during the 1790s. The personal characters of radicals came under strain in this turbulent decade, partly, as Paine identified, because it was a period of political and social flux, but partly also (and relatedly) because political prosecutions in the courts frequently put “character” as a legal category under pressure. Historians have debated the nature and scale of government repression of radical activity during the period; but as we saw in the Introduction, although the government’s application of the libel laws was “fitful,” its use of other strategies of legal harassment and intimidation was often devastatingly effective.² The characters of radicals and reformers were sites of struggle, both within and outside the law courts; and they were, to paraphrase Paine, in a process of formation and re-formation.

Paine’s trial for seditious libel in the second part of *Rights of Man*, in December 1792, punctured the optimism that had characterised the early months of the revolution controversy. His successful prosecution *in absentia* – he was by that time in France, but was defended by the renowned Whig barrister Thomas Erskine – marked a stepping-up of political and legal pressure upon reformist writers and publishers. 1793 saw the gathering of a British Convention in Edinburgh, attended by delegates from reform societies around the country who met to consult on how best to forward their aims; the same year also saw the beginning of a series of controversial trials for sedition in Scotland, the subject of Chapter 2. By the summer of 1794, the government had mustered enough confidence to press treason charges against the leaders of the popular reform societies, and the trials of Thomas Hardy, John Horne Tooke and John Thelwall took place between October and December that year. In the event, all three were acquitted, and the other arrested men were released.³ This success led to a brief resurgence of the reform societies’ fortunes in 1795, but the passage of the Two Acts at the end of that year – restricting the right to political assembly, and expanding the definition of treason – made public radical activity difficult, and pushed many activists underground. The second half of the 1790s

¹ Thomas Paine, *Rights of Man, Common Sense, and Other Political Writings*, ed. Mark Philp (Oxford: Oxford University Press, 2008), 111.

² Philip Harling, “The Law of Libel and the Limits of Repression, 1790-1832,” *The Historical Journal* 44, no. 1 (2001), 110.

³ On the run-up to the treason trials, and the trials themselves, see John Barrell, *Imagining the King’s Death: Figurative Treason, Fantasies of Regicide, 1793-1796* (Oxford: Oxford University Press, 2000).

was far more politically subdued: “a period of nervous and muffled discourse,” as one literary historian puts it.⁴

Paine is a necessary starting-point for thinking about radical character in the 1790s, since by the time his trial took place at the end of 1792, his personal character was freighted with enormous symbolic importance. Caricatures of Paine fed into an idea of the type of “the Jacobin,” and he became a stand-in for an idea of radical character in loyalist propaganda. Present at Paine’s trial was the philosopher William Godwin, who was alarmed by the precedent set by the conviction. Godwin’s 1794 novel *Things As They Are; or, The Adventures of Caleb Williams* is a commentary on (among other things) the difficulty of securing justice and vindication in a court of law, and on how personal character is best defended against the machinations of tyrants. Published after the end of the Scottish sedition trials of 1793-94 and at the same time as a spate of arrests for treason in England in 1794, *Caleb Williams* imaginatively plays out some of the questions which surfaced at both sets of trials: the relationship between character as rank and character as psychology; the correspondence (or not) between the interior life and the outward markers of character; the role of different kinds of print in mediating radical character; and the correct role for sympathy in the communication between a radical speaker and an audience – an issue which looks very different in the two alternative endings that Godwin wrote for his novel, one published and the other surviving in manuscript.

Godwin’s friend John Thelwall, a popular lecturer and leading member of the London Corresponding Society (LCS), was one of those prosecuted for treason at the end of 1794; indeed, Thelwall’s arrest and Godwin’s completion of *Caleb Williams* took place within days of one another.⁵ Testimony of Thelwall’s good character played an important part at his trial, but even after his acquittal, he anxiously sought social and moral vindication at the “tribunal” of the public, with mixed success. A victim of loyalist aggression and harassment in the later 1790s, Thelwall recognised what he called “the importance of character in the present crisis.”⁶ By the time of the publication of his *Poems Chiefly Written in Retirement* in 1801, he was attempting to cordon off poetic and domestic pursuits from his political life, segregating the character of the “man,” “poet” and “father” from that of the “politician” and “lecturer.” Marilyn Butler notes that by the mid-1790s, a shift had taken place in how reformers understood themselves as writers and readers. In contrast to the “collective literary enterprise” of the early years of the revolution controversy, by 1795 “the freedom they were claiming was to express their minds as

⁴ John W. Bugg, *Five Long Winters: The Trials of British Romanticism* (Stanford: Stanford University Press, 2014), 11.

⁵ Barrell, *Imagining the King’s Death*, 190-91; William Godwin, *Caleb Williams*, ed. Pamela Clemit (Oxford: Oxford University Press, 2009), 312.

⁶ Quoted in Michael T. Davis, ed., *London Corresponding Society, 1792-1799*, vol. 3, *Pamphlets, 1792-1794* (London: Pickering & Chatto, 2002), 20.

individuals, not as a group.”⁷ And yet, I hope to show, Thelwall’s shift to an inward or “literary” view of character never meant the abandonment of his political identity. The chapter closes by considering how the legal pressures of the decade could place a strain even on intimate friendships. Character came to be interrogated and vindicated with legal vocabulary and the urgency of a criminal trial, even when the threat of prosecution was past.

Paineite character: “avoid then those serpents”

Paine’s trial for seditious libel took place at the end of 1792. The second part of *Rights of Man* had been published in the February by J. S. Jordan, after Paine’s first publisher, Thomas Chapman, abruptly withdrew, perhaps under pressure from the government. A legal summons for Paine was issued in May, along with a Royal Proclamation against seditious writings – which, although it did not mention Paine by name, was understood by many (including Paine himself) as an alarmed reaction to the popularity of *Rights of Man*.⁸ But in June, Home Secretary Henry Dundas announced that the trial would be postponed, almost certainly in the hope that Paine would leave the country and be prevented from having a public platform at his trial; when Paine left for France in September, his passage to Calais was unhindered by the government.⁹ The case finally came to trial on 18 December, and Paine was tried and found guilty in his absence, despite a much-admired defence by Erskine.

It is not my intention to rehearse the arguments made at Paine’s trial, which have been examined elsewhere.¹⁰ However, it is worth noting that the prosecution’s objection to the second part of *Rights of Man* hinged on its imagined audience. The point was that the second part of *Rights of Man* was cheap, circulated by Paine in sixpenny copies with the help of the Society for Constitutional Information (SCI).¹¹ The Attorney General, Archibald Macdonald, objected that while the three-shilling first part of *Rights of Man* (published in 1791) had been “confined to the judicious reader,” the second part had been disseminated at a low price among uneducated readers, who were poorly-equipped to resist what Macdonald saw as Paine’s

⁷ Marilyn Butler, *Burke, Paine, Godwin, and the Revolution Controversy* (Cambridge: Cambridge University Press, 1984), 9.

⁸ John Barrell and Jon Mee, eds., *Trials for Treason and Sedition, 1792-1794* (London: Pickering & Chatto, 2006), 1:2.

⁹ Jon Mee, *Print, Publicity and Popular Radicalism in the 1790s: The Laurel of Liberty* (Cambridge: Cambridge University Press, 2016), 84.

¹⁰ See for example *ibid.*, 84-86; and Mark Crosby, “The Voice of Flattery vs Sober Truth: William Godwin, Thomas Erskine and the 1792 Trial of Thomas Paine for Sedition,” *The Review of English Studies* 62, no. 253 (2011), 95-98.

¹¹ Bob Harris, *The Scottish People and the French Revolution* (London: Pickering & Chatto, 2008), 79.

manipulative arguments.¹² For Paine, on the other hand, the book was vindicated by its wide circulation. In a letter written to Macdonald from France, and which was read aloud in court, Paine made the case that his book should be judged as widely as possible by the tribunal of the public, rather than by a packed jury made up of only twelve people: “I have gone into coffee-houses, and places where I was unknown, on purpose to learn the currency of opinion,” he writes, “and I never yet saw any company of twelve men that condemned the book; but I have often found a greater number than twelve approving it, and this I think is a fair way of collecting the natural currency of opinion.”¹³ Macdonald scorns this method of reckoning the country’s verdict upon the book, rejecting the idea that “the sense of this *nation* is to be had in some pot-houses” (a venue not mentioned by Paine) “and coffee-houses in this town of his own choosing.”¹⁴ For Macdonald, Paine promoted an unregulated, unruly tribunal of public opinion. The validity of that tribunal was a source of contention for both radical defendants and their prosecutors over the next decades.

The trial of Paine marked a watershed: his successful conviction gave the green light for the suppression of other reformist works, and the more vigorous prosecution of radical booksellers. Among many reform-minded intellectuals, Paine’s conviction demonstrated that even philosophical and speculative writings were not protected from prosecution; one of Erskine’s main arguments in his defence of Paine had been that *Rights of Man* should be seen as a respectable contribution to a longstanding political-philosophical debate. Butler explains:

[T]he uproar over Paine now looks like the crucial moment of the controversy, as decisive a turning-point in the psychology of the radical intellectual as in general political opinion. Paine forced his friends and colleagues to see themselves for the first time as activists – in, moreover, what was now a mass movement rather than a coterie or a middle-class ‘interest’.¹⁵

If Paine’s conviction redrew the boundaries of the seditious in ways that alarmed his political allies, the trial was also influential because *Rights of Man* came to represent a powerfully symbolic marker of the limits of political acceptability. The 1794 treason charges hinged partly on the government’s belief that the SCI had approved *Rights of Man*, and that Paine was one of LCS’s “literary Representatives.”¹⁶ Similarly, at the trial of Thomas Muir in 1793 (examined in the next chapter), discussions unfolded in court over the extent to which Muir had circulated

¹² John Keane, *Tom Paine: A Political Life* (London: Bloomsbury, 1995), 305, 309; Barrell and Mee, *Trials for Treason and Sedition*, 1:51.

¹³ Barrell and Mee, *Trials for Treason and Sedition*, 1:99.

¹⁴ *Ibid.*, 85.

¹⁵ Butler, *Burke, Paine, Godwin, and the Revolution Controversy*, 9.

¹⁶ Barrell, *Imagining the King’s Death*, 195; Barrell and Mee, *Trials for Treason and Sedition*, 8:84.

and recommended Paine's writings. Paine himself recognised that his prosecution for *Rights of Man* was symbolically important, and that, in a way, it was not really about him. He wrote to Macdonald:

My necessary absence from your country affords the opportunity of knowing whether the prosecution was intended against Thomas Paine, or against the Rights of the People of England to investigate systems and principles of government; for as I cannot now be the object of the prosecution, the going on with the prosecution will shew that something else was the object, and that something else can be no other than the People of England; for it is against *their Rights*, and not against me, that a verdict or sentence can operate, if it can operate at all.¹⁷

There is a lot of bravado in this, but as it turned out, Paine's prognosis contained some truth. His 1792 trial *in absentia* came to assume a wide-reaching national importance, in which "Thomas Paine" the individual played little part. Paine's personal character was collapsed into a more general significance.

Paine predicted that his character – his "person, property, or reputation" – would not be affected by a successful prosecution, "otherwise than to improve the latter."¹⁸ This forecast was overly optimistic. In the weeks and months after his conviction, anti-Paine sentiment grew to a fever pitch, no doubt partly whipped up by loyalist activists, and Paine became "a symbolic focus of fear and hatred."¹⁹ A wave of "Paine burnings" swept the country during the winter of 1792-93, in which effigies of Paine were paraded to a place of execution, hanged (or shot, or otherwise disfigured) and burned, sometimes with a copy of *Rights of Man*; Frank O'Gorman estimates that there may have been more than 500 such rituals.²⁰ The burnings played an important role in the formation of an idea of radical character within the loyalist imagination. An effigy is a hollow but symbolic representation of character, and the burnings distilled Paine (or "Tom," as he was usually called in loyalist propaganda) into a type. The effigies were often dressed in meaningful clothing, such as a French republican black coat and red cap of liberty, or "the humble garb" of a staymaker or exciseman, Paine's former occupations.²¹ The rituals promoted an alliance between Paineite and criminal character, O'Gorman explains:

¹⁷ Barrell and Mee, *Trials for Treason and Sedition*, 1:81.

¹⁸ *Ibid.*, 81.

¹⁹ Frank O'Gorman, "The Paine Burnings of 1792-1793," *Past & Present*, no. 193 (2006), 118.

²⁰ *Ibid.*, 122, 127, 132.

²¹ *Ibid.*, 126.

[M]any of the elements in the burnings – jails, gibbets, executioners, sentences and dying speeches – were reminiscent of the common features of public executions and perform vital roles in the unfolding of the ritual drama. Thus the burnings were nothing less than the considered quasi-legal judgement of the community on the great radical and his works. At some places, such as Exeter, Castle Donington and Wollaston, indeed, the burning took place after some form of trial.²²

Sometimes, the effigy made a “last dying speech,” and a spate of these were published during the winter of 1792-93, presumably to accompany the rituals (see for example Figure 2).²³ Confessional speeches and accounts of criminals’ executions were a well-established eighteenth-century genre, so these Paineite examples are exercises in anti-radical fantasy.

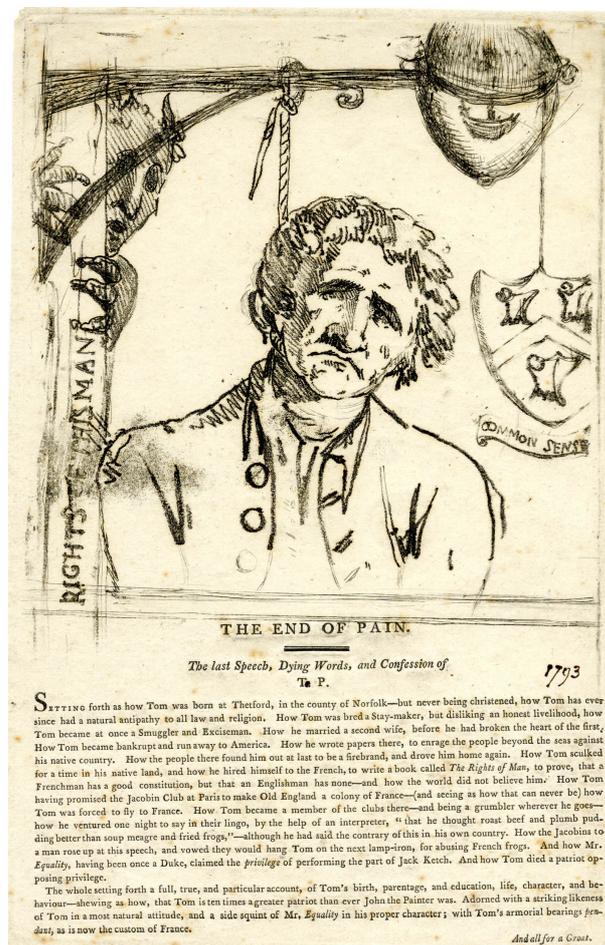


Figure 2: Anon., “The End of Pain. The Last Speech, Dying Words, and Confession of T. P.” 1793. British Museum, Online. Licensed under CC BY-NC-SA 4.0.

²² Ibid., 146-47.

²³ Ibid., 130.

In many loyalist texts, Paineite character was bound up with demonic or Satanic character, as well as with a more ordinary criminality. Corinna Wagner has pointed out that hostile commentators sometimes identified Paine with Cain, citing one remark that Paine “looked as if God had stamped his face with the mark of Cain”: devilish character and crimes are imagined to have been literally inscribed on Paine’s body.²⁴ This was an idea from which later reformers struggled to disentangle themselves. Thomas Holcroft, for instance, considered that the treason charge against him in 1794 had “black[ened]” his character, rendering him almost physically ugly: his criminal indictment, he reflected, “deforms the sweet aspect of a well spent life, and, by its assertions, changes the fair face of virtue to the black and hideous visage of a fiend.”²⁵ One “last dying speech” has Paine himself describe the character of the “jacobines” in simultaneously criminal and Satanic terms:

I will tell you how you may know them, they are proud and imperious like myself; they have no fortune, no reputation to lose; they, like myself, are remarkably distinguished by having empty pates, empty pockets, and black designing countenances ... avoid then those serpents: I here openly own that a highway robber is a far more reputable character than any of those gentry, or than myself.²⁶

A different handbill (Figure 2) features an image of Paine with a noose around his neck, and, peeping around the gallows (labelled “Rights of This Man”), “a side squint of Mr. *Equality* in his proper character.” This “Mr. Equality” has claws and horns, suggesting the demonic nature of Paineite character, when seen without disguise.

The words “Paine” and “rights of man” were markers of criminal, radical character well beyond the 1790s, as was “Jacobin.”²⁷ This criminalisation of reformers has something in common with what Lacey calls the “criminalization of status,” the idea that one is criminal through association with others. Together with a preference for thinking in terms of criminal types, the criminalisation of status has tended to accompany historical moments of particular political pressure. Such episodes disrupt the overarching trend in criminal law away from appraisals of criminal character and towards notions of criminal capacity. Lacey points, for instance, to the anxious insecurity of the late nineteenth century (economic recession, failures of empire, Fenian agitation in Ireland) and the concurrent reversion “to a concern with the idea of criminal types

²⁴ Corinna Wagner, “Loyalist Propaganda and the Scandalous Life of Tom Paine: ‘Hypocritical Monster!’,” *British Journal for Eighteenth-Century Studies* 28 (2005), 109.

²⁵ Thomas Holcroft, *A Narrative of Facts, Relating to a Prosecution for High Treason [...] and the Defence the Author Had Prepared, If He Had Been Brought to Trial* (London, 1795), 67.

²⁶ Anon., *The Last Dying Words of Tom Paine, Executed at the Gullotine [Sic] in France on the 1st of Sept. 1794 [...]* (London, [1795?]), 3-4.

²⁷ On “Jacobinism,” see James Epstein and David Karr, “Playing at Revolution: British Jacobin Performance,” *The Journal of Modern History* 79, no. 3 (2007), 495-530.

who might be targeted and identified.”²⁸ The 1790s are a far cry from late-nineteenth-century social Darwinism, but the bogeyman “Tom” Paine is suggestive of loyalist efforts to criminalise the reform movement as a group.

Many prosecuted reformers vigorously rejected the idea that they were less “reputable” than the “highway robber”; assertions of their superiority to ordinary criminals became a trope of radical defence speeches. Thelwall, for example, was appalled to find himself in 1794 “at the Bar of the Old Bailey ... holding up my hand like the vilest ruffian and murderer.”²⁹ But if reformers resented being treated as common criminals, they were sometimes willing to embrace or reclaim the shameful that loyalists attached to an idea of radical character. Thelwall wrote in 1796 of his wish to redeem the word “Jacobinism” from “stigma,” and once even identified himself as a “Sans Culotte,” to the horror of his prosecutors – albeit in a private letter that he never sent.³⁰ There is also some evidence of radical activists co-opting anti-Paine propaganda for their own purposes. O’Gorman finds a few, rare instances when Paine burnings functioned as “occasion[s] for the expression of disagreement, mockery and insult”: for instance, when a radical in Failsworth wore mourning crêpe for some months after the ritual, or when a group at a Nottinghamshire burning tried to recover the effigy afterwards.³¹ A “last dying speech” of Paine from Birmingham looks on the surface like an attack on Jacobin character, but is actually a defence in disguise: it satirically describes Paine as a “daring culprit” for seeking to promote the rights of the people. “[I]f these things be *libellous*, let the name of LIBELLER be engraved on my tomb,” declares this defiant Paine at his imaginary execution.³² Given that one sense of “character” is “engraving,” the anonymous Birmingham satirist seems to embrace the slippage between Paineite character, the character of a “LIBELLER,” and the permanence of “characters” written in stone. The radical reclamation of the character of a libeller was to be a pronounced theme in the career of Peter Finnerty, examined in Chapter 3.

The idea of Paine’s character was enormously influential, but his absence from court in 1792 meant that his trial also lent publicity to his defence counsel, Erskine. Erskine’s decision to defend Paine did not come without personal cost; he lost his position as Attorney General to the

²⁸ Nicola Lacey, “The Resurgence of Character: Responsibility in the Context of Criminalization,” in *Philosophical Foundations of Criminal Law*, ed. R. A. Duff and Stuart Green (Oxford: Oxford University Press, 2011), 171-72.

²⁹ John Thelwall, *The Natural and Constitutional Right of Britons to Annual Parliaments, Universal Suffrage, and the Freedom of Popular Association [...] Intended to Have Been Delivered at the Bar of the Old Bailey, in Confutation of the Late Charges of High Treason* (London, 1795), 2.

³⁰ Quoted in Epstein and Karr, “Playing at Revolution,” 529; Barrell and Mee, *Trials for Treason and Sedition*, 8:23-24. See also Mee, *Print, Publicity and Popular Radicalism*, 175.

³¹ O’Gorman, “The Paine Burnings of 1792-1793,” 153-54.

³² “The Last Dying Speech and Confession of Tom Paine, Who Was Executed at Birmingham, February 12, 1793, for Certain High Crimes and Misdemeanors,” [1793,] 121 1793, Franklin Collection, Beinecke Rare Book and Manuscript Library, Yale University.

Prince of Wales as a result, and told the court that a “calumnious clamour” had been raised against him: “day after day my name and character have been the topics of injurious reflection,” he lamented.³³ Be this as it may, this complaint was also part of Erskine’s carefully-curated self-presentation. He was a brilliant speaker, known for his displays of sensibility in court, including weeping and swooning; his mournful remarks about the damage that Paine’s defence had done to his character were integral to these self-representations as a man of sensibility and martyr.³⁴ “Gentlemen, my strength and time are wasted,” he told Paine’s jury, linking himself to what he called “the martyrdom of truth.”³⁵ Tellingly, Erskine’s closing remarks in Paine’s defence were not about his client, but his own role in the case: “as long as I exist, I shall ... ever do as I have done to-day,” he said.³⁶ Erskine’s version of radical character on trial – beleaguered, literary, gentlemanly – proved influential among some prosecuted reformers, including in the Scottish sedition trials of the next chapter.

Erskine’s performance of sensibility helped him to forge a seemingly intimate relationship with his audience. Gillian Russell has observed that his speeches relied on the appearance of “a transparent communication between himself and his audience that affirmed feeling as the only true grounds of judgement in the case.”³⁷ His courtroom performances were virtuosic displays of “self-dramatisation,” which exploited “voice, gesture and action and the space of the courtroom” to generate a sympathetic connection between “performer and audience.”³⁸ Erskine’s displays demonstrate how political trials could become spectacles of “sympathetic communication” between speaker and audience, in Mary Fairclough’s phrase.³⁹ We shall shortly return to this question of sensibility and sympathy in more detail with regard to *Caleb Williams*, but it is worth noting the ambiguity of Erskine’s position at Paine’s trial: ambiguous both because he emerged as a hero despite losing the case, and because his heroization was achieved partly at his client’s expense. Printed accounts of the trial describe a rapturous crowd surrounding Erskine’s carriage as he left court, with people applauding “from the windows, and in the streets, shouting ‘D—n Tom Paine, but Erskine for ever, and the Liberty of the Press: the

³³ David Lemmings, “Erskine, Thomas, First Baron Erskine (1750-1823), Lord Chancellor,” *Oxford Dictionary of National Biography* (Oxford University Press, 2008), <https://doi.org/10.1093/ref:odnb/8873>; Barrell and Mee, *Trials for Treason and Sedition*, 1:111-12.

³⁴ Crosby, “The Voice of Flattery vs Sober Truth,” 94.

³⁵ Barrell and Mee, *Trials for Treason and Sedition*, 1:159.

³⁶ *Ibid.*, 1:199.

³⁷ Gillian Russell, “The Theatre of Crim. Con: Thomas Erskine, Adultery and Radical Politics in the 1790s,” in *Unrespectable Radicals? Popular Politics in the Age of Reform*, ed. Michael T. Davis (Aldershot: Ashgate Publishing Limited, 2008), 61-62.

³⁸ *Ibid.*, 58, 66. On Erskine’s performativity, see also Judith Pascoe, *Romantic Theatricality: Gender, Poetry, and Spectatorship* (Ithaca, NY: Cornell University Press, 1997), 46-52.

³⁹ Mary Fairclough, *The Romantic Crowd: Sympathy, Controversy and Print Culture* (Cambridge: Cambridge University Press, 2013), 2.

King, the Constitution, and Erskine for ever’.” In a nod to Erskine’s status as a gentleman of sensibility, we are also told that “the ladies” waved handkerchiefs from their windows, crying, “‘God bless you Erskine, God bless you my dear Erskine’.”⁴⁰ After the treason trials of 1794, at which Erskine did secure acquittals for his clients, a series of celebratory dinners were held in his honour, while toasts, songs, poems and commemorative medals (literal good “character” in its sense of “stamp”) were produced in his praise.⁴¹ There is a sense in which Erskine’s celebrated sensibility offered to his audiences an opportunity for the kind of “moral training” that Deidre Lynch associates with “character reading” of the late eighteenth century, understood “as an occasion when readers found themselves and plumbed their own interior resources of sensibility by plumbing characters’ hidden depths.”⁴² But, as the cry of “D—n Tom Paine” shows, the lionisation of Erskine in December 1792 rested partly on the denigration of Paine. When the Friends of the Liberty of the Press passed a resolution of thanks to Erskine for his defence of Paine, they agreed after some discussion to avoid any mention of Paine at all.⁴³

Imagining radical address: William Godwin’s *Caleb Williams*

Godwin was present at Paine’s trial, and noticed how Erskine’s self-promotion worked to the detriment of Paine. He drafted a letter to Erskine, never sent, which criticised his handling of the defence: “You will perhaps be surprised to hear it affirmed,” he writes, “that you had a considerable share in procuring the verdict of guilty against your client.” Godwin argues that Erskine’s efforts in defence of Paine were compromised because “it was your opinion your client ~~should~~ ought to be convicted; & ... you were anxious it should be understood by your hearers that such was your opinion.” Unsupported by Erskine’s own interior conviction, his speech in defence of Paine “dwindled into the declamation of a schoolboy”:

What sort of exhibition of himself does an orator make who employs himself for four hours as you did, in a pretended attempt to persuade an audience into the truth of a proposition, which in his personal opinion is confessedly false? What must mankind think of this purchased fatigue of the lungs, & eloquence that is dealt out to every purchaser at so much an hour? ... Sir, you have much too high an opinion

⁴⁰ [Thomas Paine,] *Trial of Thomas Paine, at Guildhall, London, before Lord Kenyon and a Special Jury* (Edinburgh, [1792]), 35.

⁴¹ Barrell, *Imagining the King’s Death*, 403-04.

⁴² Deidre Lynch, *The Economy of Character: Novels, Market Culture, and the Business of Inner Meaning* (Chicago: University of Chicago Press, 1998), 10.

⁴³ Friends to the Liberty of the Press, *The Speech of the Hon. Thomas Erskine, at a Meeting of the Friends to the Liberty of the Press, at Free-Mason’s Tavern, Dec. 22, 1792. With the Resolutions, &c. of that Truly Patriotic Society* (London, 1793), 8.

of your talents, if you imagine that you can make a deep impression upon an audience while you are pleading against the judgment of your own understanding.⁴⁴

Failing to speak from the heart, Erskine has prostituted his famed eloquence and, crucially for Godwin, must inevitably fail to “make a deep impression upon” his listeners as a result. In previous trials, Erskine had achieved a sympathetic connection with his auditors; his feelings were registered upon his body and his interior character was legible on his face, making his oratory irresistible: “your generous anxiety was visible, the sentiments you uttered carried with them the stamp of your own approbation.” For Godwin, however, Erskine lost that transparency at Paine’s trial: “When you commenced your legal career, the observation that was universally made was, other lawyers speak from artifice & system; this man speaks because he feels. Trace back your wanderings. If you lose this first ingredient in your reputation, you will speedily have no reputation to lose.”⁴⁵ If Erskine’s oratory is no longer an index to the interior “stamp” of his character, Godwin argues that his “reputation” (character in another sense) will be irretrievably damaged.

Godwin’s letter is preoccupied with the proper relationship between radical speaker and audience. Russell has observed that Erskine’s “power ... was a mode of theatrical communication that created a galvanizing effect of sympathy between the performer and audience.”⁴⁶ Godwin was fascinated by this kind of sympathetic connection, although he believed that Erskine misused it, and worried, we shall see, that it could undermine rational thought. In two letters written in 1794 – one to the reformer Joseph Gerrald, and one to Thelwall, as they awaited their trials for sedition and treason respectively – Godwin explored what effective sympathetic communication and self-defence might look like within a legal setting. He advised Thelwall not to “quote authorities” in his defence, for this “excites no responsive sentiments, & produces no heartfelt conviction.” Instead, Thelwall should offer his jury “a plain & unsophisticated argument, making its way irresistibly to the understanding.”⁴⁷ To Gerrald, Godwin similarly stressed the importance of a sympathetic infiltration of the jurors’ hearts, for “juries are men & ... men are made of penetrable stuff. Probe all the recesses of their souls.” He advised Gerrald to offer his interior character to the jury: “Stand up to the situation be whole [sic] – yourself.”⁴⁸ Yet the letter to Gerrald also recognises that selfhood must be represented rhetorically to an audience. “The Jury, the world will feel your value if you show

⁴⁴ William Godwin, *The Letters of William Godwin*, ed. Pamela Clemit (Oxford: Oxford University Press, 2011-14), 1:71-73.

⁴⁵ *Ibid.*, 1:73.

⁴⁶ Russell, “The Theatre of Crim. Con,” 66.

⁴⁷ Godwin, *The Letters of William Godwin*, 1:103-04.

⁴⁸ *Ibid.*, 1:90.

yourself such a man,” Godwin writes, introducing an idea of appearance and “show” even as he insists upon the innate “value” of Gerrald’s character.⁴⁹ As Nicholas Williams puts it, Godwin in this letter recommends a “rhetoric of subjectivity”: an approach which “grounds itself in the strong appeal of the self,” but which is also profoundly aware that selfhood is not unmediated, and must rather be produced and represented with a view to persuading.⁵⁰

The themes of the letters to Erskine, Gerrald and Thelwall play out in Godwin’s novel of mid-1794, *Caleb Williams*; in fact, Gerrald was one of the book’s first readers.⁵¹ Like the letters, the novel is preoccupied with the question of “how to deliver a defence speech,” and, for that matter, how not to. Caleb is a young servant who is taken into service as secretary to the enigmatic and melancholy Ferdinando Falkland. He soon discovers that his master is guilty of the murder of Barnabas Tyrrel, a country squire, and although he is determined to keep Falkland’s secret, Caleb’s knowledge of the crime leads to his relentless persecution by Falkland. Eventually, at the end of the novel, Caleb and Falkland have a final reckoning, but here Godwin’s ideas diverged, for the novel has two endings: one published, the other surviving in manuscript. In the published ending, Caleb buckles under the psychological strain of Falkland’s tyrannical treatment and resorts to a court of law, where he persuades his audience of his own innocence and Falkland’s guilt. “Every one that heard me was petrified with astonishment,” he relates. “Everyone that heard me was melted into tears. They could not resist the ardour with which I praised the great qualities of Falkland; they manifested their sympathy in the tokens of my penitence.” Even Falkland is compelled to acknowledge his antagonist’s triumph: “as I went on, he could no longer resist. He saw my sincerity; he was penetrated with my grief and compunction.”⁵² This courtroom denouement seems to illustrate the possibility of achieving sympathetic connection with an audience. Caleb’s speech is impossible to “resist,” entering the hearts of the speakers and “petrif[ying]” and “melt[ing]” them with physical force. Yet although Caleb manages simultaneously to convince his hearers of Falkland’s guilt and to secure his antagonist’s admiration, he is racked with guilt for having brought down his enemy, and specifically for having resorted to a public display of oratory in court, rather than a more intimate dialogue. He is convinced, he says, that “if I had opened my heart to Mr Falkland, if I had told to him privately the tale that I have now been telling, he could not have resisted my reasonable demand. ... It is ... impossible that he could have resisted a frank and fervent expostulation, the frankness and the fervour in which the whole soul was poured out.” Caleb

⁴⁹ Ibid., 1:92.

⁵⁰ Nicholas M. Williams, “‘The Subject of Detection’: Legal Rhetoric and Subjectivity in Caleb Williams,” *Eighteenth-Century Fiction* 9, no. 4 (1997), 478.

⁵¹ See for instance Crosby, “The Voice of Flattery vs Sober Truth” and Williams, “‘The Subject of Detection’”; Godwin, *Caleb Williams*, 352.

⁵² Godwin, *Caleb Williams*, 301.

thinks that his lack of faith in this possibility “was criminal, was treason against the sovereignty of truth.”⁵³ He has reached a classically Godwinian conclusion, if he believes that private conversation with Falkland would have hammered out the truth more successfully than the public spectacle of a trial. Yet Caleb does find justice in the court: no mean feat, in light of the obstacles the novel lays in his way. As Mark Crosby notes, although Godwin “theoretically distanced himself” from public displays of oratory, this final trial scene in *Caleb Williams* (like the letters to Thelwall and Gerrald) does acknowledge a practical role for “performative oratory” in promoting the cause of justice.⁵⁴ The scene suggests that radical self-defence in a law court can achieve its goals, even if only partially.

Godwin’s manuscript ending is far less optimistic. In the unpublished trial scene, Caleb’s address to his audience is hampered by an excessive self-consciousness about the “feelings ... I intended to excite,” and consequently his oratory is overwrought and alienating: “I spoke with a rapidity, perturbation and vehemence that were absolutely alarming to my hearers.”⁵⁵ The manuscript does not wholly survive, but Godwin’s postscripts show Caleb once again imprisoned, and his mind unravelling. This alternative ending for *Caleb Williams* suggests the ease with which Godwin feared legal address could overbalance into harangue. With regard to the question of sympathetic communication, the manuscript ending is more consistent with the spirit of the earlier chapters than the published one, since the novel as a whole is profoundly uncertain about the possibility that a courtroom address might lead to the discovery of truth. Indeed, much earlier in the novel Falkland has persuaded a different court that he is innocent of Tyrrel’s murder, in a trial scene which explores the troubling prospect that an audience could be misled by a charismatic orator. Falkland delivers a “manly, logical, and impressive” defence, appealing to his audience to “look round the court, ask of every one person, enquire of your own hearts!”⁵⁶ Like Erskine after the trial of Paine:

The multitude received him with huzzas, they took his horses from his carriage, dragged him in triumph, and attended him many miles in his return to his own habitation. It seemed as if a public trial before a criminal judge, which had hitherto been considered in every event as a brand of disgrace, was converted in the present instance into an occasion of enthusiastic adoration and unexampled honour.⁵⁷

⁵³ Ibid., 300.

⁵⁴ Crosby, “The Voice of Flattery vs Sober Truth,” 108-09.

⁵⁵ Godwin, *Caleb Williams*, 306-07.

⁵⁶ Ibid., 97-98.

⁵⁷ Ibid., 100.

This euphoric reception is catastrophically misplaced. It is also bound up with “enthusiasm,” an idea of excessive zeal which was originally understood in religious terms, but by the late eighteenth century was used to refer to, among other things, “the way the passions could communicate themselves without resort to rational articulation.” By the 1790s, enthusiasm was also commonly associated with political radicalism.⁵⁸ As Fairclough explains, Godwin saw sympathy as something like an enthusiastic “contagion,” and he worried that it would spark instinctive, collective action, so undermining rational progress.⁵⁹ Certainly, the crowd’s response to Falkland’s defence is both infectious and irrational: “a general murmur of applause and involuntary transport burst forth in the court. ... there was an indescribable something in the very sound that carried it home to the heart, and convinced every spectator that no personal pleasure ever existed that was not foolish and feeble in the comparison.”⁶⁰ Individual minds dissolve into a collective delusion; the “indescribable something” is spellbinding but illusory, and leads to a fatal misreading of Falkland’s character.

Caleb Williams is a novel partly about the ongoing importance of social rank and reputation within the criminal justice system, and the difficulty of moving beyond these older understandings of “character” towards a fairer appraisal of individuals. As Nicola Lacey remarks, the novel illustrates “the persistence of the world of honour and status” even at the turn of the nineteenth century: Caleb’s legal powerlessness against Falkland reminds us that “the power to command credit or credibility” remained closely bound up with character in the sense of rank.⁶¹ Their relative social inequality makes it almost impossible for Caleb to bring Falkland to court, as he reflects: “Six thousand a year shall protect a man from accusation; and the validity of an impeachment shall be superseded, because the author of it is a servant!”⁶² Meanwhile, at his trial for Tyrrel’s murder, Falkland shrinks with aristocratic horror from calling character witnesses: “I have called no witnesses to my character. Great God! what sort of a character is that which must be supported by [a] witness?”⁶³ The relationship between character as status, and character as personal virtue, was a matter of concern for reformers. Thelwall complained: “Who is the man? What is his country? his class? his condition? To what sect or society does he belong? are the enquiries we are constantly making – not what are his

⁵⁸ Jon Mee, *Romanticism, Enthusiasm, and Regulation: Poetics and the Policing of Culture in the Romantic Period* (Oxford: Oxford University Press, 2003), 11, 82-128.

⁵⁹ Fairclough, *The Romantic Crowd*, 82.

⁶⁰ Godwin, *Caleb Williams*, 100.

⁶¹ Nicola Lacey, *Women, Crime, and Character: From Moll Flanders to Tess of the D’Urbervilles* (Oxford: Oxford University Press, 2008), 64.

⁶² Godwin, *Caleb Williams*, 265.

⁶³ *Ibid.*, 98.

merits, his capacities or his virtues?”⁶⁴ To some degree, this reformist, meritocratic agenda contributed to the courts’ gradual transition in the nineteenth century (outlined in the Introduction), away from their attention to character as status and towards a more personalised assessment of “capacities” and “virtues.”

By extension, *Caleb Williams* is concerned with the difficulty of reading character accurately, and particularly with discerning interior life from surface appearances. As soon as he enters Falkland’s employment, Caleb becomes obsessed with how to read his master’s “countenance,” of which we learn that “every muscle and petty line ... seemed to be in an inconceivable degree pregnant with meaning.”⁶⁵ Falkland’s face is soon Caleb’s “perpetual study,” but Caleb’s own appearance also falls under the scrutiny of others. At his pre-trial hearing for a trumped-up charge of theft (brought by Falkland and presided over by Mr Forester, Falkland’s brother), Caleb insists on a correspondence between his interior life and outward appearance. “I appeal to my heart; I appeal to my looks; I appeal to every sentiment my tongue ever uttered,” he begs Forester.⁶⁶ “[L]ook at me, do you see any of the marks of guilt? ... Could a real criminal have shown himself so unabashed, composed and firm as I have done now?”⁶⁷ Forester admits that Caleb has “[t]he exterior of innocence,” but this seeming goodness, overlaying what he believes is Caleb’s real guilt, is assumed to dishonour Caleb further.⁶⁸ As a fellow-servant remarks, “For your sake, lad, I will never take any body’s word, nor trust to appearances, thof [sic] it should be an angel. Lord bless us! how smoothly you palavered it over, for all the world as if you had been as fair as a new-born babe!”⁶⁹ Caleb’s body is, in fact, a faithful index to his mind, and his “smooth” language registers that he is telling the truth, but his audience misreads these external indicators. The novel as a whole is preoccupied by this question of the reliability of outward signs, particularly in an unjust society.

The problem of the relationship between exterior and interior character is exacerbated by the ways in which ephemeral print culture manipulates and rewrites character. We saw in the Introduction something of the commercial appeal of trial literature. In Godwin’s novel, trial literature transforms the individual into a spectacle to be reproduced and commodified in print. “The Most Wonderful and Surprising History, and Miraculous Adventures of Caleb Williams,” which Caleb is alarmed to discover being hawked on the streets, reshapes Caleb’s story to fit the

⁶⁴ Thelwall, *The Natural and Constitutional Right of Britons*, 40.

⁶⁵ Godwin, *Caleb Williams*, 4.

⁶⁶ *Ibid.*, 163.

⁶⁷ *Ibid.*, 165.

⁶⁸ *Ibid.*, 168.

⁶⁹ *Ibid.*, 170.

mould of the popular criminal biography.⁷⁰ Mythologised and demonised, Caleb becomes in this text “Kit” Williams, a nickname which recalls loyalist literature on “Tom” Paine. Indeed, after Paine’s trial Godwin had complained that he “saw hand-bills, in the most vulgar and illiberal style distributed, entitled, The Confession of Thomas Paine. I had not walked three streets, before I encountered by ballad singers, roaring in cadence rude, a miserable set of scurrilous stanzas upon his private life.”⁷¹ The anecdote tallies with Caleb’s reflection that “I had gained fame indeed, the miserable fame to have my story bawled forth by hawkers and ballad mongers, to have my praises as an active and surprising villain celebrated among footmen and chambermaids.”⁷² Caleb’s character, like Paine’s, is mediated through print in profoundly hostile ways: indeed, it is Falkland’s careful circulation of the “Wonderful and Surprising History” which ensures that Caleb’s character is discredited wherever he goes.

However, if ephemeral print is represented as damaging to character, this is far from the whole story, for Caleb also turns to print for self-defence; the novel itself is framed as Caleb’s memoir and statement to posterity. “I have been a mark for the vigilance of tyranny,” Caleb begins, claiming that he was inspired to write his history by “a faint idea that posterity may by their means be induced to render me a justice which my contemporaries refuse.”⁷³ The opening passage of the novel reads something like a courtroom defence, since such speeches often had posterity in view (particularly those which the defendant planned to publish). Caleb understands his writing of his story as an act of defiance. Plucking up the courage to prosecute Falkland near the end of the novel, he commits to paper a promise that “[t]hese papers shall preserve the truth: they shall one day be published, and then the world shall do justice on us both.”⁷⁴ Caleb’s commitment to preserving his character textually, for posterity, seems to mark a difference between the unreliable and ephemeral “Wonderful and Surprising History,” on the one hand, and the body of Caleb’s memoirs, aspiring to permanence, on the other; that distinction maps onto the one that Georgina Green has identified between Godwin’s sense that texts could exist either “as commodities” or “as works of political justice.”⁷⁵ But as Jonathan Grossman points out, *Caleb Williams*’ “form . . . , as well as its content, is a part of the way the novel both exposes and is itself caught up in a justice system that atomizes society into individual, self-justifying

⁷⁰ Ibid., 258.

⁷¹ Quoted in Crosby, “The Voice of Flattery vs Sober Truth,” 92.

⁷² Godwin, *Caleb Williams*, 262.

⁷³ Ibid., 3.

⁷⁴ Ibid., 292.

⁷⁵ Georgina Green, *The Majesty of the People: Popular Sovereignty and the Role of the Writer in the 1790s* (Oxford: Oxford University Press, 2014), 120.

story-tellers.”⁷⁶ Reading *Caleb Williams* in this way, as a kind of extended character defence, helps to make sense of why Caleb’s entire character deteriorates – socially, legally, fictionally – in Godwin’s unpublished manuscript ending. Thoroughly defeated by Falkland, it suddenly occurs to Caleb that posterity, like his contemporaries, might also disbelieve him:

Perhaps all men will reason upon my story as these men reasoned. Perhaps I am beguiling myself during all this time, merely for want of strength to put myself in the place of an unprepossessed auditor, and to conceive how the story will impress every one that hears it. My innocence will then die with me! The narrative I have taken pains to digest will then only perpetuate my shame and spread more widely the persuasion of my nefarious guilt! How excruciating so much as to suspect the possibility of such an issue to the scene!⁷⁷

The prospect that his story might not “impress” even a future reader, that his character will be misread down the years, horrifies Caleb. The novel itself, as a piece of printed text, seems to be implicated in the troubling inaccessibility of the truth of character to future readers.

The unsuccessful defence of character is at the heart of *Caleb Williams*. “I began these memoirs with the idea of vindicating my own character,” Caleb writes at the end of the novel, in its published version: “I have now no character that I wish to vindicate.”⁷⁸ Unlike the manuscript ending, the published ending does not see Caleb’s sanity fracture, to the point that he is no longer “A MAN.”⁷⁹ Yet despite securing legal vindication, Caleb’s character, in its senses of social identity, integrity and reputation, has come under insupportable pressure; in fact, both the manuscript and published endings chart the disintegration of radical character, in different ways. This is partly a record of the damage inflicted by “things as they are,” to borrow Godwin’s original title for the novel. Grossman notes: “The legal machinations do not call on Caleb, a character, to tell his story; they produce Caleb as a character producing himself – narrating, self-justifying.”⁸⁰ Caleb’s character, that is, only makes sense in the context of legal accusation and defence. Lynch observes that “the character with an inner life has been a useful resource for readers”: she is thinking about the ways in which the deep reading of character allowed readers to establish their “aesthetic competence” in a new mass market of readers, but there is also a sense in which a character such as Caleb, whose “inner life” is produced and defined by legal imperatives, represents a response to the prosecutorial climate of the 1790s and the strain on

⁷⁶ Jonathan H. Grossman, *The Art of Alibi: English Law Courts and the Novel* (Baltimore: Johns Hopkins University Press, 2002), 61.

⁷⁷ Godwin, *Caleb Williams*, 309.

⁷⁸ *Ibid.*, 303.

⁷⁹ *Ibid.*, 311.

⁸⁰ Grossman, *The Art of Alibi*, 57.

legal character that it entailed.⁸¹ In Godwin's account of the novel's composition, he stressed his wish to represent psychological processes and the internal "impulses" of mind and character; he was interested, he wrote, in "the analysis of the private and internal operations of the mind, employing my metaphysical dissecting knife in tracing and laying bare the involutions of motive."⁸² But if *Caleb Williams* "dissect[s]" deep into interior character, the collapse of any sort of character for Caleb, by the novel's end, seems a bleak assessment of what is possible for "character," in fiction as well as legally.

John Thelwall's political and poetical characters

At Thelwall's treason trial in 1794, the testimony of character witnesses was important to his defence. Erskine made much of his client's opposition to violence, affirming that Thelwall was "a loyal, dutiful, and affectionate subject," and representing him as a domestic man of sensibility who honoured his responsibilities to "an aged mother, a partner of his heart, and an offspring whom Providence gave into his care." Were Thelwall not constrained by poverty, Erskine insisted, "a cloud of witnesses" would have been brought to London to testify.⁸³ As it was, a more modest cohort was summoned, which included James Parkinson, the radical and surgeon, as well as non-political witnesses who spoke to Thelwall's good character "as a man of letters" and "as a son, a brother, a husband, and a father."⁸⁴ This testimony was necessary, Erskine said, to restore Thelwall's social "credit" as well as his legal acquittal: "not only to clear the prisoner from the charge, but to restore him to that credit and reputation in society, which must necessarily be affected by the imputation of having such a charge brought against him."⁸⁵

Summing up, the judge Sir James Eyre was evidently impressed by Thelwall's favourable character evidence. "It is an affectionate and warm evidence of character," he noted, and is "entitled to credit."⁸⁶ But Eyre was puzzled by how to square Thelwall's "very excellent character," set forth by the witnesses, with his radical principles:

[W]hen we consider the very good character which these gentlemen have given him, we cannot read, without astonishment, the very bad character which, with that peculiar luxuriance of fancy ascribed to him, he has thought proper to give to himself [in a letter in which Thelwall described himself as a Sans Culotte]. ...

⁸¹ Lynch, *The Economy of Character*, 6.

⁸² Godwin, *Caleb Williams*, 350.

⁸³ Barrell and Mee, *Trials for Treason and Sedition*, 8:54-55.

⁸⁴ *Ibid.*, 8:73.

⁸⁵ *Ibid.*, 8:61.

⁸⁶ *Ibid.*, 8:94.

Considering him as having the advantage of education, as a man of letters, associating with the company of gentlemen, and, above all, as a British subject; considering him, I say, in all these points of views [sic], and with all these advantages, how is it possible that he should have so acted, and have fallen into such expressions as have been proved against him, is indeed so extraordinary a puzzle as cannot possibly be explained.⁸⁷

Eyre approvingly notes Thelwall's good character in the sense of gentlemanly lifestyle and connections, but finds his activities in support of reform a shocking deviation from that standard. Moreover, although Eyre recognises Thelwall as "a man of letters," he also draws attention to Thelwall's "luxuriance of fancy," which is suggestive of an excessive, overheated imagination, and – in view of Thelwall's incautious style of lecturing, which as we shall see was discussed in court – an over-exuberant, enthusiastic manner of expressing himself.

Thelwall was acquitted by his jury after under two hours' deliberation, but he struggled to secure social acquittal after his trial: that "credit and reputation" which Erskine had mentioned. Indeed, the moment that the verdict was delivered, Thelwall began preparing to vindicate his character in a non-legal context: "I shall seize the first opportunity to defend my character and conduct," he told the court. He was admonished for this by the bench, which assured him that "whatever calumny he might conceive to have been attached to his character, was wiped away by the best refutation in the word, the verdict of a British Jury."⁸⁸ This could not have been further from the reality. In parliamentary debates shortly after Thelwall's trial, both the Attorney and Solicitor Generals made it plain that they thought the juries had been wrong to acquit.⁸⁹ Loyalist commentators agreed: as John Reeves put it, the defendants had "indeed been acquitted by a Jury, but they have since been found guilty by their country." Most notoriously, Secretary at War William Windham described the treason trial defendants as "acquitted felon[s]," and remarked that the legal acquittals "by no means proved that they were free from moral guilt."⁹⁰

These pronouncements did not intimidate Thelwall into abandoning political activism, but he was anxious to vindicate his character before the public, and he published the defence speech he had originally prepared for his trial. Erskine had dissuaded him from delivering it in court, warning, "If you do, you'll be hanged," in reply to which Thelwall quipped, "Then I'll be hanged if I do."⁹¹ The speech, part of a 1790s subgenre of undelivered defence speeches, was

⁸⁷ Ibid., 8:105.

⁸⁸ Ibid., 8:108.

⁸⁹ Barrell, *Imagining the King's Death*, 424.

⁹⁰ Quoted in *ibid.*, 429-31.

⁹¹ Ibid., 413-14.

published as *The Natural and Constitutional Right of Britons to Annual Parliaments, Universal Suffrage, and the Freedom of Popular Association*. This printed defence promoted a connection between the medium of print and legal jurisdiction, between the jury of the courtroom and that of the public mind.⁹² Calling itself Thelwall's "vindication," it retained many of the formal qualities of a legal defence, notably its address to "Gentlemen of the Jury" and its opening remark that "I ... am now come to plead for my life before you."⁹³ Angela Esterhammer and Alexander Dick have issued a call to scholars to pay greater attention to the interplay between the "language" of texts on the one hand, and "the physical spaces, media, and institutions in which words have their effects" on the other.⁹⁴ Thelwall's *Natural and Constitutional Right* invites such a reading, since it is not simply transcribed speech: it is self-consciously mediated through print, and its courtroom origins are never far from the surface. In its "Advertisement," Thelwall justifies his decision to publish it:

[W]hatever reasons might be suggested against my defending myself at the Old Bailey, they can have no weight against my standing in my own person at the bar of the public, whose right to the fullest investigation of every circumstance and every character in which they can be, by any means, interested, I have always maintained to the most unqualified extent.⁹⁵

The Natural and Constitutional Right illustrates Thelwall's longstanding commitment to "the bar of the public," before which he sought to vindicate his character in the years after his acquittal. The courtroom was to function as a recurring motif in Thelwall's writing, allowing him to present his character to the public for scrutiny as well as rehearse his experiences of personal and political crisis.

The treason charge against Thelwall and his associates had turned upon a mismatch between appearances and interiority: between each defendant's seemingly innocent, constitutional outward behaviour, and the treasonous heart allegedly resting within. Thelwall was charged with "compassing or imagining the king's death," a crime which, John Barrell explains, depended on an intention to kill the king, regardless of whether he died, or even of whether any attempt was made to kill him. A successful prosecution required the treasonous intention to be confirmed by some "overt act," but the statute itself was concerned with "internal acts of the

⁹² Thelwall, *The Natural and Constitutional Right of Britons*, iv.

⁹³ *Ibid.*, 1.

⁹⁴ Angela Esterhammer and Alexander Dick, "Introduction: Romantic Spheres of Action," in *Spheres of Action: Speech and Performance in Romantic Culture*, ed. Dick and Esterhammer (Toronto: University of Toronto Press, 2009), 13.

⁹⁵ Thelwall, *The Natural and Constitutional Right of Britons*, iv.

mind, secrets of the heart known only to God.”⁹⁶ Treason was an internal event, therefore, and this judicial emphasis on the mind made it necessary to probe the recesses of a defendant’s character. James Epstein and David Karr have shown that the 1794 treason trials saw repeated efforts by the prosecution to uncover the reform societies’ “secret” revolutionary intent.⁹⁷ Opening the case against Thelwall, serjeant-at-law James Adair argued that this was a matter of reading Thelwall’s inner life correctly:

[I]t was but seldom men acted so openly in the commission of crimes, as to say we mean to depose the King, it is our intention to subvert the Constitution of the Country, &c. ... those who had such intentions generally concealed them. ... [A]lthough their professed object was a Parliamentary Reform, ... no such thing was the secret purpose of the heart of the Prisoner at the bar. But how were the secret purposes of men’s hearts to be discovered?⁹⁸

Setting out his own reading of Thelwall’s “secret purposes of the heart,” Adair concludes with a theatrical flourish: “Here the mask drops off, and treason stands disclosed.”⁹⁹ Erskine pointed out that, according to this argument, Thelwall as a lecturer must have “disclose[d] the treasonable purposes of his heart” to entire crowds.¹⁰⁰

In Thelwall’s case, the problem of how to read interior character with accuracy was compounded by what he himself called “[t]he habitual warmth of my temper” when he was speaking or lecturing. Explaining why he did not deliver his own defence, he described the risk that “I might not only advance doctrines which, though not criminal, might be hostile to the prejudices of the Court, but might fall into such expressions of my feelings as might be offensive to some whom it was my interest to conciliate.”¹⁰¹ Thelwall positions himself here as a man of enthusiasm. Jon Mee has written about “Thelwall’s profound ambivalence towards enthusiasm”: his sense that “[p]roperly regulated warmth is the basis of true masculine identity,” and his reluctance to interpret his own “infectious” enthusiasm as being “in any simple sense ... a fault.” As Mee puts it, “Thelwall’s emotional sincerity has been both his making and unmaking.”¹⁰² In his 1801 autobiographical memoir, Thelwall celebrated “the fervour of his character,” but also recognised that it had frequently damaged his professional

⁹⁶ Barrell, *Imagining the King’s Death*, 33-34.

⁹⁷ Epstein and Karr, “Playing at Revolution,” 507.

⁹⁸ Barrell and Mee, *Trials for Treason and Sedition*, 8:13-14.

⁹⁹ *Ibid.*, 8:20.

¹⁰⁰ *Ibid.*, 8:59.

¹⁰¹ Thelwall, *The Natural and Constitutional Right of Britons*, iii-iv.

¹⁰² Mee, *Romanticism, Enthusiasm, and Regulation*, 119, 122-124.

prospects.¹⁰³ Defending Thelwall, Erskine described his client as “a man of exuberant and luxurious imagination,” arguing that everybody is occasionally guilty of “unguarded” speech:

[W]ho would be safe, if every loose word, if every vague expression, uttered in the moment of inadvertence or irritation, were to be admitted as sufficient evidence of a criminal purpose of the most atrocious nature? ... Who has not, in an unguarded hour, from a strong sense of abuse, or a quick resentment of public misconduct, inveighed even against the Government to which he is most firmly attached?¹⁰⁴

Thelwall echoed that phrasing in his *Natural and Constitutional Right*: “Where is the man who never, in the gaiety of youthful passion, gave utterance to an idle expression, or drank a ridiculous toast, which if gravely repeated, with the colourings of a malignant commentator, might be tortured into evidence of intentions which his soul would have revolted at?” he asked.¹⁰⁵ Thelwall distances himself from “idle” or “ridiculous” phrases as the products of “youth,” “passion” and “gaiety”: these are superficial, fleeting expressions, at odds with the “soul” within.

Thelwall’s unguarded speech added a new dimension to the question of how his character ought to be read. It emerged at his trial that he had taken advice from the radical lawyer John Gurney on how to protect himself from “misrepresentation” by spies and informers at his lectures. Gurney recommended having “two or three friends to take notes,” and advised Thelwall “to preserve calmness as well as he could, and if he found himself uttering any thing exceptionable, to take care to explain himself immediately, and to speak as slowly as he could.” Summoned to court to explain this advice, Gurney testified that he thought Thelwall was “liable in the warmth of speaking to be hurried away by his passion beyond the bounds of his cooler judgement” – but was never, in Gurney’s view, seditious.¹⁰⁶ For the prosecution, Thelwall’s “warmth” as a speaker suggested an insight into his treasonous heart, whereas for the defence it was an incautious overflowing of sincerity, perhaps actually suggestive of inner purity. In Erskine’s and Thelwall’s formulations, thoughtless speech is indicative of “passion,” but also, at least potentially, of a strong moral compass: a finely-tuned “sense of abuse” or “resentment of ... misconduct.” Careless speeches are, in Erskine’s words, “the intemperate effusions of the honest heart,” so may be read, to some degree, as markers of good character.¹⁰⁷

¹⁰³ John Thelwall, *Poems Chiefly Written in Retirement [...] With a Prefatory Memoir of the Life of the Author; and Notes and Illustrations of Runic Mythology*, 2nd ed. (Hereford, 1801), xv.

¹⁰⁴ Barrell and Mee, *Trials for Treason and Sedition*, 8:60-61.

¹⁰⁵ Thelwall, *The Natural and Constitutional Right of Britons*, 84.

¹⁰⁶ Barrell and Mee, *Trials for Treason and Sedition*, 8:34.

¹⁰⁷ *Ibid.*, 8:60.

Thelwall's defence of his character in *The Natural and Constitutional Right* is bound up with assertions about the purity of his interior life, and above all the integrity of his heart. "[T]hough my conduct may sometimes have been marked by the levity or intemperance of youth, my heart is untainted by any crime!" he insists, detaching the "intemperance" of his thoughtless speech from his "heart".¹⁰⁸ This use of "heart" suggests integrity and emotional conviction, but also a benevolent, humane worldview. Thelwall claims that he adheres to "the principles of humanity to an extent which the world in general is disposed to consider as romantic": even "the life of the meanest insect" is to him "sacred and inviolable."¹⁰⁹ His immediate point is that it is inconceivable that he could be a bloodthirsty traitor, but he is also painting himself as a man of sensibility; his has been "a heart bleeding for the miseries of the lower orders of the community."¹¹⁰ Thelwall represented his domestic affections in a sentimental register, picturing each member of his family in his absence, "doomed to moisten with their tears the precarious bread of charity."¹¹¹ He described his *Poems Written in Close Confinement in the Tower and Newgate*, published in 1795, as "generally transcripts of the heart": an image which suggests the heart's transparency to a reader in poetry, as well as a correspondence between the "characters" of the printed words and the "character" of the heart they reveal.¹¹²

Thelwall was eager to secure moral vindication from the public, as well as legal acquittal by a jury, noting that "acquittal could afford me no satisfaction; if those who dismissed me from this bar, freed from the suspicion of treason, did not dismiss me also, freed, in their minds, from the imputation of feelings and sentiments that would rank me with the plunderer and ruffian."¹¹³ He issued a rhetorical appeal for character witnesses in *The Natural and Constitutional Right*: "I call upon every individual who is at all acquainted with my character and sentiments to stamp the broad seal of infamy upon my forehead if I speak not truly."¹¹⁴ Appealing for his character to be inspected by the jury of the public, he engaged the vocabulary of criminal punishment in the image of branding. Thelwall's address to the public stretched beyond the confines of the courtroom where he originally imagined it would be delivered: "I call upon this tribunal, I call upon my country at large, I call upon that posterity whose impartiality will do justice to my memory, to search with scrutinizing exactness into the evidence of my motives and conduct."¹¹⁵

¹⁰⁸ Thelwall, *The Natural and Constitutional Right of Britons*, 92.

¹⁰⁹ *Ibid.*, 3.

¹¹⁰ *Ibid.*, 53.

¹¹¹ *Ibid.*, 92.

¹¹² John Thelwall, *Poems Written in Close Confinement in the Tower and Newgate, under a Charge of High Treason* (London, 1795), ii.

¹¹³ Thelwall, *The Natural and Constitutional Right of Britons*, 85.

¹¹⁴ *Ibid.*, 14.

¹¹⁵ *Ibid.*, 7.

He stressed to his (imagined) jury that their verdict would reach beyond the walls of the court, to be re-examined by contemporary readers and readers of the future. “The whole present generation is interested – Posterity is interested in your verdict,” he writes.¹¹⁶ That outward movement was replicated by the crowds gathered inside and outside the courtroom. According to one account of the trial proceedings, when Thelwall’s jury delivered its verdict, the audience within let out an “involuntary ... shout of applause,” which was quickly stifled in deference to the judges’ reproaches. Nevertheless, this “served ... as a signal to the multitude without, by whom it was caught in a moment, and repeated with such force, as for some minutes to prevent” Thelwall from making himself heard. For the editor of this account of the trial, the “instantaneous and electric” communication between the audiences within and outside the court, not attributable to any particular “quarter” or “individual,” functioned as a collective and triumphant expression of public vindication.¹¹⁷

Both Thelwall himself and later historians have documented the harassment he endured in the later 1790s, especially the loyalist vigilantism which almost broke up his lecture tour of 1796.¹¹⁸ It proved difficult for him to shake off his status as an “acquitted felon”; as Godwin’s Caleb had put it: “Was acquittal useless? ... Was the odious and atrocious falshood [sic] that had been invented against me, destined to follow me wherever I went, to strip me of character ...?”¹¹⁹ Disillusioned about the capacity of legal institutions to administer justice, Thelwall increasingly expressed a preference for the tribunal of public opinion. Reflecting on the authorities’ failures to protect him from vigilante aggression, he remarked that “I must leave to others, who can afford to purchase it, the costly luxury of legal justice, while I, with democratical frugality, appeal to the more accessible tribunal of public opinion.”¹²⁰ The violent interruptions of the 1796 tour encouraged Thelwall to “to clear my own character from the aspersions of ruffians, who, having been *twice* disappointed in their attempts to murder myself, in the desperation of their malice, endeavour to assassinate my fame. I trust, however, that both my life and my reputation will weather the storm of their persecutions.”¹²¹ Thelwall places his confidence in the resilience of his character and the integrity of the public.

¹¹⁶ Ibid., 23.

¹¹⁷ Barrell and Mee, *Trials for Treason and Sedition*, 8:107.

¹¹⁸ See especially Thelwall’s “Prefatory Memoir” in *Poems Chiefly Written in Retirement*, i-xlvi; E. P. Thompson, “Hunting the Jacobin Fox,” *Past and Present* 142 (1994), 94-140.

¹¹⁹ Godwin, *Caleb Williams*, 281.

¹²⁰ John Thelwall, *An Appeal to Popular Opinion*, in *Selected Political Writings of John Thelwall*, ed. Robert Lamb and Corinna Wagner, vol. 1, *Early Political Pamphlets and Lectures, 1793-1796*, ed. Lamb and Wagner (London: Pickering & Chatto, 2009), 138.

¹²¹ Ibid., 160.

Corinna Wagner has stressed the importance of the “tribunal of the public” in Thelwall’s thinking, in terms of both the value that he placed on people’s right to scrutinise government, and his efforts to shore up his credibility as a privately virtuous public man.¹²² For Wagner, Thelwall’s concern to represent his private virtue in a public forum was tied to a growing perception, in the later eighteenth century, that private morality was essential to a virtuous civic life. John Brewer has charted a trend in the later eighteenth century, whereby the growth of print culture not only enabled the emergence of a Habermasian public sphere, but also created an “exceptional consciousness of how private life was subject to the public gaze.” Private life was subject to public representation in print, which in turn moulded private behaviours. As writers became alive to how their private lives would be drawn under public scrutiny, Brewer explains that they grew increasingly eager to curate what the public received. Autobiographical writing and “private histories” flourished, along with “a consciousness of the degree to which private life, or to be more accurate its representation, could be an object of perusal by those with whom one had no direct acquaintance.” This interweaving of public and private contributed to a perception that private affairs were fundamental to the public good: “even the most intimate correspondence of a notable was a matter of public importance,” Brewer remarks.¹²³

Thelwall was not exactly “a notable,” but he was notorious, and that status seems to have underpinned his belief that he owed to the public an account of his private life. If the shift in attitude that Brewer describes was already underway before the 1790s, the legal and political pressures of that decade heightened its impact. In *The Natural and Constitutional Right*, Thelwall surveys his past life and weighs it in the balance, admitting that he finds “some of those little follies and intemperances which youth is heir to; but not one – I am bold to say it – not one of those actions which in the catalogue of Reason are marked as crimes – or which, from moral considerations, I could anxiously wish undone.”¹²⁴ Thelwall frames himself as a conscientious observer of his own actions, reminiscent of Adam’s Smith’s idea of the imaginary “fair and impartial spectator” within each person, acting as monitor and regulator. Smith pictures each individual’s process of self-evaluation via a legal metaphor: “When I endeavour to examine my own conduct, when I endeavour to pass sentence upon it, and either to approve or condemn it, it is evident that, in all cases, I divide myself, as it were, into two persons; and that I, the examiner and judge, represent a different character from that other I, the person whose

¹²² Corinna Wagner, “Domestic Invasions: John Thelwall and the Exploitation of Privacy,” in *John Thelwall: Radical Romantic and Acquitted Felon*, ed. Steve Poole (London: Pickering & Chatto, 2009), 98-99.

¹²³ John Brewer, “This, That and the Other: Public, Social and Private in the Seventeenth and Eighteenth Centuries,” in *Shifting the Boundaries: Transformation of the Language of Public and Private in the Eighteenth Century*, ed. Dario Castiglione and Lesley Sharpe (Exeter: University of Exeter Press, 1995), 14-15, 17.

¹²⁴ Thelwall, *The Natural and Constitutional Right of Britons*, 2.

conduct is examined into and judged of.”¹²⁵ Thelwall’s courtroom of his own conscience seems to draw on Smith’s example, albeit he places himself on trial with an urgency not found in Smith. Some years later, the reformer Richard Phillips included a biography of Thelwall in his volume *Public Characters*; Thelwall adapted Phillips’ account when he wrote up his autobiographical “Prefatory Memoir” of 1801. He retained the third-person narrative style, explaining that he was “not conscious that it contains any thing which an impartial biographer would suppress, and, as he is confident, that the severest scrutiny can detect no omission for which any motive of interest or subterfuge can be assigned.”¹²⁶ The anxious vocabulary of “scrutiny,” “motive,” “subterfuge” and “impartial[ity]” suggests a coherence between, on the one hand, Thelwall’s efforts to free his character from the charge of treason, and on the other, his presentation to the public of an autobiographical, ostensibly apolitical record, some years later.

If Thelwall believed that he owed an account of his private life to the public, his published self-representations were often conflicted: at times he publicised his private self as an essential component of his public political integrity, but at others he insisted on his entitlement to domestic privacy. Wagner has commented on Thelwall’s contradictory attitudes towards his private life, particularly the ways in which “his fears about incursions into the most intimate areas of human relations” coexisted with his “self-publicizing practices” and belief in “the contiguity between the public and private spheres.”¹²⁷ Thelwall, Wagner argues, shared from his private life to an unusually high degree, “endowing the private sphere with tremendous political significance and with making the life of the politician part of the political platform”; yet this supported a context in which “public intrusion” was encouraged.¹²⁸ She writes:

A serious tension emerges ... between his protests against government intrusion and his readiness to use personal character as the burden of proof in political and legal battle. It seems to me that Thelwall gets caught in a paradox of his own making: the very sphere of life he aims to protect from government interference is the sphere he places squarely before the inquiring eyes of the public.¹²⁹

Thelwall invests in the importance of private character and lays it open to public scrutiny, often at the same time as resenting the excesses of public intrusion.

¹²⁵ Adam Smith, *The Theory of Moral Sentiments*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 2002), 129, 131.

¹²⁶ Thelwall, *Poems Chiefly Written in Retirement*, i.

¹²⁷ Wagner, “Domestic Invasions,” 95.

¹²⁸ *Ibid.*, 106.

¹²⁹ *Ibid.*, 101.

Thelwall's sonnet "The Crisis," written from Newgate in 1794, illustrates that tension. On the one hand, the poet appeals to allies to monitor his good character, calling upon his "Compatriots dear" to "search my breast with scrutiny severe" and "mark, if now base fear / Palsy its boasted virtue ... Or one emotion feel, but what the breast / Of Hampden or of Sidney might have swell'd."¹³⁰ The poem edges towards the policing of private character, as Thelwall enlists the help of fellow-radicals in testing his integrity and moral courage. On the other hand, however, the introspective sonnet form of "The Crisis" – like the isolated conditions of its composition in Newgate – suggests that it is addressed as much to the speaker himself as to his "Compatriots." As he announced in 1794, "I look into my own heart, and I believe I know my motives!"¹³¹ This is a self-characterisation which hinges on privacy and hidden depth. As Lynch comments, the emphasis on depth in Romantic-period characters "can seem to serve much more to detach one person from another than it does to link them together."¹³² Godwin had reflected on that detachment in the character of Caleb, who turns increasingly inward in the face of social rejection, resolving that "[i]f I am to despair of the good will of other men, I will at least maintain the independence of my own mind" and, later, that "[t]he more I am destitute of the esteem of mankind, the more careful I will be to preserve my own."¹³³ These inward movements, by both the fictional Caleb and Thelwall, are suggestive of a turn toward what might today be called "the literary." They entail a shift in how the reader is understood and imagined: less an impersonal tribunal which judges and appraises, more an individual reader who aspires to know the writer intimately – something closer to Tilottama Rajan's "supplement of reading." As Mee puts it, this is an idea of reading as "communion," in which "literature" is thought of as "a world of sympathies between feeling subjects – including the relations between writers and silent readers – more to be trusted than the world of mutual incomprehension out there."¹³⁴

In his 1801 "Prefatory Memoir," written to accompany his *Poems Chiefly Written in Retirement*, Thelwall segregates his private from his public life, his poetical character from his political. "It is The Man, and not The Politician, that is here delineated," he writes. "The disciple of the Muses; not The Lecturer and Leader of Popular Societies now no more."¹³⁵ The capitalisation is suggestive of personae and types, almost of Theophrastan characters (we will

¹³⁰ Thelwall, *Poems Written in Close Confinement*, 12, lines 5, 8-9, 13-14.

¹³¹ John Thelwall, *Political Lectures, No. 1, On the Moral Tendency of a System of Spies and Informers*, in *Selected Political Writings of John Thelwall*, 1:63.

¹³² Lynch, *The Economy of Character*, 13.

¹³³ Godwin, *Caleb Williams*, 167, 271.

¹³⁴ Jon Mee, *Conversable Worlds: Literature, Contention, and Community 1762 to 1830* (Oxford: Oxford University Press, 2011), 30.

¹³⁵ Thelwall, *Poems Chiefly Written in Retirement*, i.

see more of those in Chapter 2). They seem to prove incompatible with one another, for Thelwall believes that he has failed in “uniting together the characters of the Farmer and the Poet: and the object of this Memoir is once more to be considered in the latter of these characters alone.”¹³⁶ Farmer, Poet, Man, Politician, Lecturer, Patriot, Recluse: Thelwall puts on and sheds these “characters” like parts in a play, and his performance of each role in the “Prefatory Memoir” is self-conscious.¹³⁷ These are repeated acts of self-division, forced upon him by a hostile public. The wish to carve out a protected space was already present in *The Natural and Constitutional Right*, when he complained about the pressures that surveillance placed upon private life, but the “Prefatory Memoir” pushes an uncompromising distinction between Thelwall’s “private character” and “public sentiments or exertions.”¹³⁸ He drives a wedge between political and poetical endeavour, arguing that “in the fiercest warfare of opinion, the Temple of the Muses should still be sacred.”¹³⁹ The “Prefatory Memoir” positions its author as a man of letters, stressing his autodidacticism and voracious reading, his attempts to become a painter, the resilience of his poetic “Muse,” and his scientific enquiries into animal vitality and sensation.¹⁴⁰ The autobiographical register and third-person narrator allow Thelwall to develop a quasi-fictional narration of himself, especially of his growth of “mind.”¹⁴¹ Thelwall uses the “Prefatory Memoir” to shield a poetic sphere from a political one, but also to rewrite his character for public consumption, in an almost novelistic mode.

Mee comments that the *Poems Chiefly Written in Retirement* “may hint at the idea of literature as a distinctive agency of change in itself, bringing about an epiphany of sorts within individual readers familiar from the literature of Romanticism, but this development was never absolute and Thelwall never snapped his baby trumpet of sedition, to use Coleridge’s phrase.” The poems do not, “in any simple sense,” try to establish the domestic “as a domain of authenticity opposed to the political.”¹⁴² A legalistic defensiveness is retained in the “Prefatory Memoir,” despite Thelwall’s movement into a poetic register. Indeed, the “Prefatory Memoir” postpones, rather than abandons, Thelwall’s defence of his political character, since he merely says that he trusts to “Time” for the “refutation” of the political “calumnies” against him. By “lock[ing] up his [political] sentiments in the silence of his own bosom,” he makes his private and domestic

¹³⁶ *Ibid.*, xlvi.

¹³⁷ For the terms “Patriot” and “Recluse” see *ibid.*, 141, line 18 and xxxviii.

¹³⁸ *Ibid.*, xxxii.

¹³⁹ *Ibid.*, xxviii.

¹⁴⁰ *Ibid.*, xxix.

¹⁴¹ *Ibid.*, v.

¹⁴² Mee, *Print, Publicity and Popular Radicalism*, 187.

character available for public scrutiny instead.¹⁴³ He considers his poems a reliable index to his interior self:

[P]erhaps, his character cannot better be comprehended than by a comparison of those Poems [*Written in Close Confinement*] with the Effusions [*Poems Chiefly Written in Retirement*] ... He will there be seen in his strength, and in his weakness: and, probably, both will be found to originate in the same temperament – in the same keenness of perception and habits of feeling.¹⁴⁴

Thelwall presents his character to the public as an object for study, but although the defensive mode has been suspended here, the notion that his character is worthy of (and actually requires) public scrutiny remains strong.

Legal vocabulary is present in the *Poems Chiefly Written in Retirement* and accompanying “Prefatory Memoir,” despite Thelwall’s insistence on their distance from political and judicial contexts. Mentioning one occasion which demonstrated his financial probity, Thelwall adds that his “statement ... can be supported by unquestionable documents, and will be vouched by the ultimate sufferer himself”: in other words, he offers to supply written and witness evidence.¹⁴⁵ He even mentions character testimony from his trial, given by witnesses “as respectable as ever appeared in a Court of Justice on such an occasion.”¹⁴⁶ Legal stresses persist in the *Poems Chiefly Written in Retirement*, although they are absorbed into domestic tragedy. Addressing the ghost of his daughter Maria, in one poem the speaker articulates his grief for her death in terms of a larger “debt” that he has had to pay:

Thou, my sweet babe! art to my hostile stars
Another sacrifice – another fine
(Heavier than all the past) that I have paid
For love of human nature – for the crime
Of universal brotherhood, that, thus,
Dooms me, in exile from the social sphere
Of humaniz’d fraternity[.]¹⁴⁷

¹⁴³ Thelwall, *Poems Chiefly Written in Retirement*, ii, xxxv.

¹⁴⁴ *Ibid.*, xlii.

¹⁴⁵ *Ibid.*, xxxi-xxxii.

¹⁴⁶ *Ibid.*, xix.

¹⁴⁷ *Ibid.*, 159, lines 61-67.

The lines suggest a coherence between the legal persecution of the mid-decade and the familial crisis of his daughter's death. The punitive background clings to the poem in the vocabulary of "sacrifice," a "fine" that has been "paid," his "crime," "doom" and "exile." Criminal vocabulary is applied to private affairs.

In late 1795, Thelwall and Godwin fell out. Their quarrel centred on one particular passage of a pamphlet that Godwin had published anonymously that autumn, entitled *Considerations on Lord Grenville's and Mr. Pitt's Bills*. It was written in protest over proposed legislation known as the "Two Bills," laws intended thoroughly to suppress political opposition: the Seditious Meetings Bill by restricting public gatherings on political matters, and the Treasonable and Seditious Practices Bill by converting constructive treasons to substantive ones.¹⁴⁸ As part of his larger argument, Godwin launched an attack specifically upon "the political lecturer in Beaufort Buildings" – a transparent reference to his friend Thelwall.¹⁴⁹ He claimed that while Thelwall had "uncommon purity of intention," his speeches inevitably aimed to please the crowds and secure applause, doing away with "[q]uiet disquisition" and rational, "speculative enquiry," and instead whipping up his audience's passions. It was true, Godwin admitted, that Thelwall encouraged his audiences to behave with moderation. Yet this was no better than "lord George Gordon preaching peace to the rioters in Westminster-Hall. ... It is Iago adjuring Othello not to dishonour himself by giving harbour to a thought of jealousy." Godwin thus identifies Thelwall with two disreputable characters, one a convicted traitor and the other a theatrical villain.¹⁵⁰ Thelwall was understandably furious, partly because Godwin's accusations chimed with his own anxieties about the capacity of crowds to pursue rational enquiry – although, unlike Godwin, he generally "trusted his audience to regulate themselves," and had a much more productive understanding of sympathy than his friend.¹⁵¹

Godwin wrote a letter to Thelwall, to vindicate his motives in having written this passage of the *Considerations*. He requested that this be printed in Thelwall's periodical, aptly named *The Tribune*; Thelwall agreed, but he sandwiched Godwin's letter between his own remarks, maintaining that "my Lectures bear no evidences of that character" which Godwin had given them. Thelwall introduced Godwin's letter as a form of courtroom defence: "I conceived it to be an act of *justice* to the author to give it insertion, that, thus, in all probability, every person who has read my Censure, may read, also, his Defence," he explains. The question of the "justice"

¹⁴⁸ See Barrell, *Imagining the King's Death*, 571-82.

¹⁴⁹ William Godwin, *Considerations on Lord Grenville's and Mr. Pitt's Bills, Concerning Treasonable and Seditious Practices, and Unlawful Assemblies, by a Lover of Order*, in *Political and Philosophical Writings of William Godwin*, ed. Mark Philp, vol. 2, *Political Writings II*, ed. Philp (London: Pickering & Chatto, 1993), 132.

¹⁵⁰ *Ibid.*, 2:132-33.

¹⁵¹ Mee, *Romanticism, Enthusiasm, and Regulation*, 117, 119.

due to each of them is a recurring anxiety in this exchange in the *Tribune*, as is a concern about the “tendency” of each other’s work (tendency being the legal term for the possible consequences of a libel, discussed in the Introduction). To Thelwall, Godwin’s *Considerations* “must have a tendency to produce [odious impressions] in the minds of *his* readers.” Godwin may claim that he intended no harm, but this does not undo the damaging impact of the pamphlet on Thelwall’s own reputation, for “[h]ow shall ... readers be informed that although Mr. *Godwin* has *said* all these bitter things, he did not *mean* them?”. Conversely, Godwin for his part argues that the “tendency” of Thelwall’s lectures was more urgent than the sensitivities of friendship, since “the public stake in ... [the lectures’] tendency, whether beneficial or otherwise, was of more moment than to be superseded by ... principles of gentlemanly decorum.” Thelwall retorts that Godwin has only attended two of his lectures, so is “but ill qualified to judge of the general effect upon the *audience*.” “[L]et these volumes be my witness,” Thelwall declares, engaging the pages of his *Tribune* as participants in a legal process – and imagining the republic of letters to be physically embodied in print – as he testifies that he took seriously his responsibility not to provoke his audiences’ passions. Indeed, Thelwall discusses the *Considerations* as if it were already a confirmed libel: it “*still continues before the public, with all its aggravating passages unsoftened and unexplained,*” he complains.¹⁵² The quarrel has absorbed a startling amount of legal detail.

Godwin and Thelwall repaired their friendship in the summer of 1796, but by the end of the decade, Godwin’s star was on the wane, and his character was attacked in various hostile quarters; as he put it, he was a victim of “ribaldry, invective and intolerance.”¹⁵³ Around 1800, Godwin was embroiled in another argument, this time with the schoolmaster Samuel Parr, a former friend. Godwin’s correspondence with Parr absorbed the language of the criminal court: “I should be glad if you would answer to your own satisfaction, what crime I am chargeable with, now in 1800, of which I had not been guilty in 1794, when with so much kindness & zeal you sought my acquaintance,” he wrote.¹⁵⁴ Nor was the disagreement confined to private letters: in 1801 Godwin published *Thoughts Occasioned by the Perusal of Dr Parr’s Spital Sermon*, which responded to public criticisms issued against him by Parr, James Mackintosh and Thomas Malthus; then, in November 1801, a letter was printed in the *Monthly Magazine* in which Godwin defended himself against the accusation that he supported infanticide (a charge levelled at him after the publication of the *Thoughts*). This letter, too, developed an expansive legal vocabulary of “character,” “credit,” “[a]ccusations,” “advocate,” “unbranded,” and

¹⁵² John Thelwall, “The Tribune, No. XXXVII. Godwin’s Pamphlet,” in *Selected Political Writings of John Thelwall*, vol. 2, *Selections from the “Tribune,” 1795-1796*, ed. Lamb and Wagner, 239-42.

¹⁵³ William Godwin, *Thoughts Occasioned by the Perusal of Dr Parr’s Spital Sermon*, in *The Political and Philosophical Works of William Godwin*, 2:165.

¹⁵⁴ Godwin, *The Letters of William Godwin*, 2:134.

“condemnation.”¹⁵⁵ The dispute with Parr had snowballed: each effort at self-defence had the effect not of concluding the quarrel but of multiplying it, as each statement of personal vindication was met with further attacks, requiring responses in their turn. By the time William Hazlitt published *Spirit of the Age* in 1825, he could write of Godwin’s decline from fame: “Five-and-twenty years ago he was in the very zenith of a sultry and unwholesome popularity; he blazed as a sun in the firmament of reputation ... – now he has sunk below the horizon, and enjoys the serene twilight of a doubtful immortality.”¹⁵⁶

The arguments between Godwin and Thelwall, and the pressure on both men’s personal characters in and after the 1790s, are suggestive of the ways in which the pressured climate of the 1790s encouraged them to conduct legalistic defences of their characters, publicly and in print. “I have always entertained an opinion more than usually favourable of the character of Mr. *Thelwall*, and have never been sparing in expressing it,” Godwin protested to his unconvinced friend. Character is mediated – attacked, created, defended, remade – in print. “[G]entlemanly decorum,” Godwin wrote, “will perhaps never endure an examination in the courts of morality and reason.”¹⁵⁷ The exchanges point to the potency of the courtroom trope for these reformers during the 1790s, even in the context of intimate friendships; they used it to put their friendships on trial within the courtroom of the republic of letters. Imagery of legal trials offered a framework through which Godwin and Thelwall vindicated their personal and political characters. Both defended themselves with the urgency of a legal defence, even when well out of view of the jury; these figurative trials suggest how far an experience of the legal scrutiny of character had worked its way into private friendships, via practices of mutual interrogation and self-defence.

¹⁵⁵ “Letter to the Editor of the *Monthly Magazine*: 10 November, 1801,” in *Political and Philosophical Works of William Godwin*, 2:212-13.

¹⁵⁶ William Hazlitt, *The Spirit of the Age* (Oxford: Woodstock Books, 1989), 31.

¹⁵⁷ Thelwall, “The Tribune, No. XXXVII. Godwin’s Pamphlet,” 240.

Trying “the characters of great men”: the Scottish sedition trials of 1793-94

During 1793 and 1794, a series of state prosecutions for sedition were brought against radicals in Scotland. The most famous were the trials of the five so-called “Scottish martyrs”: Thomas Muir and Thomas Fyshe Palmer, in August and September 1793 respectively; William Skirving and Maurice Margarot, in January 1794; and Joseph Gerrald, in March 1794. Several lesser-known printers and publishers were also prosecuted, and all were successfully convicted: as Bob Harris notes, “[u]nlike in England, no cases against radicals in Scotland in the 1790s failed.” Several defendants chose to escape the country in view of their poor chances, including James Tytler, who is now best remembered as a balloonist; had he not absconded, he would have been defended by Muir, who was himself an advocate.¹ One printer and bookseller who did not flee, James Robertson, was convicted for his part in publishing James Callender’s radical *Political Progress of Great Britain*, but went on to publish accounts of the trials of Muir, Gerrald, Margarot and Skirving.² Robertson produced his edition of Muir’s trial during his own imprisonment in Edinburgh’s Tolbooth, where he took the opportunity to ask Muir, a fellow-prisoner, to check his notes of the latter’s celebrated defence speech, prior to publication.³

This chapter examines how character was represented and defended at the Scottish sedition trials of 1793-94, and how it continued to be shaped and imagined in print afterwards. This chapter focuses on the five best-known prosecutions, those of Muir, Palmer, Skirving, Margarot and Gerrald, all of whom were sentenced to transportation to Botany Bay for periods of seven or fourteen years each. The events surrounding their arrests and trials before Scotland’s High Court of Justiciary are well-known. Muir was indicted for seditious speeches at reform meetings, including the reading aloud of an address sent from the United Irishmen to Scottish reformers, and for the dissemination of works including Paine’s *Rights of Man*. The case against Palmer (who was tried by the circuit court in Perth) hinged on his involvement in the production and circulation of a radical handbill in Dundee, written by the weaver George Mealmaker. Lastly, Skirving, Margarot and Gerrald were prosecuted for their involvement in the British Convention in Edinburgh in late 1793; Margarot and Gerrald were delegates from the London Corresponding Society.⁴ All five were charged with the Scottish crime of sedition, not the

¹ Bob Harris, *The Scottish People and the French Revolution* (London: Pickering & Chatto, 2008), 119; Anon., “Examination of Mr Muir,” *The Edinburgh Gazetteer*, 8 January 1793, 3.

² Harris, *The Scottish People and the French Revolution*, 65.

³ [Thomas Muir,] *Robertson’s Edition. An Account of the Trial of Thomas Muir, Esq. Younger, of Huntershill, before the High Court of Justiciary, at Edinburgh [...] For Sedition* (Edinburgh, [1793]), 4.

⁴ See John Barrell, *Imagining the King’s Death: Figurative Treason, Fantasies of Regicide, 1793-1796* (Oxford: Oxford University Press, 2000), 149.

English crimes of seditious libel or seditious words; but the charges were nevertheless “textual,” since they were concerned with these reformers as writers, speakers and publishers (understood in the broad sense of distributors). Indeed, Muir pointed out that his was “the first Jury in Scotland before whom Mr. Paine was either directly or indirectly brought,” making his prosecution, in one respect, Scotland’s trial of *Rights of Man*.⁵

The trials were met with an outpouring of interest and sympathy. The LCS sent a shorthand writer to Edinburgh to record the proceedings, and many printed editions of the trials and defence speeches were produced.⁶ The “Scottish martyrs” have continued to generate substantial interest in Scotland, especially Muir, who is well-known beyond the academy. Outside Scotland, however, historians have sometimes tended to see the trials as regional or marginal, as Nigel Leask observes:

[T]he Scottish movement tends to be viewed as merely a prelude to the narrative of a more robust English radicalism, the (brief) consummation of which was the acquittal of Hardy, Tooke, Thelwall and others in the 1794 London Treason Trials. Or else, across the waters, the fainter light of Scottish radicalism is utterly eclipsed by the revolutionary blaze of the United Irishmen and the sanguinary outcome of the rebellion of ’98.⁷

Yet the Scottish sedition trials played a pivotal role in the government crackdown on British radicalism in the 1790s, and John Barrell has demonstrated that they allowed a rehearsal of the legal arguments used at the London treason trials later in 1794.⁸ This chapter begins by placing the trials against the backdrop of late eighteenth-century Scottish criminal practice. Scottish law was (and remains) distinct from English, and its independent status had huge political significance, leading to fractious discussions of national character at the trials. The second part of the chapter breaks down how character was represented in the High Court of Justiciary in 1793-94. This was a period of transition in legal approaches to character evidence, and the trials testify to that shift; in court, character was recognised to be geared around personal integrity as well as social status, and interior experience as well as external markers of credit. Finally, the chapter turns to the sympathetic commentaries published on the defendants after their

⁵ [Thomas Muir,] *The Trial of Thomas Muir, Younger, of Huntershill, before the High Court of Justiciary, at Edinburgh [...] For Sedition. A New Edition, Corrected* (London, [1793]), 86.

⁶ Michael T. Davis, “Prosecution and Radical Discourse During the 1790s: The Case of the Scottish Sedition Trials,” *International Journal of the Sociology of Law* 33, no. 3 (2005), 155-56.

⁷ Nigel Leask, “Thomas Muir and ‘The Telegraph’: Radical Cosmopolitanism in 1790s Scotland,” *History Workshop Journal*, no. 63 (2007), 49.

⁸ Barrell, *Imagining the King’s Death*, 129-30.

convictions. The “jury of the public” judged the cases afresh, and engaged in deep and creative readings of the defendants’ characters.

National character and Scottish criminal practice in the 1790s

The 1793-94 sedition trials dealt a blow to the reputation of Scottish criminal law. Many observers, even loyalists, considered the sentences draconian: Muir’s jurors were so shocked that they prepared a petition against his sentence of fourteen years’ transportation, while a spy known only as “J. B.” reproached home secretary Henry Dundas that “almost everybody, even the most loyal subjects, think Muir’s sentence by far too severe. Two years imprisonment would have been thought lenient, if even a fine had been added few would have complained, but fourteen years to Botany Bay! You yourself I suppose will allow it is rather too much.”⁹ Reformers animadverted against the “Tyrants of SCOTIA” and condemned the sentences of transportation as an “everlasting monument to the weakness of Scottish law.”¹⁰ These aspersions partly took their energy from Gerrald’s trial defence, which had critiqued Scottish practices as primitive and despotic, similar to the seventeenth-century English Star Chamber. Cataloguing the rights to which he believed he would have been entitled in England, Gerrald – who was English – argued that, owing to the union between the two countries, Scottish practice should be brought in line with the English: “if such have been the privileges of England, and if this country is entitled, by the articles of Union, to the same privileges, I see no offence in wishing, and attempting to effect, that Scotsmen should be admitted to a participation of the same rights,” he declared.¹¹ Gerrald was especially concerned that in Scotland, reformers were suffering transportation for actions which would have gone unpunished in London: something that was soon to change, for the Scottish cases helped to pave the way for the English treason trials later that year.¹²

Gerrald’s wish that Scottish and English criminal practice should be aligned was either rhetorical, or revealed a fundamental misunderstanding about the terms of the 1707 Act of Union, under which Scottish law retained its independence from England. After 1707, English law did, in practice, come to exert considerable influence in fields such as commercial and

⁹ Quoted in Christina Bewley, *Muir of Huntershill* (Oxford: Oxford University Press, 1981), 81.

¹⁰ Anon., “Sonnet. To Citizen Joseph Gerrald,” in *The Political Harmonist; or, Songs, and Poetical Effusions, Sacred to the Cause of Liberty. By a Cosmopolite* (London, 1797), 20; Anon., *Gerrald A Fragment; Containing Some Account of the Life of This Devoted Citizen [...] Now Transported to Botany Bay for Fourteen Years!!!* (London, [1795?]), 7.

¹¹ [Joseph Gerrald,] *The Defence of Joseph Gerrald, on a Charge of Sedition [...] To Which Is Prefixed a Sketch of His Character, Written by a Friend* (London, [1794]), 15.

¹² *Ibid.*, 43.

mercantile law, but the criminal law was an area for greater Scottish control.¹³ Lindsay Farmer explains:

The Scottish criminal law has been shaped by its determination to remain independent from its English neighbour. In other areas of the law the practical consequences of the separate systems diminished under the weight of economic and administrative pressures, and as legislation revised or replaced much of the common law. Not so with the criminal law ... This independence has not occurred by chance but is the result of deliberate and hard-fought resistance on the part of Scottish lawyers.¹⁴

By the 1790s, then, Scottish criminal law was a highly politicised field. Margarot (who was also English), on being told that English law was as foreign to Scotland as that of Germany or Italy, retorted that “if this country is as foreign as Germany – Don’t talk, for God’s sake, of the English constitution; it does not belong to you.”¹⁵ Both judges and prosecutors were quick to defend their independence from England. Lord Advocate Robert Dundas remarked at Gerrald’s trial, “I hope and trust that the administration of the criminal justice of this country, however calumniated, however aspersed, is able to stand the test in competition with the administration of the criminal justice of England, or of any country upon the face of this earth.”¹⁶ Skirving was sent some legal advice by an English lawyer which he offered to the court after his verdict – unwisely as it turned out, for the judges resented this foreign interference. “It is paying a very bad compliment to the court ... that we should now be told, we don’t know what we are doing,” fumed Lord Chief Justice Braxfield, while another judge commented of Skirving’s English adviser that “if he had been a wise man he would not have meddled in what he did not understand.”¹⁷

These arguments tapped into a larger discussion, not just about the proper relation between English and Scottish law, but also about national character more broadly conceived. “I will not compare the constitution of this country, with that of England, because I am unacquainted with it,” said one judge, Lord Henderland, at Gerrald’s trial: “I am not sufficiently acquainted with

¹³ G. Campbell and H. Paton, “The Eighteenth Century and Later,” in *An Introduction to Scottish Legal History*, ed. Stair Society (Edinburgh: printed for the Stair Society, by R. Cunningham, Alva, 1958), 53.

¹⁴ Lindsay Farmer, *Criminal Law, Tradition and Legal Order: Crime and the Genius of Scots Law* (Cambridge: Cambridge University Press, 1997), 21.

¹⁵ [Maurice Margarot,] *Robertson’s Edition. The Trial of Maurice Margarot, Delegate from London, to the British Convention [...]* (Edinburgh, [1794]), 31.

¹⁶ [Joseph Gerrald,] *The Trial of Joseph Gerrald [...]* *For Sedition. Taken in Short-Hand by Mr. Ramsey*, 2nd ed. (Edinburgh, [1794]), 3.

¹⁷ [William Skirving,] *The Trial of William Skirving, Secretary to the British Convention [...]* (Edinburgh, [1794]), 167, 160.

their manners, their genius, their temper.”¹⁸ Henderland’s statement elides the meanings of “constitution” as political organisation and as physical health or “temper.” His insistence on Scottish political and legal independence is yoked to an assumed difference in “manners”; national character as political body is bound up with national character as social or individual disposition. The philosopher David Hume concluded that national character was determined by “moral” causes, not “physical” ones: in other words, that a country’s social and political life did more to shape its people’s character than climate and landscape. However, Hume observed, political borders often follow geographical landmarks, so that “[t]he same national character commonly follows the authority of government to a precise boundary; and upon crossing a river or passing a mountain, one finds a new set of manners, with a new government.”¹⁹ Hume’s sense of the abrupt change (political, social, interpersonal) which may take place simply on crossing a river is suggestive of how many reformers thought about the River Tweed, after the Scottish sedition trials. One radical commentary saw the convicted defendants as “a willing sacrifice to the *laws* of *that part* of Great Britain which lies *beyond* the TWEED!”²⁰ And Gerrald asked: “Is the Tweed then, which the God of nature has made only to be a geographical separation between the two countries, by the folly and wickedness of man to be perverted into a legal, a moral, a political separation?”²¹ The Scottish sedition trials pressed the question of what it meant to cross the border between England and Scotland, and, for English radicals, whether to cross the Tweed into Scotland was to pass into an environment that was irretrievably “other,” or if that legal and political otherness was merely the “wicked” distortion of a more natural affinity. As Farmer reflects: “The power of law is a territorial question. ... Geographical boundaries are never only natural; they are the point at which nations, and national legal competences, begin and end.”²²

“What is the characteristic of Britons?” Margarot asked one witness at his trial, a British Convention delegate, who replied: “That they are strongly attached to the cause of liberty.”²³ Margarot’s question elides distinctions between English and Scottish. “I wish the name of Englishman to be annihilated in that of Briton,” he said.²⁴ Recent research has stressed the “spirit of cosmopolitanism” that animated Scottish radicalism in the 1790s and, relatedly, the

¹⁸ [Gerrald,] *The Trial of Joseph Gerrald*, 106.

¹⁹ David Hume, “Of National Characters,” in *Essays Moral, Political, and Literary*, ed. Eugene F. Miller, rev. ed. (Indianapolis: Liberty Fund, 1985), 204.

²⁰ Anon., *Authentic Biographical Anecdotes of Joseph Gerrald [...] Written by a Friend, Who Knew Him in the Year 1765* (London, 1795), 19.

²¹ [Gerrald,] *The Defence of Joseph Gerrald*, 43.

²² Farmer, *Criminal Law, Tradition and Legal Order*, 2.

²³ [Margarot,] *Robertson’s Edition. The Trial of Maurice Margarot*, 58.

²⁴ *Ibid.*, 5.

importance of Anglo-Scottish networks in building and sustaining the Scottish reform movement.²⁵ A major aim of the British Convention was to strengthen those links between English and Scottish reformers, as Skirving, Margarot and Gerrald made plain in court. Harris emphasises the “Britishness” of much radical thought and activity in Scotland. “Most Scottish radicals were ... British or even Anglo-British radicals who happened to be Scots,” he observes: these were individuals to whom, in fact, “being British came more naturally ... than to many English radicals,” and who were convinced that union with English allies was the best way to effect political change.²⁶ Many Scottish radicals consciously inherited English traditions of liberty. These enabled them, Gordon Pentland explains, to create

unique syntheses [of national ideology] that can best be described as “Anglo-British” or “British.” There was clearly an element of practicality to this safely constitutional appeal, but its real attraction lay in its flexibility and power. It could incorporate emotive elements of Scottish history, Bruce, Wallace and the martyrs of the seventeenth century, and appeal to the broadest audience possible as an alternative British patriotism.²⁷

This uneven fusion of national ideologies meant the insertion of Scotland into English traditions of liberty. Hence Scotland could stake a claim to, for example, the 1688 revolution, a historical touchstone which “guaranteed” its share in the rights claimed by England.²⁸

The commitment of many Scottish radicals to “Britishness” should not suggest a consensus, however, for the movement contained eclectic, sometimes conflicting understandings of national character. Muir argued that Scotland had its own ancient constitution and indigenous tradition of liberty. The United Irish address which he read aloud at the Edinburgh convention, in December 1792, invited Scotland to assert its independence against England. This was controversial, and the delegates rejected it by a small majority. As Leask comments, Muir’s activities in the reform societies were “tinged by a Scottish and Irish patriotism (and opposition to the Anglo-Scottish Union of 1707) not generally shared by his fellow Scottish radicals.”²⁹ Pentland notes that the idea of a Scottish Witengamot (Anglo-Saxon parliament) had been advanced in Robert Henry’s *History of Great Britain* – the work which, at his trial, Muir admitted to having recommended to fellow-reformers for its respectable constitutionalism. Muir

²⁵ Leask, “Thomas Muir and ‘The Telegraph’,” 49.

²⁶ Harris, *The Scottish People and the French Revolution*, 112-13.

²⁷ Gordon Pentland, “Patriotism, Universalism and the Scottish Conventions, 1792-1794,” *The Journal of the Historical Association* 89, no. 295 (2004), 348-350.

²⁸ *Ibid.*, 349.

²⁹ Leask, “Thomas Muir And ‘The Telegraph’,” 50; Harris, *The Scottish People and the French Revolution*, 95.

was probably attracted to Henry's *History* because it offered a "blended history of constitutional freedoms," proposing that Scotland, like England, had enjoyed democratic, Saxon forms of government.³⁰ Gerrald made a similar suggestion in his trial defence, arguing that "the old constitution of Scotland" had encoded similar principles to those espoused by contemporary reformers.³¹

The sedition trials staged divergent configurations of Scottishness, Englishness and Britishness, all within a politically-charged criminal justice system. They sparked, in James Epstein's words, "a wider debate over the character of the Union and thus the meaning of 'Britishness' itself."³² The judges were worried by the prospect of Anglo-Scottish and Irish-Scottish radical alliances. Government anxiety about the international and interregional networks of reform reached a new pitch when the informer and conspirator Robert Watt, awaiting execution for treason in Edinburgh in 1794, claimed that plots were being hatched between radicals in Edinburgh, London and Dublin (this was disproved at Thomas Hardy's treason trial later that year).³³ Fear of a conspiracy was already visible in the sedition trials, as demonstrated by the attention that the prosecution paid to Muir's reading aloud of the United Irish address, his travels to Paris, the British Convention's so-called "committee of union," and the interest which the prosecution claimed that the Edinburgh conventions had excited in England, Ireland, France, and "the whole empire at large."³⁴

Appraisals of the Scottish sedition trials have, from the 1790s to the present, been dominated by debate over whether or not they were conducted fairly. Harris remarks that "controversy continues, without any sign of resolution, on the issue of whether the legal system was abused to crush the radicals."³⁵ Part of the difficulty is that Scottish legal history has received only patchy scholarly attention, although recent studies by Atle Wold and Lindsay Farmer on the nature of sedition as a crime under Scottish law have substantially improved our understanding of what was going on in the High Court of Justiciary in 1793-94.³⁶ To this day, one of the most

³⁰ Gordon Pentland, "Thomas Muir and the Constitution," in *Thomas Muir of Huntershill: Essays for the Twenty First Century*, ed. Gerard Carruthers and Don Martin (Edinburgh: humming earth, 2016), 195-96.

³¹ [Gerrald,] *The Defence of Joseph Gerrald*, 45.

³² James Epstein, "'Our Real Constitution': Trial Defence and Radical Memory in the Age of Revolution," in *Re-Reading the Constitution: New Narratives in the Political History of England's Long Nineteenth Century*, ed. James Vernon (New York: Cambridge University Press, 1996), 43.

³³ Barrell, *Imagining the King's Death*, 260.

³⁴ [Skirving,] *The Trial of William Skirving*, 99.

³⁵ Harris, *The Scottish People and the French Revolution*, 117.

³⁶ See Lindsay Farmer, "'Subverting the Settled Order of Things': The Crime of Sedition in Scotland, 1793-1849," in *Political Trials in an Age of Revolutions: Britain and the North Atlantic, 1793-1848*, ed. Michael T. Davis, Emma Macleod, and Gordon Pentland (Basingstoke: Palgrave Macmillan, 2019), 19-46; Atle L. Wold, "Was There a Law of Sedition in Scotland? Baron David Hume's Analysis of the Scottish Sedition Trials of 1794," in *Liberty, Property and Popular Politics: England and Scotland*,

comprehensive accounts of Scottish criminal law is Baron David Hume's *Commentaries on the Law of Scotland, Respecting Crimes*, which was published in full in 1819, but developed out of lectures which Hume (nephew of the philosopher) delivered in the 1790s. In the opening pages, Hume defended Scottish law against accusations that it was inferior to English practice, describing his wish to

rescu[e] the law of my country from that state of declension in the esteem of some part of the public, into which, of late years, it seems to have been falling; owing, I am persuaded, to this more than any other cause, that they are ignorant of what it really is. This disposition, in particular, appears in those multiplied references to the Criminal Law of England, and those frequent and extravagant encomiums on the English practice, in contrast to our own; which, in any point where the two differ, is calumniated as rude and barbarous, nay is sometimes even spoken of as grievous and oppressive.³⁷

Hume appears to allude to the backlash against Scottish law after the 1793-94 sedition trials. His *Commentaries* offers a comprehensive interpretation of the crime of sedition, albeit one heavily inflected by his Toryism. Wold explains that Hume used the 1793-94 judgments to justify the judges' decisions retrospectively: Hume "seemed to think that the trials had clarified the situation."³⁸ The account of the law of sedition in the *Commentaries* is therefore considerably more coherent than the court had managed to give at the time.

"Sedition. – Is there a term so vague and so undefined," Muir complained at his trial.³⁹ The problem was that before 1793, there had never been any trials for "sedition" as such. After the 1707 Act of Union, the crime of treason – the most serious political offence – was initially handled separately in Scotland and England, in line with Scotland's independent legal status. In 1709, however, Scottish treason law was brought in line with English, to ensure a countrywide approach to Jacobitism.⁴⁰ This reduced the scope of treason in Scotland, which had hitherto been very wide, and statutory offences which had been treasonous in Scotland ("the peculiar

1688-1815. *Essays in Honour of H.T. Dickinson*, ed. Gordon Pentland and Michael T. Davis (Edinburgh: Edinburgh University Press, 2016), 140-50.

³⁷ David Hume, *Commentaries on the Law of Scotland, Respecting Crimes*. By David Hume, Esq. Advocate, Professor of the Law of Scotland in the University of Edinburgh, 2nd ed. (Edinburgh, 1819), 1:4.

³⁸ Wold, "Was There a Law of Sedition in Scotland?," 146.

³⁹ [Muir,] *The Trial of Thomas Muir*, 61.

⁴⁰ J. Irvine Smith and Ian MacDonald, "Criminal Law," in *An Introduction to Scottish Legal History*, ed. Stair Society, 284.

treasons of the law of Scotland”) were now downgraded into common-law sedition offences.⁴¹ However, as a common-law offence, sedition remained untested after the Union. What, then, did it mean to talk of “sedition”? Wold explains that Scottish criminal law was organised into three main parts. Statute law was the highest authority and first resort for deciding a question of law. If there was no applicable statute, lawyers referred to case law, or precedent, which made up the bulk of Scottish criminal law. If there was no precedent, the third resort was to consult authoritative treatises known as “institutional” writings, thought of as a subset of the common law.⁴² The prosecutors in the sedition trials of 1793-94 had neither statute nor case law to guide them, so were forced to rely on these institutional works. Wold has given us an impressively clear-sighted analysis of the law of sedition, as it was understood and contested in the 1790s, and later interpreted by Hume. I will not restate Wold’s account here, but he stresses the law’s openness to competing interpretations, and its status as “uncharted territory” in Scotland’s High Court of Justiciary in 1793-94.⁴³

At the heart of these contested definitions of sedition, and likewise of accusations that the Scottish law was tyrannical, was the flexibility of the Scottish criminal system. Scotland had resisted accumulating much statute law, which lawyers tended to consider a repressive, alien imposition. The Scottish system, with its preference for “loose definitions and procedures,” was thought supple enough to manage its own affairs humanely, according to local needs.⁴⁴ In fact, judicial flexibility promised to protect Scottish criminal practice from the complex codification and “harshness and confusion” of the English system, with Hume praising it as the cause of the low execution and transportation rate in Scotland.⁴⁵ Crucially, however, Scottish criminal law was “both highly flexible and highly rigid,” with a “massive repressive capacity” that could be set in motion at times of political pressure.⁴⁶ Flexibility translated into stringent as well as humane punishments, as Farmer describes: “The criminal law was lenient in comparison to England, but only when it could afford to be. When the political order felt threatened, the reaction would be harsh and repressive.”⁴⁷ In the *Commentaries*, Hume represented the stringency of Scottish law against political offenders as a native strength:

⁴¹ Farmer, *Criminal Law, Tradition and Legal Order*, 105; Hume, *Commentaries on the Law of Scotland*, 1:546.

⁴² Wold, “Was There a Law of Sedition in Scotland?,” 141-42.

⁴³ Lord Henry Cockburn, *Examination of the Trials for Sedition Which Have Hitherto Occurred in Scotland* (Edinburgh, 1888), 1:1; Atle L. Wold, *Scotland and the French Revolutionary War, 1792-1802* (Edinburgh: Edinburgh University Press, 2015), 38.

⁴⁴ Farmer, *Criminal Law, Tradition and Legal Order*, 26.

⁴⁵ *Ibid.*, 38; Hume, *Commentaries on the Law of Scotland*, 1:12.

⁴⁶ Farmer, *Criminal Law, Tradition and Legal Order*, 108, 44.

⁴⁷ *Ibid.*, 103.

That our law is more rigorous than that of England in regard to certain articles, where, unhappily, there has of late been so much occasion to compare the two; – this I feel no inclination to dispute. Our ancient statutes animadverted with severity on those offences, which the factious and unruly temper of the inhabitants of this country made it indispensable to repress.⁴⁸

Seditious and treasonous offences had always suffered the full weight of Scottish law, Hume implies. His efforts to defend Scottish law from accusations of punitive illiberalism, and from unflattering comparisons with England, need to be seen in the context of the damage that the reputation of Scottish practice suffered after 1793-94. Certainly, the judges in those sedition trials made full use of their judicial discretion in both the trial procedures and sentencing.

Character in Scotland’s High Court of Justiciary

It seems likely that the Scottish and English approaches to character evidence corresponded quite closely. The Whig jurist Lord Henry Cockburn, who looked back at a distance of years on the sedition trials in his *Examination of the Trials for Sedition Which Have Hitherto Occurred in Scotland*, addressed the role that character had played in 1793-94, and significantly, did not hesitate to cite English judicial precedent when arguing that the good character of the prisoners ought to have been a mitigating factor in their sentencing. Whereas Braxfield had sentenced Gerrald more harshly precisely because of his good character (more on that shortly), Cockburn praised Chief Justice Eyre for having instructed John Horne Tooke’s jury “to give full weight ... to his general character, and to the prevailing peaceableness of the prisoner’s political principles.”⁴⁹ It seems reasonable to suppose that there was no strongly distinct Scottish practice for handling character evidence. Cockburn’s analysis of the trials demonstrates the strength of the link between political crime and character judgments. He considered, for instance, that Muir’s “general character” was “excellent, both as a citizen, and in all the relations of private life, all which, however, may certainly concur in a seditious man.”⁵⁰ He argues for a special function for character evidence in political prosecutions, where “the wickedness or the goodness of the accused does not merely aggravate or alleviate the offence, but forms a part, and a principal part, of its legal essence.”⁵¹ But while character is part of the “legal essence” of a political offence, Cockburn places greatest stress on the mitigating role that good character

⁴⁸ Hume, *Commentaries on the Law of Scotland*, 1:10.

⁴⁹ Cockburn, *Examination of the Trials for Sedition*, 2:100.

⁵⁰ *Ibid.*, 1:144.

⁵¹ *Ibid.*, 2:95.

ought to play at sentencing. At sentencing, he says, “character is a fact of the greatest importance”:

[I]f the guilt be political purely, and therefore, from its not being stained by contemplated accession to ordinary crime, may be incurred by an otherwise good man, it would be not merely ungenerous, but unjust, to discard every protestation merely because it proceeded from one against whom a verdict had passed. The political scaffold, and many of its finest historical scenes, would testify against such a conclusion.⁵²

Cockburn’s sense of the superiority of “political” over “ordinary” crime is thrown into relief by the sentence of transportation delivered at these trials. He writes of Palmer: “[w]hen we consider what he was – the habits of his life, his intellectual attainments, respectable friends, and high character – and follow out a single day of the hulk, with its convict dress and its irons ... the heart sickens.” Cockburn notes Palmer’s good character in its senses of both rank and integrity, and also registers the sensibility of his response to Palmer’s fate: “the heart sickens.”⁵³

The idea that character is at once social and personal has its foundations in Scottish Enlightenment philosophy. As Thomas Ahnert and Susan Manning explain, discussions of character in this period owed much to the “Scottish science of man,” explored and articulated by Hume, Adam Smith and others in the earlier century, and which understood individual character to be revealed principally through a person’s interactions with others.⁵⁴ As well as that philosophical background, the Scottish sedition trials illustrate with special clarity the unevenness of the shift that was taking place within criminal proceedings, from an attention to character as status, to an appraisal of a defendant’s interior psychology, “via an interim reliance on external markers of reputation,” as Nicola Lacey explains.⁵⁵ One of the most striking examples of the older, status-oriented view of character in the trials was the way in which the Englishness of three of the defendants (Palmer, Margarot and Gerrald) was held against them by the bench. Palmer, as a dissenting English clergyman, was felt to have been an insidious presence in his Dundee community: his Unitarianism, political reformism, and Englishness were yoked together as aspects of the same alien interference. One judge remarked, “All nations are liable to have bad men among them; but I own, we are little obliged to strangers, who,

⁵² Ibid., 1:218-19.

⁵³ Ibid., 1:219-20.

⁵⁴ Thomas Ahnert and Susan Manning, “Introduction: Character, Self, and Sociability in the Scottish Enlightenment,” in *Character, Self, and Sociability in the Scottish Enlightenment*, ed. Ahnert and Manning (Basingstoke: Palgrave Macmillan, 2011), 6.

⁵⁵ Nicola Lacey, *Women, Crime, and Character: From Moll Flanders to Tess of the D’Urbervilles* (Oxford: Oxford University Press, 2008), 40.

coming here under the pretence of preaching what they call the gospel, should preach sedition among the people.”⁵⁶ Of Margarot, too, it was concluded that “the circumstance of this Pannel being a stranger to this country ... [is] an aggravation of his crime” (“pannel” meaning the accused person).⁵⁷ After all, the judges pointed out, neither Margarot nor Gerrald had any “relation[s]” or “property” in Scotland: instead, as Braxfield said of Gerrald, “he comes here to disturb the peace of the country, as a delegate from a society in England to raise sedition in this country.”⁵⁸ These remarks recall the traditional judicial resentment of English influence in Scottish legal affairs. But the judges’ preoccupation with the status of Palmer, Margarot and Gerrald as “strangers” is also suggestive of the traditional reliance in criminal practice upon a defendant’s place within the local community, in deciding their criminality. In seventeenth- and early eighteenth-century courts, a defendant’s local reputation was important to the appraisal of their character, meaning that strangers to an area inevitably found themselves at a disadvantage in court. Long after jurors were expected to have personal knowledge of the defendant, courts could view prisoners from further afield unfavourably, if they were unable to call character witnesses to testify to their standing.⁵⁹ In Margarot’s case, his French-sounding name and appearance (“a little, dark creature” according to Cockburn, “something like one’s idea of a puny Frenchman”) probably told against him.⁶⁰ Dundas hinted at Margarot’s possible foreignness, remarking that “the Pannel either is or professes himself to be, an Englishman” – an insinuation Margarot rejected.⁶¹

The “external markers” of good character, to borrow Lacey’s phrase, played an important role in the trials: character was inscribed in the defendants’ social relationships and public capacities. Muir and Gerrald mobilised markers of social respectability in their defences, making classical and learned allusions which were characteristic of educated gentlemen. The court heard that Muir was a lawyer, Margarot a merchant, Palmer a clergyman – or as the prosecutor remarked, with a swipe at Palmer’s Unitarianism, “he bears the character of a clergyman, but whose religious tenets are as hostile to the established doctrines of the country, as his political ones are to the established government of the country.”⁶² The phrase “bears the character of a clergyman” suggests, on one level, simply that Palmer is a clergyman, but it also hints at an accusation of pretence, of an assumed appearance by Palmer of good character under

⁵⁶ [Skirving,] *The Trial of William Skirving*, 61.

⁵⁷ [Margarot,] *Robertson’s Edition. The Trial of Maurice Margarot*, 194.

⁵⁸ [Gerrald,] *The Trial of Joseph Gerrald*, 241.

⁵⁹ J. M. Beattie, *Crime and the Courts in England, 1660-1800* (Oxford: Clarendon Press, 1986), 439-49.

⁶⁰ Cockburn, *Examination of the Trials for Sedition*, 2:25.

⁶¹ [Margarot,] *Robertson’s Edition. The Trial of Maurice Margarot*, 100.

⁶² [Thomas Fyshe Palmer,] *The Trial of the Rev. Thomas Fyshe Palmer, Before the Circuit Court of Justiciary, Held at Perth [...] With an Appendix* (Edinburgh, 1793), 111.

cover of social respectability. Often, the court understood good or criminal character to be inscribed on the body and face, and, hence, to be externally verifiable. “[S]ee if there is any thing seditious in my appearance or behaviour,” Margarot instructed his jury.⁶³ The published trials offer occasional glimpses into how character was read into facial expressions and body language. Watching his jurors, Margarot decided that “if your countenance deceive me not, ... you all, or the greatest part of you, wish for reform.”⁶⁴ At Muir’s trial, the prosecution cast into doubt the evidence of one of the witnesses, because “from his face he plainly prevaricated; and, when closely questioned, the sweat broke upon it.”⁶⁵ In his defence statement, Muir translated his own physiological reactions to proceedings, as if to pre-empt misinterpretation: listening to Dundas’ speech, he says, “I smiled at the indecency of his exultation; but next moment I blushed when I reflected he was a lawyer, and chief Counsel in Scotland for the crown.”⁶⁶ Muir decodes his “smile” and “blush” to the jury, anticipating hostile readings and defending his face as a transparent register of the innocent mind within. Yet if Muir believed that good character could be externally verified on the face, other visual signals sent a more suspect political message. Gerrald stood trial with his hair worn long and unpowdered in the French style: symbols of costume which marked on his body “his allegiance to the egalitarianism encoded in the revolution.”⁶⁷ Character, whether good, criminal, loyalist or revolutionary, was recognised to be physically encoded.

The defendants were eager to differentiate themselves from ordinary, non-political offenders. Gerrald reminded his jury that, if convicted, he would be almost certainly exiled “in company with thieves, felons, and murderers, to toil and perish on the bleak and inhospitable shores of New Holland.”⁶⁸ His counsel alluded to the social superiority of political crime by raising the prospect of a “man of high talents, of a cultivated understanding, ... condemned to the communion of thieves and villains, the refuse and dregs of the human race!”⁶⁹ Conversely, the prosecutors and bench likened sedition to other crimes. One judge remarked of Gerrald, “it is said, that he is to be sent among pickpockets, thieves and robbers; but ... this crime [sedition] is not to be compared with theirs, it comprehends every sort of crime, murder, robbery, rape, every thing that is criminal.”⁷⁰ Dundas likened Muir to a thief or murderer: he “is tainted from head to foot, and is as unworthy to live under the protection of the meanest felon.” Dundas also

⁶³ [Margarot,] *Robertson’s Edition. The Trial of Maurice Margarot*, 178.

⁶⁴ *Ibid.*, 152.

⁶⁵ [Muir,] *The Trial of Thomas Muir*, 53.

⁶⁶ *Ibid.*, 88.

⁶⁷ Epstein, “‘Our Real Constitution’,” 41.

⁶⁸ [Gerrald,] *The Defence of Joseph Gerrald*, 43.

⁶⁹ [Gerrald,] *The Trial of Joseph Gerrald*, 58.

⁷⁰ *Ibid.*, 249.

deployed quasi-supernatural caricatures of the seditious character: Muir was “the demon of sedition,” an “oracle of mischief,” and in the back of his father’s shop, “in that cathedral of sedition, he sat like a fat spider, weaving his filthy web to catch the unwary.”⁷¹ This overwrought diagnosis of criminal and seditious character is suggestive of the criminalisation of status that we saw developing around an idea of Paineite character in the previous chapter. As Dundas told Muir’s jury, “You may in some degree judge of a man, by the company he keeps.”⁷² He cited the fact that a letter to Palmer had been found among Muir’s papers as evidence of the latter’s criminal associates – despite the fact that Palmer had not yet been tried, as an outraged Muir pointed out.⁷³ Cockburn looked back with disapproval on the group criminalisation in the trials, which he considered irrelevant to the question of good character, since Muir’s “witnesses seem to have been ... in respectable situations; and the prosecutor had nothing to say against them, except that they were all reformers.”⁷⁴

For their part, the defendants understood their prosecutions to be less about themselves as individuals than the rights of the people. “I conceive myself as vindicating the rights of Britons at large,” Gerrald declared.⁷⁵ Margarot agreed that “it is not merely a criminal at the bar that you see in me; it is not the crimes of an individual, it is not the rights of one single person that are attacked; – no, it is at present your own rights which are attacked, it is the rights of your country.”⁷⁶ Claiming to speak on behalf of the country was rhetorically compelling, but for Skirving, the question of how far he was indicted individually, and how far as the representative of the British Convention in his capacity as its secretary, was worryingly unclear. “I am not accountable for the acts of the convention, I am summoned before your lordships as an individual,” Skirving complained:

If the Prosecutor had charged me, as the secretary to the British Convention, and therefore answerable in law, for their proceedings, I should have met him boldly in that capacity, and challenged him to criminate any part of their conduct; I should have been prepared to answer every thing his ingenuity could have suggested against those deserving Patriots ... But to try me, an individual, upon parts and

⁷¹ [Muir,] *The Trial of Thomas Muir*, 52-54.

⁷² Nicola Lacey, “The Resurgence of Character: Responsibility in the Context of Criminalization,” in *Philosophical Foundations of Criminal Law*, ed. R. A. Duff and Stuart Green (Oxford: Oxford University Press, 2011), 156; [Muir,] *The Trial of Thomas Muir*, 56.

⁷³ [Muir,] *The Trial of Thomas Muir*, 97.

⁷⁴ Cockburn, *Examination of the Trials for Sedition*, 1:167.

⁷⁵ [Gerrald,] *The Defence of Joseph Gerrald*, 27.

⁷⁶ [Margarot,] *Robertson’s Edition. The Trial of Maurice Margarot*, 126.

portions of proceedings, of a seditious number of people, ... is certainly the most extraordinary and unprecedented attack.⁷⁷

Skirving objects to the confusion of his character as secretary with his character as an individual, and suggests that anything in his indictment applying to the British Convention as a body should be removed. The bench rejected that distinction, arguing, "I don't understand that the Convention is a body corporate, but a Convention of individuals."⁷⁸ (According to Hume, a recognised "body corporate" would be represented in court by a specially-appointed factor or attorney.)⁷⁹ Braxfield argued in his summing up, "how is it possible to find this man innocent, the whole being guilty art and part [i.e. all are jointly guilty], and he being secretary, is the most active man, if one man can be more guilty than another, it is that man now standing at your bar."⁸⁰ Skirving is guilty, Braxfield says, because his character as secretary stands in for the seditious whole. Skirving the individual functions as a kind of synecdoche for the British Convention.

Guilt, innocence and political allegiance could be identified in the courtroom via external markers and signals, evidence of an older approach to criminal practice that was gradually losing sway. As we saw in the Introduction, in the earlier eighteenth century the most literal physical marker of criminal character had been branding. Although more or less obsolete by the 1790s, Muir used the image of branding several times, cautioning his jury not to brand him with a seditious character: "Beware how you condemn me. Beware how you brand me with the opprobrium of being seditious."⁸¹ The image conjures up the permanence of the reputational damage that would follow a guilty verdict, but crucially, Muir's anxiety is about figurative, not literal, branding. Although the language of the trials cast back to older forms of punishment and justice, therefore, it also looked ahead to a more interiorised model of character. By warning the jury against a figurative brand, Muir defends the pure, unmarked integrity of his character, differentiating himself from the common branded felon. Citing Dundas, Muir wants not to be branded with "with the epithets of, a 'wretch,' of an 'oracle of discord,' of 'a fiend of sedition'."⁸² The branding that is at stake is reputational, an invisible marker of social shame that is more about moral condemnation than physical pain or humiliation.

⁷⁷ [Skirving,] *The Trial of William Skirving*, 31-32, 128-29.

⁷⁸ *Ibid.*, 55.

⁷⁹ Hume, *Commentaries on the Law of Scotland*, 2:260.

⁸⁰ [Skirving,] *The Trial of William Skirving*, 154.

⁸¹ [Muir,] *The Trial of Thomas Muir*, 65.

⁸² *Ibid.*, 98

Muir opened his defence with the triumphant announcement that “my *moral character* stands secure and unimpeached,” despite “[a]ll that malice could devise; all that slander could circulate.”⁸³ Character depends upon on the internal wholeness of the unbranded conscience, rather than the external purity of the unbranded body. That Muir made this claim not in the absence, but in spite, of likely reputational damage suggests his commitment to an autonomous interior life, as well as his disentangling of good character from the impact of either legal verdict or social reputation. Despite the trials’ attention to the external markers of guilt and innocence, registered in social performances and upon individual bodies, they also demonstrated a newer attention to “the particular capacities and dispositions” of witnesses and defendants, which Lacey observes were increasingly important to criminal procedure by the end of the century.⁸⁴ The defendants in the Scottish sedition trials insisted urgently upon their personal integrity. The language of the heart makes some significant appearances; Skirving’s “heart tells me I am ... [the country’s] disinterested well-wisher,” while Margarot presents himself for trial “with a conscious heart that I am totally innocent.”⁸⁵ Gerrald appealed to his jury: “If ... you give me credit, which, I am sure, as honest men you cannot withhold from me, for my veracity and openness in one instance, you have no right to mistrust me in another.”⁸⁶ Gerrald’s stress on “credit” looks back, in one respect, to the social “credit” that largely determined the fate of defendants earlier in the century, as we saw in the Introduction; but it also gestures toward an interior morality, detached from the traditional markers of respectability and perhaps closer to what Lacey calls “credibility.”⁸⁷ As Gerrald’s counsel argued, this was “a man whose office is inferior, whose abilities are equal, and his integrity, I am bold to say, superior to Bolin[g]broke’s.”⁸⁸ Gerrald’s “office” (his public capacity or character; he was a lawyer) is less important than his “abilities” (as a man of letters and an effective public speaker), which are, in turn, less important than Gerrald’s “integrity” (more elusively, his moral principles and interior conviction). The description moves progressively inward, away from external markers of value, and towards an invisible notion of good character grounded solely in moral worth.

The trial defences offered an opportunity for the defendants to set their own clear consciences on the record, in a solemn public forum. This was especially important for Muir, Skirving and Palmer, all of whom understood the trials as spiritual crises. Muir was heavily involved in local kirk politics, having even represented the popular party of the kirk – the “theologically

⁸³ *Ibid.*, 57.

⁸⁴ Lacey, *Women, Crime, and Character*, 37.

⁸⁵ [Skirving,] *The Trial of William Skirving*, 51; [Margarot,] *Robertson’s Edition. The Trial of Maurice Margarot*, 31.

⁸⁶ [Gerrald,] *The Defence of Joseph Gerrald*, 36.

⁸⁷ Lacey, *Women, Crime, and Character*, 40.

⁸⁸ [Gerrald,] *The Trial of Joseph Gerrald*, 100.

conservative” wing, the so-called “auld lights” – in a legal dispute in 1786.⁸⁹ Meanwhile, Pentland has shown that Skirving was invested in “a narrative of Scottish Presbyterian liberty,” which, taking Stuart despotism as a central frame of reference, explicitly linked the contemporary cause for political reform with that of the seventeenth-century covenants. Skirving promoted that position at the British Convention, with mixed success; the spy J. B. reported that “Mr Skirving is a well meaning man, but he interests all of his productions too much with Scripture.”⁹⁰ At their trials, both Skirving and Muir deployed a language of religious enthusiasm (touched upon in Chapter 1) that must have alarmed their prosecutors. “I may have acted from enthusiasm; but it was enthusiasm in the cause of man,” Muir announced.⁹¹ Skirving, in a startling rejection of worldly authority, declared that the court’s “sentence can only affect me as the sentence of man. – It is long since I laid aside the fear of man as my rule, – I shall never walk by it.”⁹² There were echoes of similar themes later that year at the treason trial of Thomas Hardy (another Presbyterian Scot), when Jon Mee notes that the prosecution “made a great deal of the ‘enthusiasm’ of his belief that the rights of man would herald universal peace. At one point, Hardy is even linked with the millenarian ‘Fifth Monarchy Men’ of the previous century.” Mee points out that many of Hardy’s character witnesses were also Scottish Presbyterians, a fact which probably played to his disadvantage and reinforced the court in its “negative view of ... the ‘auld licht’.”⁹³ In effect, this was another character judgment and criminalisation of status.

Muir and Skirving couched their addresses to the jury in millenarian language, which emphasised jurors’ accountability before God and made “the bar like a pulpit.”⁹⁴ Muir exhorted his jury to examine their own consciences before God:

Gentlemen, the time will come, when men must stand or fall by their actions; when all human pageantry will cease, and when the hearts of all will be laid open. If you regard your most important interests – if you wish that your conscience should

⁸⁹ Gerard Carruthers, “Thomas Muir and Kirk Politics,” in Carruthers and Martin, *Thomas Muir of Huntershill*, 142.

⁹⁰ Pentland, “Patriotism, Universalism and the Scottish Conventions,” 354-55.

⁹¹ [Muir,] *The Trial of Thomas Muir*, 58.

⁹² [Skirving,] *The Trial of William Skirving*, 168.

⁹³ Jon Mee, *Print, Publicity and Popular Radicalism in the 1790s: The Laurel of Liberty* (Cambridge: Cambridge University Press, 2016), 65.

⁹⁴ Josh Dight, “‘O Jerusalem, Jerusalem! Thou That Stonest the Prophets, and Slayest Them That Are Sent Unto Thee’: Spatial Meaning and the Scottish Martyr Trials 1793-1794” (Masters dissertation, University of York, 2015), 38.

whisper to you words of consolation; or speak to you in the terrible language of remorse – Weigh well the verdict you are to pronounce.⁹⁵

Skirving made a still more apocalyptic allusion, for he saw in the unification of Scottish and English reformers a “token of the approach of those halcyon days”. This “uniting principle,” Skirving told the bench,

was the signal and the mean[s] of our fathers [sic] deliverance from popish domination. Its effects are now more wonderful; and ... promises a still more glorious deliverance: a deliverance not from one tyranny to embrace another, but a deliverance from the principle of tyranny itself ... You would do well therefore not to be found counteracting the work of Christ in the earth. It may be the day of his coming.⁹⁶

Muir and Skirving understood their trials, and their own historical moment, to be playing out within a spiritual drama. The imagery of sacrifice, spiritual witness and persecution already suffused the trials, laying the groundwork for the defendants’ popular reception as “martyrs” after their convictions.

Palmer was the only defendant to hand his case entirely over to his lawyers. His defence counsel handled his religious character so clumsily that it is worth quoting at length. John Clerk, defending, asked the jury to

attend to the character of Mr. Palmer. ... Mr. Palmer is a person of ideas so original upon most subjects, and particularly upon one subject that is very important to us all, our religion; he is of so peculiar a way of thinking, that though, upon this occasion, he had gone to a greater degree of extravagance than would be justified in another man, I do say, that an extravagance reigns in his mind upon some subjects ... Mr. Palmer is a man of a peculiar mind and disposition ... it is impossible to consider Mr. Palmer as a rational man, with common ideas in his head ... It is no wonder that Mr. Palmer should be guilty of a piece of extravagance upon one subject, when it is proved, by the writing I have in my hand, that he has been guilty of the most immeasurable extravagance upon another subject.⁹⁷

Clerk paints Palmer as a religious eccentric with a character entirely out of the ordinary: his “mind and disposition” are “original,” “peculiar,” not “rational,” not “common.” More

⁹⁵ [Muir,] *The Trial of Thomas Muir*, 101.

⁹⁶ [Skirving,] *The Trial of William Skirving*, 44.

⁹⁷ [Palmer,] *The Trial of the Rev. Thomas Fyshe Palmer*, 150.

damagingly, Clerk considers “extravagance” (a word with overtones of enthusiasm) to be Palmer’s defining characteristic: he uses the word four times in this passage. Little wonder that Palmer regretted his decision not to defend himself, telling Muir, as we saw in the Introduction, that “[t]hey are all traitors.”⁹⁸

Muir closed his defence speech with the observation that “I have explored the tenor of my past life. Nothing shall tear from me the record of my departed days. . . . Nothing can destroy my inward peace of mind, arising from the remembrance of having discharged my duty.” This statement of integrity is simultaneously very public and very intimate – on the one hand, protecting the speaker’s testimony as uniquely personal and productive of “inward peace,” in the manner of Protestant self-scrutiny, and on the other, offering a “record” for the perusal of the court and public. Muir invites his listeners to explore and test him as a character of interior complexity and moral depth, even as he asserts his own spiritual self-sufficiency, which “[n]othing” can undermine. “I am careless and indifferent to my fate,” he says: “I can look danger – and I can look death in the face, for I am shielded by the consciousness of my own rectitude.”⁹⁹ Personal “conscience” is central: it “will whisper consolation to me under my condemnation.”¹⁰⁰ Tested before God and the public, Muir celebrates the record of the heart, and even the record of the court, as a chronicle of his moral character. The secrets of the faithful heart are accessible to God, and by extension to the discerning, sympathetic reader, even if spurned by the world. God and posterity will pass their verdicts afresh. “When our ashes shall be scattered by the winds of heaven, the impartial voice of future times will re-judge your verdict,” Muir assured his jury.¹⁰¹

Writing about Hardy’s trial, Mee notes that the defendant’s “religious beliefs do not mitigate his crime” in the eyes of the court, but instead “identify him as a historical type.”¹⁰² The millenarian themes which emerged in the Scottish sedition trials made the defendants seem more guilty to the bench, precisely because of the religious principles they attributed to themselves. Skirving thought that his purity of intention marked him as a servant of God, and absolved him of any unfortunate consequences or “tendency”:

[I]t will be admitted, by a Christian court at any rate, that one must obey God, rather than man. And consequently it must necessarily follow that, as a person, so

⁹⁸ Thomas Fyshe Palmer to Thomas Muir, 16 September 1793, JC26/1793/1/6/3, National Archives of Scotland, Edinburgh.

⁹⁹ [Muir,] *The Trial of Thomas Muir*, 100-01.

¹⁰⁰ *Ibid.*, 66.

¹⁰¹ *Ibid.*, 57.

¹⁰² Jon Mee, *Romanticism, Enthusiasm, and Regulation: Poetics and the Policing of Culture in the Romantic Period* (Oxford: Oxford University Press, 2003), 101.

situated, could not be indicted for any criminal intention, whatever tendency the things which he did conscientiously, might have to alienate the affections of the people from their rulers, no crime could, in justice, be fixed on him.¹⁰³

Skirving's view that "conscientious" action in obedience to God is above the authority of "man" would have seemed to the judges a dangerous manifestation of enthusiasm, insofar as he was effectively claiming that he could "see the truth transparently and spontaneously without mediation."¹⁰⁴ The defendants were unanimous that the purity of their intentions made them innocent: "It is the intention alone that can constitute guilt," wrote Palmer, in his undelivered defence speech.¹⁰⁵ (Only at one trial was it claimed that intention was irrelevant, when Malcolm Laing, representing Gerrald, argued for an attention to "tendency" instead, which as the Introduction showed, would have been the requirement in England. The argument was not pursued more widely.)¹⁰⁶ Their focus on intention made the defendants vulnerable to representation as zealots. Lord Swinton remarked at Margarot's trial that "most other crimes are committed from the sudden impulse of passion, or heat; but this crime is committed with a premeditated, felonious intention."¹⁰⁷ The Whig advocate Henry Erskine had recognised that if Gerrald defended himself (which he did, with limited help from counsel), "he would avow principles and views which would supply the counsel for the crown with the only thing they wanted to make out their case, THE CRIMINAL INTENTION."¹⁰⁸ Erskine rightly saw that a moralistic commitment to reform would be at the heart of the perceived criminal intention. Muir had refused Erskine's assistance, precisely because he was unwilling to give up the management of his defence.¹⁰⁹ As we saw in Chapter 1, Erskine's brother Thomas went on to defend John Thelwall successfully for treason later in 1794, upon the same condition that he be allowed to manage the whole defence himself.

For the judges, the defendants' good character was an aggravation of their crimes. Braxfield explained, regarding Gerrald:

[S]upposing that he has acted from principle, and that his motives are pure, I do say that he becomes a more dangerous member of society than if his conduct was really criminal, and acting from criminal motives. A man acting from criminal

¹⁰³ [Skirving,] *The Trial of William Skirving*, 52

¹⁰⁴ Mee, *Romanticism, Enthusiasm, and Regulation*, 8.

¹⁰⁵ [Palmer,] *The Trial of the Rev. Thomas Fyshe Palmer*, 181.

¹⁰⁶ [Gerrald,] *The Trial of Joseph Gerrald*, 81.

¹⁰⁷ [Margarot,] *Robertson's Edition. The Trial of Maurice Margarot*, 192.

¹⁰⁸ Quoted in Davis, "Prosecution and Radical Discourse," 154.

¹⁰⁹ Cockburn, *Examination of the Trials for Seditious*, 1:149.

motives is not so dangerous as a man who thinks he is acting from principle; for when a man is so misguided in his principles he overturns society and government itself.¹¹⁰

In Muir's trial, Dundas similarly argued: "Who could believe that a man of a liberal education, an Advocate at this bar, could be found among villagers, and manufacturers, poor and ignorant, for the purpose of sowing sedition and discontent?"¹¹¹ Muir's professional – indeed, legal – education, and his recognisable status as a gentleman, worked against him rather than in his favour, because sedition was a crime of public disorder. This had ramifications for an older, status-oriented view of character, since the judges viewed Muir and the others' activities as an abuse of their higher social rank. The reformers had exploited "the poor and ignorant, the deluded and infatuated."¹¹² Palmer's "situation and character" as a clergyman was a particular "aggravation of the crime," the bench argued, since his involvement with the Dundee reformers was socially pernicious as well as degrading to his own character:

[I]t affords matter of much melancholy reflection to see a man of his station – of his appearance – of his knowledge – of his carriage, associating himself, making himself a member of the Society of the Friends of Liberty, as they call themselves in the town of Dundee, a club of such men, as we saw yesterday were the president and secretary ... [I]s it to be wondered that the minds of the lower order of men, such as we saw yesterday, should be inflamed, when we see persons of Mr. Palmer's situation, and possessed of his talents, descending to such arts?"¹¹³

Popular support for reform is dismissed as the machinations of ringleaders, who have taken advantage of a "poor unfortunate set of creatures," "boys," and even "persons intoxicated."¹¹⁴ The rhetoric is overblown, but Harris points out that "paternalism" did play a significant role in the success of radical societies in different areas of Scotland, so the concerns of the prosecutors and judges may not have been wholly unfounded.¹¹⁵

Palmer's trial was more lawyerised than the others, and his counsel made a number of technical interventions. Early in proceedings one of his lawyers, John Haggart, complained that because the indictment spelt Palmer's incorrectly, it did not apply to him: "the Pannel at the Bar is

¹¹⁰ [Gerrald,] *The Trial of Joseph Gerrald*, 252-53.

¹¹¹ [Muir,] *The Trial of Thomas Muir*, 52.

¹¹² [Skirving,] *The Trial of William Skirving*, 113.

¹¹³ [Palmer,] *The Trial of the Rev. Thomas Fyshe Palmer*, 157-58.

¹¹⁴ [Margarot,] *Robertson's Edition. The Trial of Maurice Margarot*, 106.

¹¹⁵ Harris, *The Scottish People and the French Revolution*, 82.

Thomas Fyshe Palmer, but the indictment,” which spelt it “Fische,” cannot “apply to that gentleman.”¹¹⁶ Thus, Haggart argued, “instead of my client being the author of that Hand Bill, he does not bear that character.”¹¹⁷ The “character” to which Haggart refers is ambiguous, (perhaps deliberately) invoking the meanings of “character” as individual letter or printed word, and “character” as unique identity. The judges rejected this:

[T]his name Fysshē, no man would pronounce it differently, write it in any way, it would still be a Fish ... [T]his objection is not at all applicable to the case; it is written in a pronunciation that denotes the person. He has not produced any man else, who is also a Unitarian Minister, and also sometime residing in Dundee.¹¹⁸

Palmer was disappointed, writing to Muir that “I am told the flaws in my indictment are irresistible where justice can be had.”¹¹⁹ Technical accuracy in the indictment was important in both the English and Scottish courts, although one (English) authority considered it “sufficient if the name be *idem sonans*,” that is, sounding the same.¹²⁰ Farmer has pointed out that the High Court of Justiciary’s “complex and rigid rules of procedure,” including those regarding the accuracy of the record, were suggestive more of “the need to preserve the dignity (or decency) of the legal process than ... any desire to protect the rights of the accused.”¹²¹ It is also possible that Scottish courts were generally less precise about the accuracy of the indictment: Hume wrote disparagingly about the “punctilious and critical precision” of English courts in this regard.¹²²

The objection to the spelling of “Fyshe” might seem a quibble. Yet Haggart’s phrase, “he does not bear that character,” binds together Palmer’s legal and textual “characters.” The letters on the page which spell out the name are inextricable from the identity of the named person, so that “Fische,” the word on the indictment, cannot be possibly be identified with “Fyshe,” the man at the bar. A “character” can mean a distinguishing mark on the page: symbol, letter, handwriting, print, script. But in the trial, which sets textual accuracy alongside individual identity, actions and intentions, the textual sense of “character” bleeds into its other meanings. Palmer’s trial was concerned with establishing his role in writing, editing and publishing copies of the Dundee handbill; its central problem was one of text-attribution. The prosecuting lawyers wanted to read

¹¹⁶ [Palmer,] *The Trial of the Rev. Thomas Fyshe Palmer*, 17-18.

¹¹⁷ *Ibid.*, 26.

¹¹⁸ *Ibid.*, 24.

¹¹⁹ Palmer to Muir, JC26/1793/1/6/3, NAS.

¹²⁰ Thomas Starkie, *A Practical Treatise of the Law of Evidence, and Digest of Proofs, in Civil and Criminal Proceedings* (London, 1842), 1:473.

¹²¹ Farmer, *Criminal Law, Tradition and Legal Order*, 107-08.

¹²² Hume, *Commentaries on the Law of Scotland*, 1:5.

the “character” of the handbill (its printed text and handwritten annotations) directly into the moral and legal “character” of the defendant.

After the trials: reading the “characters of great men”

To understand “character” as simultaneously text, legal identity, and moral integrity is to place considerable weight on the importance of accurate and careful reading. Juries are the “readers” of defendants in court, and the defendants of the Scottish sedition trials invited their jurors to examine their characters, probing their moral depth and purity of intention. Skirving urged his jury to “hear and consider my defence, with an unbiased mind, with a mind anxious to discover truth, and to render a just decision.”¹²³ Such an appeal not only relies on the jury’s generous interpretation of the defendant’s intentions, but also aspires toward a sympathetic, affective communication between speaker and jury. “You, of the Jury, must have experienced the same emotions, and at present indulge the same feelings as I do,” Muir said.¹²⁴ Yet if character-as-text and character-as-defendant are bound together, the trials were dominated by blank text in ways which seem to trouble the possibility of definitive reading. At the trials of Margarot, Gerrald and Skirving, the prosecution case turned on a blank space left in the minutes-book of the British Convention, and the question of what would have been inserted into that gap. The prosecutor “brings you forward a blank to prove our guilt,” Margarot said.¹²⁵ The blank in the minutes opened up an empty space, which the prosecution filled with seditious intentions, and into which jurors were also invited to read. The printed trial reports were also regularly broken up with asterisks, perhaps because publishers were nervous of incurring the wrath of the judges, who in Scotland at that time disliked having their courtroom statements recorded.¹²⁶ Skirving’s edition of Palmer’s trial is scarred with gaps, despite its Advertisement’s promise that this was not a “mutilated account.”¹²⁷ The censorship interrupts the flow of the text and restricts the reader’s ability to interpret, but it also visually highlights moments of particular political danger. As Wolfgang Iser writes, “whenever the flow is interrupted and we are led off in unexpected directions, the opportunity is given to us to bring into play our own faculty for establishing connections – for filling in the gaps left by the text itself.”¹²⁸ The asterisks and gaps

¹²³ [Skirving,] *The Trial of William Skirving*, 145.

¹²⁴ [Muir,] *The Trial of Thomas Muir*, 60.

¹²⁵ [Margarot,] *Robertson’s Edition. The Trial of Maurice Margarot*, 129.

¹²⁶ Campbell and Paton, “The Eighteenth Century and Later,” 61.

¹²⁷ [Palmer,] *The Trial of the Rev. Thomas Fyshe Palmer*, 4.

¹²⁸ Wolfgang Iser, “The Reading Process: A Phenomenological Approach,” *New Literary History* 3, no. 2, On Interpretation: I (1972), 284-85.

in Skirving's edition of the trial open up the possibility that the trial proceedings, and character of the defendant, might be read creatively, subversively, or otherwise against the grain.

During his defence, Muir reflected on the writings of the reformer Benjamin Flower: "Of the truly respectable author ... I know nothing; but if from writing, a true idea may be formed of the heart which guides the pen, there is no man that I would more fondly call my friend."¹²⁹ Muir's hypothesis, that "from writing, a true idea may be formed of the heart which guides the pen," suggests a readiness to read "character" as text in parallel with "character" as "heart," or interior self. Muir implies that Flower's writing is important as much (possibly even more) for the insights it provides into the character of its author as for its political content. Attentive reading allows readers to achieve a kind of intimacy with the writer, even when "know[ing] nothing" of the latter. Muir's stance seems to grant considerable importance to his own role as reader in unlocking the full meaning of Flower's writing. His position recalls Tilottama Rajan's observation that when writers "defer ... achieved meaning from the text to its reading," the reader is creatively involved in the production of meaning, and is "transform[ed] ... from recipient to supplement."¹³⁰ Rajan's comments offer a useful way to approach the glut of written responses to the Scottish sedition trials, in which approving onlookers often understood themselves to be able to access the "hearts" of the convicted defendants, through careful perusal of their trials, defences and biographies. As one sympathetic commentary on Gerrald observed: "It may appear romantic to attribute to this man such a happy combination of talents and virtue, but whoever will peruse his writings, will scarcely dispute either."¹³¹ Gerrald's "writings" are understood as a transparent register of his "talents and virtues," a window into his character.

In 1797, Palmer published *A Narrative of the Sufferings of T. F. Palmer, and W. Skirving*. The pamphlet tried to refute accusations that he and Skirving had attempted mutiny on their voyage to Botany Bay. It brought their characters for judgment before the jury of the public, a gesture which privileged the "supplementary" role of the reader-as-jury, but also made the writer vulnerable to hostile interpretation. The Advertisement to the *Narrative* announced that it was published "to vindicate his own [Palmer's] and Mr. Skirving's character." To return to Britain after serving their sentences "would afford no consolation to their minds, unless they could return with the same unsullied reputation for which they have always been hitherto respected ... every unjust charge against them should be repelled, and ... every groundless accusation should

¹²⁹ [Muir,] *The Trial of Thomas Muir*, 74.

¹³⁰ Tilottama Rajan, *The Supplement of Reading: Figures of Understanding in Romantic Theory and Practice* (Ithaca, NY: Cornell University Press, 1990), 2.

¹³¹ Anon., *Authentic Biographical Anecdotes of Joseph Gerrald*, 24.

be investigated and annihilated.”¹³² Accompanied by written evidence, including legally valid depositions, the *Narrative* painstakingly relates Palmer’s frustrated attempts at vindication through institutional channels (he appealed to both the governor of New South Wales and the English courts), and his final resort to the press, “by which every person will be enabled to decide what degree of credit is due to the charges exhibited against them, and whether they or their accusers be the real criminals.” In the absence of legal justice, Palmer invites the “impartial public” to act as his jury.¹³³ This stance recalls Thelwall’s commitment to “the bar of the public” in his undelivered defence speech, *The Natural and Constitutional Right*, and more generally echoes Paine in the second part of *Rights of Man*, when he says: “On all cases that apply universally to a nation, with respect to systems of government, a jury of *twelve* men is not competent to decide. ... The only effectual jury in such cases would be, a convention of the whole nation fairly elected.”¹³⁴ Palmer’s *Narrative* inherits that slippage between legal jury and public readership, but its anxious and exhaustive legal detail serves as a reminder of the risk that an empowered reader-jury may not take a sympathetic view.

The idea that character can be accessed directly through text, by a thoughtful reader, assumed urgency for the Scottish defendants because their characters underwent ongoing appraisal and reappraisal in different public forums after their convictions. Palmer was demoralised to learn that he had been accused in the House of Commons of being insane, although a few days later was “consoled ... by the vindication of his character in the house ..., in this and all respects” by another group of MPs.¹³⁵ Beyond parliament, the enormous print reaction to the trials brought them before the figurative “jury” of the republic of letters. In January 1794, a letter to Palmer from his Dundee congregation was printed in the *Morning Chronicle* by his friend and fellow Unitarian minister Theophilus Lindsey, who hoped “it may ... soften the minds of his adversaries towards him, to read the character of a truly Christian pastor.”¹³⁶ The letter does read rather like a character sketch, praising Palmer’s “character as a religious and benevolent man,” especially his “indefatigable zeal,” “firm integrity,” and “active and extensive

¹³² Thomas Fyshe Palmer, *A Narrative of the Sufferings of T. F. Palmer, and W. Skirving, During a Voyage to New South Wales, 1794, On Board the Surprise Transport* (Cambridge, 1797), iii-iv.

¹³³ *Ibid.*, v.

¹³⁴ John Thelwall, *The Natural and Constitutional Right of Britons to Annual Parliaments, Universal Suffrage, and the Freedom of Popular Association [...] Intended to Have Been Delivered at the Bar of the Old Bailey, in Confutation of the Late Charges of High Treason* (London, 1795), iv; Thomas Paine, *Rights of Man, Common Sense, and Other Political Writings*, ed. Mark Philp (Oxford: Oxford University Press, 2008), 233.

¹³⁵ G. M. Ditchfield, ed., *The Letters of Theophilus Lindsey (1723-1808)*, vol. 2, 1789-1808, Church of England Record Society 19 (Suffolk: Boydell Press, 2012), 263.

¹³⁶ *Ibid.*, 250.

benevolence.”¹³⁷ These characteristics fed into the idea of martyrdom which soon attached itself to the defendants. Gerrald’s defence speech, for instance, drew on traditions of biblical, classical and Whig martyrologies, self-representations which were heightened by his physical sickliness; at one point in the trial he had to sit down from exhaustion, and he died of tuberculosis a few months after his arrival in New South Wales. Gerrald placed himself within a diverse pantheon of martyred characters, setting a secular heritage in dialogue with a spiritual one.

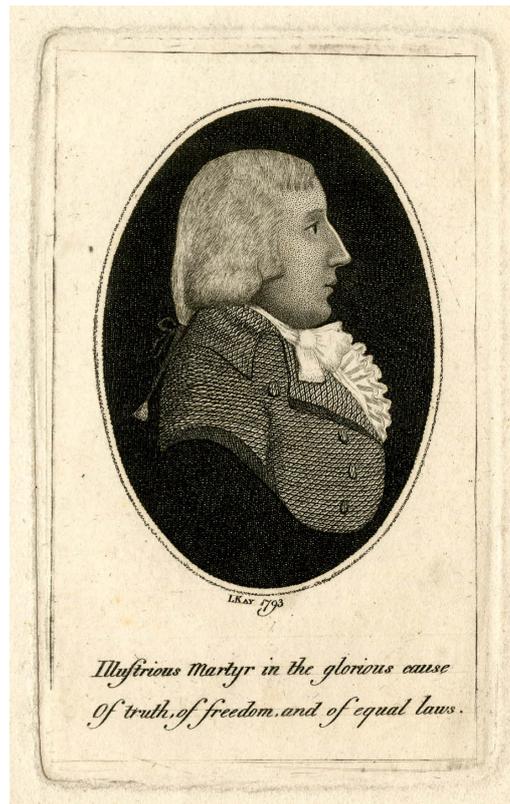


Figure 3: John Kay, “[Thomas Muir]; [Mr. Thomas Muir, who was banish’d for Sedition],” 1793. British Museum, Online. Licensed under CC BY-NC-SA 4.0.

The making of the Scottish defendants into “martyrs” was indicative of the way that printed commentaries not only passed judgment afresh, but also aspired towards an intimacy with the defendants’ characters. Images of the “martyrs” were an important part of their hagiography, although John Kay’s prints, perhaps the best-known portraits today, give away few clues as to individuality (see Figure 3). However, each defendant seems to have been known for a recognisable personality, as Thelwall’s praise indicates: “The mild, the meek, the humane and benevolent *Palmer*, has been followed into exile by the eloquent, the manly, the enlightened

¹³⁷ Robert Millar, David Hughs and David Ramsay, “Letter to Mr. Palmer from His Late Congregation at Dundee,” *Morning Chronicle*, 13 January 1794, 3.

Muir. The simplicity of *Skirving*, and his untainted honesty could not preserve him.”¹³⁸ Margarot was sometimes considered in a more dubious light; Lindsey noted that “his general character was not so high as the others.”¹³⁹ Gerrald, however, was greatly in vogue: Mee remarks on the “substantial canon of Gerraldiana” in circulation by 1795.¹⁴⁰ Many of these texts included “character sketches”: James Ridgway’s edition of Gerrald’s defence, for instance, was prefaced with “A Sketch of His Character, Written by a Friend.” As a genre, the character sketch traces back to the Greek philosopher Theophrastus, whose *Characters* included a cast of types (none of them admirable), such as “the coward,” “the tactless man,” “the country bumpkin,” and so on.¹⁴¹ Joseph Hall’s 1608 *Characters* popularised the Theophrastan tradition for seventeenth-century British audiences, and added virtuous character types to the Theophrastan template. By the mid-century, an array of character sketches was in circulation.¹⁴² The character sketches of Gerrald invoke these traditions, insofar as they present him as model of stock virtue, but they also explore the idea that Gerrald was unique and irreducible to type. Auctioneers’ catalogues listed prints of Gerrald under “Remarkable Characters” or “Convicts, Phenomena, &c.,” categories which balance Gerrald somewhere between generic type and individual.¹⁴³ That he could be represented as both unique and endlessly replicable must have contributed to the brief flourishing of his brand. Deidre Lynch remarks: “It is the *work* of the literary character ... to be somewhere in between the personal and the impersonal ... [T]he literary character’s way of seeming at once self-made, self-expressive, *and* a product of conventions gives readers something to do.”¹⁴⁴ As Lynch suggests, and as we shall see with regard to Gerrald, that balancing of character between type and selfhood demanded readers’ creative engagement.

Gerrald was represented and celebrated above all as a man of letters: Cockburn described his defence as “the sedition of a literary gentleman,” while an anonymous panegyric, *Gerrald A*

¹³⁸ John Thelwall, “The Tribune, No. XII. Saturday, 30th May, 1795,” in *Selected Political Writings of John Thelwall*, ed. Robert Lamb and Corinna Wagner, vol. 2, *Selections from the “Tribune,” 1795-1796* (London: Pickering & Chatto, 2009), 62.

¹³⁹ Ditchfield, ed., *The Letters of Theophilus Lindsey (1723-1808)*, 2:248.

¹⁴⁰ Mee, *Print, Publicity and Popular Radicalism*, 97.

¹⁴¹ See James Diggle, ed., *Theophrastus: Characters* (Cambridge: Cambridge University Press), 2004.

¹⁴² Jennifer Buckley, “Interrogating the Space(s) of the Coffee-House, 1660-1712: Defining the Character of an Institution” (Masters dissertation, University of York, 2016), 11. See also Elaine M. McGirr, *Eighteenth-Century Characters: A Guide to the Literature of the Age* (Basingstoke: Palgrave Macmillan, 2007), 2-3.

¹⁴³ William Richardson, *Portraits, India Drawings, &c. A Catalogue of a Genuine and Valuable Collection of English and Foreign Portraits, India drawings, &c. [...]* ([London,][1799]), n.p.; William Richardson, *British Portraits. A Catalogue of a Genuine and Extensive Collection of English Portraits Consisting of the Royal Families, Peers, Gentry [...]* ([London,][1800]), 315.

¹⁴⁴ Deidre Lynch, *The Economy of Character: Novels, Market Culture, and the Business of Inner Meaning* (Chicago: University of Chicago Press, 1998), 251.

Fragment, considered him “an highly polished literary character.”¹⁴⁵ Accounts of Gerrald’s character often blended genres in their efforts to capture their subject. The *Authentic Biographical Anecdotes of Joseph Gerrald*, supposedly written by an anonymous childhood friend, is novelistic in its narration of Gerrald’s life (his foster-mother is named, wonderfully, Mrs Crudge). It calls itself a “biographical sketch,” but is self-consciously sentimental: the reader is pictured as one “adown whose pensive cheek the tear of sympathy steals in silence.”¹⁴⁶ There is even something of criminal biography in the account, which culminates with Gerrald being shackled and sent away to the ship. Excerpts from private correspondence gesture towards an epistolary register, but also help to give the *Anecdotes* their promised authenticity, and the text is lent a journalistic air by the author’s correction of apparently inaccurate rumours. Gerrald’s acquaintance with, and warm approval by, great men of the age – notably Samuel Parr and Richard Brinsley Sheridan – function as something like informal character testimonials, as for example in the remark that “Dr. Parr always expressed the highest praise for Gerrald, and considered him as a most accomplished scholar.”¹⁴⁷ If this might make Gerrald a little prosaic, however, he is also a mythic hero and Promethean rebel, for “his bosom caught the seraphic fire, and he dared to vindicate the privileges assigned by ETERNAL OMNIPOTENCE TO MAN!”¹⁴⁸ For the author of the *Anecdotes*, Gerrald blazes through the sky to enlighten his contemporaries, who “hail the torrent of solar light, which, bursting from the heavens, disperse the clouds, that have too long obscured the face of day.”¹⁴⁹ *Gerrald A Fragment* presents its hero in a similarly fictional mode. The rather breathless narrative, liberally peppered with exclamation marks, draws on religious and Gothic discourses to express its author’s horror at Gerrald’s fate. It slips in some publicity for Gerrald’s pamphlet *A Convention the Only Means of Saving us from Ruin* (“it sells for half-a-crown”) and his printed defence speech (“printed for the benefit of his family, and sold by the booksellers at EIGHTEEN-PENCE”).¹⁵⁰ Gerrald’s character, then, was represented through a dizzying mix of genres: fiction, biography, sentimental writing, criminal biography, epistolarity, journalism, poetic mythicism, semi-religious enthusiasm, Gothicism, even advertisement.

In his evaluation of Gerrald’s courtroom defence, Cockburn noted the legal flaws and “offensive opinions” in the speech, but praised it for its aesthetic quality, concluding that “it must have been a striking speech, the more striking from ... [its] very defects of art.” Gerrald’s

¹⁴⁵ Cockburn, *Examination of the Trials for Sedition*, 2:80; Anon., *Gerrald A Fragment*, 5.

¹⁴⁶ Anon., *Authentic Biographical Anecdotes of Joseph Gerrald*, v.

¹⁴⁷ *Ibid.*, 12.

¹⁴⁸ *Ibid.*, 20.

¹⁴⁹ *Ibid.*, 27.

¹⁵⁰ Anon., *Gerrald A Fragment*, 11.

impressive oratorical performance and artistic creativity are, in some sense, bound up with the “defects” of his speech.¹⁵¹ Even in at the height of the Gerrald craze, sympathetic writers were surprisingly willing to acknowledge his moral failings. The *Authentic Biographical Anecdotes* attempted to defend Gerrald from accusations of “ambition,” but did so with pedantic half-heartedness: “we will not deny that he possessed some emulation to display his abilities in that cause, but must conclude his perseverance arose from better motives.”¹⁵² There seems also to have been some anxiety that Gerrald was vain, for the same author reports, not very reassuringly, that “[i]n the early part of life Mr. Gerrald was very whimsical, or foppish, in his dress; but during his confinement in Newgate he degenerated into a sloven.”¹⁵³ By contrast, *Gerrald A Fragment* maintains that Gerrald has “kept clear of those vices that disgrace the aristocracy ... the only traits that our citizen retains of his former connections, is an extreme urbanity of manners, a fascinating address, and a graceful carriage.”¹⁵⁴ The insistence is too strong to be entirely convincing, and at the very least gives the impression that contrary arguments were in circulation.

Most serious was the accusation that as a young man, Gerrald had been dissolute: as the *Anecdotes* put it, he “not unfrequently indulg[ed] in those frailties to which youth are commonly addicted.”¹⁵⁵ This led to financial “ruin” for Gerrald and his young family in the West Indies (where Gerrald had been born). Tellingly, though, the author frames this disaster as a turning-point in Gerrald’s character development:

Here would we willingly cast a veil over the folly of a man we have often so much reason to admire, but truth impels ... his extravagance was scarcely limited [sic], it encreased [sic] as his property diminished ... It was perhaps, from the series of misfortunes which followed his imprudence, that he learnt to pity the sufferings of those human beings, whom poverty has degraded in the sight of the great.¹⁵⁶

Gerrald’s extravagance – a burden on his family, as well as a source of personal discredit – is transformed here into the source of his moral and political integrity. It becomes the turn in the narrative on which the glory of his story relies. Writing in the *Tribune*, Thelwall argued along similar lines that it was precisely Gerrald’s moral weakness which revealed his sympathetic and even (paradoxically) virtuous character. “Gerrald,” he writes, “whose unblemished life –

¹⁵¹ Cockburn, *Examination of the Trials for Sedition*, 1:79.

¹⁵² Anon., *Authentic Biographical Anecdotes of Joseph Gerrald*, 17.

¹⁵³ *Ibid.*, 21.

¹⁵⁴ Anon., *Gerrald A Fragment*, 6-7.

¹⁵⁵ Anon., *Authentic Biographical Anecdotes of Joseph Gerrald*, 11.

¹⁵⁶ *Ibid.*, 13.

unblemished I say: for what are the little extravagancies of a young man of genius, born, not for the narrow circle of a family, but for the universe – and who, dissipating only what was his own, lays no burthen to replace it? – Gerrald, this great, this enlightened character ...”¹⁵⁷

Gerrald’s unspecified “little extravagancies” are for Thelwall evidence not of his unfitness for public recognition but the opposite, since they mark out his difference: his “genius” and “enlightened character,” existing not for a “narrow,” domestic range of action but “for the universe.” In Thelwall’s treatment, Gerrald’s moral flaws are evidence not of bad, but of superior, character. Thelwall’s creative readerly engagement with Gerrald’s character recollects Iser’s observation that “the ‘unwritten’ part of a text stimulates the reader’s creative participation.”¹⁵⁸ It might simply be that Thelwall thinks these frailties are irrelevant in a hero of Gerrald’s mythic stature, but his account also gives an impression of a character with shades of interior depth, which may be plumbed by a sympathetic reader but which, perhaps, may “never finally be sounded.”¹⁵⁹

Rajan has written about what she calls a “negative hermeneutic” at play in some Romantic-period texts, “in which the act of reading supplies something absent from and in contradiction to the textual surface.” The negative hermeneutic encourages readers to read between the lines, fill up the blanks, and participate actively in the creation of character: a negative hermeneutic, she notes, “identifies meaning with what is *not* said, deferring it to the imaginary.”¹⁶⁰ The Gerrald who emerges from these celebratory publications adds up to something approaching a fictional character, whom readers are invited not only to appreciate, but also to engage with creatively. Thelwall was in regular correspondence at this time with Samuel Taylor Coleridge, who did not share his friend’s optimistic outlook on Gerrald’s character and was disturbed by reports of his moral laxity. “GERALD [sic], you insinuate is an *Atheist*,” he wrote to Thelwall:

I have been informed by a West-Indian (a Republican) that *to his knowledge* Gerald left a *Wife* there to starve – – and I well know that he was prone to intoxication, & an *Whoremonger*. I saw myself a letter from Gerald to one of his FRIENDS, couched in terms of the most abhorred Obscenity, & advising a marriage with an old woman on account of her money – Alas! alas! Thelwall – I almost wept ... That story of his writing in favor [sic] of the slave-trade was never *fully* cleared up[.]¹⁶¹

¹⁵⁷ Thelwall, “The Tribune, No. XII. Saturday, 30th May, 1795,” 62.

¹⁵⁸ Iser, “The Reading Process,” 280.

¹⁵⁹ Lynch, *The Economy of Character*, 141.

¹⁶⁰ Rajan, *The Supplement of Reading*, 5.

¹⁶¹ Earl Leslie Griggs, ed., *Collected Letters of Samuel Taylor Coleridge. Electronic Edition*, vol. 1, 1785-1800 (Oxford: Clarendon Press, 1956-71; IntelLex Corp.: Charlottesville, VA, 2002), 214-15.

Coleridge urgently gathers legalistic evidence, spoken and written, of Gerrald's bad character, and shores up its credibility through reference to the reliability of the West Indian witness as well as his own status as eyewitness. The exclamation "Alas! alas! Thelwall – I almost wept" indicates the passionate sympathy with which many reform-minded readers approached Gerrald, but also the ways in which sympathy contributed to the formation of a radical character within public discourse, in unexpected ways.

Thelwall probably reprimanded his friend for paying too much attention to rumour, for Coleridge's next letter defends his interest in "anecdotes":

I am sorry, that you should entertain so degrading an opinion of me as to imagine that I *industriously* collected anecdotes unfavorable [sic] to the characters of great men – . No! Thelwall – but I cannot shut my ears – & I have never given a moment's belief to any one of those stories unless when they were related to me at different times by professed Democrats – . – My vice is of the opposite class – a precipitance in praise – witness my Panegyric on Gerald & that *black* gentleman, Margarot – in the Conciones [ad populum].¹⁶²

Coleridge protests that he is too generous rather than too severe in his assessment of character, but either way, his insistence points to a fascination with "the characters of great men." He stresses that he only trusts the testimony of "professed Democrats" (that is, those who will have no political motive in smearing public reformers), although this too is a character judgment of sorts. The almost casual reference to "that *black* gentleman, Margarot," suggests that Coleridge saw Margarot's seeming foreignness as a mark against his good name – as the courts had done. Coleridge's interest in "the characters of great men" brings us full circle to the older criminal assessments of "character," with their focus on community standing, witness reliability, and informal reputation, in which rumour and "anecdote" play their part.

In 1796, Coleridge published an article entitled "Modern Patriotism." It was an attack against the character of what he called the "Modern Patriot," probably a composite of Thelwall and others; Thelwall certainly read it as a personal slight. "Modern Patriotism" closely resembles the Theophrastan character sketch, with its blend of anecdotal illustrations of character ("You have studied Mr. Godwin's Essay on Political Justice ... you wear powder, and eat pies and sugar!") and sweeping outlines ("The PATRIOT indulges himself in no comfort, which, if society were properly conducted, all men might not enjoy"). The "modern patriot" is wrong to call himself such, Coleridge argues, because his "principles are villainous ones." Specifically, Coleridge is thinking of Godwinian philosophy: he insists that "to think filial affection folly,

¹⁶² Ibid., 221.

gratitude a crime, marriage injustice, and the promiscuous intercourse of the sexes right and wise ... cannot increase the probability that you are a PATRIOT.” Thelwall was famous for his approval of Godwinian thought, so it is unsurprising that he took these remarks as an attack on his own private morality, and went on to debate the issues in letters with Coleridge.¹⁶³ Coleridge was convinced that private immorality was incompatible with civic virtue or “patriotism.” Rather, he understood that character had to have a religious foundation. The modern patriot must “give up your sensuality and your philosophy, the pimp of your sensuality; you must condescend to believe in a God, and in the existence of a Future State!”¹⁶⁴ Although Coleridge later wrote to Thelwall that he trusted his friend’s “heart,” Mee has shown that in general, “he was sceptical of the possibilities of anyone managing a practical universal benevolence without the disciplining effects of the Bible.”¹⁶⁵ For Coleridge, commitment to God and to “a Future State” provided moral character with a kind of anchor, regulating it and preventing it from slipping into the merely sensory and sensual.

Coleridge’s anxieties throw into relief the problem of what moral character ought to look like in a radical – especially in heroes like Thelwall and Gerrald, who played prominent roles on the public stage. Part of what makes Gerrald an intriguing figure is that sympathisers did not perceive his character to be wholly good, and yet as Mee comments, he took his place in “the pantheon of the radical movement ... as an icon of heroic suffering for the people.”¹⁶⁶ After his conviction, Gerrald’s character was formed and creatively interpreted by sympathetic readers, who found ways to rehabilitate (or not, in Coleridge’s case) his less palatable traits. In the aftermath of all five trials, readers engaged with the external markers of the defendants’ characters at the same time as seeking to plumb their depths, just as the juries had done in court. Chapter 3 turns to a far less respectable defendant, who for many readers was a profoundly ambivalent representative of the cause of reform. The career of the Irish writer and publisher Peter Finnerty bridges the upheaval of the 1790s with a later phase of radical activity beginning in the 1810s, thus complicating the idea that there were two obviously distinct phases. Finnerty’s Anglo-Irishness also draws out the importance of cross-British reform networks that this chapter has begun to address, and demonstrates how the question of national character could become crucial in appraisals of radical character.

¹⁶³ On Thelwall and Coleridge’s dialogue, particularly their poetical and political debates, see Judith Thompson, “An Autumnal Blast, a Killing Frost: Coleridge’s Poetic Conversation with John Thelwall,” *Studies in Romanticism* 36, no. 3 (1997), 427-56.

¹⁶⁴ Samuel Taylor Coleridge, “Modern Patriotism. The Watchman No III. Thursday, March 17, 1796,” in *The Watchman* ([Bristol,] [1796]), 73-74.

¹⁶⁵ Mee, *Romanticism, Enthusiasm, and Regulation*, 149.

¹⁶⁶ Mee, *Print, Publicity and Popular Radicalism*, 97.

Pillorying Peter Finnerty: radical Irish character and credit

For many literary historians, the name of Peter Finnerty is probably most familiar as a footnote to Percy Bysshe Shelley's radical youth. In 2015, the Bodleian Library acquired Shelley's *Poetical Essay on the Existing State of Things*, published by the nineteen-year-old poet in 1811 "for assisting to maintain in prison Mr. Peter Finnerty, imprisoned for a libel."¹ Shelley also contributed £1 1s. to a subscription for Finnerty the same year, and it was with dismay that his father Timothy wrote to his attorney, "I hear he [i.e. Percy] has corresponded with Lucien B[onaparte] and it is thought he did with Finnerty. Perhaps I have not heard half."² Yet Finnerty was not merely an inspiration to the young Shelley: he was also an important participant in the worlds of radical publishing, electioneering, and parliamentary reporting, in London and (more briefly) Dublin, in a career which spanned the 1790s to his death in 1822. It is regrettable, therefore, that scholarship on Finnerty in his own right is scarce. Instead, as Jonathan Jeffrey Wright puts it, he has surfaced "as a minor character, albeit a colorful one, in studies of other, 'greater' men ... such as William Hazlitt and Lord Castlereagh," or has made "sporadic appearances in literature relating to the United Irish movement, the freedom (or lack thereof) of the press in late Georgian Britain, and London radicalism."³ While hardly absent from the history books, then, there is still no full-length biography of Finnerty, and he has not enjoyed the same detailed study as many other radical writers, publishers, and activists of the period.

Wright's has been the fullest account of Finnerty's career to date. Following James Epstein's lead in emphasising the "spatial practices" and performativity of radical culture of the period, Wright is especially interested in Finnerty's subversive use of different metropolitan spaces across his career, particularly parliament and the courts. He finds that "the creation of spectacle and display of contempt for authority were ... regular and defining characteristics" of Finnerty's political career.⁴ This disruptive performativity offers a valuable route into understanding how Finnerty's character was created, represented, defended and attacked, both in the context of his involvements with the law, and before the figurative tribunal of the public in print. But his character is difficult to pin down in any simple way. On the one hand, Finnerty's individual identity was often subsumed into a larger set of debates. This was particularly so at his 1797 trial, when the case was wrapped up with the controversy over the execution of United Irishman

¹ Percy B. Shelley, *Poetical Essay on the Existing State of Things. By a Gentleman of the University of Oxford, for Assisting to Maintain in Prison Mr. Peter Finnerty, Imprisoned for a Libel* (London, 1811).

² Quoted in Kenneth Neill Cameron, *The Young Shelley: Genesis of a Radical* (London: Victor Gollancz, 1951), 50, 85.

³ Jonathan Jeffrey Wright, "An Anglo-Irish Radical in the Late Georgian Metropolis: Peter Finnerty and the Politics of Contempt," *Journal of British Studies* 53, no. 3 (2014), 661-62.

⁴ *Ibid.*, 666.

William Orr, but it was also true of his 1810-11 prosecution by Lord Castlereagh, which many commentators recognised to be less a personal quarrel than a dispute over the proper limits of press freedom. Yet if Finnerty was regularly a stand-in for larger issues, it is also evident that he was a distinctive, even exceptional figure, with whom other reformers found it difficult to rub along: a “troublesome, querulous, but sometimes amusing” individual, according to Samuel Bamford.⁵ Finnerty showed a striking tenacity and boldness in the courtroom, and was willing to explore options for legal redress that other radicals left untouched – in particular, to act as a litigant against his opponents, and not only to assume the stance of a martyr. Finnerty had a similarly unshakeable attitude to money and to his own poor credit throughout his career, and was not embarrassed to fix a monetary value to his character or to seek financial aid. Certain pressure points in his career illustrate Margot Finn’s point that “character” and “credit” created and reinforced one another in the early years of the nineteenth century.

More than any other writer in this thesis, Finnerty’s contemporaries saw him as “a character” and eccentric. He had been no “common individual,” according to his obituary in the *Morning Chronicle*.⁶ William Hazlitt, who worked with Finnerty as a parliamentary reporter, sketched out his unusual appearance and inelegant speech: “Finnerty was coarse, even gross in his general habits; of a large and awkward frame; had a ludicrous cast in one eye that heightened his rich humour” (the squint was also remarked upon by spies).⁷ Moreover, Hazlitt wrote, “PETER was a rough satirist – spared no man’s feelings – heeded no man’s antipathies – and took more pleasure in provoking his enemies than conciliating his friends.”⁸ Character in general sustains a balance between the uniquely individual and the endlessly-repeatable, and if Hazlitt emphasised his colleague’s difference, Finnerty was also represented as a textbook Irish stereotype. Bruce Nelson has observed that by the nineteenth century, Irish character was stereotyped in England as effeminate, passionate, lazy, irrational, emotional, violent, savage, impoverished, and childish: characteristics all attributed to Finnerty in different hostile publications. Nelson has also written about the “racial in-betweenness” that came to be identified with Irishness, and it is telling that written descriptions and printed images of Finnerty often referenced his dark colouring.⁹ The *Satirist; or, Monthly Meteor* magazine

⁵ Samuel Bamford, *Passages in the Life of a Radical* (Oxford: Oxford University Press, 1984), 223.

⁶ Anon., “The Late Mr. Finnerty,” *Morning Chronicle*, 15 May 1822, 3.

⁷ George Orr to John King, 22 September 1799, HO 100/87/308, The National Archives, London.

⁸ William Hazlitt, “Peter Finnerty,” in *New Writings of William Hazlitt*, ed. Duncan Wu, vol. 2 (Oxford: Oxford University Press, 2007), 224, 226.

⁹ Bruce Nelson, *Irish Nationalists and the Making of the Irish Race* (Princeton, NJ: Princeton University Press, 2012), 43. See also Michael de Nie, *The Eternal Paddy: Irish Identity and the British Press, 1798-1882* (Madison, WI: University of Wisconsin Press, 2004) and Joseph Theodoor Leerssen, *Mere Irish and Fíor-Ghael: Studies in the Idea of Irish Nationality, its Literary Expression and Development* (Amsterdam: John Benjamins, 1986).

nicknamed him “Peter the Wild Boy,” a joke about the supposed primitivism of the Irish.¹⁰ Invocations of Finnerty’s Irishness were often politically anxious: in an anti-reform pamphlet of 1802, he is “*Green F—y*,” “dressed in *green* even to his stockings,” while a satirical print the same year dubs him “The Green Man from Dublin.”¹¹ Green was the colour associated with the 1798 rebellion, and its ongoing linkage with Finnerty in London in the first years of the nineteenth century suggests that his political origins with the United Irishmen remained close to the surface, to English eyes.

Irish stereotypes are present even in Hazlitt’s generally friendly account. Finnerty, Hazlitt writes, “was possessed of a peculiarly mellifluous brogue, which he appeared to cultivate as a mark of distinction. ... [H]e loved Ireland to the last, and would overwhelm any man with a torrent of eloquent Billingsgate who would speak disrespectfully of the *sod*.” He was “essentially a man for the mob – his element was popular tumult – he had no sense of conventional refinements – despised etiquette – abhorred negus, and gloried in whiskey-punch.”¹² Hazlitt’s idea of Finnerty as “a man for the mob” is suggestive of an anxiety about his friend’s revolutionary credentials. But Hazlitt’s family had links with the United Irish movement, and if Hazlitt took a complex view of his own part-Irishness, he was also sympathetic towards Ireland.¹³ Moreover, while hostile representations of Finnerty were often undoubtedly xenophobic, we shall see that he also benefited from his extensive networks among Irish expatriates in London, including well-connected Whigs. David O’Shaughnessy notes that in eighteenth-century London, “perceptions of the Irish were subject to the vicissitudes of popular prejudice and engrained stereotypes, to be sure, but ... the Irish could, nonetheless, benefit from their networks and from the many achievements of their individual members.”¹⁴ In that sense, Finnerty’s Irish character needs to be understood not simply as a source of derision among critical commentators, but also as supporting his political efforts and sustaining his high profile.

Finnerty’s first prosecution was in Dublin in 1797, when, as the printer of the United Irish newspaper the *Press*, he was tried for seditious libel. Virtually unknown and very young (he was probably about nineteen), Finnerty played a minimal role in his defence, but achieved some

¹⁰ [George Manners,] “Strictures on Cobbett,” *The Satirist; or, Monthly Meteor* 4, January 1809, 48.

¹¹ [G. Huddesford,] *The Scum Uppermost When the Middlesex Porridge-Pot Boils Over!! An Heroic Election Ballad, with Explanatory Notes. Accompanied with an Admonitory Nod to a Blind Horse* (London, 1802), 9; John Thomas Smith, “To the freeholder of Surrey,” 1802, British Museum, Online.

¹² Hazlitt, “Peter Finnerty,” 2:224, 226.

¹³ See for example Tom Paulin, *The Day-Star of Liberty: William Hazlitt’s Radical Style* (London: Faber & Faber, 1998), 2, 129-31.

¹⁴ David O’Shaughnessy, “Introduction: ‘Tolerably Numerous’: Recovering the London Irish of the Eighteenth Century,” *Eighteenth-Century Life* 39, no. 1 (2015), 6. See also Marianne Elliott, *Partners in Revolution: The United Irishmen and France* (New Haven, CT: Yale University Press, 1982), 288-89.

fame after his conviction, when he was made to stand in the pillory for an hour.¹⁵ He was accompanied to the pillory by senior United Irishmen Lord Edward Fitzgerald and Arthur O'Connor, the latter holding an umbrella over the prisoner's head in a moment of what Epstein has elsewhere called "street spectacle."¹⁶ On stepping down from the pillory at the end of the hour, he addressed the assembled crowd: "My friends, you see how cheerfully I can suffer; I can suffer any thing provided it promotes the liberty of my country."¹⁷ His hour on the pillory was short, but it cast a long shadow over his career. An old-fashioned marker of criminal character, the pillory came to figure as a defining symbol in public appraisals of Finnerty's character, whether sympathetic or hostile. After his release from prison, he emigrated to London where he threw himself into radical journalism, electioneering, and eventually parliamentary reporting for the *Morning Chronicle*. 1808-09 saw two further legal encounters: first, at the end of 1808, the government issued an *ex officio* information against him for a libel on the Duke of York, owing to his role in helping to break the scandal around military corruption; and second, Finnerty himself brought a libel action against the *Satirist; or, Monthly Meteor* in early 1809, in response to scurrilous claims that the magazine had made about him in relation to the Duke of York prosecution. These two cases have received minimal attention from modern historians, but they raise important questions about the relationships between character and financial credit, and between the civil and criminal law with regard to libel, as well as the role of Irish stereotypes in defining how Finnerty's character was interpreted by his opponents. Lastly, in 1810-11 Finnerty was prosecuted by Lord Castlereagh for libel, in the case which garnered Shelley's support. He was convicted and imprisoned, but used his trial as a platform to raise public awareness about Castlereagh's alleged complicity with torture and government brutality during the 1797-98 upheavals in Ireland. Indeed, Finnerty's career as a whole illustrates the permeability of the boundaries between Irish and English radicalism; his success in publicising Castlereagh's record, among English radicals and the English public generally, was one of his major legacies.

The United Irishmen's "man of straw": Finnerty's 1797 Dublin trial

When Finnerty stood trial for seditious libel in Dublin in December 1797, he was prosecuted under English law. Unlike Scotland, which prided itself on its independent criminal system, Ireland was subject to English common law, though with some extra statutes passed by

¹⁵ The exact year of Finnerty's birth is uncertain, but was probably around 1778; see Wright, "An Anglo-Irish Radical," 663.

¹⁶ Valentine Browne Lawless, *Personal Recollections of the Life and Times, with Extracts from the Correspondence, of Valentine Lord Cloncurry* (Dublin, 1849), 62; James Epstein, "Spatial Practices/Democratic Vistas," *Social History* 24, no. 3 (1999), 300.

¹⁷ [Peter Finnerty,] *Trial of Mr. Peter Finerty, Late Printer of the Press, for a Libel against His Excellency Earl Camden, Lord Lieutenant of Ireland, in a Letter Signed Marcus, in That Paper* (Dublin, 1798), 62.

Westminster and the Irish parliament (subject to English approval).¹⁸ To grasp fully the historic legal context of Ireland, Kathleen Murphy has argued that we must pay attention to those “extraordinary cases” in which Irish law diverged from English expectations about criminal procedure, and discarded “the ideals of English rule by law.” Such cases reveal fundamental, underlying disparities between the two countries’ legal systems, going back, Murphy says, to “[t]he precedent set in the sixteenth century to treat Ireland differently – to subvert the ideals of the English constitution when circumstances demanded.”¹⁹ Although the Irish criminal justice system was rarely subject to “official manipulation” outside of political cases, Murphy notes “the extreme [lengths] to which the Dublin government could go, even if it rarely did. Placemen, prejudiced jurors, trial delays, *ex officio* presentments, and crown witnesses provided the Dublin government with extraordinary leverage over the institutions of law and authority.”²⁰ In Finnerty’s case, that political “leverage” involved a strategy of harassment and intimidation while he was in prison, including lengthy interrogations, the threat of whipping, and spells of solitary confinement; his brother was even brought by a government agent from their hometown of Loughrea to Dublin, to remonstrate with him (without success, apparently; the brother became a United Irishman too).²¹ In court, Finnerty faced a hostile judge and packed jury, as his defence counsel, the celebrated John Philpott Curran, frankly acknowledged to the jurors: “You know and we know ... you have been ... chosen by a Sheriff who is nominated by [the lord lieutenant]” – an assertion greeted by choruses of “*No! No!*” from the prosecution.²² Such protestations notwithstanding, it is true that sheriffs were appointed each year by the lord lieutenant, giving the government substantial control over the jury pool in politically sensitive cases. Finnerty’s jury was returned by Dublin’s town major, Henry Sirr, who worked vigorously on behalf of Dublin Castle to repress the 1798 and 1803 rebellions, and even hatched a plan to charge Finnerty with Defenderism should his 1797 trial end in acquittal.²³

As at the Scottish sedition trials four years earlier, Finnerty’s trial was an arena for the playing out of competing ideas about national character. Anxieties crystallised in relation to the jury, which Finnerty’s lawyers identified as both a potential channel of corruption and a cornerstone

¹⁸ Kathleen S. Murphy, “Judge, Jury, Magistrate and Soldier: Rethinking Law and Authority in Late Eighteenth-Century Ireland,” *The American Journal of Legal History* 44, no. 3 (2000), 255.

¹⁹ *Ibid.*, 231-32.

²⁰ *Ibid.*, 250, 254.

²¹ [Finnerty,] *Trial of Mr. Peter Finerty*, 59-60; P. Finerty, n.d., Rebellion Papers 620/34/51/8, National Archives of Ireland, Dublin; Darcy Mahon, 9 December 1797, RP 620/33/137, NAI; David Ryan, “Disaffection and Rebellious Conspiracy in the Loughrea Area 1791-1804,” in *The District of Loughrea*, ed. Joseph Forde et al. (Loughrea, Co. Galway: Loughrea History Project, 2003), 21.

²² [Peter Finnerty,] *A Report of the Trial of Peter Finerty, Upon an Indictment for a Libel. By William Ridgeway, Esq. Barrister at Law* (Dublin, 1798), 55.

²³ Murphy, “Judge, Jury, Magistrate and Soldier,” 241, 249; Thomas Edward Newell, *The Apostacy of Newell, Containing the Life and Confessions of That Celebrated Informer [...]* (London, 1798), 63-65.

of English constitutional liberty. With reference to the 1794 treason acquittals, they presented English juries as models of integrity for Irish emulation:

Gentlemen, you have been often told of the blessings of the constitution and you are desired to look at the sister kingdom. I call upon you, to look at her with a steady eye – Look at the conduct of Juries in that country – Look at their conduct in the case of *Tooke* – Their verdict in the case of *Thelwal* [sic] and *Hardy* ... If you take a lesson from that country, do not imitate her when she is wrong – but deviate sometimes into rectitude.”²⁴

Finnerty’s jurors, Curran argued, must “[c]ompare your conduct with that of the Juries in *England* and see how you will stand the examination”.²⁵ Such comparisons seem unflattering, but are perhaps not surprising from Whiggish lawyers, given that the English legal system was considered a gold-standard among reformers; indeed, Michael Brown and Seán Donlan observe that “even Irish revolutionaries seldom rejected English law in Ireland *tout court*.”²⁶

Unsurprisingly, the prosecution bridled at the insinuation that Irish juries lacked the integrity of their English counterparts, noting that “national feeling would prefer a national example”: “was there no *Irish* Jury worthy of your imitation?” asked the Prime Serjeant, James Fitzgerald.²⁷ As Brown and Donlan observe, Irish Protestants after 1688 generally “rejected and resented any implication that Ireland was a mere dependency of its British neighbour.”²⁸ Fitzgerald’s frosty reassertion of Irish national pride seems to be as much a rejection of Curran’s heavy reliance upon an English constitutional inheritance as it is a legal argument about precedent.

At the time of his Dublin prosecution, Finnerty was not long out of a printer’s apprenticeship, which had ended early after he was caught “mounted on one of the frames, haranguing the men on liberty and equality.”²⁹ We do not know when he first became involved in United Irish circles, but by the time the first number of the *Press*, the newly-launched newspaper of the United Irishmen, went to print in September 1797, Finnerty had been registered as its legal proprietor.³⁰ On 26 October, the *Press* printed a letter under the pseudonym “Marcus.” Now

²⁴ [Finnerty,] *A Report of the Trial of Peter Finerty*, 50.

²⁵ *Ibid.*, 72.

²⁶ Michael Brown and Seán Patrick Donlan, “The Laws in Ireland, 1689-1850: A Brief Introduction,” in *The Law and Other Legalities of Ireland, 1689-1850*, ed. Michael Brown and Seán Patrick Donlan (Farnham: Ashgate, 2011), 13.

²⁷ [Finnerty,] *A Report of the Trial of Peter Finerty*, 88.

²⁸ Brown and Donlan, “The Laws in Ireland, 1689-1850,” 6.

²⁹ Hazlitt, “Peter Finnerty,” 2:224.

³⁰ Richard R. Madden, *The United Irishmen, Their Lives and Times. With Several Additional Memoirs, and Authentic Documents, Heretofore Unpublished; the Whole Matter Newly Arranged and Revised*, 2nd series, 2nd ed. (Dublin, 1858), 242. On Finnerty’s involvement with the *Press*, see Wright, “An Anglo-

thought to have been written by Deane Theophilus Swift, it was concerned with the case of William Orr, a Presbyterian farmer from county Antrim who had been convicted in September of administering the United Irish oath to two soldiers.³¹ The Orr case is a good illustration of Murphy's observation that in eighteenth-century Ireland, "[c]harges of the grossest perversions of official prerogative coincide with times of great stress and arrest."³² Testimony crucial to Orr's conviction had gone on to be discredited, and some of the jurors claimed that they had been drunk during their deliberation. However, despite many petitions for Orr to be pardoned, a recommendation for mercy from his jury and more than one official respite, the death sentence went ahead, and Orr was hanged on 14 October, becoming the first main United Irish martyr. The "Marcus" letter, printed hot on the heels of Orr's execution, complained that the conviction and execution had been invalid, and that Orr ought to have been extended a pardon.³³ To government prosecutors, this libel against the administration of justice presented an opportunity to clamp down upon the fledgling *Press* newspaper, and Finnerty was arrested in early November.

As proprietor of the *Press*, Finnerty was legally responsible for its publications, but he was owner in name only. Ranged behind him was a cast of illustrious United Irishmen with stakes in the paper, including O'Connor, Thomas Emmet, Lord Edward Fitzgerald and Valentine Lawless.³⁴ Finnerty's status at the *Press* was a lowly one, despite his public prominence. The United Irishmen found it prudent to minimise the role of the "personalities of the owners" in their newspapers, since this made them more resilient against government suppression: as Brian Inglis explains, "new owners, new editors would promptly instal themselves in the newspaper office, the day that their predecessors were taken away to jail."³⁵ In that sense, Finnerty's unknown character was an asset. Government agents and informers thought him merely "a young man of straw," "no more than a stalking Horse to the Republican party," and "an Instrument in the Hands of opposition."³⁶ At his trial, Finnerty rejected these representations, declaring that "[h]owever humble I may be, ... I should spurn the idea of becoming the

Irish Radical," 663-67; Brian Inglis, *The Freedom of the Press in Ireland, 1784-1841* (London: Faber & Faber, 1954), 99-104; Madden, *The United Irishmen*, 242-46.

³¹ Guy Beiner, *Forgetful Remembrance: Social Forgetting and Vernacular Historiography of a Rebellion in Ulster* (Oxford: Oxford University Press, 2018), 75.

³² Murphy, "Judge, Jury, Magistrate and Soldier," 255.

³³ For a concise account of Orr's case and the Marcus letter, see Thomas MacNevin, *The Lives and Trials of Archibald Hamilton Rowan, the Rev. William Jackson, the Defenders, William Orr, Peter Finnerty, and Other Eminent Irishmen* (Dublin, 1846), 481-96.

³⁴ Inglis, *The Freedom of the Press in Ireland*, 99.

³⁵ *Ibid.*, 92.

³⁶ Thomas Bartlett, ed. *Revolutionary Dublin, 1795-1801: The Letters of Francis Higgins to Dublin Castle* (Dublin: Four Courts Press, 2004), 184; Mahon, RP 620/33/137, NAI; Darcy Mahon, 4 December 1797, RP 620/33/113, NAI.

instrument of any party, or any man.”³⁷ Finnerty’s assertions of the independent integrity of his character are in tension with his “humble” status. A letter he wrote from prison betrays the ambiguity of his position:

Enquire if any thing I can do – if any suffering of mine, how[eve]r severe, can place them beyond the reach of the tyrants – and with extacy shall I undergo it ... I can now feel the prosperity of their declining to appear bail for me – if they had = most probably the very act wou’d expose them to suspicions & imprisonment and I feel that tis better I shou’d suffer confinement & even more, than that society shou’d be deprived of them whose exertions can render such material service.³⁸

Finnerty diminishes his own importance in relation to his United Irish allies, even as he promotes his capacity for heroic martyrdom: he both elevates and erases his own character. His request that his correspondent “[e]nquire if [there is] any thing I can do” discloses an anxiety about being forgotten, at the same time as he praises the expediency of his having been left alone and unbailed in prison.

Finnerty’s invisibility in prison is typical of his part in the 1797 affair. Even at the trial, his identity was cast into doubt by a technical argument made by his own lawyers (and rejected by the bench), who pointed out that the prosecution witnesses, including the commissioner of stamp duties who registered Finnerty as proprietor, could not confirm beyond doubt that the man at the bar was the same person who had registered the *Press*.³⁹ One of his counsel, hinting at informer collusion, considered it

not impossible, that any individual in the community, calling himself, *Peter Finerty* might offer himself at the Stamp-Office – offer an affidavit and sign his name, when he was not *Peter Finerty* at all. ... [T]he evidence ... amounts to no more than that a man calling himself, *Peter Finerty*, offered himself at the Stamp-Office, and signed a name purporting to be the name of *Peter Finerty* – But where is the evidence bringing it to the Traverser [i.e. defendant]?⁴⁰

The episode recalls the argument over the spelling of Thomas Fyshe Palmer’s name in his indictment in 1793, and the judge’s fractious conclusion that “this name Fysse, no man would

³⁷ [Finnerty,] *Trial of Mr. Peter Finerty*, 59.

³⁸ Finerty, RP 620/34/51/8, NAI.

³⁹ [Finnerty,] *A Report of the Trial of Peter Finerty*, 17, 25.

⁴⁰ *Ibid.*, 22-23.

pronounce it differently, write it in any way, it would still be a Fish.”⁴¹ The repetition of “*Peter Finerty*” only makes Finerty himself fade further from view, collapsing his character into his identity and making both elusive. The fact that his affidavit was “taken in a dark room,” as we are told, literally shrouds him in gloom.⁴²

That Finerty’s character drifts so easily out of view in court is suggestive of his status as a stand-in for the cause of Irish reform in the turbulent moment of 1797-98. As Curran told the jury, “It is not upon *Finerty* you are sitting in judgment – But you are sitting in judgment upon the lives and liberties of more than half of Ireland.”⁴³ Specifically, Finerty’s prosecution for the “Marcus” letter was bound up with the trial and conviction of Orr, and has been described by Guy Beiner as almost “a replaying of Orr’s trial.”⁴⁴ This made it easy for the prosecution to seize on the referential quality of Finerty’s defence, “if *his* defence it can be called”:

[Finerty’s lawyers] told you they were unprepared; but though it were not the hacknied case – a *Libeller’s defence* – little preparation would serve their turn – hence therefore, it cannot be that they have brought forward in his defence, much of what they have heretofore, and in another place, ineffectually advanced in the accusation of others.⁴⁵

Fitzgerald represents Finerty’s defence as a generic “*Libeller’s defence*” which instantly marks out his criminal character. Finerty’s downfall should discourage others “who may be solicited to lend their names to give currency to sedition – let them recollect that on the day of trial, no defence either was, or could be made for him – He had an host of lawyers of the first abilities – *He had all the pride, pomp and circumstance of a distinguished libeller,*” but to no avail. In this representation, the character of a libeller is indelibly linked to low social character and the upstart pretensions of “vanity.”⁴⁶ Finerty serves as a warning to those who might be tempted to aspire to political activity beyond their station. A loyalist song about Finerty, “The new Date Obolum; or, Patriotic Mendicancy,” echoed this idea of unwarranted self-importance by having Finerty declare from the pillory:

“How glorious my triumph, how lofty my station,

⁴¹ [Thomas Fyshe Palmer,] *The Trial of the Rev. Thomas Fyshe Palmer, Before the Circuit Court of Justiciary, Held at Perth [...] With an Appendix* (Edinburgh, 1793), 24.

⁴² [Finerty,] *A Report of the Trial of Peter Finerty*, 40.

⁴³ *Ibid.*, 81.

⁴⁴ Beiner, *Forgetful Remembrance*, 75.

⁴⁵ [Finerty,] *A Report of the Trial of Peter Finerty*, 87.

⁴⁶ *Ibid.*, 91

“For an hour indulging sublime *Speculation!*

“O’er the heads of the people exalted I stood, sir,

“Truth’s innocent martyr, a *Babe in the Wood*, sir.”⁴⁷

The “Date Obolum” motif, which translates as “give a penny,” comes from the story of the Byzantine general Belisarius, who fell from glory and was forced to beg. Finnerty’s “lofty” position is a punning reference to his literal elevation in the pillory, as well as to his self-promotion by taking up with radicals beyond his social “station.” As a “*Babe in the Wood*,” Finnerty’s youth is acknowledged; but his self-styling as “Truth’s innocent martyr” is a paraphrase of generic radical sentiment to the point of parody.

Finnerty was found guilty, and at sentencing made a statement which gave him a rare moment of visibility. Even here, it is difficult to identify Finnerty’s voice with certainty, because the two published accounts of the trial differ in their transcriptions of his speech. William Ridgeway’s (possibly state-sponsored) edition of the trial is generally thorough, but gives a short version of this statement; John Stockdale, printer of the *Press*, produced an abridged edition of proceedings, but includes a considerably more detailed version of the statement.⁴⁸ Whether Ridgeway cut passages of Finnerty’s statement or Stockdale embellished it is impossible to determine, although it is possible that Stockdale, as a colleague at the *Press*, had access to Finnerty’s trial notes. Certainly, Ridgeway’s rather repentant version (“My Lord, I admit the publication is very gross”) sounds less probable than Stockdale’s recalcitrant Finnerty, who condemns the prosecution’s efforts to “defame and abuse my character,” and is altogether more defiant, or mockingly deferential:

[H]eretofore, my Lord, I have been taught to think that truth was above all things important, and I never did believe it possible that truth and falsehood were in any instances equally guilty ... but your Lordship’s opinion and the verdict of the Jury teaches a different lesson, and may serve to regulate my conduct in future.⁴⁹

In both editions, Finnerty emphasises his good intention as the location of criminal responsibility; as Stockdale lyrically puts it, “if guilt, my Lord, consists in the mind, I solemnly assure you that I have examined my heart, and find that it perfectly absolves me from any

⁴⁷ Anon., “The New Date Obolum; or, Patriotic Mendicancy,” in *A Collection of Constitutional Songs. To Which Is Prefixed, a Collection of New Toasts and Sentiments Written on Purpose for This Work* (Cork, 1799-1800), 43.

⁴⁸ See Paul O’Higgins, “William Ridgeway (1765-1817) – Law Reporter,” *Northern Ireland Legal Quarterly* 18, no. 2 (1967), 211.

⁴⁹ [Finnerty,] *A Report of the Trial of Peter Finerty*, 106 (Ridgeway’s version); [Finnerty,] *Trial of Mr. Peter Finerty*, 59-61 (Stockdale’s version).

criminality of intention.”⁵⁰ This was refuted by the judge who, in line with standard libel doctrine, stated that criminality lay in a publication’s tendency, not the publisher’s intention. It is probably significant that Ridgeway’s Finnerty declares, “I am totally unconnected to any party, or any individual, whose views are hostile to the government.”⁵¹ This declaration takes the sting out of the *Press* project, by presenting Finnerty as a maverick or “man of straw” rather than a well-connected activist.

Finnerty was sentenced to two years’ imprisonment, together with one hour in the pillory, a £20 fine, and the requirement to find sureties for good behaviour.⁵² Pillorying was designed to mark bad character publicly; as J. M. Beattie notes, “to stigmatize and dishonor and to mark out an offender as unworthy of trust or respect.”⁵³ However, it was a hazardous strategy in political cases, risking “a demonstration of support for the prisoner that would turn his punishment into a triumph and undermine authority and the law.”⁵⁴ Sure enough, Finnerty’s pillorying in Dublin was a piece of radical theatre. When John Frost’s pillory sentence had been cancelled in 1793, Epstein describes how a supportive crowd seized the opportunity to replace the official “ritual of public shame” with its own “carnavalesque” celebration, on “the ... raucous, levelling zone of the street.”⁵⁵ Scenes like these were disastrous for the government. In a debate in the Irish House of Commons shortly after Finnerty’s conviction, the lawyer Edmond Stanley proposed that whipping would be a more suitable punishment for “seditious publications” than the pillory, “for the pillory, at present, when inflicted for this offence, was a triumph.”⁵⁶ In fact, Finnerty claimed to have been threatened with whipping in prison, “a species of punishment, to a man educated as I have been in principles of virtue, and honesty, and manly pride, more terrible than death – a punishment, my Lord, which I am too proud to name, and which, were it now to make part of my sentence, I fear, although I hope I am no coward, I should not be able to persuade myself to live to meet.”⁵⁷ Whipping was the most humiliating of the corporal punishments, and had a strong class aspect: Thomas Muir was told by the bench in 1793 that he had been spared whipping because it “was too severe, and disgraceful, the more especially to a man who had

⁵⁰ [Finnerty,] *Trial of Mr. Peter Finerty*, 61.

⁵¹ [Finnerty,] *A Report of the Trial of Peter Finerty*, 107.

⁵² *Ibid.*, 113.

⁵³ J. M. Beattie, *Crime and the Courts in England, 1660-1800* (Oxford: Clarendon Press, 1986), 464.

⁵⁴ *Ibid.*, 466.

⁵⁵ Epstein, “Spatial Practices/ Democratic Vistas,” 301.

⁵⁶ Anon., “Ireland. House of Commons,” *Express and Evening Chronicle*, 27 February – 1 March 1798, 2.

⁵⁷ [Finnerty,] *Trial of Mr. Peter Finerty*, 60. See also Anon., “The Eve of ’98,” *Freeman’s Journal and Daily Commercial Advertiser*, Monday 27 December 1897, 2.

bore [sic] his character and rank in life.”⁵⁸ As Finnerty’s emphasis on his moral virtue and pride suggests, whipping aimed at the irreparable damage and discrediting of character before the community.⁵⁹ Although pillorying was supposed to be a similarly shocking and public designation of criminal character, in Finnerty’s case it presented an opportunity for subversive expressions of communal approval and support.

“The new Date Obolum,” written to mark Finnerty’s pillorying, is a satirical begging song. Its target was the subscription campaign organised in Finnerty’s aid: “Come, out with your purses, for greatly I need ’em,” its greedy Finnerty says. “Tho’ the taxes take *all*, give poor Peter the *rest*, sir.”⁶⁰ Finnerty’s personal credit apparently suffered among tradespeople after his arrest, and he complained from his cell to a correspondent, “I wrote last night for a guinea – & you sent me half a guinea = I’ll thank you for ... a guinea ... [A]ccording as I am pursued, ... confidence in my solvency declines.”⁶¹ Historians recognise the punitive financial burdens that libel prosecutions placed upon printers and booksellers, but harder to quantify is the loss of credit, professional reputation and “character” broadly imagined that must have pursued many, even after a sentence was served or the threat of proceedings had subsided.⁶² Finnerty found that his “solvency” was not improved after his release, since,

from the strong prejudice prevailing against me ..., which even long suffering and imprisonment was insufficient to appease or soften, I had found it vain to seek for any employment here ... however studiously correct I may be in my behaviour – how[eve]r I may rely on my own innocence, and on the justice of the higher powers – I cannot even hope in these times to escape insult and persecution from certain persons whose disposition to illtreat me.⁶³

As first an accused, then a convicted, libeller, Finnerty’s reputation was diminished such that he could not secure credit or employment. His predicament recalls Margot Finn’s observation:

Character functioned ... at once as the basis upon which lenders extended credit to borrowers and consumers and as a broader social and cultural measure of personal worth. Perceptions of personal worth, in turn, registered the successful use of

⁵⁸ [Thomas Muir,] *The Trial of Thomas Muir, Younger, of Huntershill, before the High Court of Justiciary, at Edinburgh [...]* *For Sedition. A New Edition, Corrected* (London, [1793]), 104.

⁵⁹ Beattie, *Crime and the Courts in England*, 463.

⁶⁰ Anon., “The New Date Obolum; or, Patriotic Mendicancy,” 44.

⁶¹ Finnerty, RP 620/34/51/8, NAI.

⁶² Philip Harling, “The Law of Libel and the Limits of Repression, 1790-1832,” *The Historical Journal* 44, no. 1 (2001), 118-19.

⁶³ Peter Finnerty to Lord Castlereagh, 11 April [1799], RP 620/52/233, NAI.

goods and services obtained on credit to construct creditworthy characters. Credit thus reflected character, but also constituted it.⁶⁴

On emigrating to London in 1799, a spy reported that Finnerty attempted to visit Valentine Lawless in the Tower of London, then imprisoned on suspicion of treason: not on a political errand, however, “but for the purpose of repairing his fortunes.”⁶⁵ Impoverished by his conviction in Dublin, Finnerty lost no time in pursuing financial help from a United Irish superior, taking advantage of his Irish connections in England. At this early moment in Finnerty’s career, his bad character as a convicted libeller was already becoming bound up with an idea of poor financial credit, in ways that proved hard to disentangle.

“What damages does he deserve?”: Finnerty and the *Satirist* magazine, 1808-09

In late 1808, a scandal erupted surrounding Frederick, Duke of York, the second son of George III and commander-in-chief of the army, when it was revealed that army promotions were being bought and sold under the brokerage of his mistress, Mary Anne Clarke. Finnerty helped to break the scandal by publishing a pamphlet entitled *An Appeal to the Public, and a Farewell Address to the Army*, by one Major Denis Hogan. Hogan was an Irish military officer who claimed that he had been unable to obtain a promotion by honest means. In exasperation he turned to the press, warning that he could effect an “*exposé*” of corrupt practices and “petticoat influence” within the army, with which the Duke of York was complicit.⁶⁶ His claims caused a sensation, and as the affair gathered momentum, a “seething mass of corruption” was exposed, extending beyond the army to the purchasing of government offices, parliamentary seats and votes, and East India Company positions.⁶⁷ The Attorney General prepared over twenty *ex officio* informations for libels on the Duke of York, including charges against Finnerty as publisher of Major Hogan’s pamphlet and an Irish associate, Garrett Gorman (or O’Gorman), as its printer – evidence of the way in which Finnerty had embedded himself in an Irish expatriate network. In the end, none of the cases reached trial. The Commons began its own investigation into the scandal early in 1809, and although it exonerated the Duke of corruption, the

⁶⁴ Margot C. Finn, *The Character of Credit: Personal Debt in English Culture, 1740-1914* (Cambridge: Cambridge University Press, 2003), 19.

⁶⁵ Orr to King, HO 100/87/308, TNA.

⁶⁶ Denis Hogan, *An Appeal to the Public, and a Farewell Address to the Army*, 2nd ed. (London, 1808), 39, 36.

⁶⁷ Anna Clark, *Scandal: The Sexual Politics of the British Constitution* (Princeton, NJ: Princeton University Press, 2004), 148, 174.

controversy was such that he was forced to resign. By March 1809, all the meditated libel prosecutions, including those against Finnerty and Gorman, had been abandoned.⁶⁸

In theory, *ex officio* informations allowed cases to move to trial much faster than those initiated by indictment. However, they could also protract proceedings indefinitely. According to one later account, Gorman was required to produce such extortionate bail after his arrest that

if it were not for an individual who gave a bond of indemnity to the persons who became his bail, he might have remained in prison to this hour, had he lived so long – nay, for years; for it is not apprehended that the publication of Major Hogan’s appeal, for which O’Gorman was arrested, will ever be brought to trial.⁶⁹

This was far from unusual. As Philip Harling explains, an *ex officio* information was no more than “a summons filed by the attorney general that required the accused to appear in court when called upon to defend himself.” The scope for harassing and financially intimidating defendants over extended periods was considerable, for not only were defendants often required to pay heavy securities for bail, but the period of waiting for a trial could also be indefinite: before 1820, when the law was changed to require informations for libel to be brought to trial within a year, “[t]he threat of a trial could and sometimes did follow the accused to the grave.”⁷⁰ The *ex officio* information against Finnerty did not expose him to this kind of lifelong harassment, but the charge that he had libelled the Duke of York was never formally resolved. While the case was pending, a series of attacks against Finnerty were published in *The Satirist; or, Monthly Meteor*, a scurrilous Tory magazine edited by George Manners. More work needs to be done on the *Satirist*, but its frequent libels and “unpalatable” lack of respectability clearly made it an uncomfortable political ally to the Tory establishment.⁷¹ In January 1809, it printed various claims about Finnerty’s involvement in Major Hogan’s pamphlet, including the charge that he had fled the country for fear of prosecution, together with abusive remarks on Finnerty’s “blasted ... character,” and a prediction that “*Peter the Wild Boy* will most probably spend another ‘*proud hour*’ upon the pillory.”⁷² Drawing upon something that Finnerty himself

⁶⁸ J. Ann Hone, *For the Cause of Truth: Radicalism in London 1796-1821* (Oxford: Clarendon Press, 1982), 195-96.

⁶⁹ [Peter Finnerty,] *Case of Peter Finnerty, Including a Full Report of All the Proceedings Which Took Place in the Court of King’s Bench Upon the Subject [...]* (London, 1811), xxi.

⁷⁰ Harling, “The Law of Libel and the Limits of Repression,” 113.

⁷¹ H. J. Spencer, “Manners, George (1778–1853), Journal Editor and Diplomatist,” in *Oxford Dictionary of National Biography* (Oxford University Press, 2004), <https://doi.org/10.1093/ref:odnb/17954>.

⁷² [George Manners,] “Strictures on Cobbett,” *The Satirist; or, Monthly Meteor* 4 (January 1809), 48.

apparently uttered, this was to become the defining catchphrase in the *Satirist's* campaign against Finnerty (it was still recycling the joke under a new editorship in 1813).⁷³

Incensed by the *Satirist's* attacks, Finnerty lost no time in bringing legal proceedings, not against Manners (who would not publicly acknowledge authorship), but against its publisher, Samuel Tipper. As a private individual seeking legal remedy for libel, Finnerty could choose between two options. The first was to prosecute Tipper under criminal law, by bringing an indictment before a grand jury, which would then decide if there was enough evidence to take the case to trial (the option pursued by Lord Castlereagh when he personally undertook to prosecute Finnerty for libel the following year). The second was to bring an action against Tipper in the civil courts: a jury would hear the case, but rather than finding the defendant guilty or not guilty, their job was instead to decide how much money the plaintiff (Finnerty) deserved to be awarded in damages. Finnerty opted for this procedure, and when his case, *Finnerty v. Tipper*, reached the Court of Common Pleas in February 1809, he laid his damages at £2,000.⁷⁴

Finnerty's decision to bring a civil action against Tipper – not a criminal indictment – was politically motivated. The point was that in civil actions the truth of an alleged libel was a valid defence, whereas under criminal law, truth made no difference (to the outrage of reformers). As Sir Edward Coke's landmark pronouncement of 1605 stated, “[i]t is not material whether the libel be true, or whether the party against whom it is made, be of good or ill fame.”⁷⁵ As a result, proceedings by action were praised in some radical quarters as a mode more “congenial with the true spirit of the British constitution.”⁷⁶ Finnerty's counsel, William Draper Best, argued: “I wish that every person who is aggrieved by the abuse of the liberty of the press, would appeal to a jury of his country as Mr. Finnerty has done ... instead of having recourse to criminal prosecutions.”⁷⁷ The rationale for ignoring the question of truth in criminal cases was that libels would tend towards a breach of the peace, so it made no difference whether or not they were true. In civil libel cases, by contrast, the focus was on the awarding of damages, so that the defendant (here, Tipper) was allowed to justify his publication of the relevant passages of the *Satirist* on the basis that the claims were true, and therefore not slanderous. The fact that Tipper chose not to do this suggested an acknowledgement of wrongdoing, as Best pointed out: “there being no justification put upon the record, you must consider ... [the passages] as originating in

⁷³ Anon., “Lincoln Castle, Alias Gaol,” *The Satirist; or, Monthly Meteor* 12 (March 1813), 227.

⁷⁴ [Peter Finnerty,] *Finnerty v. Tipper. A Full and Accurate Report of the Trial of the Action Brought by Peter Finnerty against Samuel Tipper, Publisher Of “The Satirist,” For a Libel [...]* (London, 1809), 1.

⁷⁵ Edward Coke, “Scandalous Libels (Case of),” in 77 Eng. Rep. 250 (1378-1865) (1605), 251.

⁷⁶ [Finnerty,] *Finnerty v. Tipper*, iii.

⁷⁷ *Ibid.*, 3.

the wicked malice of the defendant, or of those persons who set him upon publishing this execrable stuff.”⁷⁸

However, if truth was relevant to a libel action in the civil courts, so was the “good or ill fame” of the victim, mentioned by Coke. For this reason, Finnerty’s character came under sustained attack during his proceedings against the *Satirist*. Robert Post explains why character mattered in civil libel actions:

In contrast to the criminal remedy, in which truth was irrelevant and the focus of the proceeding was therefore clearly and narrowly on the defendant’s affront to the honorific status of the plaintiff’s role, the focus of the civil proceeding was expanded to include the possible derelictions of the plaintiff. ... [T]he plaintiff could be required to demonstrate that he had not acted dishonorably before being entitled to receive civil damages.⁷⁹

Defending Tipper, Samuel Shepherd argued that Finnerty’s action was invalid because he bore the character of a libeller. It was, Shepherd argues, “a principle of law, that he who complains in a civil action of a libel, must take care that he is not a libeller himself.”⁸⁰ Finnerty could not “ask a jury to protect his character, when he has been so regardless of the characters of others,” Shepherd insisted, reminding the jury that Finnerty “has been convicted of a libel somewhere or other, and has stood in the pillory for it” – that is, in Dublin.⁸¹ Shepherd also presented Finnerty as the libeller of George Manners. He traced Finnerty’s ongoing dispute with the *Satirist* to debates, held by the radical Robin Hood debating society, on the topic of whether Manners or Bill Soames, a pickpocket and vagrant, was the “greater nuisance in society.”⁸² He demonstrated that Finnerty had taken part in these debates, and had helped to produce handbills denigrating Manners as a “literary ruffian” (he was unable to prove that Finnerty was the society’s manager).⁸³ This libellous provocation was sufficient justification for the *Satirist*’s retaliation, Shepherd thought:

Is a man ... who is making a daily traffic of libels – to say he is entitled to damages, because he draws down on his head a portion of that scurrility he is

⁷⁸ *Ibid.*, 3-4.

⁷⁹ Robert Post, “The Social Foundations of Defamation Law: Reputation and the Constitution,” *California Law Review* 74, no. 3, Symposium: New Perspectives in the Law of Defamation (1986), 705-06.

⁸⁰ [Finnerty,] *Finnerty v. Tipper*, 32.

⁸¹ *Ibid.*, 29, 38.

⁸² *Ibid.*, 34. On the origins of the Robin Hood debating society, see Wright, “An Anglo-Irish Radical,” 672-73.

⁸³ [Finnerty,] *Finnerty v. Tipper*, 33, 36.

constantly dealing out to others. ... When men of fair characters are attacked by libellous writers, it is fit their characters should be redeemed by a jury; but if a man challenges and provokes libels against him by offences of a similar nature, he has no right to have any appeal he may make attended to, or even to come into a court of justice.⁸⁴

Finnerty does not have that “fair character” which would entitle him to be vindicated by a jury of his peers. Indeed, his criminality by trade (“making a daily traffic”) deprives him of the “right” to be heard, even to be present, in a court.

Shepherd did not hesitate to designate Finnerty “the author of the libel on the Duke of York,” despite the Major Hogan case not yet having come to trial. “I would ask,” he said, “how he dare come into court to complain of libels, who has published a libel upon the first characters in the country, even his majesty himself?”⁸⁵ Finnerty is confidently assigned a criminal character within the court. Shepherd told the Court of Common Pleas, “Mr. Finnerty ... stands before you one of the most confirmed libellers that ever abused the press of this country.”⁸⁶ At times, *Finnerty v. Tipper* descends into finger-pointing over who has libelled whom, but it was rare for a debate like this to be aired in court at all, since the truth of an alleged libel was not officially given space in criminal trials. That it took place in this instance was owing to Finnerty’s willingness to litigate – despite his status as a convicted libeller ten years previously, and now as a suspected libeller against royalty. Best represented the action against Tipper as a necessity on Finnerty’s part, because the *Satirist*’s freely-circulating libels risked prejudicing the outcome of any future trial of his client for Major Hogan’s pamphlet, still expected imminently. But if Finnerty hoped his civil action would safeguard his pending prosecution, the strategy made his character vulnerable to attack, for it proved impossible to disentangle his action against Tipper from either his criminal record or the pending case.

In his charge to the jury, Lord Chief Justice James Mansfield conceded with obvious reluctance that the *Satirist* had libelled Finnerty. However, he queried “what injury Mr. Finnerty can suffer for this abusive libel,” since he had no character worth protecting in the first place: “it is on the ground of a man having a good character himself, that he comes into a court of justice to complain of a libel against him.”⁸⁷ As Shepherd put it, “Mr. Finnerty ... has chosen to ask for damages. What damages does he deserve?”⁸⁸ The jury agreed, awarding Finnerty the

⁸⁴ Ibid., 38-39.

⁸⁵ Ibid., 36, 28.

⁸⁶ Ibid., 29.

⁸⁷ Ibid., 79, 75.

⁸⁸ Ibid., 37.

humiliating sum of one shilling in damages: an embarrassingly low valuation of his character, although the outcome was technically in his favour. The *Satirist* gleefully reported this slur on “the *fair fame and credit* of one Peter Finnerty,” and divulged that Finnerty had been compelled by the court to pay legal costs.⁸⁹ It printed an epigram which goaded that Finnerty

Must pay his lawyer’s bill – or, should he fail,

He p’raps may rave for *freedom* – in a *jail*.

Be this reflection then the wretch’s hope,

His *twelve pence damages* will buy – a rope.⁹⁰

The epigram yokes together different aspects of Finnerty’s supposed bad character: his poor “credit” and poverty (the imagined inability to pay his lawyer), criminality (occupying a prison), and moral degradation (his imagined suicide). Finnerty’s decision to proceed by action had invited the monetisation of his reputation. By fixing the financial value of his character at an ambitious £2,000, he tempted its satirical deflation by opponents such as Manners. Ironically, the subscription gathered for him after his prosecution two years later raised that sum of £2,000, in a mark of respect of Finnerty’s character which contrasted with the court’s humiliating award of one shilling.⁹¹

The cheapness of Finnerty’s character, confirmed in a court of law, seemed to support Manners’ original assessment of him as a “felon,” unable to fix a respectable price to his name.⁹² In January 1809, the *Satirist* had portrayed Finnerty, Cobbett and their associates as a “fraternity of pickpockets,” and the Robin Hood debating society which they frequented as a “DEN OF THIEVES.”⁹³ Manners imagines three convicted housebreakers sending a letter of support to the society, directly “from the *condemned hole* in Newgate,” unsubtly aligning the radical debating society with the criminal underworld.⁹⁴ In Finnerty’s case, however, such attacks were regularly bound up with a xenophobic view of Irish national character. As the *Examiner* noted (sympathetically), Finnerty “has one deadly sin in the eyes of a number of persons; – he is an Irishman, – a native of that country, where to feel for the people about you, is to be accused of

⁸⁹ [George Manners,] “Crumbs of Comfort, for Litigious Knaves,” *The Satirist; or, Monthly Meteor* 4 (May 1809), 474.

⁹⁰ “Anecdotes, Epigrams, &c.,” *The Satirist; or, Monthly Meteor* 4 (May 1809), 479.

⁹¹ Marie-Louise Legg, “Finnerty, Peter (c. 1766-1822), journalist,” in *Oxford Dictionary of National Biography* (Oxford University Press, 2016), <https://doi.org/10.1093/ref:odnb/9474>.

⁹² [Manners,] “Strictures on Cobbett,” 49.

⁹³ [George Manners,] “The Satirist and Pickpockets,” *The Satirist; or, Monthly Meteor* 4 (January 1809), 1, 3.

⁹⁴ *Ibid.*, 13.

bloodthirstiness; and to differ with the propriety of cheating them, is to show that you are not fit to be trusted.”⁹⁵ During 1809, the *Satirist* published a series of satirical prints of Finnerty which exploited Irish stereotypes: one shows a villainous-looking, dark-complexioned Finnerty plotting in the shadows with Cobbett, and wielding a dagger with which to murder the ailing John Bull; another has him actually stabbing Britannia in the heart, Major Hogan’s pamphlet poking out of his breast pocket; and a third depicts a more primitive savagery, as Finnerty, half-dressed in ragged skins and peasant’s boots, stirs a cauldron labelled “Malice.”⁹⁶ O’Shaughnessy notes that “barbarity” had been associated with the Irish with particular force since the mid-seventeenth century, and the *Satirist* develops that theme of anti-English violence in these images, perhaps implicitly invoking Finnerty’s historic association with the United Irishmen, too.⁹⁷ However, the *Satirist* did not primarily choose to represent Finnerty as politically dangerous. Its favourite nickname for him was “Peter the Wild Boy,” which partly recalls Charles Maturin’s just-published *Wild Irish Boy* of 1808, but is most strongly suggestive of “Peter the Wild Boy,” a feral child found in a Hanoverian forest in 1722 and brought to England by George I.⁹⁸ Peter was a curiosity for many years, and it was variously speculated that he was “an idiot,” the abandoned child of a criminal, or a “living example of the state of Nature.”⁹⁹ For the *Satirist* to identify Finnerty with this “wild boy” was to ridicule him as immature, intellectually deficient, uncivilised, and savage – and to locate those traits in his Irishness. The magazine delighted in anecdotes of Finnerty’s cowardice in the face of physical threat, and of “blustering” tantrums which gave way in the face of authority. In one, Finnerty “submitted to a thrashing” by a “gentleman” antagonist “with all the *tameness of a lamb*”: a childish fit of temper followed by abject surrender to a social superior, in a fantasy of national and class-based mastery.¹⁰⁰

⁹⁵ [Leigh Hunt,] “Remarks on the Case of Mr. Finnerty,” *The Examiner*, 24 February 1811, [n.p.].

⁹⁶ Samuel de Wilde, “John Bull in a Fever,” *The Satirist* (Samuel Tipper, July 1809), British Museum, Online; De Wilde, “A Second Sight View of the Blessings of Radical Reform,” *The Satirist* (Samuel Tipper, May 1809), British Museum, Online; De Wilde, “The Patriotic Triad, or Tried Patriots,” *The Satirist* (Samuel Tipper, September 1809), British Museum, Online.

⁹⁷ David O’Shaughnessy, “Introduction: ‘Tolerably Numerous,’” 4-5.

⁹⁸ See especially [Manners,] “The Satirist and Pickpockets,” 5-6. Maturin actually briefly served as a curate in Loughrea, Finnerty’s hometown: see Robert Miles, “Maturin, Charles Robert (1780–1824), Writer and Church of England Clergyman,” in *Oxford Dictionary of National Biography* (Oxford University Press, 2004), <https://doi.org/10.1093/ref:odnb/18351>.

⁹⁹ Maria and Richard Lovell Edgeworth, *Practical Education* [...], vol. 1 (London, 1798), 63; Anon., *The Annual Register, or a View of the History, Politics, and Literature, For the Years 1784 and 1785*, 2nd ed. (London, 1795), 43; James Burnet, Lord Monboddo, *Antient Metaphysics* [...], vol. 3 (London, 1783), 67.

¹⁰⁰ [Manners,] “The Satirist and Pickpockets,” 10.

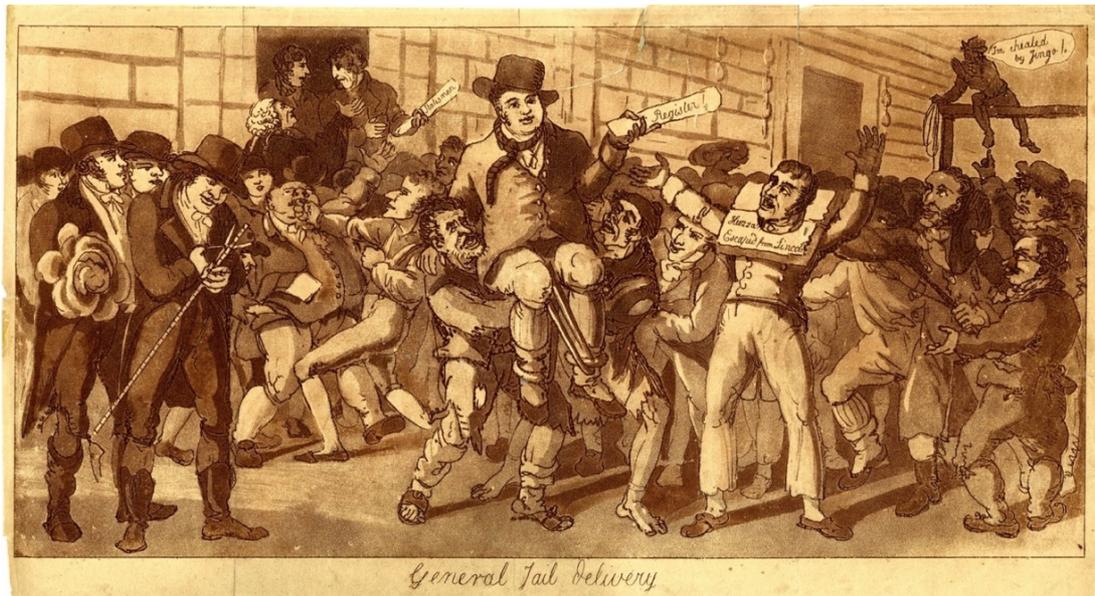


Figure 4: Anon., “General Jail Delivery,” *The Satirist*, 1811. British Museum, Online. Licensed under CC BY-NC-SA 4.0.

The *Satirist* kept up its campaign against Finnerty for some years. Even in 1812, it printed a satirical image entitled “General Jail Delivery” to mark Finnerty’s release from Lincoln gaol (Figure 4). This depicts a fragment of pillory still hanging around his neck, albatross-like, and labelled with a paper that reads “Huzza! Escaped from Lincoln,” probably in a parodic imitation of the paper that would be affixed to a pilloried prisoner’s head, declaring their crime.¹⁰¹ Arms flung wide in triumph, Finnerty is permanently yoked to the pillory, so that even his release from prison is framed as a temporary “Escape.” At a distance of twelve years and many miles, Finnerty’s pillorying in Dublin (“somewhere or other,” as Shepherd put it in 1809) continued to loom large. By the late eighteenth century, the pillory was falling into disuse, a “paradigm of the old penal order” that was shortly to be abolished.¹⁰² Its symbolism was all the more potent for that primitivism. While sympathetic commentators understood Finnerty to be the victim of outmoded despotism, to the hostile it was evidence of publicly confirmed criminality. As one writer argued in relation to the claims made about the Duke of York in Major Hogan’s pamphlet, “I believe his Highness’s assertion will not be put in competition with a man who has been pilloried for the violation of all law and justice.”¹⁰³ For Manners, Finnerty’s “proud hour in the pillory” in Dublin was central to his character as a libeller:

¹⁰¹ “General Jail Delivery,” *The Satirist* (1811), British Museum, Online; Beattie, *Crime and the Courts in England*, 464.

¹⁰² Beattie, *Crime and the Courts in England*, 614.

¹⁰³ Anon., *The Incontrovertible Proofs of the Forgeries in Major Hogan’s Pamphlet [...]* (London, 1808), 13.

The word PILLORY, roused all the energies of THE WILD BOY. – “Gentlemen,” he exclaimed, “it is to the pillory that I owe my present honourable notoriety; ’twas in the pillory that I proved my love of freedom, and my contempt of tyranny. . . . The hour that I spent on that villainous instrument of tyrants was the proudest of my life?”¹⁰⁴

Manners understood Finnerty’s experience “on that villainous instrument” as the pivot on which the rest of his life turns. The “PILLORY” is understood both as a shaping force on Finnerty’s character, and as a marker of his fixed criminality.

For reformers, far from the pillory marking Finnerty’s criminality, it indicated his honourable character. Indeed, it was that pride about the pillory that Manners wanted to mock as perverse and deviant. Best insisted at *Finnerty v. Tipper* that “[i]f Mr. Manners had said in his Satirist what it was for, that Mr. Finnerty had stood in the pillory, . . . his libel would have lost its sting”; for considering the “character” of the Irish government in 1797, Finnerty’s “offence was not of that description which renders a man infamous.” Best notes that his spell in the pillory was overseen by “persons of the first rank and respectability” (he alludes to O’Connor’s umbrella), so it “is no reason why Mr. Finnerty should not be received into society as well as Mr. Manners; – I rather think he would [be] much sooner.”¹⁰⁵ Finnerty’s criminal record, acquired under a tyrannical government, signifies respectability. The *Examiner* agreed that to be given the character of a libeller under bad rulers was a badge of pride. It traced Finnerty’s radical credentials directly to his 1797 conviction: “he had annoyed the Irish government, – in other words, he had been a libeller, – a character, which when regarded with reference to the definition lately given of libel, and to the times and the country in which he wrote, – the first impulse of honest men is, I verily believe, to look upon with respect”.¹⁰⁶ The character of a libeller is elevated, and the pillory recognised as a powerful symbol through which character can be represented, defended and attacked.

Lord Castlereagh’s prosecution of 1810-11: the “two wild Irishmen”

Although the government was forced to drop its planned prosecution of Finnerty for Major Hogan’s pamphlet, he was a “marked man” after 1809.¹⁰⁷ In the late summer of that year, Finnerty undertook to report for the *Morning Chronicle* on the military campaign at Walcheren, in the Dutch province of Zeeland. He sailed with the British fleet as a kind of embedded war

¹⁰⁴ [Manners,] “The Satirist and Pickpockets,” 8.

¹⁰⁵ [Finnerty,] *Finnerty v. Tipper*, 65-66.

¹⁰⁶ [Hunt,] “Remarks on the Case of Mr. Finnerty,” 114.

¹⁰⁷ Duncan Wu, *New Writings of William Hazlitt*, vol. 2, 221.

correspondent, but on arrival at Walcheren was, to his fury, issued with an official order to return home. Convinced that Lord Castlereagh was behind it, Finnerty wrote a heated article in the *Morning Chronicle* airing his hypothesis, and proposing two possible motives for his removal: Castlereagh's fear of what he might publish regarding the disastrous Walcheren expedition, or – and Finnerty fixes most importance to this – a wish to besmirch his reputation and “excite a warwhoop against me.” Through the order, he writes, “I have been most foully slandered, and to remain silent any longer would be to betray a culpable indifference to the preservation of my own character, and to the weight of public opinion.” Finnerty conceives of the entire affair as an assault on his good name, yet “that character, which a Minister of the Crown has thought worth attacking, it will not, I hope, be deemed presumptuous in me to think worth defending.” Finnerty interpreted the order for his removal from Walcheren as evidence of “Lord Castlereagh's PERSEVERING hostility,” going back to his involvement with the *Press* as a young man. Castlereagh wanted to silence him, Finnerty believed, being “tolerably aware that I have some knowledge of his real character, and that I have not omitted to propagate that knowledge.”¹⁰⁸ He also used his article to draw fresh scrutiny onto the Irish judicial scandals that took place under Castlereagh's watch in 1797-98, attributing the harassment he experienced in prison in Dublin more or less directly to Castlereagh's influence, and stating his conviction that Castlereagh had personally sought to prevent both his release from prison and his emigration to England.

Finnerty claimed that he had originally wanted to take Castlereagh to court over the Walcheren order, but had refused on principle to bring a criminal indictment against him, because criminal courts would not consider the truth of the alleged libel. His lawyer advised him that pursuing a civil action would be unlikely to succeed, so Finnerty framed the *Morning Chronicle* article as a last resort: an opportunity for the public defence of his character before the jury of the public, in the absence of legal remedy.¹⁰⁹ With its legalistic register and self-conscious turn away from formal legal justice, instead looking to the tribunal of the public, it has much in common with other undelivered courtroom defences published by John Thelwall, Thomas Fyshe Palmer and others. In response to the article, Castlereagh launched a prosecution against Finnerty for libel. He did so as a private prosecutor, refusing the government's offer to manage the case (although the Attorney General, Vicary Gibbs, represented him as prosecutor in court), and instead, through a sense of “public duty,” taking an indictment before a grand jury himself.¹¹⁰ This was partly a reflection of the government's difficulty in securing convictions for seditious libel at

¹⁰⁸ Peter Finnerty, “Lord Castlereagh and Mr. Finnerty,” *Morning Chronicle*, 23 January 1810, 4.

¹⁰⁹ [Finnerty,] *Case of Peter Finnerty*, 18.

¹¹⁰ Hansard, “State of the Nation,” 11 July 1817, *Parliamentary Debates*, Commons, 1st ser., vol. 36, c1420. On private prosecutions, which continued well into the nineteenth century, see John H. Langbein, *The Origins of Adversary Criminal Trial* (Oxford: Oxford University Press, 2003), 11-12.

this time; Michael Lobban finds that in the relatively stable years after 1800, most government prosecutions for libel targeted publications which could be clearly seen to have attacked individual members of government, the army, or the administration of law or government, rather than a more abstract idea of the constitution.¹¹¹ Awaiting trial, Finnerty travelled back to Ireland where he gathered affidavits to prove Castlereagh's complicity with torture during the 1798 rebellion. When the case came to trial in July 1810, he attempted to read them to the court, and restated the allegations of official misconduct linked to Orr's case. Lord Ellenborough ruled all such evidence inadmissible. "We are not here to enter into a trial of Lord Castlereagh's government in Ireland", he objected; Finnerty was adding "fresh libels" to the record.¹¹² Proceedings were suspended to give Finnerty time to redact the libellous passages, but Ellenborough rejected the new statement a week later still more strongly, on the basis that truth was no defence for libel in criminal cases.

Finnerty decided to let judgment go by default, effectively accepting a guilty verdict. His reasoning was that he could instead use his evidence to mitigate his sentence, since the truth of the libel was supposed to be admissible at sentencing, although not as regular evidence in criminal law. He probably hoped that a default plea would force the court to give a platform to his allegations against Castlereagh, but some potential allies outside of court took a dim view of the strategy. Leigh Hunt in the *Examiner* disapproved on the grounds that Finnerty appeared to be admitting his own guilt: "I know, as he afterwards declared, that such was not his real opinion; and I believe, that he thought he was justified in availing himself of what he imagined would diminish the punishment; but on both these very accounts, the proceeding was unworthy of him". In the event, the bench refused to allow his evidence even at sentencing, but it is typical of Finnerty's pragmatism that he took the decision to let the verdict go by default, in a strategy that Hunt worried was "double dealing."¹¹³ The decision also meant that Finnerty lost the opportunity to question Castlereagh himself as a witness; Castlereagh had been anticipating that Finnerty would "ask me as many impudent Questions" as his "Jacobin Ingenuity can suggest."¹¹⁴ At sentencing, Finnerty's courtroom style was opportunistic and brazen, and according to one observer was inadequately captured in printed reports: "the account of Mr Finnertys [sic] conduct and sentence ... has been most fully reported in the statesman[,] however it is still imperfect as Finnerty behaved most boldly."¹¹⁵ Finnerty's boldness was

¹¹¹ Michael Lobban, "From Seditious Libel to Unlawful Assembly: Peterloo and the Changing Face of Political Crime c1770-1820," *Oxford Journal of Legal Studies* 10, no. 3 (1990), 326.

¹¹² [Finnerty,] *Case of Peter Finnerty*, 22, 24.

¹¹³ [Hunt,] "Remarks on the Case of Mr. Finnerty," 116.

¹¹⁴ Lord Castlereagh to Sir Charles (Lord) Stewart, 18 July [1810], Castlereagh Papers D3030 Q/2/1, 2, Public Records Office of Northern Ireland, Belfast.

¹¹⁵ Edward Keane to Daniel O'Connell, 13 February 1811, Ms 33,565/41(9), National Library of Ireland, Dublin.

further illustrated by his insistence that he was the injured party with regard to Castlereagh, “rather the accuser than the accused.”¹¹⁶ He even audaciously calculated his damages from the Walcheren affair to around £500, proving himself once again willing to monetise his commitment to reform in an unsentimental manner.¹¹⁷

Gibbs, prosecuting Finnerty, stressed both his bad conduct in court and confirmed criminal character: he even alluded to Finnerty’s previous conviction in Dublin, although prosecutors were not supposed to bring evidence of a defendant’s bad character, except to refute the defence’s claim that it was good. But although even Ellenborough rejected that evidence, Gibbs pressed the point, arguing that Finnerty was, according to his own statement, “a convicted libeller in Ireland.”¹¹⁸ This was evidence of bad character in a pure form, a criminal record brought directly into court. For his part, Finnerty insisted on his status as a man of character in its sense of good social standing: he cited a legal maxim in Latin and deployed criminal terminology, in efforts to stake his claim to the markers of educated and legally-literate character (which was the more urgent after he opted to defend himself alone, without the help of his counsel, the Catholic lawyer Henry Clifford). Finnerty also challenged Gibbs’ assumption that to be a libeller is to be of bad character:

According to your law, I may be called a libeller, but if I had not these affidavits to produce, I might be called a liar also. The latter is an odious character in every state of society, but I do not know that in the present state of England, a libel upon a public man furnishes any presumptive evidence against the morality or judgment of the author. I am, therefore, more anxious to rescue myself from the imputation of the one than of the other.

He echoes the now-familiar radical notion that bearing the character of a libeller is a stamp of honour, “in the present state of England.” To brand someone “a libeller” tells us little about their “morality or judgment,” when the criminal libel law refuses to consider the role of truth. By contrast, the “odious character” of “a liar” carries a social stigma. So while the prospect of losing his legal character causes Finnerty little anxiety, the “loss” of his moral character would be worse than “any punishment within power’s limits to inflict.”¹¹⁹

At the trial, Finnerty framed his relationship with Castlereagh as one of almost lifelong animosity, stretching back to 1797. Castlereagh’s biographer claims that Finnerty “hounded him

¹¹⁶ [Finnerty,] *Case of Peter Finnerty*, 24.

¹¹⁷ *Ibid.*, 18.

¹¹⁸ *Ibid.*, 58-59.

¹¹⁹ *Ibid.*, 32.

throughout his life,” but Finnerty insisted the reverse – that Castlereagh “oppressed me in Ireland when a mere boy; and ... has ever since continued to slander my name.”¹²⁰ His prosecutor has been only too successful, for, like Godwin’s Caleb Williams, “my name has for some time been ... a butt at which any calumniator might shoot with impunity ... I have been abused, foully abused. Every thing that the invention of malignity and political prejudice could suggest, has been sent forth to injure me.”¹²¹ Yet like Caleb and Falkland, a mutual respect seems to have existed between the two men. Hazlitt reminisced that when both were at parliament (Castlereagh as a member of government, Finnerty as a reporter), “his lordship always bowed to PETER in the lobby of the House, a condescension the latter used to acknowledge as proof of the ascendancy of his own character.”¹²² In turn, Finnerty allegedly described Castlereagh as “one of the most gentlemanly men in the House of Commons,” suggesting an antagonism not unmixed with admiration.¹²³ In 1811, he pointed out that they were both Irish, their fates tied together in “an English court of justice, [which] will decide between one Irishman who has the good fortune to be esteemed by his countrymen, and another who is the object of their universal de— But here I check myself.”¹²⁴ Others also noted their shared heritage. At the trial of John Gale Jones in July 1810, also for a libel on Castlereagh linked to the same affair, the defence counsel remarked of Finnerty and Castlereagh, “I know nothing about either of them, thank God; but I hear they are two wild Irishmen, who had a kind of dispute in Ireland ... For my part I think they ought to have fought it out at home.”¹²⁵ Castlereagh’s respectable Irish character has become tied up with Finnerty’s “wild Irish” one. Both men sought in the 1811 trial the vindication of their character: Finnerty because he considered his to have been aspersed by the order for his removal from Walcheren, Castlereagh because he considered himself a victim of libel, whose “character” Finnerty had set out “to ruin.”¹²⁶ Crucially, though, Finnerty successfully turned public attention onto their dispute back “at home” – that is, onto the record of Castlereagh’s government in Ireland.

Finnerty was sentenced to eighteenth months’ imprisonment in Lincoln gaol, and was required to find heavy securities for good behaviour. He enjoyed strong public support, however, and did not disappear from public view: indeed, his imprisonment at Lincoln became the topic of a

¹²⁰ John Bew, *Castlereagh: The Biography of a Statesman* (London: Quercus, 2011), 112; [Finnerty,] *Case of Peter Finnerty*, 57.

¹²¹ [Finnerty,] *Case of Peter Finnerty*, 39, 41.

¹²² Hazlitt, “Peter Finnerty,” 2:226.

¹²³ Quoted in Wright, “An Anglo-Irish Radical,” 680.

¹²⁴ [Finnerty,] *Case of Peter Finnerty*, 56.

¹²⁵ Anon., “Court of King’s Bench, Friday, July 20. The King v. John Gale Jones,” *The Times*, Saturday 21 July 1810, 2.

¹²⁶ [Finnerty,] *Case of Peter Finnerty*, 58.

parliamentary debate, after he submitted a petition regarding the poor gaol conditions there, and in response to which the Lincoln gaoler submitted his own petition.¹²⁷ The ongoing energy of these debates came down to Finnerty's significance for the reform community, which understood him not as a criminal character but as a symbolic stand-in for the free press. One paper considered Finnerty's legal battle with Castlereagh not as "a struggle between two individuals," but rather as "a struggle whether the liberty of the press shall be supported in the person of Peter Finnerty."¹²⁸ On learning that he was held in a felon's cells at Lincoln, another newspaper queried, "Is this a proper place of confinement for a gentleman, by education at least, for a mere literary offence?"¹²⁹ Here, Finnerty has earned the character of a "gentleman," although the qualifier "by education at least" implicitly acknowledges that he lacks gentility by birth (and is perhaps not especially accurate: we know that Finnerty was apprenticed to a printer in Dublin, but it is not certain that he completed the apprenticeship, nor that he received any other formal education).¹³⁰ To frame his libel as "a mere literary offence" reinforces Finnerty's gentlemanly status, even as it diminishes the political force of his attack on Castlereagh.

Supportive descriptions of Finnerty as a "gentleman" are never wholly convincing, since he occupied a dubious position between the respectable and unrespectable wings of the reform community. Like many Irish publishers and activists, Finnerty bridged the constitutionalist reform movement and a murky, revolutionary underworld. Iain McCalman explains that the "long-established cross-flow between British and Irish popular politics," of which Finnerty was a representative example, encouraged the combination of electioneering, journalism, and so on with "a penumbra of more extreme and illegal operations."¹³¹ To aristocratic Whigs as well as respectable popular radicals, Finnerty pushed at the limits of "good character" in troubling ways; his character was subject to ongoing appraisals by the jury of the public, and divided opinion. Some Whigs could only acknowledge Finnerty as an ally with discomfort. Duncan Wu notes that even the Whig politician Henry Brougham, "on whose behalf Finnerty campaigned in Westmorland in 1818 ... told Lord Holland that 'Finnerty is not quite the kind of subject in

¹²⁷ Hansard, "Petition of Mr. Finnerty Complaining of his Treatment in Lincoln Castle," 21 June 1811, *Parliamentary Debates*, Commons, 1st ser., vol. 20, cols. 723-38; Hansard, "Petition of the Keeper of Lincoln Gaol Respecting Mr. Finnerty," 1 July 1811, *Parliamentary Debates*, Commons, 1st ser., vol. 20, cols. 774-76.

¹²⁸ Anon., "Subscription in Ireland to Indemnify Peter Finnerty," *The Belfast Monthly Magazine* 6, no. 32 (1811), 244.

¹²⁹ Anon., "Bury, March 6, 1811," *The Bury and Norwich Post: Or, Suffolk, Norfolk, Essex, Cambridge, and Ely Advertiser*, 6 March 1811, 2.

¹³⁰ Hazlitt, "Peter Finnerty," 2:224.

¹³¹ Iain McCalman, "'Erin Go Bragh': The Irish in British Popular Romanticism c.1790-1840," in *Irish-Australian Studies: Papers Delivered at the Fifth Irish-Australian Conference*, ed. Oliver MacDonagh and W. F. Mandle (Canberra: Australian National University, 1989), 169-70.

whose person one should wish to see the libertys [sic] of the press be tried’.”¹³² Finnerty’s financial credit was never good, but although the subscription appeal launched in his aid generated respectable support (the meeting was chaired by Sir Francis Burdett), it also involved less reputable figures such as Arthur Thistlewood (secretary to the London subscription committee).¹³³ It is little surprise, then, that while he was a friend of Hazlitt, Curran and Cobbett, and an associate of Godwin (Godwin and Finnerty saw each other intermittently between 1807 and 1821, mainly through mutual acquaintance with Curran and James Perry, editor of the *Morning Chronicle*), other reformers mistrusted Finnerty as a “notorious profligate” and “low lived reprobate” – this from the respectable Francis Place.¹³⁴

Finnerty’s major achievement at his 1811 trial was to bring the memory of government brutality in Ireland in 1797-98 to the forefront of public consciousness. As one sympathetic Irish onlooker noted, Finnerty had promised “that he would not surrender up the confidence his Irish friends reposed in him and would use their affidavits[,] and no man could make stronger efforts to do so[,] to the great astonish[men]t of the Bar and a Crowded Court.”¹³⁵ Despite Ellenborough’s efforts to suppress the evidence in court, the work had been started. The public scrutiny that Finnerty brought to bear on Castlereagh’s record on torture in Ireland was perhaps his most lasting legacy, and the 1811 case gave new life both to the Orr affair (just as Finnerty’s Dublin prosecution had done), and to the brutality of Dublin Castle in 1797-98. That Castlereagh’s complicity in Irish torture was widely known and condemned, both within and beyond the reform community, was largely down to Finnerty’s efforts, as McCalman describes:

Once in London he seized every opportunity to publicise these charges. They were taken up by Burdett in parliament; they were aired in the popular radical and Whig press; and they became the starting point of a wider public campaign against torture and flogging in other spheres of British administration. ... Many of the Irish labourers and artisans who joined Arthur Thistlewood’s armed conspiracies in the winters of 1816-17 and 1819-20 claimed that they wanted to avenge the atrocities of ’98 with “butcher” Castlereagh’s blood.¹³⁶

Finnerty was not the only prosecuted reformer who tried to turn the charges back against his prosecutor, and make the government out to be the true criminal; that was a common trope of

¹³² Wu, *New Writings of William Hazlitt*, 2:222.

¹³³ Hone, *For the Cause of Truth*, 201

¹³⁴ Anon., “The Late Mr. Finnerty,” 3; *The Diary of William Godwin*, ed. Victoria Myers, David O’Shaughnessy and Mark Philp (Oxford: Oxford Digital Library, 2010), <http://godwindiary.bodleian.ox.ac.uk>; Wu, *New Writings of William Hazlitt*, 2:222.

¹³⁵ Keane to O’Connell, Ms 33,565/41(9), NLI.

¹³⁶ McCalman, “Erin Go Bragh’,” 178.

radical defences. But he did so with more coherence than most, in both legal and rhetorical terms, and with spectacular public success.

In 1817, twenty years after Finnerty's first trial in Dublin, Castlereagh's record in Ireland was raised again in parliament, in a "State of the Nation" debate introduced by Brougham. The affidavits that Finnerty had collected for his 1811 trial were cited, and Castlereagh was obliged to defend both his prosecution of Finnerty and his role in the Irish government in the 1790s. Finnerty's character came under fire in the Commons too, and he was referred to as "a pilloried libeller" and "a convicted libeller," with specific reference to his Irish conviction.¹³⁷ George Canning insisted that Finnerty's affidavits were unreliable due to their "polluted" origins: they were mere "[c]alumnies, founded on the authority of a traitor who had been pardoned, or of a libeller who had had the advantage of standing in the pillory."¹³⁸ But Brougham objected that the affidavits were valid legal documents:

[T]hey were the testimony of eye-witnesses and of sufferers – of persons who had seen, and persons who had undergone the torture. ... [T]hey were sworn before judges in Ireland, and when tendered in the court of King's-bench here, were not at all objected to for any irregularity in the jurats, but only because a new and very doubtful rule excluded matter of justification in a question of mitigation of punishment.¹³⁹

It is significant that Brougham does not defend Finnerty as a trustworthy contributor to civic debate, but instead insists that his role as the collector of the affidavits is irrelevant: "what could it signify whose hands gave in the affidavits!" he exclaims. It is perhaps also telling that while Finnerty functions in the parliamentary debate as a locus for a cluster of related anxieties and political agendas, he is mentioned by name only a handful of times: a "man of straw" again.

Hatred of Castlereagh was a defining feature of the reform movement throughout the 1810s, and when he took his own life in August 1822 (almost exactly three months after Finnerty's death, in a coincidence that further links the two men together) many radicals celebrated his death.¹⁴⁰ Castlereagh's reputation was bound up with his record in Ireland. For instance, William Hone and George Cruikshank caricatured him as "Derry Down Triangle," with "triangle" referring to the infamous frames on which rebels were flogged in 1798, supposedly with Castlereagh's

¹³⁷ Hansard, "State of the Nation," 11 July 1817, *Parliamentary Debates*, Commons, 1st ser., vol. 36, cols. 1425, 1420.

¹³⁸ *Ibid.*, cols. 1425-26.

¹³⁹ *Ibid.*, cols. 1444-45.

¹⁴⁰ McCalman, "'Erin Go Bragh'," 179.

sanction.¹⁴¹ Awaiting his own prosecutions for blasphemous libel, in July 1817 Hone reported on the parliamentary debates in *Hone's Reformists' Register*. He reprints passages of Finnerty's 1811 sentencing, provides some detail on Finnerty's 1797 prosecution (including a passage from Curran's famous defence), and sets forth evidence about the use of torture in Ireland, "to enable my readers to judge for themselves respecting charges of TORTURE," he says.¹⁴² The same year, Hone published a satirical pamphlet entitled *Official Account of the Noble Lord's Bite!*, which imagined that Castlereagh, the "noble lord" of the title, had been bitten by a dog named Honesty. Infected by "Honesty," Castlereagh is moved to remember his own reformist leanings early in his career in Ireland: "I'm a *Whig!* – I'm a *Whig!*" he cries. To the ministers gathered around their bitten colleague, Castlereagh's youthful commitment to reform makes him appear alarmingly revolutionary, and one anxiously repels the idea that governmental ministers "could either be *united* men, or do anything illegal."¹⁴³ Finnerty was hardly a sufficiently reputable character to serve as a direct model for Hone's respectable self-defences at his trials in December 1817. However, much of Hone's satirical work engages with the image of Castlereagh that Finnerty helped to popularise, and his dramatisation of the conflict between Castlereagh and the dog Honesty reworks in an allegorical form the central conflict between radical activists and government ministers – perhaps even reproducing something of the antagonistic relationship between Finnerty and Castlereagh, in the process.

¹⁴¹ *Ibid.*, 177-78.

¹⁴² William Hone, *The Reformists' Register, and Weekly Commentary*, vol. 1, *From February 1, 1817, to July 19, 1817* (London, 1817), 817-18.

¹⁴³ [William Hone,] *Official Account of the Noble Lord's Bite! And His Dangerous Condition, with Who Went to See Him, and What Was Said, Sung, and Done, on the Melancholy Occasion [...]* (London, 1817), 7-8.

Character, intention and allegory: the trials of William Hone

In January and February 1817, the radical publisher William Hone began selling four cheap parodies at twopence each: *The Political Litany*, *The Sinecurist's Creed*, *The Bullet Te Deum* and *The Late John Wilkes's Catechism*. All borrowed the forms and vocabulary of the Church of England liturgy to condemn government corruption, and they sold well and circulated rapidly, spreading from London to Manchester, Newcastle, Bristol, and the even Scilly Isles within a couple of months.¹ Hone abruptly withdrew the parodies from sale in late February, but if he hoped this would protect him from legal interference, he was mistaken. At the start of May an *ex officio* information was issued against him for blasphemous libel, and he was imprisoned for some weeks. After his release in July, it seemed possible that the government might decide to drop Hone's case quietly (the fate of many *ex officio* informations, including Peter Finnerty's of 1808-09), but in November 1817 he received his summons to court, and in December stood trial for blasphemous libel at London's Guildhall, in trials for three of the parodies (all but *The Bullet Te Deum*) on consecutive days. To the mortification of the government and the glee of the reform community, Hone was acquitted three times over. The trials caused a public sensation, and he found himself the recipient of a large subscription, signed by a diverse list of names and pseudonyms, including Percy B. Shelley, Sir Francis Burdett, John and Leigh Hunt, "United Englishmen," "An Enemy to Persecution," and "No Parodist, but a Friend to Freedom."²

Hone, defending himself alone without legal counsel, achieved this heroic status largely because of the Attorney General's decision to prosecute for blasphemous rather than seditious libel. Blasphemous libels were supposed to be those against the established Church – Hone was accused of "bring[ing] into contempt and ridicule the Sacred Book from which the offices of religion were performed" – but his trials were, transparently, politically motivated.³ Juries were thought more likely to convict for blasphemous than seditious libel, and the government worked closely with the Society for the Suppression of Vice and (earlier) the Proclamation Society to pursue politically radical publications under charges of irreligion.⁴ In Hone's case, this proved a

¹ Kyle Grimes, "Spreading the Radical Word: The Circulation of William Hone's 1817 Liturgical Parodies," in *Radicalism and Revolution in Britain, 1775-1848: Essays in Honour of Malcolm I. Thomis*, ed. Malcolm I. Thomis and Michael T. Davis (New York: St. Martin's Press, 2000), 150; Philip Harling, "The Law of Libel and the Limits of Repression, 1790-1832," *The Historical Journal* 44, no. 1 (2001), 128.

² [William Hone,] *Trial by Jury and the Liberty of the Press. The Proceedings at the Public Meeting, December 29, 1817, at the City of London Tavern, for the Purposes of Enabling William Hone to Surmount the Difficulties in Which He has Been Placed [...]*, 2nd ed. (London, 1818), 21-25.

³ [William Hone,] *The Three Trials of William Hone, for Publishing Three Parodies [...]* (London, 1818), 65.

⁴ Marcus Wood, *Radical Satire and Print Culture, 1790-1822* (Oxford: Clarendon Press, 1994), 102.

catastrophic error of judgment on the part of crown lawyers, since it left him in the extraordinary position of being able to admit to having deliberately ridiculed the government, but not the Church. His three acquittals dealt a blow to the law of libel, adding to a growing weight of evidence that it was no longer an effective tool for managing political dissent. Philip Harling explains that prosecutors were finally forced to abandon libel in the early 1820s, for three main reasons:

because they lacked the administrative means to ... [enforce the law], because even successful prosecutions had the undesirable effect of advertising the libellous passages, and because the instability of language guaranteed that radicals would occasionally humiliate them by convincing the jury that the words being prosecuted did not carry the seditious meaning that had been attached to them.⁵

Hone's case, Harling argues, exemplifies those three weak points in the application of the libel law. Lacking the resources or means to prosecute every offending bookseller, Home Secretary Lord Sidmouth had intended to make an example of Hone. Preparing for his successful conviction, crown lawyers had filed *ex officio* informations against vendors of his parodies, almost all of which they were forced to drop. So damaging were Hone's acquittals that no more informations for libel were filed for almost two years afterwards.⁶

Literary historians have seized on the apparently "literary" nature of Hone's trials. During his defences, Hone interrogated the nature of parody, drawing a distinction between those parodies which ridiculed a source directly, and those – like his own, he argued – which used a source (in his case, the Church of England liturgy) to ridicule something else (corruption in the government). For Joss Marsh, Hone's parodies threatened the established order because they revealed "the problematic inventedness – the *literariness* – of what is parodied. Sacred texts treated as mere literary constructs are demoted to such."⁷ Hone has also been interpreted as a uniquely "literary" defendant because, to support his defence, he cited dozens of other parodies, historical and contemporary. With his books and papers "ranged ... before him, covering nearly a fourth of the [court] table," his bookish victory looked like the triumph of imaginative heritage over legal precedent: Hone's most recent biographer considers him to have "proved that he was the expert on English literature."⁸ Such accounts of Hone's trials owe too much to a modern equation of "literature" with creative and imaginative writing, in particular as defined against a

⁵ Harling, "The Law of Libel and the Limits of Repression," 120.

⁶ *Ibid.*, 128, 125, 131.

⁷ Joss Marsh, *Word Crimes: Blasphemy, Culture, and Literature in Nineteenth-Century England* (Chicago: University of Chicago Press, 1998), 39.

⁸ [Hone,] *The Three Trials of William Hone*, 72; Ben Wilson, *The Laughter of Triumph: William Hone and the Fight for the Free Press* (London: Faber & Faber, 2005), 236.

stuffy legal bureaucracy. But Clara Tuite is surely right to argue that the trials “illuminate powerfully how the developing institution of literature was produced.” The very idea that literature “*should* comprise an autonomous sphere and be able to constitute its own rules and interests, as distinct from those of law, politics and religion” has its origins in the period and, Tuite points out, was hammered out partly in high-profile cases such as Hone’s.⁹ To that extent, the widespread critical view of Hone as a “literary” hero is understandable, although it often fails to recognise its own indebtedness to a Romantic view of authorship and “the literary.”

Contemporary sympathisers appreciated the entertaining, performative quality of Hone’s trials. John Keats wrote to his brothers after the acquittals that “Hone the publisher’s trial, you must find very amusing; and as Englishmen very encouraging.”¹⁰ Hone has recently enjoyed something of a revival of popular interest which, along Keats’ lines, celebrates him as both plucky underdog – “the forgotten hero of the British press” – and defiant comic, whose “crime was to be funny.”¹¹ Academic historians, too, often cite the subversive, irrepressible laughter at Hone’s trials, and with good reason.¹² Yet such accounts of Hone’s trials regularly neglect to mention the toll that they took on his health, as well as his own ambivalence about the parodies, which he stopped selling because of the offence they caused to his strictly Calvinist father, among others.¹³ As Harling cautions, “we would do well to consider the scars he received and not simply the battle he won”.¹⁴ To view Hone purely “in the terms of his own defence” is to miss the ways in which he challenged legal norms and promoted an idea of character that was founded on radical ideals of equality and personal responsibility.¹⁵ Near the end of his life, in 1832, Hone underwent a conversion experience and became a committed Christian, marking a new phase of life which historians generally treat as distinct from his earlier years. But with regard to character, Hone’s efforts to defend himself in court in 1817 already had a strongly religious aspect, drawing on the Calvinist dissenting tradition of his upbringing and looking ahead to the last decade of his life.

⁹ Clara Tuite, “Not Guilty: Negative Capability and the Trials of William Hone,” in *Censorship and the Limits of the Literary: A Global View*, ed. Nicole Moore (New York: Bloomsbury Academic, 2015), 44, 35.

¹⁰ Maurice Buxton Forman, ed., *The Letters of John Keats*, 4th ed. (London: Oxford University Press, 1952), 70.

¹¹ Wilson, *The Laughter of Triumph*, 14; Ian Hislop and Nick Newman, *Trial by Laughter* programme blurb, aired 27 February 2016 (London: BBC Radio 4, 2016), radio broadcast, <https://www.bbc.co.uk/programmes/b071h2x6>.

¹² See for example Joseph M. Butwin, “Seditious Laughter,” *Radical History Review* 18 (1978), 18-19; Grimes, “Spreading the Radical Word,” 153-55.

¹³ Frederick William Hackwood, *William Hone: His Life and Times* (New York: A. M. Kelley, 1970), 60-61.

¹⁴ Harling, “The Law of Libel and the Limits of Repression,” 134.

¹⁵ Wood, *Radical Satire and Print Culture*, 110.

Intention, independence, interiority: Hone's defence of character at the 1817 trials

Earlier chapters have shown that the question of “tendency” – the consequences, or possible consequences, of a text’s publication – was at the heart of the law of libel. As we have seen, the law’s emphasis on tendency did not entirely do away with a defendant’s intention in publishing the work in question, but rather absorbed it into the outcome of publication. As Lord Ellenborough put it at Hone’s second trial:

[P]ublishers must be answerable for the tendency of works they put forth, and they are not to put perverse constructions on their own acts, and thus excuse themselves. If the paper have a tendency to inflame, the law says, the party had an intention to inflame; if to corrupt, that he meant to corrupt.¹⁶

The Attorney General, Samuel Shepherd, echoed that “a man’s intention was to be judged by his acts or their effects, and not by what he declares to be his intention.” Hone, Shepherd said, must be held responsible for the likely effects of his publication, since he is “answerable for the evil but too likely to result from that publication which he deliberately published; for it could avail nothing to any man to make protestations of innocent intention, while he scattered about his firebrands and arrows of death.”¹⁷ This position was in keeping with the general absence of attention to modern notions of capacity and intention, among eighteenth- and early nineteenth-century legal commentators. Although indictments used the language of “intention,” this was simply the formulaic wording of the charge and did not reflect an interest in a defendant’s psychology in the modern sense.¹⁸

It is striking, then, that Hone argued precisely the contrary in his defences. He insisted that his personal intention in publishing his parodies had been good and that, moreover, intention trumped tendency. He told his jury, “you are to settle the difference between intention and tendency; the tendency may be bad, but was the intention so? that is the very gist of the case – the pinch of the argument.”¹⁹ This seems to contain an implicit acknowledgement that the tendency *was* bad, but Hone insisted that his intention had been to produce “a political squib” rather than “an impious and blasphemous libel”; that is, a politically- rather than a religiously-motivated publication:

¹⁶ [Hone.] *The Three Trials of William Hone*, 89.

¹⁷ *Ibid.*, 191.

¹⁸ See Nicola Lacey, *In Search of Criminal Responsibility: Ideas, Interests, and Institutions* (Oxford: Oxford University Press, 2016), 37-38.

¹⁹ [Hone.] *The Three Trials of William Hone*, 90.

This was the question which they were to try, and they had nothing to try but that. They had nothing to do with the tendency which his work might have out of doors, ... or, at least, they had so little to do with it, as not to suffer it to weigh a feather in their minds in returning their verdict to the Court.²⁰

Hone understood criminality to rest in his own subjective intention as publisher of the parodies, not in their wider public tendency “out of doors.” By minimising the parodies’ tendency, and instead placing his own intention at the centre of the jury’s enquiry, Hone echoed many other similar arguments made at the trials of reformers over the past few decades, most famously by Thomas Erskine twenty or thirty years previously.²¹ In this, as in other respects, as we shall see shortly, Hone was self-consciously inserting himself within a radical tradition.

Hone’s privileging of intention was suggestive of what legal theorists might call a “capacity” understanding of criminal responsibility. Capacity responsibility, Nicola Lacey explains, assumes that “we are responsible not for our selves, for who we are, or for our social status, but – on a quasi-contractual basis – for the specific acts which we (choose to) do or (in limited circumstances) refrain from doing.”²² Hone’s defence was founded on a view of himself as an autonomous citizen, answerable for his personal decisions to the extent that he was prepared to accept responsibility for his intention in publishing the parodies, but not for their tendency more widely imagined. His trials sat in a period of transition, with the idea of capacity becoming a more important measure of criminal responsibility over the course of the nineteenth century. Hone’s disagreement with the court in 1817, over the question of tendency and intention, maps onto that story of gradual change. It was a transition congenial to his radical politics, because as Lacey describes, privileging capacity meant according greater value to “agency and individual freedom,” and to “the notion of an agent endowed with powers of understanding and self-control.”²³ Hone’s stress on his good intention followed from his reform-minded reorientation of the relationship between citizen and state.

The shift towards a capacity view of criminal responsibility over the nineteenth century was slow and probably only ever partial. Lacey observes that the justice system could, and did, incorporate “multiple and even inconsistent approaches to [criminal] responsibility,” both “at different times within a single system” and “over different institutional spaces of the criminal process at any one time.”²⁴ Hone, rather than being ill-informed for espousing intention over

²⁰ Ibid., 16.

²¹ John Barrell, *Imagining the King’s Death: Figurative Treason, Fantasies of Regicide, 1793-1796* (Oxford: Oxford University Press, 2000), 347.

²² Lacey, *In Search of Criminal Responsibility*, 27.

²³ Ibid., 27.

²⁴ Ibid., 26.

tendency, would be better understood as jostling with his opponents over the meanings and implications of the criminal law, which was a contested site of debate. In an 1816 commentary, Henry Brougham acknowledged the centrality of tendency to libel cases, but was still able to suggest (rather confusingly) that while proof of good intention in libel cases was not “itself a defence to the prosecution,” it did go some way “to disprove that *animus injuriandi* – that *mens rea*, without which the law holds no man guilty.”²⁵ Even Shepherd was drawn into the debate over intention at Hone’s third trial, remarking that “writing and publishing were plainly acts of deliberation, in excuse of which, if they were wicked or unjustifiable, it was impossible to allege a momentary impulse or the infirmity of human nature.”²⁶ Shepherd engages with intention as a useful marker of criminality, despite its having no common-law or statutory role in proving libels. Hone’s successful defence of his intention at his trials is indicative of a shift in jury expectations: their willingness both to ignore the judge’s statement of the law, and to privilege a defendant’s subjective account of his motivation, as publisher. It also highlights the discursive nature of the law, and its resistance to being fixed or sealed-off from those changing social expectations.

Hone’s stress on his intention has implications for his status as an author. He was not the original author of the parodies; we know that he reworked at least *The Late John Wilkes’s Catechism* and *The Political Litany* from pre-existing source material.²⁷ On the face of it, his prosecutors’ focus on tendency downplayed any interest in Hone as an author, since “tendency” has a lot to do with establishing the possible social effects of a published text, and very little to do with finding its creative originator. As Kevin Gilmartin comments: “The law of libel seized upon the printed text as a set of potential effects, achieved through publication, distribution, and reception as well as composition.” Yet Gilmartin also notes that “[a]s the term ‘author’ came, under romantic auspices, to identify the unique, identifiable origin of a discursive effect, it named precisely what the government wanted to discover in its dealings with popular unrest.” In this way, Hone’s prosecutors were keen to “collapse” his role as publisher into that of author, with Shepherd remarking that Hone, “if not the author of the tract, ... was the author of its publication.”²⁸ For his part, Hone’s insistence on the primacy of his intention, legally speaking, was bound up with a view of authorial intentionality. His defences reveal his sense that he had the right to offer the final word on the meaning of his parodies:

²⁵ [Henry Brougham,] “Liberty of the Press and its Abuses,” *The Edinburgh Review* 27, no. 53 (September 1816), 115.

²⁶ [Hone,] *The Three Trials of William Hone*, 142.

²⁷ Wood, *Radical Satire and Print Culture*, 114; David A. Kent and D. R. Ewen, eds., *Regency Radical: Selected Writings of William Hone* (Detroit: Wayne State University Press, 2003), 392.

²⁸ Gilmartin, *Print Politics*, 120; [Hone,] *The Three Trials of William Hone*, 63.

From the beginning to the end of the production in question, the subject and the object was political. It was intended to ridicule a certain set of men, whose only religion was blind servility ... If they [i.e. the jury] could find a passage in it, that, in any way, tended to turn anything sacred into ridicule, he called on them to find him guilty; but, if they could not discover such a passage, he demanded an acquittal at their hands.²⁹

Hone admits a seditious intention in order to deny a blasphemous one. He grants special importance to his own intention as the parodies' originator, giving himself an author's interpretive authority and assuming the right to fix meaning. The only "tendency" he would acknowledge responsibility for would be one contained within the text: the possibility that it might "tend" to make the sacred ridiculous, rather than that it might generate certain social effects.

In court, Hone was stubbornly independent, and willing to stray from legal conventions. This would not have been possible had he not defended himself; his friends had advised him to find legal representation, but he told the court, "I could not fee counsel."³⁰ His determination to defend himself placed him within a radical tradition of self-defence, and it is significant that he felt that none of the lawyers proposed to him were suitable. Some would not visit him in prison, while others lacked the "*courage*" that Hone thought necessary: "Will he be able to stand up against my Lord Ellenborough? Will he withstand the brow-beating of my Lord Ellenborough?"³¹ Ellenborough agreed tartly that no barrister would present "such disgusting parodies and prints" in the cause of the defence, "or at least persist in such exhibitions, especially after the judge had expressed his decided disapprobation of them."³² Hone's defences privileged his independence of mind over legal norms and doctrines. For example, he argued that the jury had the right to consider the truth of an alleged libel, thanks to the greater powers granted them by Fox's 1792 Libel Act; in reality, Fox's Act made no difference to the role of truth in criminal libel cases. Yet radical defendants often insisted on the relevance of truth in trials for libel, and despite the law's clarity on the matter, courts were regularly drawn into discussion by opportunistic radical defendants, such as Finnerty at his 1810-11 prosecution. As Gilmartin explains: "Radical defendants consistently challenged the court's authority to frame the debate by appealing beyond the law to the evidence of the world."³³ Hone's legal claims

²⁹ [Hone.] *The Three Trials of William Hone*, 52-53.

³⁰ *Ibid.*, 159.

³¹ *Ibid.*, 154.

³² *Ibid.*, 193.

³³ Gilmartin, *Print Politics*, 146.

were more about making a case for what the law ought to be than an engagement with it on its own terms.

Bypassing the circumlocutory legal precision of the judge and prosecutors, Hone used a rhetoric of ignorance and “common sense” to seek an alliance with his juries. “Was a laugh treason?” he asked: “Surely not.”³⁴ Hone had not been charged with treason, but the appeal was an emotive manipulation of the language of the criminal law, as well as a strategic simplification that encouraged jurors to interpret the proceedings against him as morally stark, rather than legally nuanced. Hone was assisted in presenting himself as virtuously ignorant by Ellenborough, whose frequently cryptic remarks helped Hone to position his own legal ignorance as a marker of good character. “I am ignorant of the technical rules of evidence,” he told the court, his ignorance a badge of honesty and sincerity.³⁵ Marcus Wood identifies Hone’s “stance of defiant ignorance” as one of his inheritances from John Lilburne, the seventeenth-century Leveller and Puritan whose 1649 treason trial inspired him as a boy.³⁶ Hone borrowed substantially from Lilburne in his presentation of himself as a martyr, as we shall see shortly, but he also drew on Lilburne’s radical revision of the relationship between defendant and jury. As Wood notes, Lilburne made “absolute claims for the judgemental powers of a jury,” insisting on the jury’s authority over that of the judges (to the fury of the latter). Hone, too, made much of the idea that the jurors were his true judges, an idea he shored up with reference to Fox’s Libel Act and the new power it granted to juries in libel trials to decide on matters of law, not simply matters of fact. So when Ellenborough asserted that tendency decided the libel, Hone cited the 1792 Act, which allowed judges to give juries their opinion on the libel in question, to dismiss the judge’s statement as “but the opinion of *one* man, it is but his lordship’s opinion”. Hone told his jurors: “You are my judges.”³⁷ Disrupting the hierarchy of the court, he minimised the role of the actual judge, who, he claimed provocatively, was merely “the administrator of ... law.”³⁸

The alliance that Hone wanted to establish with his jury was one of mutual respect and respectability, grounded in ideas about literary improvement, sensibility, and domestic virtues. Hone was a determined reader and autodidact, and he foregrounded his own respectability by stressing the bookishness of his character. Books “had been the solace of his life,” he said, and regretted with self-deprecating humour that, as a bookseller, “what was very unfortunate, he

³⁴ [Hone,] *The Three Trials of William Hone*, 174, 126.

³⁵ *Ibid.*, 87.

³⁶ Wood, *Radical Satire and Print Culture*, 129. For Hone’s account of his discovery of a printed copy of Lilburne’s trial as a child, see Hackwood, *William Hone*, 40.

³⁷ [Hone,] *The Three Trials of William Hone*, 90.

³⁸ *Ibid.*, 148.

was too much attached to his books to part with them.”³⁹ Hone makes his love of books into a marker of good character, identifying himself as a participant in literary and improving culture. The man of letters is also a man of sensibility: in July 1817, *Hone’s Reformists’ Register* had described his release from prison that month with reference to his love of nature and poetry, and an idealisation of youth. Hone recalls looking for the last time from Horsemonger Lane Gaol at the Surrey hills, “clad in their verdure, whereon, in the days of my youth, I had rambled alone, with Thomson or Collins in my hand, stopping now and then to listen to the wind – to the chirrup of the grasshoppers – to the hum of the bee – or to inhale at leisure the fragrance of the fresh air.”⁴⁰ The defences are also sprinkled with references to Hone’s wife and young children, suggesting the strength of his domestic affections and foregrounding his virtue as a private man. Indeed, he insisted in court that public and private characters were inseparable for the truly virtuous: “He knew no distinction between public and private life. Men should be consistent in their conduct.”⁴¹

But if Hone wanted to take for granted his equality with his jurors, his defences probed at the question of what made up a good character. He told his jury: “I talk to you as familiarly as if you were sitting with me in my own room; but then, gentlemen of the jury, I have not seats for you; I have not twelve chairs in my house; but I have the pride of being independent.”⁴² The informal, respectable, domestic relationship which Hone claims to enjoy with his jurors is complicated by his poverty, even as it is affirmed. Gilmartin has described the efforts made by radicals in this period to redefine the qualities traditionally associated with “independence”: rejecting the idea that independence derives from the ownership of property, they interpreted their poverty and “capacity to labor” (drawing on John Locke’s theory that property derives from labour in the first place) as key virtues in themselves.⁴³ Thomas Hardy in the 1790s had been concerned that the London Corresponding Society’s popular membership should be recognised as respectable; he was anxious to distinguish true respectability from what he called “the common received idea” of it, and considered himself “independent” because he was “fearless of consequences,” rather than because he possessed “worldly goods.”⁴⁴ Hone, too, understood his independence as a mental quality. He told his third jury, “None is supposed to be independent without property. I have never had any property.” Yet, he said,

³⁹ [Hone,] *The Three Trials of William Hone*, 23.

⁴⁰ William Hone, *The Reformists’ Register, and Weekly Commentary*, vol. 1, *From February 1, 1817, to July 19, 1817* (London, 1817), 750-51.

⁴¹ [Hone,] *The Three Trials of William Hone*, 23.

⁴² *Ibid.*, 159.

⁴³ Gilmartin, *Print Politics*, 34-35.

⁴⁴ Quoted in Jon Mee, *Print, Publicity and Popular Radicalism in the 1790s: The Laurel of Liberty* (Cambridge: Cambridge University Press, 2016), 72-73.

I have ever been independent in mind, and hence I am a destitute man. I have never written or printed what I did not think right and true; and in my most humble station have always acted for the public good, according to my conception, without regard to what other men did, however exalted their rank.⁴⁵

Hone understands his independence as both the cause and consequence of his poverty. His commitment to his own view of what is “right and true” has guided his efforts in the service of the public, free from outside interference or the trappings of “rank.”

Independence is a moral quality, in Hone’s construction: indeed, the “desertion of principle” would mean “the sacrifice of real independence.”⁴⁶ In his 1820 satirical pamphlet *Non Mi Ricordo*, a witness at Queen Caroline’s trial offers to “produce a certificate of good character” from a government minister, but is told: “Pho! pho! do n’t [sic] trifle; can you [produce one] from any respectable person?”⁴⁷ The joke – that to be a minister is to be of unrespectable character – plays on what Hone saw as a lack of correlation between respectability and status. His 1817 trial defences were concerned with disentangling good moral character from high social rank. His particular target was George Canning, now a member of government, whose pro-government parodies had appeared in the pages of the *Anti-Jacobin* between 1797 and 1798, including one poem which Hone singled out entitled “The New Morality; or, The Installation of the High Priest.” Hone argued that this was a parody on passages of scripture but that, like his own publications, it was political. Hone brought Canning figuratively into court, reversing the roles of prosecutor and accused, and troubling the relationship between rank and character, since “Mr. Canning ... ought, at that moment, to be standing in his place, but ... [he] had been raised to the rank of a Cabinet Minister.”⁴⁸ Hone went so far as to suggest that Shepherd ought to prosecute Canning in the interests of fairness, and by the third trial was pointing out that Canning had once been a reformer, calling him a “trimmer” who had “played ... [a] double game.”⁴⁹ Hone also provocatively redefined his own prosecution as a test of Canning’s character by proxy, since both men were parodists. “Why did they not, to save Mr. Canning’s character, abstain from this prosecution?” Hone asks. “Mr. Canning would have thanked them.”⁵⁰

⁴⁵ [Hone,] *The Three Trials of William Hone*, 161.

⁴⁶ *Ibid.*, 168.

⁴⁷ [William Hone,] “*Non Mi Ricordo!*” &c. &c. &c., 16th ed. (London, 1820), n.p.

⁴⁸ [Hone,] *The Three Trials of William Hone*, 45.

⁴⁹ *Ibid.*, 176, 180.

⁵⁰ *Ibid.*, 183.

Hone reversed the roles of defendant and prosecutor, positioning himself as the innocent victim of a libel and the Attorney General as the libeller, since “to impute to him the crime of blasphemy was a foul and unfounded slander.”⁵¹ In doing so, he may have been remembering the advice of the bookseller Sir Richard Phillips, who had written to Hone’s friend Francis Place before the trials, arguing that *ex officio* informations were illegal:

It behoves a man therefore who is thus unlawfully proceeded against not to act as a defendant – not to plead or parley – but to consider his assailants as the true culprits, to oblige them to exert force towards him, & thus to proceed against them severally & collectively by actions for damages in the court of Common Pleas, & by indictments in the courts of Session.⁵²

Phillips’ proposal – that radicals should sue for damages and bring indictments against their prosecutors – recalls Finnerty’s willingness to act as a litigant against those he considered to have libelled him. Hone did not take Phillips’ advice literally, but he followed its spirit when he insisted in court that not only did the old and new parodies which he had shown the court prove him not guilty, but that, if those publications really were criminal, they also proved the government’s guilt in not having pressed charges on previous occasions. The ministers were the true criminals, he said. Highlighting the inconsistency of the application of the libel laws with typical hyperbole, he presented the government’s negligence as treasonous: “His Majesty’s Secretaries of State, who ought to be the conservators of the public morals, had committed high treason against the peace and happiness of society, if, believing such publications to be libellous, they had suffered them so long to exist unnoticed.”⁵³ Hone even likened his prosecutors to “Pharisees . . . guilty of the same crime for which they were now seeking to punish him!”, and exhorted his prosecutors to imitate more closely “the character of that Divine Being,” Jesus Christ.⁵⁴ The point recalls the argument made by Joseph Gerrald at his 1794 trial that Christ himself was a reformer: “The Revolution [of 1688] was an innovation; the Reformation was an innovation; Christianity itself was an innovation,” Gerrald declared.⁵⁵ At that, Lord Braxfield is said to have muttered under his breath, “muckle he made o’ that, he was hanget.”⁵⁶

⁵¹ Ibid., 168.

⁵² Sir Richard Phillips to Francis Place, 7 May 1817, William Hone papers MS 40120 ff.56-57, British Library, London.

⁵³ [Hone,] *The Three Trials of William Hone*, 54.

⁵⁴ Ibid., 157-58.

⁵⁵ [Joseph Gerrald,] *The Defence of Joseph Gerrald, on a Charge of Seditious Libel [...] To Which Is Prefixed a Sketch of His Character, Written by a Friend* (London, [1794]), 26.

⁵⁶ See for example Murray Armstrong, *The Liberty Tree: The Stirring Story of Thomas Muir and Scotland’s First Fight for Democracy* (Edinburgh: Word Power Books, 2014), 268; the episode is alluded

Trying “the prisoner Honesty”: martyrdom and allegorical character in 1817

Hone turned the charge of irreligion and impiety back upon his prosecutors, and contrasted the “infamous time-servingness” of government ministers with the respectfulness and piety of his own character.⁵⁷ He was evasive in court about whether he belonged to the established church or was a dissenter, but his defence of his good character had a grounding in both scripture and Protestant martyrology. At his first trial, Hone’s claim that “he had endeavoured so to school his mind that he might give an explanation of every act of his life” is suggestive of a rigorous standard of self-discipline and Protestant self-scrutiny.⁵⁸ But the Protestant underpinnings of his defence became most evident in the third trial, by which time the ordeal had left Hone unwell: he “appeared exceedingly ill and exhausted,” struggled to hear what was being said, and could barely keep up with his note-taking, signs of physical weakness which allowed him to represent himself in the character of a martyr – again, not unlike Gerrald twenty-five years earlier.⁵⁹ Hone begged the court to “remember that he was on a trial of life or death”: not an exaggeration, in the sense that an imprisonment would have been disastrous for his precarious health.⁶⁰ But he rejected a postponement, saying that “had he not been able to walk, he should have ordered himself to be brought in his bed, and laid upon the table, for the purpose of making that defence, even in a state of feebleness.” Bodily illness is bound up with a gritty, God-given moral resilience, for Hone announces that he has discovered within himself unexpected physical strength, “more ... than he had hoped to possess: indeed, his powers were restored in an extraordinary measure.”⁶¹ Hone reads this as a sign that he is in God’s care:

If Providence ever interfered to protect weak and defenceless men, that interference was most surely manifest in his case. It had interposed to protect a helpless and defenceless man against the rage and malice of his enemies. He could attribute his defence to no other agent, for he was weak and incapable, and was at that moment a wonder unto himself. (Here a mixed murmur of applause and pity was heard from the crowd assembled.)⁶²

Hone presents himself as a channel for the workings of God. His sense of persecuted innocence spurs him to new defiance, despite his fatigue: “Oh, no! no! he must not be crushed; you cannot

to in Lord Henry Cockburn, *Examination of the Trials for Sedition Which Have Hitherto Occurred in Scotland*, vol. 2 (Edinburgh, 1888), 84-86.

⁵⁷ [Hone,] *The Three Trials of William Hone*, 52.

⁵⁸ *Ibid.*, 23.

⁵⁹ *Ibid.*, 138.

⁶⁰ *Ibid.*, 150.

⁶¹ *Ibid.*, 149.

⁶² *Ibid.*, 153-54.

crush him. I have a spark of liberty in my mind, that will glow and burn brighter, and blaze more fiercely, as my mortal remains are passing to decay,” he told the court, amid “[g]reat shouts of applause.”⁶³ The audience’s vocal appreciation of his defence evidences the success of Hone’s sympathetic connection with the assembled crowd, affirming his public status as a martyr.

Hone’s self-characterisation in the third trial owes much to Protestant martyrology. He knew Foxe’s *Acts and Monuments* from childhood, and as we have seen, took inspiration from Lilburne’s 1649 trial; his 1817 defences thus engaged what Marcus Wood describes as “Foxean paradigms for the behaviour of Protestant martyrs during heresy trials.” Hone positioned himself within a line of Protestant martyrs stretching back to the cases narrated by Foxe, and via Lilburne. Wood observes:

The trial of the innocent before corrupt judges, who he then proceeds to outwit and ridicule through God’s help, was central to the rhetorical structure of the *Acts and Monuments*. ... Foxe provided basic patterns for the presentation of judicial encounters in which the simple and righteous man triumphed over the massed intellectual and coercive power of the state.⁶⁴

Wood has traced the specific influences of Foxe and Lilburne in Hone’s defences, but the martyrological heritage is also revealing in a more general sense, since it shows that Hone wanted to represent his trials – and his own character as defendant – in the context of a Protestant memory of persecution and resistance to tyranny. That memory is recent, indeed, since Hone’s handling of his defence recalls the trials of the Protestant “martyrs” at the Scottish sedition trials of 1793-94; a self-consciousness about his place within this tradition of radical defences had emerged strongly by Hone’s third trial. It is true that Hone’s radical insistence on his independence in court, and his preoccupation with his personal intention, together constituted a decidedly modern way of approaching character – because of both the value he placed on interiority and integrity (distinct from social rank) and the attention he paid to subjective experience and capacity. However, the Protestant martyrology underpinning Hone’s defence also suggests another dimension to his representation of character, one which pits good against evil within the courtroom.

⁶³ Ibid., 163.

⁶⁴ Wood, *Radical Satire and Print Culture*, 131.



Figure 5: [William Hone,] *Another Ministerial Defeat! The Trial of the Dog, for Biting the Noble Lord* [...] *By the Author of "The Official Account of the Noble Lord's Bite."* London, 1817. Working Class Movement Library, Salford.

While he was waiting for his case to go to court in the second half of 1817, Hone published a short satirical pamphlet, *The Trial of the Dog, for Biting the Noble Lord*. The squib was written under the shadow of his courtroom ordeals that year, and merits being read both as a commentary on that experience, and as an unusual representation of radical character on trial. *The Trial of the Dog* presents itself as a piece of courtroom reportage. The defendant, a dog named Honesty, is on trial for having bitten a lord, unnamed but easily identifiable as Lord Castlereagh. Owing to the “undauntedness of his character,” Honesty is tied to the bar and ordered to wear spectacles and a muzzle, “that the prisoner might clearly see he had a fair and impartial trial” (Figure 5). The crown alleges that Honesty had entered the noble lord’s house and bitten him. Afraid that he might be infected, the “N---e L--d’s reputation and employment were suspended; and he was an object of dread to all who usually acted with him.”⁶⁵ During cross-examination, it emerges that the lord had actually known Honesty in Belfast in years gone by, an allusion to Castlereagh’s support for the Whigs early in his career in Ireland. Expert medical witnesses named Reynolds and Oliver testify (a nod to the government spies of those names), as does “MR. C--NN--G” (Canning). The case looks bad for Honesty, until his lawyer

⁶⁵ [William Hone,] *Another Ministerial Defeat! The Trial of the Dog, for Biting the Noble Lord; with the Whole of the Evidence at Length. Taken in Short-Hand* [...] (London, 1817), 3.

calls the lord's doorkeeper to testify that the lord had in fact bitten himself, on learning that his old acquaintance Honesty was in the house. The jury finds Honesty not guilty, but all does not end happily, for the court rules that he must stay in prison "until he should cease to be suspected of being suspicious," a power enjoyed by law enforcers after the suspension of Habeas Corpus.⁶⁶

The Trial of the Dog is a satire on both Castlereagh and the court system. Reading the pamphlet in parallel with Hone's protracted legal anxieties of 1817, it is difficult not to identify the dog Honesty with Hone himself. In court, Hone avowed his belief that honesty was the greatest virtue: "he considered nothing dearer to man than sincerity," he said, and insisted that "[n]o honest men could have anything to fear even from misrepresentation; for honesty was always sure to defeat that, whether it applied to government or to individuals."⁶⁷ Later, Hone was to describe his acquittals as "an exemplification of a golden rule taught to me in my childhood, that 'Honesty is the best policy'."⁶⁸ While the pamphlet does not state a month of publication, *The Trial of the Dog* was almost certainly written at some point after early August 1817, when Castlereagh was badly bitten by one of his wife's mastiffs: this very likely provided Hone's immediate inspiration for the squib.⁶⁹ By then, Hone had been released from prison, but he waited throughout the autumn to hear if he would be called to trial, and could hardly have failed to identify himself with the beleaguered dog in his satire. "Hone" and "Hone-sty" are lexically linked, too.

There is another candidate for the real-life counterpart of the dog Honesty, however: Thomas Evans, the former United Englishman, one-time secretary of the London Corresponding Society, and founder of the Society of Spencean Philanthropists in 1814. Evans had been imprisoned without trial between 1798 and 1801 and was arrested again in February 1817 with his son, on suspicion of treason. Hone began reporting on the case in *Hone's Reformists' Register* in March, and until the paper collapsed in October he continued to protest against the pair's imprisonment and to appeal for financial aid for Evans' wife, Janet (herself a redoubtable activist). Summer issues of the *Reformists' Register* show a clear cross-referencing of content with *The Trial of the Dog*, linking the dog Honesty with Thomas Evans in unmistakable parallels. The fictitious court in *The Trial of the Dog* rules that Honesty will "be confined in Horsemonger Gaol until he should cease to be suspected of being suspicious; with further liberty to see the Surry [sic] Hills daily – if he could; to play on the flute – if he knew how; but

⁶⁶ Ibid., 8.

⁶⁷ [Hone,] *The Three Trials of William Hone*, 18, 122.

⁶⁸ William Hone, *Aspersions Answered: An Explanatory Statement, Addressed to the Public at Large, and to Every Reader of the Quarterly Review in Particular*, 3rd ed. (London, 1824), 64.

⁶⁹ John Bew, *Castlereagh: The Biography of a Statesman* (London: Quercus, 2011), 440.

not to sing *bow, wow!*".⁷⁰ Similarly, the *Reformists' Register* reported that Evans and his son had been imprisoned "under suspicion" (that is owing to the suspension of habeas corpus), and that "among other hardships, he [i.e. Evans] was deprived of his flute!".⁷¹ The Evanses were held in Horsemonger Lane Gaol where, like Honesty (and Hone), they could glimpse the Surrey hills if they climbed onto a table.⁷²

The parallels between the dog Honesty and Thomas Evans are intriguing, and raise the question as to whether Hone was sympathetic to a more revolutionary radicalism than he openly admitted.⁷³ Certainly, Hone's parodies attracted the admiration of the Spenceans, who helped to disseminate them, and chanted his *Political Litany* in tavern meetings under the direction of the younger Thomas Evans.⁷⁴ For his part, Hone praised Evans senior as "one of the plainest and most honest-minded men I ever saw ... He had not a lean, pale, Cassius-looking countenance, but a round good healthy fat-looking face, the very index of a manly mind"; Hone reads Evans' face as a clear external indicator of his good character.⁷⁵ He had also had some contact with Evans in 1816, regarding his wish to publish an extract from Evans' pamphlet *Christian Policy*.⁷⁶ However, in the *Reformists' Register* Hone stressed the limited nature of his contact with either Thomas or Janet Evans, ostensibly to demonstrate his impartiality in their case, but perhaps also to stress his respectable distance from the family's revolutionary alehouse radicalism.⁷⁷ That said, affiliations were still being worked through at this stage, particularly before the Cato Street conspiracy in 1820. Iain McCalman observes that the Evanses were beginning to take up "a more respectable and moderate stance," probably even before the 1817 arrests took place.⁷⁸ With Evans' precise political position unclear at this stage, it would be unwise to read *The Trial of the Dog* as ideologically allied to the revolutionary underworld, in any straightforward sense.

⁷⁰ [Hone,] *Another Ministerial Defeat! The Trial of the Dog, for Biting the Noble Lord*, 8.

⁷¹ Hone, *The Reformists' Register*, 1:752.

⁷² *Ibid.*, 1:758.

⁷³ For this approach in relation to other publications by Hone, see for instance Jason McElligott, "The Royal Shambles (1816): Hiding Republicanism in Plain Sight," in *Censorship Moments: Reading Texts in the History of Censorship and Freedom of Expression*, ed. Geoff Kemp, Textual Moments in the History of Political Thought (London: Bloomsbury Academic, 2015), 125-32.

⁷⁴ Iain McCalman, *Radical Underworld: Prophets, Revolutionaries, and Pornographers in London, 1795-1840* (Cambridge: Cambridge University Press, 1988), 117, 122-23.

⁷⁵ William Hone, *The Reformists' Register, and Weekly Commentary*, vol. 2, *The Last Part. Being from July 26, 1817, to October 25, 1817, Inclusive* (London, 1817), 426-27.

⁷⁶ William Hone to Thomas Evans, 13 December 1816, William Hone Papers MS 50746 f.1, BL.

⁷⁷ Hone, *The Reformists' Register*, 2:427.

⁷⁸ McCalman, *Radical Underworld*, 130.

The Trial of the Dog's bibliographical history is instructive for understanding both how Hone used and adapted different sources, and how he recycled his own material across his career. Trial parodies go back to at least the seventeenth century, with satirical animal trials a popular subgenre. Hone's original source for *The Trial of the Dog, for Biting the Noble Lord* was a 1771 mock-trial, *The Trial of Farmer Carter's Dog Porter, for Murder*, in which a dog named Porter is tried and hanged for the murder of a hare, in a satire on the game laws. It was supposedly written by the Jamaican planter and lawyer Edward Long, although some historians have identified the author as Thomas Paine. Paine, it seems, did write a poetic mock-trial of a dog – also named Porter, but belonging to a farmer named Short – which he wrote for the Headstrong Club in Lewes, and published in 1775 under his pseudonym "Atlanticus" in the *Pennsylvania Magazine*.⁷⁹ It is not clear if Hone knew that poem, but he knew and owned a copy of the 1771 *Trial of Farmer Carter's Dog Porter*, and this version provided him with rough inspiration for *The Trial of the Dog* in 1817.⁸⁰ Then, ten years later, Hone printed an abridged version of *The Trial of Farmer Carter's Dog Porter* as an Ash Wednesday entry for his *Every-Day Book* (unadapted this time, with no mention of Honesty or the noble lord). He included as an illustration Cruikshank's woodcut print that had accompanied the 1817 pamphlet, showing the dog Honesty tied and shackled to the bar and sporting spectacles, but without an indication of the image's radical origins.⁸¹ The movement of Cruikshank's illustration from the sheets of the radical squib to the bound pages of the antiquarian *Every-Day Book* looks like a classic retreat inward: an eschewal of political danger in favour of a safer, more historical, more "literary" set of meanings. Indeed, the shift mirrors the arc of Hone's career in general: his exchange of radical satire for antiquarian interests from the mid-1820s onwards.

Years later, Hone wrote of this shift in his career: "In my struggles formerly, I struck out into the gulfstream [sic] of Politics, and drifted into its very vortex. There was no happiness for me in that whirlpool, and with exhausting efforts I succeeded in reaching the pleasant region of Literature."⁸² Hone drives a wedge between Politics and Literature, similar to the inward movement that we have already seen explored by John Thelwall or Leigh Hunt. Yet that idea of retreat may not do credit to the political potential of Hone's antiquarian interests. As Kyle Grimes argues, "one can see in the modes of collective authorship pioneered in the *Every-Day*

⁷⁹ Beirne, "A Note on the Facticity of Animal Trials in Early Modern Britain," *Crime, Law, and Social Change* 55 (2011), 369-70; Atlanticus, "[Poetical Essays. For July]," *The Pennsylvania Magazine; or, American Monthly Museum* 1, July (1775), 331-32. See also John Keane, *Tom Paine: A Political Life* (London: Bloomsbury, 1995), 70-71.

⁸⁰ Wood, *Radical Satire and Print Culture*, 147.

⁸¹ William Hone, *Every-Day Book; or, Everlasting Calendar of Popular Amusements [...] With Three Hundred and Twenty Engravings*, vol. 2 (London, 1827), 199.

⁸² Hackwood, *William Hone*, 312.

Book an ultimately radical decentralization of and democratization of print culture.”⁸³ That decentralisation and democratisation is evident in Hone’s ability to collate and build on multiple, diverse sources; his works are, as Tuite has written of the parodies, “complex and multilayered works of intertextuality.”⁸⁴ *The Trial of the Dog* is more than simply an updated version of an earlier trial parody, or even a stand-in for Evans’ or Hone’s cases. The case of the dog Honesty is those things, of course but it is also the story of an everyman defendant in the style of Bunyan. Hone adored *The Pilgrim’s Progress* as a boy, and had been sorely disappointed to discover that there were no other books quite like it. His father bought him Bunyan’s *The Holy War*, but it lacked the same colourful characters and landscapes:

I found no “Christian” and “Hopeful”; no “Wicket-Gate,” no “Valley of the Shadow of Death,” no “Giant Despair,” no “Vanity Fair,” no “Interpreter’s House,” no “Delectable Mountains” with the shepherds, no river with “Christian” helping “Hopeful” through the flood – the “Shining Ones” on the other side.⁸⁵

The Pilgrim’s Progress was an important inspiration for radicals well into the nineteenth century; in an 1839 spin-off version, a *Political Pilgrim’s Progress* saw the character of “Radical” make his journey towards “the City of Reform.”⁸⁶ *The Trial of the Dog* is not that blunt, but the name of the dog Honesty is strongly suggestive of Bunyan’s characters: Christian, Faithful, and so on. In *The Pilgrim’s Progress*, the jurors who convict Faithful in his trial at Vanity Fair have names such as “Mr. *Blind-man*, Mr. *No-good*, Mr. *Malice*, Mr. *Love-lust*.”⁸⁷ In Hone’s rendering of Honesty’s trial, the jurors are “Peter Pension,” “Gregory Guineaman,” “Thomas Taxem,” and so on.⁸⁸

The significance of this small pamphlet for how we understand Hone’s representation of radical character is profound. The dog-defendant has neither interiority, individuality, nor intention. Instead he is a type, participating in a larger moral scheme and slotting into a Bunyanesque allegorical tradition. The ongoing usefulness of this older model of character recalls Deidre Lynch’s notion of a “pragmatics of character,” which stresses the ways in which writers and readers use character in different ways at different moments – and, importantly, complicates any

⁸³ Kyle Grimes, “*The Every-Day Book* (1825-26), William Hone: An Introduction to Hone’s Antiquarian Volumes and to this Electronic Edition,” *The William Hone Biotext* (website), accessed 8 Mar 2019, <http://honearchive.org/etexts/edb/introduction.html>.

⁸⁴ Tuite, “Not Guilty,” 36.

⁸⁵ Hackwood, *William Hone*, 30.

⁸⁶ See Kirsty Milne, *At Vanity Fair: From Bunyan to Thackeray* (Cambridge: Cambridge University Press, 2015), 120.

⁸⁷ John Bunyan, *The Pilgrim’s Progress* (Oxford: Oxford University Press, 2003), 94.

⁸⁸ [Hone.] *Another Ministerial Defeat! The Trial of the Dog, for Biting the Noble Lord*, 2.

idea of a smooth transition into deep, “Romantic” character.⁸⁹ What Andrea Henderson calls “the depth model” of subjectivity was, as she notes, “only one available model among many in the period.”⁹⁰ *The Trial of the Dog, for Biting the Noble Lord* suggests the ongoing usefulness of older kinds of fictional character to Hone, as he prepared for, and reflected on, his upcoming defences in a court of law. The dog Honesty is void of personality or depth, but is heavily symbolic, an actor in a spiritual drama. The noble lord is asked during cross-examination, “Do you think it possible for the prisoner, Honesty, to escape hanging or starving in these times?”, to which he replies, “I do not.”⁹¹ The principle of honesty, Hone asserts none too subtly, is persecuted “in these times.” The dog *is* honesty, as Bunyan’s Christian *is* an everyman Christian, or the juror Malice *is* malice. This kind of characterisation reflects what Gilmartin has called the moral “polarization” of radical discourse at this time.⁹² The character of Honesty is given no troubling experiences of self-doubt or inner conflict; political and moral corruption are placed firmly on the outside.

Crucially, however, both in his defences and in *The Trial of the Dog*, Hone’s project was not simply serious: he wanted also to make his audience laugh. The dog Honesty is at once a moral paragon and faintly ridiculous. In that respect, we might ask to what extent Hone is putting distance between himself and Evans, rendering the revolutionary activist harmless and even absurd. Hone’s old-fashioned woodcut portrait of the dog harks back to the “black-letter lore” of which he was so fond, but is also grotesque and cartoonish.⁹³ More generally, the interaction of the allegorical and the bizarre in this pamphlet allows Hone to bring together the universal and the particular, the morally serious and the ludicrous. Hone’s defence is generally remembered today for its sharp wit, and for the anarchic laughter it unleashed in court. He confessed that he wanted “to laugh his Majesty’s Ministers to scorn; he had laughed at them, and, ha! ha! ha! he laughed at them now.”⁹⁴ Yet alongside this performance of laughter – which seems in any case more defiant than amused, especially given Hone’s state of exhaustion at the third trial – Hone described his defence as a Bunyanesque spiritual battle: “when I have done no wrong, when I know I am right, I am as an armed man; and in this spirit I wage battle with the Attorney-General, taking a tilt with him here on the floor of this Court,” he told his jury.⁹⁵ Recalling

⁸⁹ Deidre Lynch, *The Economy of Character: Novels, Market Culture, and the Business of Inner Meaning* (Chicago: University of Chicago Press, 1998), 4.

⁹⁰ Andrea K. Henderson, *Romantic Identities: Varieties of Subjectivity, 1774-1830* (Cambridge: Cambridge University Press, 1996), 2.

⁹¹ [Hone.] *Another Ministerial Defeat! The Trial of the Dog, for Biting the Noble Lord*, 4.

⁹² Gilmartin, *Print Politics*, 5.

⁹³ Hackwood, *William Hone*, 43.

⁹⁴ [Hone.] *The Three Trials of William Hone*, 162-63.

⁹⁵ *Ibid.*, 163-64.

Bunyan's Christian, or the battle for the city of Mansoul in *The Holy War*, Hone pictures himself participating in a larger story of spiritual strife in which "right" is pitched against "wrong." Character for Hone in 1817 is at once serious and ludicrous, interior and surface-oriented, flat and round.

Satirists have long argued that to satirise is to prompt moral reflection and tell truth to power. In that sense, we need to recognise that in both the defences and *The Trial of the Dog*, Hone's twin goals – to spark moral outrage and laughter – are inextricable from one another. In the introduction to his *Facetiae and Miscellanies*, Hone quoted from Pope on the moral virtue of the "true satirist": "there is not in the world a greater error than ... the mistaking a satirist for a libeller; whereas, to a true satirist, nothing is so odious as a libeller, for the same reason as to a man truly virtuous, nothing is so hateful as a hypocrite."⁹⁶ If satire in general is an ethical project, Hone understood parody in particular as having a close relationship with spiritual allegory. "Allegory is of the nature of parody," he wrote in the notes for his unfinished *History of Parody*.⁹⁷ These manuscript notes show that Hone had planned to include a section on the topic of "Allegory, Antithesis, &c."⁹⁸ As he wrote (and crossed out; the notes are a mass of scribblings and afterthoughts), "Allegory and Antithesis ... are too closely related to the subject to be passed in silence."⁹⁹ Both allegory and parody overlay a new meaning onto a source text. Both require a certain amount of decoding and interpretation from an attentive reader, and both generally develop a moral or political argument through reference to the familiar source. Under the heading of "Spiritual Allegory," Hone planned to include in his *History of Parody* some remarks on "Bunyan's Pilgrim" and a range of other religious allegories, including Benjamin Keach's 1684 *The Travels of True Godliness* and William Caxton's early fifteenth-century print edition of *The Pilgrimage of the Soul*.¹⁰⁰ Hone's plans for *The History of Parody* demonstrate his sensitivity to the similarities between parody and allegory, in both formal and ethical terms.

Religious character and the tribunal of the public: telling "the History of my Mind and Heart"

Before Hone's trial came to court, he had already begun attempting the defence of his character before the tribunal of the public. *Hone's Reformists' Register* was a weekly two-penny paper that he published between February and October 1817. Hone wanted it to be "an authentic HISTORY OF REFORM," combining editorial essays with reports on parliamentary

⁹⁶ William Hone, *Facetiae and Miscellanies* [...] (London, 1827), viii.

⁹⁷ William Hone, "History of Parody," William Hone papers MS 40108 f.317, BL.

⁹⁸ *Ibid.*, f.46.

⁹⁹ *Ibid.*, f.68.

¹⁰⁰ *Ibid.*, f.61.

proceedings and public meetings pertaining to reform.¹⁰¹ By March, he was using the paper to begin formulating a defence for his parodies, which had come to the attention of the government. He continued to publish the *Reformists' Register* throughout his imprisonment between May and July 1817, so that, to borrow Gilmartin's words, its "very appearance [was] a defiant political gesture."¹⁰² The ongoing publication of the *Reformists' Register* allowed Hone to build and sustain a seemingly personal relationship with readers, granting them insights into his character before the trials came to court – for instance in his presentation of himself as a man of sensibility, and in his introduction of the theme of martyrdom. Leigh Hunt had developed the *Examiner's* distinctive "editorial persona" during his own imprisonment of 1813-15, as David Stewart explains: "during his time in prison he fully exploited the unique opportunity afforded him when he became his own biggest story. The personal had become inextricably political, and throughout this period Hunt displayed a remarkable dexterity in combining the two."¹⁰³ Something similar is going on for Hone in the *Reformists' Register* in mid-1817, albeit Hone's self-characterisation is less developed or sophisticated than Hunt's (not least because the *Reformists' Register* was a shorter-lived venture). Hone, like Hunt, found himself "his biggest story," and printed exhaustive accounts of his interactions with the courts and other agents of the law. He commits every detail to the record of his paper, with a promise to reject the charges and defend his character against the imputation of legal or moral wrongdoing. "I have said that I will repel and refute this scandalous and senseless charge of *blasphemy*," he tells his readers: "I must be allowed to choose my time and place for doing it; but I *will* do it, and, I repeat it, to the confusion and dismay of my enemies."¹⁰⁴ Hone introduced the first *Register* after his arrest with an urgent address "TO THE PEOPLE OF ENGLAND," explaining, "I wrote my last *Register* at home, in the midst of my family. Since then the reign of terror has commenced, and I now write from a prison."¹⁰⁵ The immediacy of such passages was heightened by Hone's practice of signing off "King's Bench Prison, No. 12 in 4" or "No. 2 in No. 7."¹⁰⁶ These references to rooms in the King's Bench complex ensured that Hone remained accessible to correspondents and well-wishers.

Considering Hone's strident emphasis in court on the importance of his personal intention in publishing his parodies, it is curious that days after the trials closed, he appeared to admit that they had a bad tendency. In a letter to the *Morning Post* on 24 December 1817, he urged fellow-

¹⁰¹ Hone, *The Reformists' Register*, 1:1.

¹⁰² Gilmartin, *Print Politics*, 81.

¹⁰³ David Stewart, *Romantic Magazines and Metropolitan Literary Culture* (Basingstoke: Palgrave Macmillan, 2011), 37.

¹⁰⁴ Hone, *The Reformists' Register*, 1:558.

¹⁰⁵ *Ibid.*, 1:481.

¹⁰⁶ *Ibid.*, 1:558, 622.

booksellers not to reprint his parodies, declaring, “I shall never write any work of the same tendency again.” His choice of word is surely not accidental, given the debate over tendency in court. Hone’s supporters were disappointed by the *Morning Post* notice, which seemed to grant the question of bad tendency to the Attorney General and so undermine Hone’s triumph.¹⁰⁷ But Hone was anxious to repair his reputation within the forum of the public. “Permit me to assure the Public, through the medium of your Paper,” he wrote, “that I am much disgusted, and may, perhaps, be injured in public estimation by this procedure [i.e. the republishing of the parodies]; and that I have no intention of re-publishing those works in any other shape than in the report of my trials.”¹⁰⁸ After his legal acquittals, Hone turned to self-vindication before the tribunal of public opinion, clarifying his motives and shielding his character from further injury.

In 1820, Hone published *The Apocryphal New Testament*, a controversial collection of non-canonical gospels that was the first English-language publication of its kind cheap enough (at six shillings) to reach a wide audience.¹⁰⁹ Hone was attacked for it, most notably by an anonymous clergyman writing in the *Quarterly Review*, who dismissed him as “a wretch as contemptible as he is wicked” and “a poor illiterate creature, far too ignorant to have any share in the composition either of this, or of his seditious pamphlets.”¹¹⁰ Hone finally responded in 1824 with a pamphlet entitled *Aspersions Answered*, which set out to rebut the accusations of irreligion and assert his own authorship. The *Quarterly* reviewer wrote a reply to this, and Hone responded a second time, this time with *Another Article for the Quarterly Review*. Both *Aspersions Answered* and *Another Article* are devoted to refuting the reviewer’s attacks in careful detail, but Hone also looks back to his 1817 trials as the origin of his public reputation as irreligious. “I deem it necessary to notice the imputations of irreligion that have often been urged against me during the last seven years,” he wrote, adding that “[f]rom the time of my trials, it suited that [Tory] portion of the public press ... to connect my name with anti-Christian writers and publishers.”¹¹¹ In *Aspersions Answered*, Hone figuratively reopens his trials in the courtroom of public opinion, and assumes the position of a defendant seeking to rehabilitate his damaged character. “I pledge myself to prove that every ... charge urged against me by the reviewer is a wilful falsehood; and that every statement in support of each charge is a deliberately-manufactured fraud,” he vows, dismissing the reviewer as a “defamer” who “cloak[s] his crime” behind the *Quarterly* and “stands ... convicted of the foulest forgery.”¹¹²

¹⁰⁷ Harling, “The Law of Libel and the Limits of Repression,” 133-34.

¹⁰⁸ W. Hone, “To the Editor of the Morning Post,” *The Morning Post*, 24 December 24 1817, 2.

¹⁰⁹ Marsh, *Word Crimes*, 44.

¹¹⁰ Anon., “Apocryphal New Testament,” *Quarterly Review* 25, no. 50 (1821), 348.

¹¹¹ Hone, *Aspersions Answered*, 5, 9.

¹¹² *Ibid.*, 14, 37.

The criminal vocabulary continues to flow thick and fast in *Another Article*: the reviewer's reply is another "fraud" and his accusations "slanderous inventions," so that he "stands condemned," having received his "verdict" from the public, and so on.¹¹³

Gilmartin finds *Aspersions Answered* a good illustration of the monologic style of much radical writing of the period, which preferred "to silence rather than persuade," and "employed extensive quotations ... [from the *Quarterly*] in order to contain and neutralize rather than accommodate criticism."¹¹⁴ This is part of what is going on in *Aspersions Answered*, but if Hone was aiming for closure, he did not achieve it, as the existence (and title) of *Another Article* makes plain. Moreover, neither pamphlet is particularly successful at containing and neutralising; rather, Hone agonises over his battered public reputation and his sense of a debt of explanation owed to the world at large:

The topic ... is a painful one to me, and I would fain avoid it; but to my children and to my excellent wife, who are as dear to me as my life-blood – to the public – to that portion of the public especially who having been my especial friends, yet know of me only through evil report and good report, – to myself, with something of the self-respect which every one entertains who is not an exception to our common nature, and not to be excepted from civilized society – to these, and more than these, I owe that I should seem as I am, and not as I have been misconceived.¹¹⁵

Hone's address expands and contracts in this passage, his imagined audience taking in his family, the public, his sympathetic supporters, and himself. The strain is on character – how it is to be defended effectively, and to whom – and although Hone promises he is confronting this "painful" matter, he seems doubtful that he can overcome public misreadings of his character.

Part of Hone's anxiety here arises from the fact that he and his associates were rarely considered worthy of mention by the "respectable literary journals," who, as Wood explains, "reserved their analytical wrath for the productions of socially and linguistically acceptable figures such as Hazlitt, the Hunts, and Brougham."¹¹⁶ In May 1823, the *Edinburgh Review* printed some remarks to the effect that Hone had pirated work by Thomas Moore and Lord Byron,

¹¹³ William Hone, *Another Article for the Quarterly Review. By William Hone, Author of Aspersions Answered*, 3rd ed. (London, 1824), 3-5.

¹¹⁴ Gilmartin, *Print Politics*, 18, 20.

¹¹⁵ Hone, *Aspersions Answered*, 8.

¹¹⁶ Wood, *Radical Satire and Print Culture*, 97.

designating him a “literary thief.”¹¹⁷ Distressed, Hone drafted and redrafted a carefully-worded letter to Francis Jeffrey, asking that a correction be issued, and promising “that the charge is wholly unfounded.” He pointed out that he was not a regular subject of discussion in the *Edinburgh Review*, and this being “the first time ... that my name has appeared ... there is a seeming of hostility in ~~gratuitously~~ coupling ... me with infamy.”¹¹⁸ To his delight, the request was granted and an apology was printed the following January.¹¹⁹ “I have been so little used to secure justice,” Hone wrote to Jeffrey in a gushing letter of thanks.¹²⁰ His protestations are a little unconvincing, for Hone did pirate some of Byron’s poems, as the next chapter discusses. But he also struggled to convince readers (like the *Quarterly* reviewer) that he was the author of his own works, even those for which he was most famous, such as *The Political House that Jack Built*. As he grumbled in 1822: “However flattering the remark, that ‘it is impossible these fine children can be yours,’ there is something provoking in it. I am not ashamed of my offspring, and am responsible for what the poor things do” – an oblique admission of the importance of tendency? – “and it is not pleasant to hear their parentage ascribed to others.”¹²¹ The idea that there must have been a more respectable, better-educated author lurking just out of sight was also at play in the *Quarterly Review*’s attacks. Hone reflected:

The reviewer’s pretence that *Aspersions Answered* was written by another hand, is a compliment to me and a reproach to himself, that he did not intend. Many with a university education, assume *learning* to be every thing; and imagine, that men without it neither know, or think, nor have the power of expressing themselves intelligibly.¹²²

Hone’s difficulty in being taken seriously as an author was tied up with the “independent” poverty and autodidacticism he had celebrated in court. For Joss Marsh, this refusal to recognise Hone’s authorship was a legacy of the “complete civil disabling” that blasphemers of the sixteenth and seventeenth centuries had suffered, who could not “claim legal rights, indeed could hardly be said to exist.”¹²³ The damage to Hone’s character as a reputed (and acquitted)

¹¹⁷ Anon., “Literary Property. Late Judgments of the Chancellor,” *The Edinburgh Review* 38, no. 76 (1823), 306.

¹¹⁸ William Hone to Francis Jeffrey, 5 November 1823, William Hone Papers MS 40120 f.200, British Library.

¹¹⁹ [Francis Jeffrey,] “Notes by the Editor,” *The Edinburgh Review* 39, no. 78 (1824), 501.

¹²⁰ William Hone to Francis Jeffrey, 9 December [1823], William Hone Papers MS 40120 f.203, BL.

¹²¹ Hone, *Facetiae and Miscellanies*, vii.

¹²² Hone, *Another Article for the Quarterly Review*, 31.

¹²³ Marsh, *Word Crimes*, 50.

blasphemer was not so severe, but it nevertheless interfered with his ability to secure public recognition as an author.

The intensity of the pressure on character in *Aspersions Answered* is partly accounted for by the fact that the *Apocryphal New Testament* did more to fix Hone's public reputation as a blasphemer than the 1817 liturgical parodies.¹²⁴ Hone waited four years before turning to the press for his vindication, and the eventual prompt for *Aspersions Answered* was a family one. His estranged brother Joseph, a lawyer, had found his business so harmed by association with William, after the publication of the *Apocryphal New Testament*, that he decided to emigrate with his family. A letter was circulated among Joseph's colleagues in August 1823 seeking subscriptions to support him and alluding to the brothers' estrangement, which it attributed to Joseph not "adopting his brother's *religious* and political opinions."¹²⁵ Hone objected to this phrasing, which he felt "purported an antithesis, a contradistinction; it was a clear line of separation, with Joseph on the one side religious – William on the other irreligious."¹²⁶ In fact, Hone argued, he would have considered his brother his most reliable witness on the question of his religious beliefs: Joseph could "have given conclusive testimony in rebuttal of the charges of irreligion," he said.¹²⁷ Offended, he wrote to Joseph for an explanation about the phrasing of the circular, and *Aspersions Answered* prints large sections of their correspondence by way of evidence. The pamphlet powerfully illustrates the damage that could be inflicted by a climate of political mistrust, even within a domestic relationship. The published letters show that Joseph had concluded that William "admitted the charge" of irreligion, simply because the latter had not openly responded to the accusations levelled at him regarding the *Apocryphal New Testament*.¹²⁸ Joseph echoes criminal terminology in his correspondence, expressing to William his anxiety about the "tendency of your public acts," and adding that during their estrangement he had always "avoid[ed] every thing that might have the semblance of an attack upon your character or reputation."¹²⁹ By the end of their exchange, William had corrected Joseph's misperceptions about his religious beliefs and the pair were reconciled. But the damage had been done: the pressure on reputation arising out of a politically polarised, legally charged climate had filtered into a familial relationship, nudging the brothers' private correspondence into the public sphere.

¹²⁴ Timothy Larsen, *Crisis of Doubt: Honest Faith in Nineteenth-Century England* (Oxford: Oxford University Press, 2006), 35.

¹²⁵ Hone, *Aspersions Answered*, 5.

¹²⁶ *Ibid.*, 10.

¹²⁷ *Ibid.*, 9.

¹²⁸ *Ibid.*, 11.

¹²⁹ *Ibid.*, 12.

“It may be information to some,” Hone commented in *Aspersions Answered*, “that I have a heart.”¹³⁰ Troubled that his brother could have mistaken his opinions so drastically, he reflects that “if he had studied my character, [he] could ... [not] have been induced to conclude that my silence imported admission of the imputations.”¹³¹ Joseph misread the outward markers of William’s behaviour, failing to recognise the true stamp of his brother’s character. In *Aspersions Answered*, Hone understands character to be strongly interior, but legible to a thoughtful observer who is committed to undertaking careful “study”; indeed, he publishes *Aspersions Answered* because he hopes it might correct public misreadings. Submitting his character for the appraisal of careful readers, “others must determine” if he has acted well.¹³² In 1819, Hone wrote a defence speech for Richard Carlile to use at his trial for blasphemous libel before the Court of King’s Bench. The speech has Carlile declare to his jury that “my object here is as open to you as what I am brought here for is open to the world – you have read my heart as the public has read my publications.”¹³³ Hone pictures the relationship between Carlile, his jurors, and his publications as transparent. The speaker’s inner depths – “my heart” – are as legible as written text – “my publications.” “Character” (interiority) is read through “characters” (the printed letters on the page). Moral character is discernible through the intention of the autonomous writer, and through the meaning which emerges seamlessly from the text.

But Hone understood his bother Joseph’s error to be about more than a poor reading of his character; it was also a failure to read scripture with enough care. “My brother had never fallen in with the gross imputations of irreligion urged against me, after our intercourse ceased in July 1820, if a little Biblical inquiry had enabled him fully to comprehend the objects and limits of mine, when I incidentally alluded to topics connected with it during our previous intimacy,” he writes.¹³⁴ The deep reading of character and of scripture go together. The language of “heart” is applicable here too, since it equates for Hone both to moral depth and to an intuitive feeling towards God. As a committed Christian late in life, he could remember becoming occasionally aware, during his “impenitent” youth, of an “inexplicable *something* which, opposed to my wickedness, seemed to heave my heart.”¹³⁵ The religion of Hone’s youth retained a draw, but it was not until the last decade of his life that he became a regular churchgoer again. Timothy Larsen thinks that Hone was probably a strict atheist only for a brief period in his late teens.

¹³⁰ Ibid., 10.

¹³¹ Ibid., 12-13.

¹³² Ibid., 67.

¹³³ William Hone, “Manuscript [...] Written for and Partly Used by Richard Carlile in his Trial at the Court of King’s Bench, 1819”, Richard Carlile Papers RC 544, The Huntington Library, San Marino, California.

¹³⁴ Hone, *Aspersions Answered*, 12.

¹³⁵ Hackwood, *William Hone*, 56.

Otherwise, although for a period of some years Hone neither attended church nor had his children baptised, he was not an unqualified religious sceptic. At the time of his 1817 trials, Larsen concludes that Hone was a kind of Deist: “a theist and admirer of Jesus Christ, but also someone who had no place in his life for organized religion.”¹³⁶ In 1832, Hone underwent a religious conversion, and he and several family members were received into the Congregational Weigh House Chapel, where Hone became a regular worshipper and friend of the minister Thomas Binney.¹³⁷

Near the end of his life, Hone began preparing an autobiography which he never finished; the surviving fragments suggest his anxiety about defending his religious character before the public and before God. The work was conceived of as a kind of conversion narrative, “a memoir explanatory of my mind from its perversion in boyhood by the principles of a wretch-making philosophy, until I found happiness in the submission of my will, and by divine grace was enabled to surrender my heart to God in Christ.” The memoir is of Hone’s “mind,” “will,” and “heart”: a spiritual record of deep character. It treads a line between the intensely personal and the public, for Hone continues to express a sense of owing to the public an explanation of his religious character. “From certain occurrences which are matters of history, and some of my productions which are not yet forgotten, the public continues to deal with me as a public man,” he writes. Hence “it seems incumbent on me to make a plain declaration of my religious sentiments,” Hone goes on, and “I wish it could be read by all who ever heard my name.”¹³⁸

The “certain occurrences which are matters of history” sound like a euphemistic reference to Hone’s 1817 trials. Significantly, it was the occasion of their anniversary in 1838 that prompted him to begin writing down his life history. It is worth quoting his account of this in full (ellipsis in original):

The 18th, 19th, and 20th of December, 1817, are memorable dates in my wayward life, for those days gave my name publicity. Their anniversaries might perhaps have been kept in rejoicing by me and my family, but they have annually passed unheeded, save by a casual remark that these were the days ...

Now, however, all in the house but myself having retired to rest for the night of this 20th of December, 1838, and I being thus left in quiet loneliness, recollections arise of the hurries of that evening one and twenty years ago, and I find myself pondering on the multitude of events which have since transpired; on the rapid

¹³⁶ Larsen, *Crisis of Doubt*, 25.

¹³⁷ Hackwood, *William Hone*, 304-318.

¹³⁸ *Ibid.*, 14-15.

flight of time; and especially on a circumstance of more importance to me personally, and to society, through me, as one of its members, than any other connected with my existence.

Explanation to the public has long been due from me, and I no longer defer, in the hope of more leisure, to give it; but seizing on the departing minutes of this anniversary, as though they were my last moments, I proceed to an explicit disclosure which it is my purpose and hope to continue, at brief intervals, until it be complete.¹³⁹

In the event, Hone never made this “explicit disclosure,” for it remained unfinished and unpublished at the time of his death. Even in this short passage, his statement of intent is rather at odds with the elliptical deferral of any actual details. In a sense that is fitting, since we have seen that Hone struggled throughout his career with the question of how much of himself to disclose and how much to hold back. He insists that the truth of his character is legible to readers, even as it remains shrouded in gloom.

Hone’s representation of his character as at once transparent and murky was, at least in these late writings, bound up with his conviction that the events of his life carried a profound spiritual significance. Twenty-one years on, Hone looked back at his 1817 trials as one episode in his “wayward life,” collapsing them into a larger story of spiritual failure and redemption. That is not to say that he minimised or regretted his prosecutions: on the contrary, he recognised that they were “of more importance ... than any other” part of his life, and he did not apologise for publishing the parodies (though he did regret publishing the *Apocryphal New Testament* – a text far more damaging to Christian orthodoxy than the parodies had been). His sense of the trials’ significance “to society, through me” recalls a separate observation made in 1824, that “through me, right obtained a victory over wrong” in court – in other words, that his acquittals had a spiritual meaning.¹⁴⁰ That belief was probably tied up with Hone’s reverence for his father, a pious Calvinist whose spiritual autobiography he published posthumously in 1841. This memoir had interpreted the lives of both father and son in terms of a larger spiritual drama. William Hone senior reflects that the name “William” signifies conqueror, a meaning he felt he had fulfilled in becoming, “by divine grace, a conqueror over Satan.” He goes on:

Oh! that the like conquest may be verified in William my son, who by an unexpected appearance of the hand of God towards him, was favoured with great deliverances, and triumph over Lord E-----rough, by verdicts of acquittal ... Herein

¹³⁹ Ibid., 61-62.

¹⁴⁰ Hone, *Aspersions Answered*, 63-64.

was the signification of his Christian name “William” answered; and as “Hone” signifies “a stone,” may he be a lively stone built up in the spiritual house of God.¹⁴¹

Hone’s father reduces character to the “signification” of name. His son’s portrayal of character in his own autobiographical fragments generally involves greater emotional shading than this; but even so, the Bunyanesque theme of spiritual “conquest” is present in Hone’s explorations of character across his career.

Understood in spiritual terms, interior character for Hone is hard either to grasp or to represent. The legal testing of his character before Lord Ellenborough seems to have become less pressing or interesting to him than its anticipated spiritual testing before God. He wrote in June 1841: “The history of my three days’ Trials in Guildhall, may be dug out from the Journals of the period – the History of my Mind and Heart, my Scepticism, my Atheism, and God’s final dealings with me, remains to be written.”¹⁴² The 1817 prosecutions had represented a gruelling public trial of Hone’s character, printed in now-musty “Journals”; but the record of his “Mind and Heart,” character’s truly authoritative transcript, is yet unwritten. Untried before God’s tribunal, his character remains a blank page. At the end of *Aspersions Answered*, Hone entertained the idea that the world might vindicate his character after his death, in a way it had not during his lifetime:

I am persuaded ... that, when the whereabouts [sic] of my existence shall be enquired of, not one act I have done will be alleged, nor will a person who knew me be able to testify, in behalf of the representations I have here sought to refute. Then some will stand forth as witnesses to my having possessed qualities that they denied me while I lived, and others be forced to confess their ignorance of my character when they wantonly aspersed it.¹⁴³

Just as Hone had commented in 1838 that the anniversary of his trials was something akin to his own “last moments,” so this account, too, has an end-of-days quality to it. Its biblical syntax and vocabulary seem to promise a final settling of the score.

In these reflections in *Aspersions Answered*, Hone is partly concerned with imagining that his enemies’ “ignorance” about him will be corrected after his death. In another sense, though, his assertion of their “ignorance of my character” is an attempt to find refuge against the

¹⁴¹ William Hone, ed. *The Early Life and Conversion of William Hone [Sr.] [...] A Narrative Written by Himself* (London, 1841), 27.

¹⁴² *Ibid.*, 48.

¹⁴³ Hone, *Aspersions Answered*, 68.

misreadings of a hostile world. Hone wants his character to be recognised as good, but also as resisting easy comprehension. Since it has proven impossible to defend his character adequately against the charges of his antagonists, Hone resorts to an idea of character as fundamentally unknowable, a secret between himself and God. Gilmartin has written that popular radical reformers, unlike their “romantic contemporaries and liberal successors” (one thinks especially of Byron and Shelley), “did not pretend that their own exclusion or exile was a source of strength.”¹⁴⁴ Certainly, there is little of the Romantic exile in Hone’s sociable 1838 declaration that “I have been a lover of the world and its pleasures.” But within the same breath, he states himself also to have been “an insatiable reader in search of truth; an anxious enquirer after happiness.”¹⁴⁵ There is something Byronic about the murkiness of character in these later representations of Hone’s, which find in their own illegibility “a source of strength.” The final chapter will explore how Byronism proved useful to radical publishers and pirates of the 1810s and 20s, Hone among them. These writers pressed the Byronic hero into the service of their own ideological agendas; the Byronic hero’s murky depths were even cited in a treason trial of 1817, as a form of character defence. Hone’s vexed self-representations, especially in his later fragments, are suggestive of how a Byronic illegibility of character can come to look like a defensive strategy in its own right.

¹⁴⁴ Gilmartin, *Print Politics*, 31.

¹⁴⁵ Hackwood, *William Hone*, 60.

Lord Byron, character and the law

As the last chapter began to indicate, the phenomenon of Byronism proved useful to William Hone. In 1816 Hone gathered some of Byron's poems, together with a couple of spurious ones, into an edition entitled *Poems on his Domestic Circumstances*; this was followed in 1817 by a prose adaptation of *The Corsair*, and in 1819, a continuation to *Don Juan*, in which Byron's protagonist Juan becomes a beleaguered radical publisher in London.¹ As well as creatively reworking the Byronic hero, Hone had a personal grievance to air regarding *Don Juan*. Canto I of Byron's poem had contained a short parody of the Ten Commandments: "Thou shalt believe in Milton, Dryden, Pope, / Thou shalt not set up Wordsworth, Coleridge, Southey," and so on.² An outraged Hone published a key to the poem entitled "*Don John, or Don Juan Unmasked*," in which he pointed out that parodies of this sort had been condemned by crown lawyers at his trials two years earlier – yet Byron's Tory publisher John Murray, the "Don John" of his title, had published Byron's parodic stanzas "in utter defiance of Grand Juries, and the King's Attorney-General."³ Murray's offence is the greater because whereas Hone had parodied the liturgy ("entirely a human composition"), Byron's parody on the commandments targets the word of God itself. Hone concludes that Murray is protected by his social status and connections:

[N]o other man but he who has Government support and Government writers to back him, *dare* publish *Don Juan* as it now stands. Mr. Murray is too "respectable" to fear attack, or even insinuation for the *immoral* tendency of the Poem. He and his quarto book of 227 pages, with only 16 lines in a page, and a magnificent circumference of margin, and a guinea and a half in price, may defy the Society for Suppression of Vice.⁴

Hone identifies that Murray's "respectable" character (set in scornful inverted commas) shields him from legal prosecution. The fine "character" of *Don Juan* – its "magnificent" style of print and "quarto volume" format – place it aloof from its poorer, cheaper counterparts, which suffer the weight of government and Vice Society hostility.

¹ Peter Manning, "The Hone-ing of Byron's *Corsair*," in *Reading Romantics: Texts and Contexts* (New York: Oxford, 1990), 216-17; [William Hone,] *Don Juan. Canto the Third* (London, 1819).

² *DJ* 1:1633-34.

³ [William Hone,] "*Don John, or Don Juan Unmasked; Being a Key to the Mystery, Attending That Remarkable Publication, with a Descriptive Review of the Poem, and Extracts*" (London, 1819), 34.

⁴ *Ibid.*, 37-38.

For the writers examined in previous chapters, including Hone, the legal obligation to defend themselves before a criminal court preceded any effort at self-defence before the jury of the public. The failings that those writers perceived within the criminal justice system encouraged them to seek vindication within the republic of letters; the legal pressure on character spilled over into non-legal writings. Byron has to be looked at the other way around, since he recognised the need to defend himself before the tribunal of the public well before his poetry was accused of being criminal. Byron's name had been linked with scandal since he left Britain for the continent in 1816, but the last five years of his life saw increasing controversy attach to the poet, beginning with the publication of Cantos 1 and 2 of *Don Juan* in 1819, and the following three cantos in 1821. The poem was widely considered licentious, and shocked its early readers as much for its style (veering between the flippant and sublime) as its content. In 1822 Byron broke with Murray, and began collaborating more closely with brothers John and Leigh Hunt; eventually it was settled that John Hunt would take over publication of *Don Juan*, and the remaining finished cantos (6-16) were published during the second half of 1823 and early 1824. Byron also started to attract legal attention during this period, although unlike most of the writers in this thesis, he never appeared in court to defend his work. In 1824 it was John Hunt, as publisher of Byron's satiric poem *The Vision of Judgment*, who stood trial before the Court of King's Bench, charged with a libel on the late George III. For the most part, Byron's legal involvements concerned not the criminal but the civil law, and on questions of copyright and intellectual property. A series of rulings in the Court of Chancery around this time established that authors whose publications might be found "injurious" to the public had no property in them, so had no legal recourse against piracy. Both *Don Juan* and *Cain* were affected in this way.

Byron's celebrity, which has been the subject of much recent scholarly attention, was built on a perception of blurred boundaries between the writer and the heroes of his poetry. Many readers understood Byron himself to be legible in his writings; as one fan wrote to him, "I know you only in your writings and though I see many reprehensible principles in them yet I am convinced that the mind which prompted them is of no common stamp."⁵ This reader trusts in a relationship between the words on the page and the "stamp" (interior character) of the poet who imprinted them. At the same time, the Byronic hero was defined not by his transparency of character but by his gloomy, obscure depths. Byron's celebrity depended on the self-conscious production of character in his poetry, and "character" mattered from early on in his career – well before legal pressures began to exert. Indeed, Byron is an important figure for thinking about Romantic character in any context: his absence from Deidre Lynch's *Economy of Character* is

⁵ Anonymous to Lord Byron, n.d., John Murray Archive MS 43523, National Library of Scotland, Edinburgh.

suggestive of the ways in which critical attention to novelistic character may sometimes have come at the expense of recognising how other forms, including poetry, saw character develop in significant ways. As Hone's reworking of Byron's poems indicates, Byronic character proved useful to popular radical activists, who found in its enigmatic, murky quality a template for their political agendas. But for Byron, it was only later in his career that legal-political pressures began to inflect his representations of character. While he had always been concerned about his place within an oppositional Whig tradition, the legal pressures on his poetry after 1819 brought a new set of influences to bear on his explorations of character – although he often treated the idea of a public self-defence with aristocratic disdain. Outside the courts, Byron endured increasingly hostile attacks on both himself and *Don Juan* in the British press, many of which were prosecutorial in their vocabulary. Meanwhile, copyright disputes over *Don Juan* and *Cain* in the civil courts were followed by Hunt's criminal prosecution for *The Vision of Judgment* in 1824. Byron did not attend Hunt's trial, but his presence was felt in the courtroom. A key aspect of the defence case was that poetry simply was not suitable matter for legal debate. In effect, Hunt's lawyer argued that literary knowledge should be sealed off from legal scrutiny, in the process diminishing the political importance of poetry in general, and Byronism in particular.

Celebrity and Byronic heroism: character in *Childe Harold's Pilgrimage* and *Don Juan*

Since Byron's poetry first appeared in print, readers have been identifying the heroes of the poems with the poet himself. From *Childe Harold's Pilgrimage* to the Turkish Tales and *Don Juan*, generations of readers have assumed that the Byronic hero is one and the same with the character of "Byron," knowable from and discernible in his poetry.⁶ Recently, critics have interpreted that supposed equivalence of poet and hero through the lens of celebrity culture. The expansion of scholarship on Byron's celebrity in the last ten or fifteen years has encouraged recognition of "the Byronic" as a commercial and multimedia phenomenon, highlighting the central importance of readers, fans, literary pirates and others to the production of Byronism.⁷ Corin Throsby, for example, considers Byron's poetry to be flirtatious, since it encouraged readers "to think that his characters were in fact him ... [and] to feel they have access to Byron's seemingly true self."⁸ Tom Mole calls this effect a "hermeneutic of intimacy," since it offers an impression of the poet's own "deep selfhood as both hidden and yet legible." Byron's

⁶ For a study of the Byronic hero's literary ancestors and counterparts, see Peter L. Thorslev, *The Byronic Hero: Types and Prototypes* (Minneapolis: University of Minnesota Press, 1962).

⁷ See Ghislaine McDayter, *Byromania and the Birth of Celebrity Culture* (Albany, NY: SUNY Press, 2009); Tom Mole, *Byron's Romantic Celebrity: Industrial Culture and the Hermeneutic of Intimacy* (New York: Palgrave Macmillan, 2007); Corin Throsby, "Flirting with Fame: Byron's Anonymous Female Fans," *Byron Journal* 32, no. 2 (2004), 115-23; Throsby, "Flirting with Fame: Byron and His Female Readers" (University of Oxford, DPhil thesis, 2009); Clara Tuite, *Lord Byron and Scandalous Celebrity* (New York: Cambridge University Press, 2015).

⁸ Throsby, "Flirting with Fame: Byron's Anonymous Female Fans," 116.

“authentic truth,” Mole suggests, appeared to his readers to have “retreated to a deep inner space where it lurked in secret, hidden from observers. And yet at the same time it continually poured out in writing, in conversation, on the surface of the body and its adornments, where it was made legible for those who knew how to look.”⁹ Byron’s celebrity was predicated upon the appearance of a murky and deep interiority, the truths of which were concealed from the undiscerning public, but fathomable to the thoughtful reader.

Scholarship on Byron’s celebrity has shifted our understanding of the Byronic hero well beyond a mere “poetics of self-expression, which gains its potency from personality,” to borrow Mole’s words.¹⁰ It has had comparatively little to say, however, about the shifts in the representation of character that literary historians have registered as taking place in novels at a similar historical moment; a notable exception is Mole’s reading of *Don Juan*, which I will return to shortly. The supposed depth of the Byronic hero, and the careful reading he seems to require, has much in common with Lynch’s analysis of early nineteenth-century novelistic character. Lynch has described the Romantic reorientation of characters “to depth, rather than, as before, to legibility.”¹¹ That distinction recalls the Byronic hero’s gloomy interiority, deep but hard to read; of Conrad, the eponymous hero of *The Corsair*, Byron writes that it is “As if within that murkiness of mind / Worked feelings fearful, and yet undefined.”¹² This is a depth without detail, which on the face of it has little in common with the psychological realism of early nineteenth-century novelistic character. Yet as Lynch points out, the deepening of Romantic characters was linked to “both a new insistence that reading was an activity pursued by *individuals* and, at the same time, a new determination to produce lines of demarcation between *classes* of readers.” The appearance of depth and concealed meaning in Byron’s poetry has a clear place within an “economy of prestige in which cultural capital was distributed asymmetrically and in which not all who read were accredited to ‘really read’ literature.”¹³ Only the skilful reader is equipped to sound the mysterious depths of the Byronic hero, understood to be of a piece with Byron himself. As Throsby comments, “Byron continually suggests in his poetry that only a select group of readers can truly understand his work.”¹⁴ Byron’s celebrity helped to support the conditions in which the careful reading of deep character was considered valuable and prestigious.

⁹ Mole, *Byron’s Romantic Celebrity*, 142.

¹⁰ *Ibid.*, xiv.

¹¹ Deidre Lynch, *The Economy of Character: Novels, Market Culture, and the Business of Inner Meaning* (Chicago: University of Chicago Press, 1998), 12.

¹² *The Corsair*, in *CPW* 3:157, lines 211-12.

¹³ Lynch, *The Economy of Character*, 6.

¹⁴ Throsby, “Flirting with Fame: Byron and His Female Readers,” 30.

That Byron tantalised his readers with an impression of a profound but elusive inner life is recognised to have been key to his commercial success. For Mole, it meant that the Byronic “brand” was able to “remain immediately recognisable in the crowded market and yet to be always newly interesting.”¹⁵ But Byron’s evasion of fully-legible character also had political implications. As Hone’s adaptations and reworkings of *The Corsair* and *Don Juan* imply, Byronic character was a template that radical publishers co-opted; the pirate William Benbow even used an image of the poet for his shop sign, “The Byron’s Head.”¹⁶ In October 1817, a Byronic hero made an unexpected appearance at the trial of a Derbyshire radical named Isaac Ludlam, prosecuted for treason for his involvement in the failed Pentrich uprising earlier that year. Ludlam’s advocate, Thomas Denman, argued that his client had been led astray by the charismatic leader of the rebellion, the stockinger Jeremiah Brandreth, whom he likened to the hero of *The Corsair*, Conrad. Brandreth’s “peculiar character” had been “wonderfully depicted by a noble poet of our own time,” Denman told the court – meaning Byron. The poet’s “prophetic description” of Brandreth, in *The Corsair*, “will perfectly bring before you his character, and even his appearance, the commanding qualities of his powerful but uncultivated mind, and the nature of his influence over those that he seduced to outrage.” Indeed, Denman went on, the “portrait” is “as minute, as accurate, as powerful, as if the first of painters had seen him in his hour of exertion, and had then hit off his likeness.” Denman quoted passages from *The Corsair* to illustrate Conrad/Brandreth’s magnetic hold over his followers, his brooding appearance, and even his Byronic “sable curls in wild profusion.”¹⁷ Unselfconsciously, Denman introduced poetic material as something akin to character evidence into a criminal trial. The extracts from *The Corsair* elevate Brandreth to heroic status, even as they declare his guilt. Denman’s likening of Brandreth to Conrad argues for a high degree of fluidity between different modes of “reading” character: between how the jurors are expected to “read” a witness, and how they would “read” the hero of a poetic romance. In asking jurors to make inferences about Brandreth from *The Corsair*, Denman grants Byron’s poem the status of evidence, placing the legal appraisal of character in easy relationship with the knowledge of character that the careful reading of poetry would yield.

Denman failed to convince the jury, and Ludlam was executed late in 1817. The same year Byron finished writing Canto 4 of *Childe Harold’s Pilgrimage*, the final part of the poem (it was published in 1818). The character of Childe Harold had introduced the reading public to the

¹⁵ Mole, *Byron’s Romantic Celebrity*, 25.

¹⁶ See Tuite, *Lord Byron and Scandalous Celebrity*, 203.

¹⁷ [Jeremiah Brandreth,] *The Trials of Jeremiah Brandreth, William Turner, Isaac Ludlam, George Weightman, and Others, for High Treason, under a Special Commission at Derby [...] Taken in Short Hand by William Brodie Gurney Short Hand Writer to Both Houses of Parliament*, vol. 2 (London, 1817), 235-36.

key ingredients of the Byronic hero, from his first appearance in Cantos 1 and 2 in 1812: an unnamed “crime”; libertinism, but also a secret, ill-fated love; a lethargy regarding the world; a state of exile; detachment from the company and understanding of others; and a painful but hidden emotional life, for “at times the sullen tear would start, / But Pride congeal’d the drop within his ee.”¹⁸ *Childe Harold’s Pilgrimage* gestures toward Harold’s unique interiority, without plumbing it in detail. His interior life is invoked mainly to draw a contrast with the performance of outward show: his is a heart “throb[bing] with secret pain” among “the throng in merry masquerade.”¹⁹ In his preface to Cantos I and II, Byron wrote that he wanted Harold to be “deepened” as a character: “Had I proceeded with the Poem, this character would have deepened as he drew to the close; for the outline which I once meant to fill up for him was, with some exceptions, the sketch of a modern Timon, perhaps a poetical Zeluco.”²⁰ Byron advanced that plan in the later Cantos of the poem, which begin to develop a greater sense of Harold’s interior life, although ironically this came at the expense of Harold himself, who, having already begun to fade from view by the second Canto, almost entirely vanishes from Cantos 3 and 4. The “pilgrimage” is a journey of the mind, as much that of the poet as of Harold; Jerome McGann considers that “in *Childe Harold’s Pilgrimage* we are interested in the poet’s existential condition.”²¹ As the poem progresses, Byron absorbs historical and contemporary events, together with features of landscape and topography, into character, so that the speaker – whether Byron, Harold, narrator, or some combination thereof – can stand at Venice, in Canto 4, “A ruin amidst ruins.”²²

Byron insisted that he and his hero were not the same, but readers persisted in interpreting the poem autobiographically. Eventually he gave up trying to preserve “a distinction between the author and the pilgrim” that nobody else respected, and by Canto 4, author and character have blurred together almost seamlessly.²³ As he pointed out, though, Harold is not particularly admirable; indeed, he is a “very indifferent character.” As a “Childe,” Harold is an archaic character type based on noble rank and the codes of romance. Yet he has none of the qualities associated with the traditional figure of the knight, as Byron acknowledged: “it has been stated, that ... he is very *unknightly*, as the times of the Knights were times of love, honour, and so forth.” If Harold embodies the failure of modern character to live up to old-fashioned ideals, Byron challenges the idea that those values ever predominated, since “it so happens that the

¹⁸ *CHP* 1:27, 48-49.

¹⁹ *CHP* 2:774-75.

²⁰ “Preface [to Cantos I-II,]” *CHP* 1, in *CPW* 2:6.

²¹ Jerome J. McGann, *Fiery Dust: Byron’s Poetic Development* (Chicago: University of Chicago Press, 1968), 33.

²² *CHP* 4:219.

²³ “To John Hobhouse, Esq.,” *CHP* 4, in *CPW* 2:122.

good old times ... were the most profligate of all possible centuries.” In fact, Harold’s lack of chastity was a “perfectly knightly” trait, according to the norms of chivalric society. Harold, Byron warns, cannot be read in simple moral terms:

It had been easy to varnish over his faults, to make him do more and express less, but he never was intended as an example, further than to show that early perversion of mind and morals leads to satiety of past pleasures and disappointment in new ones, and that even the beauties of nature, and the stimulus of travel (except ambition, the most powerful of all excitements) are lost on a soul so constituted, or rather misdirected.²⁴

In the same breath as insisting that his protagonist “never was intended as an example,” Byron lists lessons emerging out of Harold’s “early perversion of mind and morals.” It is not clear what role, if any, Byron has in mind for a moral reading of character in the poem.

Standing in the ruins of Rome’s Colosseum towards the end of the Canto 4, the poet offers up a prayer to “Time! the beautifier of the dead,” to whom he promises to “devote” his “blood.”²⁵ By this time, Byron had left England and, as the next part of the chapter will show, was under increasingly hostile public scrutiny. The passage reads remarkably like a political defence speech, with its appeal to posterity for vindication, its invitation to others to testify to the speaker’s moral resilience, and its desire to set down a true “record”:

And if my voice break forth, ’tis not that now
I shrink from what is suffered: let him speak
Who hath beheld decline upon my brow,
Or seen my mind’s convulsion leave it weak;
But in this page a record will I seek.
Not in the air shall these my words disperse,
Though I be ashes; a far hour shall wreak
The deep prophetic fullness of this verse,
And pile on human heads the mountain of my curse! ...

My mind may lose its force, my blood its fire,

²⁴ “Preface [to Cantos I-II,]” *CHP* 1, in *CPW* 2:5-6.

²⁵ *CHP* 4:1162, 1193-94.

And my frame perish even in conquering pain,
But there is that within me which shall tire
Torture and Time, and breathe when I expire;
Something unearthly, which they deem not of[.]²⁶

The passage is a statement of commitment to posterity, and of the immortality of “Something” within the poet that will survive death. These remarks belong partly to the context of Byron’s concerns about poetic fame and legacy, but the investment in future vindication in “a far hour,” together with the demand that anyone should “speak / Who hath beheld decline upon my brow,” is suggestive of a statement of self-defence. John Thelwall had similarly issued an appeal, in his undelivered defence speech of 1794, for “every individual who is at all acquainted with my character and sentiments to stamp the broad seal of infamy upon my forehead if I speak not truly.”²⁷ Byron’s words also echo Hone’s invitation in court in 1817, that “[i]f any man knew one act of his life to which profaneness and impiety might be applied, he would ask that man to stand forward and contradict him at that moment.”²⁸ Byron, as we shall see, knew the details of the 1794 treason trials (and almost certainly Hone’s, for that matter), and may well have read reports of Thelwall’s trial. All three writers are appealing for public testimony to their characters; but where Thelwall and Hone had been concerned with proving their honesty and innocence, good character in Byron’s account is less straightforwardly linked to integrity. Rather, Byron understands the value of his character to be in his resilience against any appearance of “decline” or “weak[ness]”; the value of Byronic character hinges on an interior struggle that is hidden, rather than laid bare to allies and enemies alike.

Critics have noted that *Childe Harold’s Pilgrimage* is a poem partly about the failures of heroism in the modern age, a sceptical reflection on “the future possibility of histories made by great men.”²⁹ *Don Juan*, too, tackles the problem of depicting heroic characters satisfactorily. “I want a hero,” the narrator declares in the poem’s first line, but a rollcall of modern candidates winds up with the narrator’s conclusion that “I ... can’t find any in the present age / Fit for my

²⁶ *CHP* 4:1198-1206, 1226-30.

²⁷ John Thelwall, *The Natural and Constitutional Right of Britons to Annual Parliaments, Universal Suffrage, and the Freedom of Popular Association [...] Intended to Have Been Delivered at the Bar of the Old Bailey, in Confutation of the Late Charges of High Treason* (London, 1795), 14.

²⁸ [William Hone,] *The Three Trials of William Hone, for Publishing Three Parodies [...]* (London, 1818), 18.

²⁹ Philip W. Martin, “Heroism and History: *Childe Harold* I and II and the Tales,” in *The Cambridge Companion to Byron*, ed. Drummond Bone (Cambridge: Cambridge University Press, 2004), 96.

poem.”³⁰ Old-fashioned models of good character no longer apply, as the narrator discovers when he attempts to set forth Juan’s ancestry:

His father’s name was José – *Don*, of course,
A true Hidalgo, free from every stain
Of Moor or Hebrew blood, he traced his source
Through the most Gothic gentlemen of Spain; ...
... José, who begot our hero, who
Begot – but that’s to come – ³¹

This account of Juan’s lineage and status is tripped up by tangents, so that the narrator traces back only as far as Juan’s father before abandoning the project altogether. The passage resembles a similar one in *Childe Harold’s Pilgrimage*; but there, an account of Harold’s ancestry is cut short owing to the narrator’s mysterious reticence:

Childe Harold was he hight: – but whence his name
And lineage long, it suits me not to say;
Suffice it, that perchance they were of fame,
And had been glorious in another day.³²

Both poems introduce and then reject an idea of character-as-status, bound up with family and ancestry: *Childe Harold’s Pilgrimage* in order to foster a sense of enigma around its hero, *Don Juan* because the narrator’s trademark digressions comically deflate the biblical phraseology. The mysterious absence behind the lineage of Harold is transformed, in *Don Juan*, into a disorientating rejection of the traditional signposts of character.

Despite its scepticism, a nostalgia emerges in *Don Juan* for an earlier eighteenth-century approach to characterisation. This is especially pronounced in Canto 13, when a company assembles at Lord Henry’s country seat, “Norman Abbey” (a thinly-veiled rendering of Byron’s own Newstead Abbey). Among the guests are “Dick Dubious the metaphysician,” “Sir Henry Silvercup, the great race-winner,” and “the young bard Rackrhyme”: a colourful cast, distinguishable by the external markers of their characters. The transparently meaningful names slot into a playful social order; as the narrator observes, “Good company’s a chess-board – there

³⁰ *DJ* 1: 1, 37-39.

³¹ *DJ* 1:65-68, 71-72.

³² *CHP* 1:19-22.

are kings, / Queens, bishops, knights, rooks, pawns; the world's a game."³³ Contrasting this assortment with the dullness of contemporary society, the narrator celebrates the pleasures of social mixing and variety:

If all these seem an heterogeneous mass
To be assembled at a country seat,
Yet think, a specimen of every class
Is better than an humdrum *tête-à-tête*.
The days of Comedy are gone, alas!
When Congreve's fool could vie with Molière's *bête*:
Society is smooth'd to that excess,
That manners hardly differ more than dress.³⁴

The narrator's nostalgia for "The days of Comedy" is bound up with his approval of character types belonging to seventeenth- and early eighteenth-century comic theatre: "Congreve's fool," "Molière's *bête*." Malcolm Kelsall has identified in Lord Henry's party "a social ideal implied beneath the comic surface of the satire," but the episode also explores the ideals of character.³⁵ The narrator contrasts his preference for "a specimen of every class" with the blandness of modern polite society, "smooth'd to ... excess" and lacking diversity or eccentricity. By dismissing modern social interaction as "an humdrum *tête-à-tête*", Byron seems to denigrate precisely that plumbing of interiority which critics consider typical of Romantic characterisation. As we know, Lynch has considered this in the context of the novel, but for Byron it was a poetic imperative to resist the "humdrum." Grumbling about the "drivel" of Wordsworth and the Lake School, he exclaims in Canto 3: "'Pedlars', and 'boats', and 'waggons'! Oh! ye shades / Of Pope and Dryden, are we come to this?'"³⁶ An older eighteenth-century model is invoked in contrast to the stultifying conventions of the Lake School.

Modern English society is represented in *Don Juan* as superficial and homogeneous; the presence of "A sort of varnish over every fault" has created "a smooth monotony / Of character."³⁷ The poem's later cantos reflect an increasing preoccupation with the relationship between surface and depth in character. In Canto 15, the narrator reflects that the "countenance"

³³ *DJ* 13:689, 692, 669, 705-06.

³⁴ *DJ* 13:745-52.

³⁵ Malcolm Kelsall, *Byron's Politics* (Brighton: The Harvester Press Limited, 1987), 180.

³⁶ *DJ* 3:880, 889-90.

³⁷ *DJ* 14:123, 127-28.

is merely “a masque of rest” which turns “human nature to an art”: he writes, “Few men dare show their thoughts of worst or best; / Dissimulation always sets apart / A corner for herself.” The “countenance,” together with other external markers of character, fails to provide the viewer with insights into “the cavern of the heart.”³⁸ The cavern, suggestive of both depth and darkness, is an apt metaphor for thinking about Byronic character. It is perhaps also an allusion to Plato’s cave, as if inner character – the truth of “the heart” – is only to be glimpsed through shadows. With regard to Juan, we are given teasing suggestions of an interior which is never disclosed. He is

Observant of the foibles of the crowd,
Yet ne’er betraying this in conversation;
Proud with the proud, yet courteously proud,
So as to make them feel he knew his station
And theirs[.]³⁹

More than simply socially adept, Juan has a shapeshifting quality. His “conduct” has absorbed English habits of strictness and a “manlier vigour” since his arrival in England; he had “The art of living in all climes with ease.”⁴⁰ With women, he is a blank slate, becoming “what / They pleased to make or take him for,” so that “They fill the canvass up.”⁴¹ By emphasising the role of seeming and appearance in Juan’s character, the passage hints at a substance just beyond reach. Claiming that “Sincere he was – at least you could not doubt it, / In listening merely to his voice’s tone,” the narrator assures us that Juan’s “voice’s tone” is a reliable indicator of inner sincerity, even as he casts doubt on it through the caesura and halting qualifiers.⁴² Canto 15 presents a profoundly unstable relationship between the external markers of Juan’s good character and the possibility of a coherent interiority. Juan’s outward appearance is invoked to assure his valuable inner life, even as the speaker’s hesitant phrasing makes its existence seem improbable. It is not simply that external markers fail to be reliable indicators of Juan’s inner personhood, but that the presence of an interiority itself grows doubtful.

The narrator of *Don Juan* announces in Canto 17 (unfinished at the time of Byron’s death):

Temperate I am – yet never had a temper;

³⁸ *DJ* 15:18-23.

³⁹ *DJ* 15:115-19.

⁴⁰ *DJ* 15:85-86, 88.

⁴¹ *DJ* 15:121-22, 125.

⁴² *DJ* 15:101-02.

Modest I am – yet with some slight assurance;
Changeable too – yet somehow ‘*Idem semper*:’ ...
So that I almost think that the same skin
For one without – has two or three within.⁴³

Character is recognised here as multilayered and responsive to circumstance. McGann writes that “the personality of the poet does not develop” in *Don Juan*; instead, “the reader ... encounters the poet from so many angles and points of view that he seems not only fully present, but fully presented.”⁴⁴ Yet if this changeability is performed, it is not clear that a stable interiority rests beneath. Quite the reverse, for a single “skin” contains “two or three within”; looking beneath the skin seems to reveal only more personalities. Mole argues that *Don Juan* offers readers a “stubbornly un-modern” presentation of “subjectivity,” and this at a time when historians recognise that modern notions of selfhood were crystallising.⁴⁵ Mole makes the persuasive case that in *Don Juan*, Byron problematises certain “normative” (in Byron’s phrase, “canting”) ideas of the self which were becoming prevalent in the early nineteenth century. Specifically, Mole reads the poem as challenging two notions: that an individual’s life ought to develop progressively; and that personal selfhood ought to be not only deep but also legible.⁴⁶ These values – the development and the legibility of character – had helped to sustain Byron’s early celebrity, but the poet’s failure to reproduce them in *Don Juan* was part of a resistance to that celebrity, Mole suggests, and a deliberate social critique on Byron’s part. While Byron does not dispute in the poem the possibility that deep character can exist, he does contest our ability to read it with any accuracy, so that, Mole says, “at stake [in *Don Juan*] is not the opposition of depth and surface, but the opposition of legible and illegible subjectivity.”⁴⁷

Mole interprets Byron’s disengagement from notions of progressive and legible character alongside the poet’s rejection of social hypocrisy and cant, and in parallel with his retreat from the demands of celebrity culture. Yet as well as commercial disillusionment and philosophical misgivings, Byron’s refusal to shine a light into his heroes’ “murkiness of mind” is a defiant gesture which repays being read in the context of the legal pressures of the last five years of his life. The composition and publication of the later cantos of *Don Juan*, written in a period of increasing hostility towards the poet from British literary reviews, also map onto Byron’s

⁴³ *DJ* 17:81-83, 87-88.

⁴⁴ McGann, *Fiery Dust*, 31-32.

⁴⁵ See for example Dror Wahrman, *The Making of the Modern Self: Identity and Culture in Eighteenth-Century England* (New Haven, CT: Yale University Press, 2004).

⁴⁶ Mole, *Byron’s Romantic Celebrity*, 130-31.

⁴⁷ *Ibid.*, 143-44.

greater contact with radical circles. The question of how to “read” character is a concern in much of Byron’s poetry across his career, but his legal entanglements after 1819 give those problems a fresh nuance: whether or not interiority can be discerned from external signs and appearance; how to tease apart personal intention from social effects (or the legal doctrine of “tendency,” explored in earlier chapters); if modern heroism is possible, and what it would look like; if noble lineage or status have any continued relevance to good character; what the significance of literary forerunners and precedents might be. The Byronic hero of earlier poems had modelled a flirtatious, “murky” depth, with stunning commercial success; but while Byron also evades the clear portrayal of deep character in *Don Juan*, that evasion is a more perversely drawn rejection of the norms of nineteenth-century characterisation. Its replacement of the “humdrum *tête-à-tête*” with a cast of surface-level characters, in an earlier comic style, is of a piece with Byron’s appreciation of late seventeenth- and early eighteenth-century poetry and drama, and his admiration for Pope, Fielding, and so on. The poem’s resistance of depth or accountability of character marks a difference from the character defence tradition explored in earlier chapters, in which writers had prioritised the clear communication of moral integrity to a sympathetic audience, whether in court or before the public. Aristocratic insouciance, and Byron’s intense dislike of cant, play their part in this; as he told Murray in 1822, he would support the Hunts in their prosecution for *The Vision of Judgment*, “though it should cost me – character – fame – money – and the usual et cetera.”⁴⁸ Nevertheless, under siege from legal and extra-legal attacks on his personal character, Byron’s representations and defences of character (“and the usual et cetera”) began to be inflected by legal and political anxieties.

The Court of Chancery and the tribunal of the public: Byron “like a pannel before a Jury”

Previous chapters of this thesis have been concerned with writers’ direct confrontations with the courts, but Byron’s main involvement with legal process, at least as far as the suppression and distribution of controversial writings went, centred on questions of copyright, and therefore fell under the scope of civil rather than criminal law. Literary historians have devoted considerable attention to the role that copyright law played in the circulation of texts in the eighteenth and early nineteenth centuries.⁴⁹ Writers had recourse to two main options to protect their property against literary piracy: under the 1710 Statute of Anne, they could prosecute pirates to recover damages; and they could apply to the Court of Chancery for an injunction against pirated works. Injunctions were supposed to be temporary, offering protection only until the question could be

⁴⁸ *BLJ* 10:68.

⁴⁹ On the copyright law of the Regency period, see especially David Saunders, “Copyright, Obscenity and Literary History,” *ELH* 57, no. 2 (1990), 431-44; W. H. Wickwar, *The Struggle for the Freedom of the Press 1819-1832* (London: George Allen & Unwin Ltd, 1928), 259-73; Paul M. Zall, “Lord Eldon’s Censorship,” *PMLA* 68, no. 3 (1953), 436-43.

decided in a criminal court. In practice, however, Paul M. Zall explains that the costliness of appealing injunctions meant that they “were almost inevitably permanent,” and the damages that could be obtained through a criminal prosecution were so slight as to make injunctions the only practical protection against piracy.⁵⁰ In 1817, the case *Southey v. Sherwood* was heard at the Court of Chancery. It centred on the republican drama *Wat Tyler*, written by a young Robert Southey in 1794 and deposited with the radical publishers Ridgeway and Symonds, but never published.⁵¹ In February 1817, the play was dug up and published without Southey’s permission (by different publishers).⁵² A horrified Southey, now poet laureate, sought an injunction against the publishers, but it was refused by Lord Chancellor Eldon on the grounds that an author cannot have property in a work that is “injurious” to the public. Eldon was not sure whether or not *Wat Tyler* was injurious, so Southey was told he would have to take the question before a jury to determine his property in *Wat Tyler*. The ruling paradoxically enabled the free circulation of a publication that a judge had deemed possibly seditious, since pirates could now (and did) reprint the play with impunity. There was a precedent for Eldon’s ruling: in 1802 he had refused an injunction to the satirist John Wolcot (“Peter Pindar”), citing an earlier decision made by Lord Chief Justice Eyre not to grant Joseph Priestley damages for manuscripts destroyed in the 1791 Birmingham riots.⁵³ But it was the high-profile and embarrassing *Southey v. Sherwood* which captured public attention and publicised the court’s somewhat counterintuitive position.

In 1819, Byron’s publisher Murray sought an injunction against pirated publications of *Don Juan*. In light of Eldon’s ruling at *Southey v. Sherwood*, Byron thought the attempt would fail. He was worried that if the poem was declared “indecent & blasphemous” he would lose guardianship rights over his daughter, as Shelley had over his children, because of *Queen Mab*.⁵⁴ In fact, Murray was successful; but he had less good fortune when, in February 1822, he applied for an injunction against William Benbow for his pirated publication of *Cain*. This time, Eldon stated that “I cannot grant this injunction until you show me that you can maintain an action upon it”: in other words, to establish his property in the poem Murray needed to recover damages successfully under the copyright statute.⁵⁵ In the event, Murray did obtain the

⁵⁰ Zall, “Lord Eldon’s Censorship,” 437.

⁵¹ Leo M. Alpert, “Judicial Censorship of Obscene Literature,” *Harvard Law Review* 52, no. 1 (1938), 48.

⁵² Manning, “The Hone-ing of Byron’s *Corsair*,” 218.

⁵³ Zall, “Lord Eldon’s Censorship,” 437. See also [William Nassau Senior?], “Cases of Walcot v. Walker, &c.,” *Quarterly Review* 27, no. 53 (1822), 125-26.

⁵⁴ *BLJ* 6:252.

⁵⁵ Anon., “Court of Chancery, Tuesday, Feb. 12. Lord Byron’s ‘Cain.’ – Murray v. Benbow,” *The Times*, 13 February 1822, 3.

favourable verdict of a jury, securing *Cain*'s copyright.⁵⁶ But the most embarrassing of Byron's copyright cases was still to come. In August 1823, the radical publisher William Dugdale applied to have Murray's injunction for *Don Juan* dissolved, on the basis that the poem "was ... of such a character as that it would not receive the protection of a court of law." The Vice Chancellor, Sir John Leach, reluctantly did so, but recommended to Byron the expediency of "proceeding at law [against Dugdale] to recover damages. If Lord Byron succeeded in his action, his Honour thought it would follow that he would be entitled to the protection of this Court by injunction."⁵⁷ This Byron's lawyer declined to do because of Dugdale's poverty – and so, Zall concludes, "the harmonious arrangement between authors or publishers and Chancery which had developed during the eighteenth century [was] broken down."⁵⁸

It is important to notice that these Chancery rulings did not actually pronounce the works in question injurious, merely that they might be, and that deciding the question either way belonged to the common law courts. This was a matter of establishing "the character of the book" in question, good or bad.⁵⁹ As Eldon stated at his *Murray v. Benbow* ruling, *Cain* "is a work the character of which may not be of a nature not to sustain an action at law. I don't say that it is; but it being doubtful, this Court cannot interfere to protect it." The Court of Chancery was restricted to considering the property of the publication, and could not make a decisive ruling on its criminal "character." Eldon admitted that refusing the injunction "opens a door for its wider dissemination: but, sitting here, I have no criminal jurisdiction to punish or check such offences. The way to put a stop to them is by proceeding directly against the offenders in another mode, and through another channel." He was conscious that his position seemed counterproductive: "It may appear strange that I should thus allow the multiplication of copies, if the object of the poem be mischievous, which I do not say whether it is, or is not; I cannot help that," he hedged.⁶⁰ Others were not persuaded: the *Examiner* argued that far from keeping the two courts distinct, their "separate jurisdictions are mixed and confounded" by the Lord Chancellor, since "an important question of criminal law, which belongs solely to a jury, is most despotically decided incidentally, and as it were *en passant*, during the discussion of a question of mere property."⁶¹ While it is not correct that Eldon "decided" the criminality of these publications, it is true that by deferring judgment to a jury he left it unprotected, as it would be if a jury had indeed decided against it.

⁵⁶ Zall, "Lord Eldon's Censorship," 439.

⁵⁷ Anon., "Don Juan. – Lord Byron v. Dugdale," *The Times*, 11 August 1823, 2.

⁵⁸ Zall, "Lord Eldon's Censorship," 440.

⁵⁹ Anon., "Murray v. Benbow," 3.

⁶⁰ *Ibid.*, 3.

⁶¹ Anon., "Literary Property," *The Examiner*, 17 August 1823, 530.

These civil copyright cases complicate any assumption that the law's relationship to writers was simply a repressive one in the period, since the rulings served to enable the freer dissemination of (possibly) blasphemous and seditious works; pirates did run the risk of criminal prosecution for works that had been denied an injunction, but this was costly and risky for publishers to undertake.⁶² The controversies generated by Eldon's rulings demonstrate what Margot Finn calls the "plurality" of English legal culture.⁶³ Far from being homogeneous, different strands of legal practice could operate at cross-purposes. Moreover, the copyright cases demonstrated that the status of authorship was predicated upon the ownership of property, not on an abstract notion of a work's creative originator: in turn, property was contingent upon a publication's good tendency, its maintaining of a good "character." As Peter Manning describes, the many pirated editions of Byron's poetry brought "into prominence the ways in which a text, once written, separates from its author and enters an economy of production and distribution, to be acted on by forces beyond the writer's prevision or control."⁶⁴ With authorship so easily cut loose from the text, it takes on a fragile quality. David Saunders writes:

[W]hat happens to the status of "author" when individuals are rendered incapable of exercising the rights that the law invests in them when constituting them as "authors"? ... When Shelley and Byron seek to assert their status as owners of a copyright, but are constrained from doing so by their status of liability for an immoral publication, we can observe that the legal personality of the author – in these circumstances – has no essential unity.⁶⁵

In Byron's case, the legal fragility of authorship, its lack of "essential unity," had ramifications for his celebrity. The empty space at the heart of "the legal personality of the author" made Byron's works highly appealing to pirates, particularly those unprotected by injunctions.

The Chancery rulings left the legal status of poems like *Don Juan* and *Cain* in doubt: they had not been found seditious or blasphemous libel in a criminal court, but were highly suspect. One of the consequences was that such controversial cases were opened up to public reportage and commentary within the forum of the newspaper and periodical press, in papers including the *Times*, *Examiner* and *Quarterly Review*. Byron had been an object of intense public interest throughout his years of fame, but in the last years of his life his personal character came under an increasingly hostile pressure of scrutiny by reviewers and public commentators. In August

⁶² Zall, "Lord Eldon's Censorship," 439.

⁶³ Margot C. Finn, "Victorian Law, Literature and History: Three Ships Passing in the Night," *Journal of Victorian Culture* 7, no. 1 (2002), 135.

⁶⁴ Manning, "The Hone-ing of Byron's *Corsair*," 233.

⁶⁵ Saunders, "Copyright, Obscenity and Literary History," 435.

1822, he wrote to Thomas Moore of his wish, “in the present clash of philosophy and tyranny, to throw away the scabbard. I know it is fearful odds; but the battle must be fought.”⁶⁶ Despite that determination, he was sensitive to the vicissitudes in his public fortune, railing in an 1822 letter to Murray against “the rascaille English who calumniate me in every direction – and on every score.”⁶⁷ By the 1820s, many commentators understood Byron’s character to be irredeemably bad. In 1820, William Wordsworth wrote to a correspondent: “With Lord B’s private life I have nothing to do – I know nothing of it – but confining our notice to his Works, it cannot be questioned that they afford abundant proofs of sensual, corrupt, and malignant propensities. The Soul, and with the Soul, the Genius, suffers as these prevail.”⁶⁸ For Wordsworth to say that he knew “nothing” about Byron’s “private life” was either disingenuous or indicated a wish to distance himself from gossip, since Byron’s domestic scandals were common knowledge, at least up to 1816. Wordsworth understands private and poetic characters to be yoked together: “in order to be a good Poet it is necessary to be a good Man,” he writes. Further, he considers that Byron’s bad character is legible in the text of his poetry; moral and poetic “characters” are read and condemned together.

Some unsympathetic readers believed that English national character itself was implicated in, and threatened by, Byron. Wordsworth told Henry Crabb Robinson that he was “persuaded that Don Juan will do more harm to the English character, than anything of our time,” while John Wilson Croker wrote to Murray that certain passages of *Don Juan* risked doing “injury to the national character.”⁶⁹ The most notorious attack on both Byron and *Don Juan* came from Southey, in the preface to his sycophantic 1821 poem on the death of George III, *A Vision of Judgement*. For Southey, Byron’s role in the formation of the so-called “Satanic school” of poetry threatened to destroy the “moral purity” of “English literature.” Southey’s critique of *Don Juan* was legalistic in its rhetoric: he insisted that “[t]he publication of a lascivious book is one of the worst offences which can be committed against the well-being of society.”⁷⁰ In private correspondence he went further, denouncing Byron’s poem as “a foul blot on the literature of his country” and even “an act of high treason on English poetry.” That charge reflected Southey’s conviction that *Don Juan* was offensively bad poetry, as well as offensively

⁶⁶ *BLJ* 9:191.

⁶⁷ *BLJ* 10:23.

⁶⁸ Ernest de Selincourt, ed., *The Collected Letters of the Wordsworths. Electronic Edition*, 2nd ed., vol. 8, *A Supplement of New Letters*, ed. Alan G. Hill (Oxford: Clarendon Press, 1993; IntelLex Corp.: Charlottesville, VA, 2002), 177.

⁶⁹ De Selincourt, ed., *The Collected Letters of the Wordsworths. Electronic Edition*, 2nd ed., vol. 3, *The Middle Years. Part II: 1812-20*, rev. Mary Moorman and Alan G. Hill (Oxford: Clarendon Press, 1970; IntelLex Corp.: Charlottesville, VA, 2002), 579; Croker quoted in Andrew Rutherford, *Byron: The Critical Heritage* (London: Routledge & K. Paul, 1970), 193.

⁷⁰ Robert Southey, *A Vision of Judgement* (London, 1821), xviii.

immoral; part of his objection was its “imported” Italian influence, and its “very easy” rhymes.⁷¹ Yet Southey did not merely couch his attack on the poem and on Byron in the figurative vocabulary of the criminal prosecution: he really believed that the poem should be suppressed, through the moral pressure of public disapproval if not formal legal channels:

The greater the talents of the offender, the greater is his guilt, and the more enduring will be his shame. Whether it be that the laws are in themselves unable to abate an evil of this magnitude, or whether it be that they are remissly administered, and with such injustice that the celebrity of an offender serves as a privilege whereby he obtains impunity, individuals are bound to consider that such pernicious works would neither be published nor written, if they were discouraged as they might, and ought to be, by public feeling; every person, therefore, who purchases such books, or admits them into his house, promotes the mischief, and thereby, as far as in him lies, becomes an aider and abettor of the crime.⁷²

Southey supposes that either Byron’s “celebrity” protects him from prosecution, or the law is not powerful enough to “abate” the “evil” of his poem (Southey must have been sensitive to the law’s inadequacies after its failure to grant him copyright of *Wat Tyler*). In the absence of effective legal recourse, he invokes the power of the market to control *Don Juan*’s circulation, reminding the public that “pernicious works would neither be published nor written” if the demand for them did not exist. For Southey, “individuals” bear responsibility for discouraging immoral works like *Don Juan*: anyone who buys and, hence, implicitly supports the poem shares its author’s guilt, becoming a kind of accessory after the fact, in moral if not legal terms. Indeed, in his argument that *Don Juan* should not even enter a person’s house, Southey echoes William Blackstone’s *Commentaries on the Laws of England*, which stated that a person became an accessory if they provided “a house or other shelter to conceal [a felon].”⁷³

Southey’s critique indicts *Don Juan* and charges its author with a bad character. His prosecutorial vocabulary was shared by other commentators hostile to Byron, who joined in with charging, sentencing and condemning the poet through the language of the criminal trial. In February 1822, Francis Jeffrey – himself a lawyer; he had played a prominent role defending Scottish radicals in the trials of 1816-20 – sustained a lengthy legalistic critique of *Don Juan* in

⁷¹ Packer, Ian, and Lynda Pratt, eds., *The Collected Letters of Robert Southey. Part Six: 1819-1821*, March 2017, no. 3443, Romantic Circles, https://romantic-circles.org/editions/southey_letters/Part_Six/HTML/letterEEEd.26.3443.html.

⁷² Southey, *A Vision of Judgement*, xviii.

⁷³ Sir William Blackstone, *Commentaries on the Laws of England* [...] 12th ed., vol. 4 (London, 1793-95), 38.

the *Edinburgh Review*.⁷⁴ Assuming the voice of the jury of the nation, he proclaims that “the great body of the English nation – the religious, the moral, and the candid part of it – consider the tendency of his writings to be immoral and pernicious.” Jeffrey continues, as if from the bench:

We do not *charge him* with being either a disciple or an apostle of Satan; nor do we describe his poetry as a mere compound of *blasphemy and obscenity*. On the contrary, we are inclined to believe that he wishes well to the happiness of mankind – and are glad to *testify*, that his poems abound with sentiments of great dignity and tenderness, as well as passages of infinite sublimity and beauty. But their *general tendency* we believe to be in the highest degree pernicious [emphasis added].⁷⁵

Jeffrey “acquitt[s]” Byron of “mischievous intention,” but rules that “his writings have a tendency to destroy all belief in the reality of virtue.”⁷⁶ His comments echo the debate over tendency and intention that had been so prominent at Hone’s trials. The *Morning Chronicle* took the more generous position that if “the opinions avowed by Lord Byron [in *Don Juan*], however mischievous may be their tendency, are not really entertained by him, or that belief is voluntary, we do not well see how ... the publication [is] criminal.”⁷⁷ Here, as Hone had argued, the writer’s good intention is presumed to absolve him of criminality, even if the tendency of the work is “mischievous.” For Wordsworth, however, *Don Juan* had a “damnable tendency,” and he wrote to Crabb Robinson that the *Quarterly Review* should not leave it “unbranded”; that is, it should publish an unfavourable review of the poem.⁷⁸ Byron’s poem and his character were alike subject to trial, condemnation and acquittal, within the columns of these papers. The Whig *Edinburgh Review*, the radical *Morning Chronicle* and the Tory Wordsworth (speaking for the *Quarterly*) unite in recognising the bad “tendency” of *Don Juan*, although they disagree about Byron’s intention and hence the extent of his criminality.

In August 1819, *Blackwood’s Edinburgh Magazine* published a particularly scathing attack on *Don Juan* and on Byron, likening the poet to “a cool unconcerned fiend.”⁷⁹ Unusually for him, Byron responded with an essay (unpublished in his lifetime), “Some Observations upon an

⁷⁴ Gordon Pentland, “State Trials, Whig Lawyers and the Press in Early Nineteenth-Century Scotland,” in Davis, Macleod, and Pentland, *Political Trials in an Age of Revolutions: Britain and the North Atlantic, 1793-1848*, 217.

⁷⁵ [Francis Jeffrey,] “Lord Byron’s Tragedies,” *The Edinburgh Review* 36, no. 72 (1822), 447-48

⁷⁶ *Ibid.*, 451, 448.

⁷⁷ Anon., “The Liberal, &c.,” *Morning Chronicle*, 8 November 1822., 1.

⁷⁸ De Selincourt, ed., *The Collected Letters of the Wordsworths. Electronic Edition*, 3:579.

⁷⁹ Anon., “Remarks on Don Juan,” *Blackwood’s Edinburgh Magazine* 5, no. 29 (1819), 513.

Article in *Blackwood's Edinburgh Magazine*," which offered a quasi-legalistic defence of his good character. Imaginatively but unwillingly standing before the jury of the public, he complains that "it is hard indeed to be compelled to recapitulate ... [my actions] in my own defence – by such accusations as that before me – like a pannel before a Jury calling testimonies to his Character."⁸⁰ While able "to call forth the most willing witnesses – at once witnesses and proofs" of his unselfishness, he points out that "general opinion" has already decided against him, passing "sentence without trial – and condemnation without a charge."⁸¹ In this, he considers himself more unfortunate than those who have suffered the law's judgment unjustly, since he finds himself "condemned without being favoured with the act of accusation – and to perceive in the absence of this portentous charge or charges – whatever it or they were to be – that every possible or impossible crime was rumoured to supply it's [sic] place – and taken for granted."⁸² Byron uses the vocabulary of criminal justice and of the legal character defence, albeit with aristocratic reluctance. "[I]t is hard indeed" to defend himself, he says, for "my name ... had been a knightly or a noble one since My [sic] fathers helped to conquer the kingdom for William the Norman" – an objection that recalls the exclamation of William Godwin's Falkland at his fictional trial in *Caleb Williams*: "Great God! what sort of a character is that which must be supported by [a] witness?"⁸³ The *Blackwood's* review and Byron's response should both be read in the context of the magazine's campaign against Leigh Hunt and his associates. But Byron's essay also fits into the subgenre of political defences, legalistic in style but not designed for a courtroom, which were published as interventions in the tribunal of the republic of letters: works including Thomas Fyshe Palmer's *A Narrative of the Sufferings of T. F. Palmer*, Peter Finnerty's "Lord Castlereagh and Peter Finnerty," and Hone's *Aspersions Answered*.

For the most part, Byron stayed aloof from explicitly defending himself against charges of sedition or blasphemy, even after the Court of Chancery's failure to secure his property in *Don Juan* and *Cain* added a sharper edge to the attacks on his personal character. Yet echoes of courtroom character defences are present, particularly in the prefaces to later poems. The preface to *Cain* pre-empts the accusations of blasphemy which inevitably followed its appearance, while the preface to *The Vision of Judgment* (itself a satiric response to Southey's poem) contains a legalistic list of questions which Byron puts to Southey in an imagined

⁸⁰ George Gordon Byron, "Some Observations Upon an Article in *Blackwood's Edinburgh Magazine*," in *The Complete Miscellaneous Prose*, ed. Andrew Nicholson (Oxford: Oxford University Press, 1991), 91.

⁸¹ *Ibid.*, 92, 94.

⁸² *Ibid.*, 96.

⁸³ *Ibid.*, 95; William Godwin, *Caleb Williams*, ed. Pamela Clemit (Oxford: Oxford University Press, 2009), 98.

interrogation.⁸⁴ The preface to Cantos 6, 7 and 8 of *Don Juan* also engages the tropes of the political defence speech. Clara Tuite has read this preface very effectively in the context of Byron's feelings about both Lord Castlereagh and Shelley, whose two deaths hung over its composition in the summer of 1822.⁸⁵ But it also inherits the tropes of radical exclusion and defiance that are typical of political defences. It begins with an attack on Castlereagh's bad character, which Byron frames in terms of a distinction between private and public character, familiar from the defences of Thelwall and Hone, among others. "That he [i.e. Castlereagh] was an amiable man in *private* life, may or may not be true; but with this the Public have nothing to do," Byron writes. He condemns Castlereagh's capacities as a ruler in the strongest terms: "the most despotic in intention and the weakest in intellect that every tyrannized over a country." Furthermore, because Castlereagh committed suicide he is either "a felon or a madman," at least according to the letter of "the *law*."⁸⁶ These attacks on Castlereagh seem to draw on a generic convention of political defences, turning the charge of criminality back upon the prosecutor.

In the second part of the preface, Byron responds to the hostile reception of the earlier cantos of *Don Juan*:

The hackneyed and lavished title of Blasphemer – which, with radical, liberal, jacobin, reformer, etc. are the changes which the hirelings are daily ringing in the ears of those who will listen – should be welcome to all who recollect on *whom* it was originally bestowed. Socrates and Jesus Christ were put to death publicly as *Blasphemers*, and so have been and may be many who dare to oppose the most notorious abuses of the name of God and the mind of man.

Byron celebrates the criminalisation of radical character as a fate shared by both Socrates and Christ. The description of Christ as a reformer or blasphemer in his own day was a trope used by Joseph Gerrald at his 1794 defence, and by Hone in the defence he drafted for Richard Carlile in 1819.⁸⁷ As Tuite comments, it is also a striking "moment of self-identification as accused blasphemer" on Byron's part.⁸⁸ Byron implicitly aligns his own position with that of Christ or Socrates, as well as with Carlile, whom he obliquely refers to as "the 'wretched Infidel,' as he is called, [who] is probably happier in his prison than the proudest of his

⁸⁴ See "Preface" to *Cain*, in *CPW* 6:228-30; and "Preface" to *The Vision of Judgment*, in *CPW* 6:309-12.

⁸⁵ Tuite, *Lord Byron and Scandalous Celebrity*, 112-13.

⁸⁶ "Preface to Cantos VI, VII, and VIII," in *CPW* 5:295-96.

⁸⁷ [Joseph Gerrald,] *The Defence of Joseph Gerrald, on a Charge of Sedition [...] To Which Is Prefixed a Sketch of His Character, Written by a Friend* (London, [1794]), 26; William Hone, "Manuscript ... written for and partly used by Richard Carlile in his Trial at the Court of King's Bench, 1819," Richard Carlile Papers RC 544, The Huntington Library, San Marino, California.

⁸⁸ Tuite, *Lord Byron and Scandalous Celebrity*, 115.

Assailants.” Byron just as quickly distances himself from Carlile – “[w]ith his opinions I have nothing to do” – but he recognises the powerful emotional draw of martyrdom, arguing that Carlile’s “very Suffering for conscience-sake will make more proselytes to Deism than ... suicide Statesmen to Oppression.”⁸⁹

A rather different legalistic defence made its way into the opening stanzas of Canto 7. It is a defence based more on *Don Juan*’s literary precedents than on character, at least in the narrow sense of moral integrity; Byron is concerned to place himself within a diverse lineage of respected authors and their colourful protagonists. But although he focuses on precedent, Byron’s examples *are* also about characters, albeit they privilege flamboyant variety, superficiality, and historic colour. He begins by mocking cumbersome legal syntax, and the doctrine of “tendency”:

They accuse me – Me – the present writer of
The present poem – of – I know not what, –
A tendency to under-rate and scoff
At human power and virtue, and all that;
And this they say in language rather rough.
Good God! I wonder what they would be at!
I say no more than has been said in Dante’s
Verse, and by Solomon and Cervantes;
By Swift, by Machiavel, by Rochefoucault [sic],
By Fenelon, by Luther, and by Plato,
By Tillotson, and Wesley, and Rousseau[.]⁹⁰

Byron offers a catalogue of poetic, biblical, novelistic, philosophical and theological precedents with which to defend his poem. By the time Canto 7 was published in 1823, he had been reflecting on the usefulness of literary forerunners for some time, in view of the threat that Eldon’s rulings posed to literary property. He wrote to Murray in 1819:

Of the Chancellor’s law – I am no judge – but take up Tom Jones & read him [–]
Mrs. Waters and Molly Seagrim – or Prior’s Hans Carvel – & Paulo Purganti –

⁸⁹ “Preface to Cantos VI, VII, and VIII,” in *CPW* 5:296-97.

⁹⁰ *DJ* 7:17-27.

Smollett's Roderick Random – the chapter of Lord Strutwell – & many others; – Peregrine Pickle the scene of the Beggar Girl – – Johnson's *London* for *coarse* expressions ... Anstey's Bath guide – the "Hearken Lady Betty Hearken" – take up in short – Pope – Prior – Congreve – Dryden – Fielding – Smollett – & let the Counsel select passages – and what becomes of *their* copyright if his Wat Tyler – decision is to pass into a precedent?⁹¹

The *Wat Tyler* ruling seems to cast an impossible number and diversity of works beyond the pale. Byron's eclectic pantheon of literary precedents recalls Hone's magpie-like collection of historic and contemporary parodies for his 1817 defences. Like Hone, Byron interprets character as historically-oriented and diverse: his list of literary forerunners takes in a range of satirical or bawdy poets, dramatists and novelists, both canonical and lesser-known. The selection speaks to Byron's love of late seventeenth-century and early eighteenth-century writers, and to his preference for the comic and satiric.

"As to my writing a defence – that is lawyer's work": oppositional character and the 1824 trial of John Hunt

Byron's nostalgic approach to character in *Don Juan* assumes a Whiggish dimension in the episode of Juan's visit to London. The narrator is prompted to reflect on the former grandeur of parliament:

He also had been busy seeing sights –
The Parliament and all the other houses;
Had sate beneath the gallery at nights,
To hear debates whose thunder *roused* (not *rouses*)
The world to gaze upon those northern lights
Which flashed as far as where the musk-bull browses:
He had also stood at times behind the throne –
But Grey was not arrived, and Chatham gone.⁹²

In Byron's account, time contracts and expands inexactly, as if in imitation of the circularity of history and the stagnation of the Whig cause. While Byron's own schema dated the events of the poem to around 1789, he also inserts himself (a young "Orator" who has just delivered his maiden speech in parliament) among the visitors at Lord Henry's house in Canto 13, bringing

⁹¹ *BLJ* 6:253.

⁹² *DJ* 12:649-56.

the action forward to around 1812.⁹³ “Where [are] Grattan, Curran, Sheridan, all those / Who bound the bar or senate in their spell?” the narrator asks, adding bitterly: “Where / My friends the Whigs? Exactly where they were.”⁹⁴ Kelsall has argued that Byronism emerged partly owing to Byron’s political position as an “inheritor” of the philosophy and traditions of the “patrician Whigs,” looking back to the 1688 revolution. “The ‘Byronic’,” Kelsall argues, “is in part created by the ideology of the Whigs under stress. Byron’s writing is also an imaginative attempt both to express the limits, and harness the energy, of Whig experience at that moment in history.”⁹⁵ Kelsall emphasises the difficulty of Byron’s maintaining “positive liberal hope” during the 1810s and afterwards, with “the great Whig figures of the eighteenth century” either dead or “declined into the caution of years,” and Whiggism seemingly indefinitely stuck in opposition.⁹⁶ *Don Juan*’s English Cantos are concerned with political nostalgia, as well as the disappointment Kelsall identifies; they safeguard an ideal version of oppositional Whiggish character, even as they entertain the prospect that the archetypes of Whig heroism cannot be reproduced in the modern age. Byron’s representations of character after 1819 can usefully be read in the context of his sense of Whig crisis, and of the criminalisation of oppositional character which this thesis has traced back over the previous thirty years. For instance, while the idea of exile had always been a central characteristic of the Byronic hero, beginning with Childe Harold, after *Don Juan* it began to take on echoes of political exile and even criminal transportation. More than once, Byron called his removal from England a “transportation,” noting in *Don Juan* in 1823 that he had spent “Seven years (the usual term of transportation)” abroad.⁹⁷ In the context of a stanza which laments the loss of English national dignity, this self-representation as an exiled man of virtue recalls the flurry of panegyrics on Joseph Gerrald, published in the wake of the Scottish sedition trials.

Byron’s admiration for the idealised character of the gentleman reformer or revolutionary (of which Gerrald was a type) went back at least to his years of fame in London. In 1813, he expressed a wish to immerse himself in the company and memories of older Whigs, enthusing that

anything that confirms or extends one’s observations on life and character delights me even when I don’t know people – for this reason – I would give the world to pass a month with Sheridan or any lady or gentleman of the old school – & hear

⁹³ *DJ* 13:714; Kelsall, *Byron’s Politics*, 180.

⁹⁴ *DJ* 11:611-12, 631-32.

⁹⁵ Kelsall, *Byron’s Politics*, 2.

⁹⁶ *Ibid.*, 5.

⁹⁷ *DJ* 10:526. See also *BLJ* 7:49.

them talk every day & all day of themselves & acquaintance – & all they have heard & seen in their lives.⁹⁸

Byron's eagerness for the memories of the "old school" is blended with curiosity about their diversity of "acquaintance," "life and character." His 1814 journal records dinners with Richard Brinsley Sheridan, Thomas Erskine and others:

On Tuesday dined with Rogers, – Mackintosh, Sheridan, Sharpe, – much talk, and good, – all, except my own little prattlement. Much of old times – Horne Tooke – the Trials – evidence of Sheridan, and anecdotes of those times when *I*, alas! was an infant. If I had been a man, I would have made an English Lord Edward Fitzgerald.⁹⁹

The United Irishman Fitzgerald (a one-time associate of Finnerty) had died in 1798 from wounds incurred resisting arrest. He represents for Byron an exemplary type of aristocratic, revolutionary and martyred character. The young poet's eagerness to document the "talk" of his more senior companions means that their "anecdotes" overflow the bounds of his sentence: "old times – Horne Tooke – the Trials – evidence of Sheridan," the latter probably referring to the character evidence that Sheridan gave at the trial of United Irishman Arthur O'Connor for treason in 1798 (see also Figure 1, in the Introduction).¹⁰⁰ Byron's examples move from Horne Tooke (probably his 1794 trial for treason, although Byron might have been thinking of his 1770 libel case) to "the Trials" (presumably those of 1794), to further trials of the later 1790s. This movement is suggestive of his sense of a sequence, an oppositional tradition into which he wishes to insert himself. It is surely no coincidence that Don Juan's bedtime reading is "A paragraph, I think about Horne Tooke."¹⁰¹

Byron's account of the heroes of "old times" is striking for its omissions: Horne Tooke is praised for his part in the 1794 trials, but Thelwall and Hardy are forgotten or erased. Byron privileged the character of the gentleman reformer, and invoked external markers of social rank to distinguish himself from popular radicals. In a letter to John Cam Hobhouse in 1820, he was anxious to dissociate his friend, newly a Member of Parliament, from "scoundrels" and "ruffians" such as William Cobbett and Henry Hunt.¹⁰² He had already urged Hobhouse that "[Francis] Burdett is the only one of them in whose company a Gentleman would be seen unless

⁹⁸ *BLJ* 3:129

⁹⁹ *BLJ* 3:249.

¹⁰⁰ [Arthur O'Connor,] *The Trial at Large of Arthur O'Connor, Esq.* [...] (Dublin, 1798), 80-81.

¹⁰¹ *DJ* 16:211.

¹⁰² *BLJ* 7:80.

at a Public meeting – or in a Public house.”¹⁰³ He cites his own and Hobhouse’s classical scholarship, a marker of gentlemanly character, to signal a posture of learned distance from the popular movement: “Why our classical education alone – should teach us to trample on such unredeemed dirt as ... the unblushing baseness of these two miscreants [Henry Hunt and Cobbett]; – and all who believe in them.”¹⁰⁴ Byron set store on such markers of genteel character, and his remarks recall what Manning aptly calls “the gulf [that] Byron’s consciousness of his rank put between himself and those who claimed him as any ally.”¹⁰⁵ To Murray, Byron complained:

If we must have a tyrant – let him at least be a gentleman who has been bred to the business, and let us fall by the axe and not by the butcher’s cleaver. ... Lord George Gordon – and Wilkes – and Burdett – and Horne Tooke – were all men of education – and courteous deportment – so is Hobhouse – but as for these others [i.e. Henry Hunt and other popular reformers] – I am convinced – that Robespierre was a Child – and Marat a quaker [sic] in comparison of what they would be could they throttle their way to power.¹⁰⁶

Byron prefers the “axe,” a traditional method of execution for high-born traitors, to the “butcher’s cleaver,” the shopkeeper’s tool put to revolutionary use. The celebration of tyranny in this letter is ironic, but Byron’s prizing of “education” and “courteous deportment,” markers of the well-“bred” gentleman, is sincere enough. The hyperbolic likening of Robespierre to “a Child” and Marat to “a quaker” emphasises not only the violence that he perceived many in radical circles to espouse, but also their underhand, “throttl[ing]” methods, contrasted implicitly with the those of the honourable man of high rank.

Byron could be viciously snobbish towards popular reformers, or “blackguards” as he liked to call them, a term that interestingly connotes criminality as well as low and vagrant status.¹⁰⁷ While reiterating his commitment to the principles of reform, Byron expressed his “most thorough contempt and abhorrence – of all that I have seen, heard, or heard [sic] of the persons calling themselves *reformers*, *radicals*, and such other names, – I should look upon being free with such men, as much the same as being in bonds with felons.”¹⁰⁸ It may be that Byron softened that position as he came in for a greater share of censure on his own part; we have seen

¹⁰³ *BLJ* 6:166.

¹⁰⁴ *BLJ* 7:81.

¹⁰⁵ Manning, “The Hone-ing of Byron’s *Corsair*,” 231.

¹⁰⁶ *BLJ* 7:44-45.

¹⁰⁷ See for example *BLJ* 7:44.

¹⁰⁸ *BLJ* 7:81.

that two years later, in the preface to Cantos 6, 7 and 8 of *Don Juan*, he was scathing about the “title[s]” flung about by “hirelings,” including “radical, liberal, jacobin, reformer.”¹⁰⁹ But any contact between Byron and such activists, even those who pirated his work without his permission, created unease among conservative onlookers: “Byron is judged by the company he keeps,” Tuite explains.¹¹⁰ Chapter 2 explored the issue of the criminalisation of status, whereby as Nicola Lacey explains, “criminality” is thought to “inhere in a type or group rather than an individual ... we know criminals from the company they keep, or from the kind of person that they are.”¹¹¹ Even Byron’s relationship with pirates could be understood in this way. Referring to Benbow’s shop “The Byron’s Head,” Southey considered that “Lord Byron had attained the last degree of disgrace when his head was set up for a sign at one of those preparatory schools for the brothel and the gallows” – regardless of the fact that Byron had nothing to do with Benbow’s venture.¹¹² Cheap pirated editions of *Don Juan* ensured Byron’s continued place in the radical canon for many years after his death, and it was read widely among Chartists and other activists of the mid-century.¹¹³ Due to Murray’s nervousness, Cantos 1 and 2 had seemed to declare their own criminality in 1819, with no author or publisher’s names given on the title page, and with asterisks blanking out certain stanzas and lines.¹¹⁴

As allies of Byron, John and Leigh Hunt were far from plebeian. Kevin Gilmartin has emphasised Leigh Hunt’s “acute sensitivity about issues of rank and refinement,” together with his growing commitment to a middle-class sensibility over the course of his career. Like Byron, he was swift to differentiate himself from men such as Cobbett and Henry Hunt; indeed, “the mere mention” of the latter “prompted the defensive parenthetical, ‘no relation of ours’.”¹¹⁵ Byron’s relationship with the Hunts was not free from tensions of class. Six months after Leigh Hunt’s arrival in Italy with his family in 1822, Byron reported to Murray:

As to any community of feeling ... or opinion between L[eigh] H[unt] & me – there is little or none – we meet rarely – hardly ever – but I think him a good principled & able man – & must do as I would be done by. – I do not know what

¹⁰⁹ “Preface to Cantos VI, VII, and VIII,” in *CPW* 5:297.

¹¹⁰ Tuite, *Lord Byron and Scandalous Celebrity*, 226.

¹¹¹ Nicola Lacey, “The Resurgence of Character: Responsibility in the Context of Criminalization,” in *Philosophical Foundations of Criminal Law*, ed. R. A. Duff and Stuart Green (Oxford: Oxford University Press, 2011), 156-57.

¹¹² Quoted in William St. Clair, *The Reading Nation in the Romantic Period* (Cambridge: Cambridge University Press, 2004), 328.

¹¹³ *Ibid.*, 335.

¹¹⁴ *Ibid.*, 232-24.

¹¹⁵ Kevin Gilmartin, *Print Politics: The Press and Radical Opposition in Early Nineteenth-Century England* (New York: Cambridge University Press, 1996), 199.

world he has lived in – but I have lived in three or four – and none of them like his Keats and Kangaroo terra incognita – Alas! poor Shelley! – how he would have laughed – had he lived, and how we used to laugh now & then – at various things which are grave in the Suburbs.¹¹⁶

Byron's laughter, lordly and knowing, sets him aloof from the suburban Leigh Hunt by a "world." He assured Moore: "You may easily suppose that I know too little of Hampstead and his satellites to have much communion with him."¹¹⁷ Byron's condescending air does not do justice to his determination to support the Hunts, particularly at the time of John Hunt's prosecution, as we shall see, but also in his awareness of the Hunts' financial hardships and his (somewhat reluctant) involvement in their new paper, *The Liberal*. The relationship was sometimes strained, but Byron could also be forthcoming in his praise of the characters of both brothers. He reported that John Hunt was "a steady, bold fellow ... and full of moral, and, I hear, physical courage," and elsewhere "a stiff sturdy conscientious man – and I like him – he is such a one – as [William] Prynne – or [John] Pym might be."¹¹⁸ Likening John Hunt to these seventeenth-century Puritan rebels (the former stood trial in the Star Chamber for sedition, while the latter was one of the parliamentarians whom Charles I tried to arrest prior to the outbreak of civil war), Byron combines a hint of condescension with apparently genuine admiration of Hunt's character.

Byron's praise of John Hunt in these letters probably had something to do with the fact that in December 1822, Hunt was indicted for a libel on the late George III in Byron's *The Vision of Judgment*.¹¹⁹ The poem had been printed in the first edition of *The Liberal* in October 1822. Byron more than once offered to stand prosecution in Hunt's place, writing to his friend and adviser Douglas Kinnaird that "I am ... willing to be *both ostensible and responsible* for the poem – and to come home and face the consequences on the *Author*."¹²⁰ In the event, that was not feasible, since Hunt, as publisher, was legally responsible for the poem. Byron must have made a point of insisting on his willingness to face prosecution, though, for at the trial itself, Hunt's counsel corrected the accusation that the poem's author was hiding "behind the curtain": on the contrary, he "was instructed to say, [that Lord Byron] would never shrink from appearing to answer for this or for any other of his productions."¹²¹ Unable to stand trial in Hunt's place,

¹¹⁶ *BLJ* 10:69.

¹¹⁷ *BLJ* 10:105.

¹¹⁸ *BLJ* 10:105, 69.

¹¹⁹ Wickwar, *The Struggle for the Freedom of the Press*, 271.

¹²⁰ *BLJ* 10:72. See also *BLJ* 10:66.

¹²¹ Anon., "Court of King's Bench, Thursday, Jan. 15. 'The Vision of Judgment.' – the King v. Hunt," *The Times*, 16 January 1824, 4.

Byron was anxious to secure him “the best counsel,” at his own expense.¹²² “Choose whom you & he think best,” he instructed Kinnaird, “– Scarlet [sic] – or Denman (*my* personal friend the latter is or was) or any other fit Advocate.”¹²³ The Whig lawyer James Scarlett was chosen, but not before somebody, perhaps Kinnaird or Hunt, suggested that Byron could write Hunt’s defence. On this, though, Byron was definite: “As to my writing a defence – that is lawyer’s work – and I desired him to consult one before he published the vision &c.”¹²⁴ Elsewhere he reiterated, “I can not make a lawyer’s defence of H[unt] – he must get that done by the technical people – there is ample scope for it”.¹²⁵ Byron could not resist making a few suggestions, however, including that Southey’s *A Vision of Judgement* should be cited, as should *Wat Tyler*: the defence counsel could “ask *why that* is not prosecuted?” Byron suggested.¹²⁶

Hunt was tried in January 1824, in a private prosecution brought by the Constitutional Association, then at its last gasp.¹²⁷ He was accused of “contriving and intending to injure, defame, disgrace, and vilify, the memory, reputation, and character of his late Majesty King George the Third,” and of “disturb[ing] and disquiet[ing] the minds and destroy[ing] the comfort and happiness of our said Lord the now King and other the said descendants.” This was a prosecution about the character of the late George III: John Adolphus, prosecuting on behalf of the Constitutional Association, argued that the poem had defamed George’s character, which in fact had “no moral stain upon it.” The poem’s “utterly libellous” representation of the king would inevitably give pain to the surviving royal family, Adolphus claimed. But his definitions both of “character” and of the kind of libel at issue were extremely unclear. He told the court: “it might ... be said that the characters of Kings belonged to history; but it was not to be said that the character of either dead or living Monarchs was to be left at the mercy of any daring libeller.”¹²⁸ This claim confusingly elides “the characters of Kings” (historical monarchs in their capacities as sovereigns) with “the character of ... dead or living Monarchs” (the personal virtues or qualities of those individuals). Nor did Adolphus attempt to clarify the possible role of sedition in the case against Hunt – the category of libel normally associated with a written attack on a monarch.

James Scarlett, defending, seized upon these gaps in Adolphus’ argument. Scarlett “could have wished that ... his learned friend had favoured the jury with a true definition of the crime of

¹²² *BLJ* 10:162.

¹²³ *BLJ* 10:72.

¹²⁴ *BLJ* 10:66.

¹²⁵ *BLJ* 10:53.

¹²⁶ *BLJ* 10:80-81.

¹²⁷ Wickwar, *The Struggle for the Freedom of the Press*, 271.

¹²⁸ Anon., “‘The Vision of Judgment.’ – the King v. Hunt,” 2.

libel, pointing out the difference between a libel upon a King, and one against an individual; and informing the jury under which of these present heads the prosecution had been instituted.” Scarlett duly set out the difference between a libel on a private individual (which “tends to a breach of the peace” because of its “attack upon a man’s character and conduct”) and a libel on “the character of a living Sovereign.” The latter is an entirely different category of offence, since it is seditious: seditious libels are those which threaten “that allegiance and attachment” owed to a monarch, “and upon which the preservation of the executive power depends.” Consequently, a libel on a living monarch, “though it might be seditious, treasonable, and dangerous, could never form a part of that other sort of libel” which would apply in the case of a private individual. George III was of course deceased; but while the characters of private individuals could still be protected after their deaths, Scarlett claimed that such could never be the case with a dead monarch. The lives and actions of former monarchs must be subject to open debate, he argued, for the preservation of English liberty:

While he [the monarch] lives, the sanctity of his character protects him; he is safe not only from all personal attack, but even from the breath of public opinion; but when he reaches the grave, undistinguished in this common lot of mortality from all men, his sanctity and his privileges leave him. It was of the deepest interest to mankind, to the liberty and safety of men, and of Englishmen, that the character of kings should then undergo a full and a free discussion.¹²⁹

Scarlett established the basic category distinctions which Adolphus had confused: between libel and seditious libel, and between the person of the monarch and the person of a private individual. To no avail: after half an hour’s deliberation, the jury found Hunt guilty. In June 1824, two months after Byron’s death in Missolonghi, the court fined Hunt £100 (a sum paid by Byron’s estate) and required him to pay heavy sureties as well.¹³⁰

Hunt himself received very little attention at the trial. Byron was mentioned, however: Adolphus delicately refrained from actually naming the poet, but expressed himself “truly sorry to see a high and glorious name so debased, to see great talents, that might have been better employed, so occupied.”¹³¹ His point is a close echo of the kinds of complaints made about Byron by the literary reviewers. William Gifford, editor of the *Quarterly Review*, had written to Murray in 1819 that Byron “is, or rather might be, the most extraordinary character of his age,” were it not for his lack of “[m]orality and religion” or “respect for the good opinion of mankind”; meanwhile, John Gibson Lockhart had urged Byron in an unsigned essay that

¹²⁹ Ibid., 3.

¹³⁰ Wickwar, *The Struggle for the Freedom of the Press*, 272. See also *BLJ* 11:135-36.

¹³¹ Anon., “‘The Vision of Judgment.’ – the King v. Hunt,” 2.

“England is yours, if you choose to make it so.”¹³² If Adolphus ventriloquised the reviewers, Scarlett emphasised the inappropriateness of bringing *The Vision of Judgment*, a poem, before a criminal court at all. Scarlett argued that “an examination into the character of a deceased king, or a criticism upon an ingenious poem” were alike unsuitable topics “for discussion at this tribunal.” Whether understood in terms of historical debate or poetic criticism, the controversies around *The Vision of Judgment* were not “fit” for legal scrutiny. Scarlett pointed out that Shakespeare had represented Richard III “as a murderer and a tyrant,” while Sir Walter Scott had portrayed James I as “exhibiting in various conversations his total want of all the qualities that are essential to a king and a man.”¹³³ These monarchs were, like George III, also the ancestors of the current king, yet Scott and Shakespeare were surely not culpable: how far back into the royal ancestry were poets and historians permitted to enquire? At the 1817 trial of Isaac Ludlam, poetry had been proposed as evidence by the defence; but at the 1824 trial of Hunt, Scarlett promoted a notion of the poetic and historic as protected categories, and of their authorship as belonging to a separate sphere of jurisdiction.

Scarlett’s point was that the rule of law did not apply to Byron’s poem, because of its literary – poetic and historic – status. He laid stress on Byron’s *Vision* as one half of a dialogue between writers, a response to Southey’s earlier work, *A Vision of Judgement*. Byron’s flippant style must be read in terms not of political controversy, Scarlett urged, but of a debate between two poets. Byron aimed “merely to lash Mr. Southey for his adulation, and to show how another poet, looking at the same subject from a different point of view, would write upon it.” He imagines Byron telling Southey, “I think your poem dull, vapid, and stupid; and I will produce another poem, in which I will prove the truth of my opinion.” It is as if the *Vision* is not a political intervention at all, but merely a formal experiment, designed to respond to Southey’s innovation with “a new form of verse” in his *Vision*. At this point in proceedings, there is an unexpected literary critical intervention, presumably by Chief Justice Abbott: “It was here suggested to Mr. Scarlett, that hexameters were not entirely new to English poetry, having been essayed by Sir Phillip Sidney, Spenser, and others.” If this discussion of poetic form in court seems to blur the boundaries between legal and non-legal methods of enquiry, Scarlett’s defence really works to seal off poetic character from wider social ramifications. In a high Romantic depiction of the act of creative composition, he argues that one should “make allowances for the licence which a poet claimed, and for the frenzy which he felt when his pen was in his hand.” Such disputes were common to poets: “the sole object of the author in the composition of this imputed libel was to give vent to those bitter feelings which poets were known to indulge, and

¹³² Quoted in Rutherford, *Byron: The Critical Heritage*, 161, 189.

¹³³ Anon., “‘The Vision of Judgment.’ – the King v. Hunt,” 3.

to characterize Mr. Southey's poetry as not to be endured by either heaven or hell."¹³⁴ In his own act of literary criticism, Scarlett reframes the celestial themes of Byron's poem as figures of speech, in the process substantially lessening their political clout. And a distinct type of poetic character emerges from Scarlett's speech: poets are inclined to "frenzy," "licence," and "bitter feelings."

A recurring theme over the past five chapters has been the way in which a modern idea of "the literary" was beginning to be worked out, partly during or after political trials. John Barrell has raised the suggestion that Coleridge's theory of the imagination, articulated in his *Biographia Literaria*, was indebted to the legal pressure that had been exerted on the idea of the imagination during the 1790s, owing to the statutory definition of treason as "imagining the king's death." Barrell proposes that Coleridge's poem "Fire, Famine, and Slaughter" (published in 1798) not only imagines the death of Prime Minister William Pitt, but also contains "regicidal imaginings."¹³⁵ Yet when Coleridge set about trying to defend his poem twenty years later, in an "Apologetic Preface" to his volume *Sibylline Leaves*, he insisted on the distance between his poetic and political imaginations:

It is true, Coleridge says, that he had "wildly imagined" Pitt's death; but the wildness of that act of imagining was the wildness of the poet considered as the antithesis of the wildness of the political activist. The very process of imagining Pitt's death was the means of saving his life; for to imagine his death was at the same time to purge the poet of any malevolent intention against him.¹³⁶

As Barrell explains, Coleridge is arguing in effect for "a thorough dissociation of imagining and *merely* imagining."¹³⁷ He "attempt[s] to take the politics out of the imagination by voiding the imagination of all connection with intention or desire, and so by making poetry, even poetry on political subjects, something which inhabits a quite other universe of discourse from politics itself."¹³⁸ Where treasonous imagination was understood in the 1790s to be "a symptom of division," the poetic imagination that Coleridge describes in the *Biographia* is "a sublimating and synthesizing power."¹³⁹ As Nigel Leask puts it, Coleridge came eventually to reject the

¹³⁴ *Ibid.*, 4.

¹³⁵ John Barrell, *Imagining the King's Death: Figurative Treason, Fantasies of Regicide, 1793-1796* (Oxford: Oxford University Press, 2000), 644.

¹³⁶ *Ibid.*, 650.

¹³⁷ *Ibid.*, 648.

¹³⁸ *Ibid.*, 651.

¹³⁹ *Ibid.*, 644.

notion “that poetry was a vehicle for political truths at all.”¹⁴⁰ Defending Hunt for publishing Byron’s *Vision of Judgment*, Scarlett similarly tried to accentuate the boundary between poetic, imaginative, historical, or philosophical writing on the one hand, and the sphere of political action on the other. Scarlett was interested in protecting historical enquiry from legal repression, as well as poetry; his argument was about the protection of “literature” or the republic of letters, rather than imaginative or aesthetic writing narrowly conceived. But his defence was also underpinned by a sense that poets are distinct types of characters, with distinct concerns. The poet’s proper sphere, we are led to suppose, is not the courtroom.

¹⁴⁰ Nigel Leask, *The Politics of Imagination in Coleridge’s Critical Thought* (Basingstoke: Macmillan Press, 1988), 157.

Conclusion

Byron's representations of character – both his own and those of his protagonists – signal the end of the road for the kinds of radical defences that this thesis has examined. That is not because Byronic character lacks political potency. On the contrary, there are good reasons for reading Byron's approach to character in the context of the prosecutorial climate of the Romantic period: the attacks on his personal character and poetry in the periodical press; his failure to secure the copyright to several of his poems; his wish to understand himself within an oppositional heritage that also included John Horne Tooke and Lord Edward Fitzgerald; the prosecution of John Hunt for libel, for *The Vision of Judgment*. An idea of a reader – real or imagined, in or outside court – was central to how radical writers defended themselves; many hoped that their own interior “character” would be legible to readers through their writing, in the “characters” of handwriting or print. But Byron revelled in character's gloomy depths and illegibility, not in its transparency and justification to a sympathetic audience. Indeed, for writers like Hone or Thelwall, who did invite readers or juries to plumb the depths of their characters, that openness could make them vulnerable to further aspersions, hampering instead of serving their efforts at self-defence. In that sense, both the disclosure and the evasion of legible character could come to look like a protective gesture, suggestive of what Jane Stabler has called the “nervous vulnerability of Romantic texts to their readers.”¹

This thesis has traced a tradition of character defences, unfolding from the early 1790s to the mid-1820s. Defences of character, including those never delivered in a court or written only with publication in mind, form an important subset of radical writing of the period. Writers were often self-conscious about placing themselves within a radical lineage, and many defendants were personally linked to those who had gone before: Hone, for example, was a member of the LCS in his teens, while Finnerty's career spanned 1790s Ireland and 1810s England. They also drew on shared tropes and conventions. Over the preceding chapters, we have frequently seen assertions of the defendant's superiority to ordinary criminals and “felons”; the privileging of personal intention over the legal doctrine of tendency; assertions of purity of “heart”; a commitment to the importance of the truth (again, often in contrast to the criminal law of libel, which granted no role for truth as a defence); appeals to posterity; rhetorical invitations for witnesses to come forward to testify to the speaker or writer's character; claims about true “independence,” in the sense not of property ownership but of having a free mind; a belief that public figures should be privately virtuous; efforts to turn the charge of criminality back against the prosecutor; and a commitment to the tribunal of the public, sometimes explicitly chosen over the legal tribunal. For several defendants,

¹ Jane Stabler, *Byron, Poetics and History* (Cambridge: Cambridge University Press, 2002), 7.

Protestantism was also an important underpinning. Protestant martyrology and practices of self-scrutiny informed how figures such as Muir or Hone understood both their political activism and the requirement to defend themselves at the bar of the court – sometimes leading to a millenarianism which alarmed crown lawyers. Yet the writers do not unite around a single ideological position: Byron’s aristocratic insouciance and Finnerty’s unrespectable litigiousness have little in common with this Protestant heritage, for example. Although a tradition emerges, it is not uniform.

Very little scholarship has read “character” as a jointly legal- and literary-historical category, and I have sought to address that gap. Deidre Lynch remarks that “the sensitive reading that plumbs the depths of a character in a novel – the enterprise of ‘appreciating’ the inner lives of beings who cannot possibly be taken at face value – can be ranged alongside other, cognate technologies of the self that came into use in the romantic era.”² Political trials are one “cognate” field, in which ideas about selfhood were shaped. This is partly because the courts were at a transitional moment in how they appraised the characters of defendants, and partly because political prosecutions brought character under pressure in striking ways. In telling the literary-historical story of character’s development critics have generally privileged the novel. However, I have tried to think expansively about a range of forms and genres in which “character” mattered: trial literature and defence speeches, of course, but also those non-legal statements of personal vindication that are to be found within autobiography, polemic, poetry, satire, character sketches, letters and fiction. In an era of exceptional legal stress, the legal imperative of self-defence served as a template which writers used across legal and non-legal writings; and the courts were a space in which character was worked out and imagined, perhaps no less than in the novel.

² Deidre Lynch, *The Economy of Character: Novels, Market Culture, and the Business of Inner Meaning* (Chicago: University of Chicago Press, 1998), 126.

Abbreviations

BLJ Byron, George Gordon, Lord. *Byron's Letters and Journals*. Edited by Leslie A. Marchand. 13 vols. London: John Murray, 1973-94. Footnote references are to volume number and page number.

CHP Byron, George Gordon, Lord. *Childe Harold's Pilgrimage*. All quotations are from *CPW* (vol. 2). Footnote references are to canto number and line number (not stanza number).

CPW Byron, George Gordon, Lord. *The Complete Poetical Works*. Edited by Jerome J. McGann. 7 vols. Oxford: Clarendon Press, 1980-93. Footnote references are to volume and page number.

DJ Byron, George Gordon, Lord. *Don Juan*. All quotations are from *CPW* (vol. 5). Footnote references are to canto number and line number (not stanza number).

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