

“till all law is annihilated”: Godwin versus the Bar

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If there ought to be no such thing as law, the profession of a lawyer is no doubt entitled to our disapprobation. A lawyer can scarcely fail to be a dishonest man. William Godwin¹

Godwin's views on the institution of law and the profession of legal advocacy were well known, and lionized by some, among his circle. In a letter to Godwin of 8 September 1800, Samuel Taylor Coleridge proclaims, “I swell out my chest & place my hand on my heart, & swear aloud to all that you *have* written, or shall write, against Lawyers, & the practice of the law.”² Coleridge was responding to Godwin's remarks about lawyers in a letter of 6 September: “how incalculable a misfortune it is for a man to be devoted to the profession of a lawyer. I know not whether you entirely coincide with the opinions I have published on that subject?”³ Both men are referring to Godwin's discussion of law and legal advocacy in *Enquiry Concerning Political Justice* (1793).

In the first edition of his great work of speculative philosophy, Godwin posits an ideal of immutable law against which he critiques the real world institution, which he describes as an ideological shackle that inhibits progress due to its endemic indeterminacy. This indeterminacy results in law being shrouded by an all-encompassing obscurity. Godwin argues that the foundational premise that “Law was originally devised, that

ordinary man might know” (769) all of the conditions that governed his actions within society is fundamentally flawed. In its embryonic stage, law was fixed and knowable by all; but because it is based upon human experience it has become mutable. Godwin opines that as “no action of any man was ever the same as any other action,” every legal case must be judged on its own merits, and as new cases occur, “the law is perpetually found deficient” (767). To remedy these constant deficiencies, lawgivers must either attempt to manipulate new cases to conform to already established laws, leading to a confusing multiplicity of interpretations of these laws, or they must invent new laws to fit each new case. In both instances, law becomes a self-perpetuating system that “can never be brought to a close” (766) and results in an indeterminacy that undermines its foundational premise. Godwin also equates law to a species of prophecy in that “its task is to describe what will be the actions of mankind, and to dictate decisions respecting them” (769). For Godwin, law is an infinite, prescriptive paradigm, “a labyrinth without end [...], a mass of contradictions that cannot be extricated” that in turn fixes “the human mind in a stagnant condition” (770), thus actively and perpetually thwarting the potential for progress. Practitioners of law, Godwin claims, are both changed by and culpable for the totalizing obscurity that makes law “an institution of the most pernicious tendency” (771).

In perhaps one of the most startling critiques in *Political Justice*, Godwin uses the example of the profession of legal advocacy to illustrate “the perniciousness of law” (771). Those who study and then practice law become contaminated by its infinitude because of the adaptability of human nature: “Men are the creatures of the necessities under which they are placed.” It follows that through close contact with their profession, lawyers become infected with ambiguity: “He that is perpetually conversant in quibbles, false colours and sophistry, cannot equally cultivate the generous emotions of the soul and the nice discernment of rectitude.” Once trained (and, for Godwin, contaminated), lawyers ensure that the law remains a systematically corrupt and deliberately obscure control mechanism:

The very education that enables a lawyer, when he is employed for the prosecutor, to find out offences the lawgiver never meant, enables him when he is employed for the defendant, to find out subterfuges that reduce the law to a nullity. It is therefore perpetually necessary to make new laws. These laws, in order to escape evasion, are frequently tedious, minute and circumlocutory. (767)

There is, for Godwin, a positive side to systemic corruption. As law is the product of human invention, it is capable of improvement. By identifying its faults, Godwin hopes to provoke reform.

It is in this vein that, while tarring all lawyers with the same brush of dishonesty, Godwin takes exception to a species of advocate that he refers to as the "perfectly honest lawyer." This is an advocate who "pleads no cause he does not believe to be just, and to employ no argument that he does not believe to be solid." For Godwin the honest lawyer is more dangerous than the dishonest lawyer's sophistries because rather than inspiring the reformation of law, honest lawyers soften and mask the law's deficiencies, postponing "the reign of sound policy, and render[ing] mankind tranquil in the midst of imperfection and ignorance" (771-72).

In the three years following the publication of the first edition of *Political Justice*, Godwin sought to continue his critique of law and legal advocacy through a variety of textual avenues. In the days after Thomas Paine's conviction in absentia for sedition, Godwin composed a letter to Paine's defense lawyer, Thomas Erskine, cautioning of the dangers of performative oratory in the theatre of the courtroom, and published a series of anonymous letters and essays in newspapers and stand-alone pamphlets either directly addressing the government's legal representatives or responding to proposed new laws drawn up in the wake of the 1794 treason trials. In an earlier essay I examined Godwin's unfinished letter to Erskine as a testing ground for the discussions of duty, sincerity and oratory in *Political Justice*.⁴ In this essay, I want to extend this examination to Godwin's critique of law and, more particularly, the role of legal advocacy and

performative oratory in his published commentaries on the 1794 treason trials and the government's subsequent legislative response to the failure of these trials. In addition to reiterating the views on law and lawyers set out in the first edition of *Political Justice*, Godwin appropriates and modifies some of the rhetorical strategies of his opponents to critique an institution and profession that he believed eroded freedom and inhibited the sort of collective progress called for in his *magnum opus* of speculative philosophy.⁵

I.

As the first edition of *Political Justice* was going to press, the radical reform movement in Britain sent thirty-six petitions from various metropolitan areas in England and Scotland to parliament. The petitions called for universal male suffrage and were intended to support a parliamentary motion proposed by the future prime minister and moderate reformist, Charles Grey, on 6 May 1793. Grey's motion failed, in part because of Tory fears that the fires of French republicanism were quickly spreading across the English Channel and infecting the British reform movement. Even before a substantial majority in the House of Commons struck down Grey's motion, the various reform societies that had organized the petitions were discussing other avenues for reforming a parliament that had, they believed, grown increasingly corrupt. Influenced by events in France, many radicals considered that where petitioning had failed, a national convention comprising representatives from across the country would succeed. While some amongst the reform movement, notably the Society for Constitutional Information (SCI), preferred petitioning members of the more radical London Corresponding Society (LCS), who were keen on summoning a convention that would be representative of the whole body politic.⁶ Such a convention, they believed, would put pressure on parliament to initiate reform.

The LCS hierarchy hoped that while parliament could dismiss or, as it transpired with the vote on Gray's reform motion, ignore petitions, it couldn't ignore the will of the whole people.⁷ On the advice of William

Skirving, secretary of the Friends of the People in Scotland, the LCS under its chairman Maurice Margarot and its founder and secretary Thomas Hardy, pushed for a general convention comprised of delegates from Britain's various reform societies. This convention was convened in Edinburgh in late October and reconvened on 19 November due to the tardy arrival of the LCS delegates Margarot and Joseph Gerrald. As John Barrell observes, with the arrival of Margarot and Gerrald the "Edinburgh convention began to model its procedures [...] on those of the new National Convention of France," including some delegates addressing each other as "citizen."⁸ On 5 December the Edinburgh sheriff dispersed the convention and arrested several delegates, including Margarot, Gerrald, and Skirving.

After his arrest, Gerrald was transferred from Edinburgh to London to await trial.⁹ Godwin visited Gerrald in Newgate prison before the trial. In a letter to Gerrald of 23 January 1794, Godwin stresses the significance of the trial in the broader context of the reform movement – "it may be the means of converting thousands & progressively Millions, to the cause of Reason and public Justice" – before offering Gerrald a defense strategy.¹⁰ Part of this strategy was to deploy a form of performative oratory "best calculated to persuade" what he anticipates will be a packed jury.¹¹ Godwin cautions Gerrald that while his oratory must be persuasive, it should not engage in "vain defiance & empty vaunting." He goes on to provide Gerrald with an opening address for the jury, using speech marks to ventriloquize the defendant:

I do not believe you will be slaves. I do not believe that you will be inaccessible to considerations irresistible in argument & which speak to all the genuine feelings of the human Heart. I have been told that there are men upon whom truth, truth fully & adequately stated, will make no impression. It is a vile & groundless calumny upon the character of the human mind. This is my theory, & I now come before *you* for the practice.

While Godwin is appealing to an innate ethos of honesty, where truth will be recognized by “the genuine feelings of the human heart,” he casts Gerrald’s jury as test cases for partisans of reason and truth. Rather than Gerrald being on trial, it is the jurors’ characters of mind that will, in Godwin’s estimation, be judged.

In terms of the legal grounds for securing Gerrald’s acquittal, Godwin considers that the general convention was entirely lawful because it was in accordance with the Bill of Rights. Godwin goes further to claim that the legality of the convention went beyond English law and was in accordance with “the Law of universal Reason authorizing Men to consult.” In Godwin’s formulation, English law is secondary to, and therefore trumped by, the Law of universal Reason. As in *Political Justice*, Godwin posits an alternative paradigm of law by which to hold real world law accountable. In *Political Justice*, Godwin’s idealized law is similar to his conception of universal Reason as they are both immutable and knowable by all. To stress the lawfulness and utility of the convention, Godwin advises Gerrald to present its aims, and by implication, its delegates, as patriotic and benevolent:

You and the reformers are true friends of the country,
that you are actuated by pure philanthropy &
benevolence & have no selfish views[,] that your
projects lead to general happiness & are the only means
of averting the scene of confusion which is impending
over us.

The “scene of confusion [...] impending over us” is Godwin’s shorthand for the government’s response to the French revolution and, more particularly, the radical reform movement. Indeed, Godwin is so concerned with what he sees as government overreach, legislative or otherwise, that he once more ventriloquizes Gerrald to defend the general convention and the reform movement in general as a patriotic duty against a government unduly influenced by foreign interests and operating contrary to the betterment of those it is charged with governing:

Our whole effort is directed to the preventing mischief & the sparing every drop of blood. The longer the confederates of foreign despots among us go on in their present impious career, the more you will want us. [We] place ourselves in the breach – to snatch your wives & children from destruction. Will the present overbearing & exasperating conduct of government lead to tranquillity & harmony? [W]ill new wars & new taxes[,] the incessant persecution[,] Ruin & punishment of every man that dares to oppose them ~~heat~~ heal the dissensions of mankind? no[,] nothing can save us but moderation[,] prudence & timely reform, the permitting men to confer together upon their common interests in a benevolent mind, unprovoked by insult[,] counteracting[,] treachery & arbitrary decrees. It is for this antidote to the madness of men in power that we have made every sacrifice, & are ready to sacrifice our lives. If you punish us, you punish us because we have watched for your good.

In calling for moderation and prudence, Godwin's occasionally hyperbolic rhetoric evinces a more performative approach as it moves from stressing the patriotic nature of the convention to its necessity in preventing an "overbearing" and insane government from not only destroying the jury's wives and children, but also mankind. Conventions provide, Godwin suggests, a space where men may converse with men, the "collision of mind with mind" essential to Godwin's idea of rational discourse, and not only act as check on the unrestrained power of a corrupt government, but also enable the sort of collective progression called for in *Political Justice*.¹² Gerrald didn't exactly follow Godwin's advice, although he did complain to the jury about "judges violat[ing] the law," and while he unsuccessfully employed an advocate for his defense, Gerrald did speak during the trial to appeal to a Godwinian ideal of reason underpinning universal suffrage – before claiming that the general convention was seeking to "promote a more close and sincere union

between England and Scotland.” Gerrald’s lengthy speech, which contrary to Godwin’s advice drew on numerous legal authorities including Coke and Blackstone, failed to convince the jury.¹³ Along with Margarot and Skirving, Gerrald was found guilty and sentenced to fourteen years transportation. It wasn’t long, however, before Godwin was presented with another chance to offer members of the reform movement legal advice in the face of state prosecution.

II.

For many in the radical reform movement, the sentences meted out to Gerrald, Margarot, and Skiving offered striking proof of the government’s tyrannical grip over the judiciary to resist parliamentary reform. In light of events in Edinburgh, members of the LCS and the SCI believed such reform was urgently needed. A secret motion at the Edinburgh general convention had set out the circumstances for the convention to be reconvened so as to more aggressively pursue reform. These circumstances included the introduction of certain legislative measures, such the outlawing of assemblies and the suspension of Habeas Corpus, as well as a French invasion and the embarkation of foreign troops on British and Irish soil. At the beginning of 1794, the government stationed Hessian mercenaries on the Isle of Wight and at Portsmouth. While the government claimed that this was a pre-emptive measure against sickness amongst the Hessians, it prompted the LCS to call for the general convention to be reconvened. Letters signed by Hardy were dispatched to reform societies throughout the country encouraging them to attend a British convention so that stronger links between societies could be forged, views shared, and future action discussed. With one exception, Hardy’s letters failed to persuade the provincial reform societies of the need to reconvene the convention, and by 14 April 1794 the LCS at their general meeting convened on the bowling green at Chalk Farm, rejected draft resolutions calling for a convention and thereafter no longer pursued the matter with the same resolve.¹⁴

The government, on the other hand, believed that the radical reform movement was seeking to summon a convention to usurp parliament and form a republic along the lines of recent events in France. On 12 May 1794, the government arrested Hardy along with the secretary of the SCI, Daniel Adams, on charges of treasonable practices. Over the next couple of months senior LCS and SCI members were rounded up, including some of Godwin's circle, such as John Horne Tooke, Thomas Holcroft, and John Thelwall. On the advice of a House of Commons secret committee, the government introduced and passed a bill suspending Habeas Corpus authorizing the state to hold the recently arrested without bail or charge until the following year. In the event, on the advice of a second secret parliamentary committee the arrested leaders of the London reform societies were put on trial later that year.¹⁵

Sir James Eyre, Lord Chief Justice of the Court of Common Pleas, presented the charge against the leaders of the LCS and SCI to a Grand Jury on 2 October 1794. Shortly after, published versions of Eyre's charge appeared in a variety of print outlets.¹⁶ For liberals and radicals, Eyre presented an extremely controversial interpretation of 25 Edward III (1351), the statute codifying the offense of treason and how it related to the alleged activities of the defendants. As John Barrell has painstakingly shown, Eyre was following the language of the second secret parliamentary committee as he sought to delineate a series of offenses – what he repeatedly described as “modern” or “French” treason – that weren't explicitly defined under the provisions of the governing statute.¹⁷ Unlike most of the other previous instances of treason in English history, which sought to install one sovereign power in place of another, the aim of “modern” or “French” treason was, according to Eyre, aimed at replacing the entire constitution, including the king, with an entirely new constitution predicated on universal suffrage. While the governing statute broadly defined the offenses codified as treasonous, it left the judiciary and jurors to consider what constituted the overt acts that proved treason. Eyre's strategy was to argue that by advocating universal suffrage Hardy *et al* were engaged in overt acts of treason

because the occurrence of such reform necessitated the removal, by whatever means, of the king. By convening a British convention, Eyre argued, the reformers were effectively establishing a sovereign power to rival the king and his government. Eyre's rather capacious interpretation was based on the statute's phrasing of treason as "compassing and imagining the death of the king" and "levying war" against the king. To prove the latter, it was necessary to show an overt act of raising an army to topple the king, or in the case of "compassing and imagining the death of the king," an overt act or, as Eyre claims, series of acts indicating that the accused intended harming or killing the king.¹⁸ Eyre's interpretation of 25 Edward III prompted numerous responses in the liberal print media. The most significant of these in terms of contemporary influence was Godwin's *Cursory Strictures on the Charge delivered by Lord Chief Justice Eyre*.

Published anonymously in the *Morning Chronicle* on 21 October and shortly thereafter as a pamphlet by George Kearsley, *Cursory Strictures* modifies some of the critiques of law and lawyers Godwin sets out in *Political Justice*.¹⁹ According to his diary, Godwin visited Newgate prison three times between the delivery of Eyre's charge to the Grand Jury on 2 October and the publication of *Cursory Strictures* on 21 October.²⁰ While many of those arrested were confined in the Tower of London, Holcroft was held in Newgate, which was far less restrictive in terms of visitation rights.²¹ On 17 October, Godwin also records spending time with Joseph Gurney, the pre-eminent court stenographer of the period. It is likely that the visits to Holcroft in Newgate and the meeting with Gurney were related to his composition of *Cursory Strictures*. Godwin refers to consulting one of the numerous unauthorized transcripts of Eyre's charge, frequently citing long passages from the Chief Justice in *Cursory Strictures*, which opens with a patriotic invocation to an Englishman's right to free speech. Reflecting his own commitment to clarity in communication, and anticipating one of his principle criticisms of Eyre, Godwin claims to present his arguments "in a manner perfectly frank and explicit."²² As we have seen, in *Political*

Justice Godwin condemns the obfuscating rhetoric deployed by advocates and *Cursory Strictures* provided him with the opportunity of exploding such rhetoric by, as he puts it, "detect[ing] and expos[ing] [Eyre's] sophistries" (151).

Godwin's critique of Eyre is constructed, as Barrell notes, around the valorization of 25 Edward III, which Godwin describes as "one of the great palladiums of the English Constitution" (148).²³ This was an important, albeit somewhat flawed, tactic for Godwin as it allowed him to claim that Eyre's formulations of "modern" treason were an imaginative construction that went well beyond the provisions of 25 Edward III. Godwin begins his argument by praising Eyre's explication of the governing statute, describing the Lord Chief Justice as a non-partisan, "temperate, discreet, and honest man" (150). We should be reminded here of Godwin's comments in *Political Justice* about the "perfectly honest lawyer" whose sincerity masks the need for reform. By commending Eyre for his initial interpretation of the statute, Godwin is able to stress forcefully what he considers as the Chief Justice's move away from enumerating black letter law and judicial precedent to creating fictional constructs of treason. For Godwin, this departure from the statute as well as judicial authority shifts Eyre from the realm of law to "the axioms and dictums of moralists and metaphysicians" (152). Godwin takes specific issue with Eyre's description of the types of overt acts that 'prove' an intention to harm or kill the king. Anticipating Kafka's nightmarish legal bureaucracy, Godwin claims that in Eyre's imaginative construction of these overt acts, anyone "shall be liable to be arraigned and capitally punished for a crime that no law describes, that no precedent or adjudged case ascertains, at the arbitrary pleasure of the administration" (152). The law in Eyre's formulation becomes very similar to the corrupt institution Godwin attacks in *Political Justice* as "a mere trap to delude us to our ruin, creating a fancied security, an apparent clearness and definition, the better to cover the concealed pitfalls with which we are on every side surrounded" (152). Indeed, Godwin goes further to claim that Eyre's creation of a new form of

treason not only undermines the very institution he represents, but threatens its very existence. In Godwin's view, Eyre constructs offences that "can never be construed into treason, till all law is annihilated, and all maxims of jurisprudence trampled under foot and despised" (152-53). One of the long-term goals set out in *Political Justice* is the emancipation of individuals from institutions such as law and parliamentary government, because while initially helpful, they eventually constrain the reasoning faculties and thus prevent development. Eyre's charge provided Godwin with the opportunity to show how the law, its framers, and in particular its practitioners, used such institutions to repress freedom and stifle progress.

For much of *Cursory Strictures*, Godwin is at pains to critique the rhetorical strategy that enabled Eyre to yoke his charge of "modern" treason to 25 Edward III – a strategy founded on "forced constructions, [...] ambiguous and deceitful words, and all the delusions of a practiced sophister" (156). In particular, Godwin identifies a specific tactic in Eyre's armory that he terms "incroachment," which he later describes as a figure of speech "of the highest use to a designing and treacherous orator" (161). In Godwin's analysis, "incroachment" begins with an affirmation that is "modestly insinuated at first, accompanied with considerable doubt and qualification" before being "repeated afterwards, unaccompanied with these qualifications, and at last assented in the most peremptory and arrogant terms" (161). Godwin has in mind Eyre's initially cautious discussion of "modern" treason as "subverting the monarchy" to the subsequent claim that, if unchecked, such an offense will lead to "the death and destruction of all order, religion &c." (162). Eyre's use of "incroachment," which Godwin also describes as "this profusion of fiction, hypothesis, and prejudication," is carefully calibrated to not just persuade, but to "bewilder the imaginations, to throw dust in the eyes, and confound the understandings of the Grand Jury and the nation" (163). Just as he had critiqued Erskine's use of performative oratory in December 1792, Godwin considered that Eyre's "sophistry" had taken the Chief Justice beyond the provisions of the governing statute to create offenses covered by no law. In his formulation of law here, Godwin

keeps close to his idealized view of law in *Political Justice* as an immutable concept that everyone should know, but is being corrupted by lawyers into an infinite, indeterminate, and obscure system. Furthermore, Eyre is guilty of feigning a form of prescience regarding his construction of "modern" treason in that as a lawgiver the Chief Justice could not, as Godwin states in *Political Justice*, "define that which is infinite" (789). Godwin goes on to accuse Eyre of abusing his position and displaying "the most frigid indifference to human happiness and human life" so as to force a trial, or as it transpired a series of trials, that would confirm his construction of "modern" treason thereby setting the necessary legal precedent "to guide our judgment in future instances" (166). Because Godwin anticipates that the jury will be packed, he believes that Eyre is using the courtroom, on the instruction of the government, to bypass parliament in order to make into law an offense of treason that was not covered by the codifying statute.

As with his letter to Gerrald, Godwin uses ventriloquization to emphasize his principle objections to Eyre's interpretation of 25 Edward III. For example, Godwin translates into "plain English" (166) Eyre's recommendation to the Grand Jury that the defendants be sent to trial. He describes the Chief Justice as using "a sort of language which it is impossible to recollect without horror, and which seems worthy of the judicial minsters of Tiberius or Nero." The syntax of the paragraph makes it difficult to know whether Godwin is referring to his own translation into "plain English" of Eyre or the Chief Justice's transcribed charge to the Grand Jury. Godwin also uses a form of "incroachment" by appending increasing pejorative qualifications to his arguments against Eyre, proclaiming at one point that "this is the most important crisis, in the history of English liberty, that the world ever saw" (168). Godwin may well have felt justified in using similar rhetorical strategies as Eyre, for just as the Chief Justice was seeking to convince the Grand Jury to find true bills against the accused, Godwin was seeking to exculpate them publicly. This is almost certainly why the ventriloquized passages in both the letter to Gerrald and *Cursory Strictures* are explicitly performative – they are designed for the theatre of the courtroom. In a

concluding rhetorical flourish emphasizing the speciousness of Eyre's charge, Godwin ventriloquizes an address to be given by the presiding justice (which, as it turned out, was Eyre) to the defendants at the trials. In this address, Godwin frames the charges leveled at Hardy *et al* as not just patriotic, but also as a species of universal benevolence:

Six months ago you engaged in measures, which you believed conducive to the public good. You examined them in the sincerity of your hearts, and you admitted them with the full conviction of the understanding. You adopted them from this ruling motive, the love of your country and mankind. (169)

While invoking universal benevolence as a touchstone for the defendants' actions would have certainly appealed to liberals and radicals, loyalists favored a particularized form of benevolence where local attachments surpassed the more diluted form of universal benevolence. Yet, despite his considerable rhetorical flair, Godwin's critique of Eyre was directed at an audience that didn't necessarily comprise lawgivers and packed juries.

The publication of *Cursory Strictures* in the *Morning Chronicle* ensured, as Mark Philp observes, that Godwin reached public attention more quickly and more broadly than if it were first published in pamphlet form.²⁴ In the minds of some of the accused, Godwin achieved his aim. Horne Tooke, for instance, is supposed to have claimed that *Cursory Strictures* "laid Eyre on his back."²⁵ However, as John Barrell has shown, Godwin's arguments had a negligible influence on the leading defense advocate, Thomas Erskine. Part of the reason for this was that, as Francis Buller notes in his response to *Cursory Strictures*, Godwin confuses Eyre's charge of constructive treason with substantive treason.²⁶ As previously stated, the governing statute did not explicitly delineate overt acts that could be used to prove treason, but rather, as Barrell states, "left judges and juries to decide on what constituted an overt act."²⁷ Eyre's charge offered a series of overt acts that, he argued, could be interpreted as treasonous. If Godwin had recognized the difference between

constructive and substantive treason, his arguments in *Cursory Strictures* wouldn't have been as effective. In the event, this oversight, whether deliberate or not, also forced Godwin to mimic Eyre's own rhetorical strategy of "incroachment" to repeatedly accuse the Chief Justice of departing from 25 Edward III and into the realms of his imagination. If anything, it was this aspect of Godwin's critique that Erskine used in the trials to claim that it was the prosecution and not the defendants who were "imagining the death of the king."

III.

Erskine secured the acquittals of Hardy, Horne Tooke, Thelwall, and the other arrested radicals including Holcroft, were discharged.²⁸ Godwin attended all three trials, and after Horne Tooke's acquittal composed a letter to Eyre. Signed "An impartial honest man," in this letter Godwin softens the rhetorical approach taken in *Cursory Strictures* to praise Eyre's summing up of the evidence which is described as "fair & manly, candid both to the prosecutor & the prisoner."²⁹ While Eyre hadn't deviated from the line taken in the original charge, that "he who means to depose the king" by whatever means "has compassed and imagined the death of the king," it seems that the Chief Justice had summed up proceedings in a way that Godwin deemed if not even-handed then certainly less prejudicial than the original charge to the Grand Jury.³⁰ The question Eyre asked the jury to consider was whether sufficient evidence had been presented to show that Horne Tooke had been involved in planning a "national convention to usurp the powers of the government."³¹ For Godwin, this was "upon the whole [a] noble & admirable" question, yet he still objected to Eyre's "exposition of the law of treason."³² It seems then, that while Eyre's interpretation of 23 Edward III remained the same, it is the manner in which it was expressed in the courtroom that impressed Godwin to the extent that a congratulatory letter was drafted. Indeed, Eyre's summation is stripped of the 'figures of speech' such as 'incroachment' that Godwin critiques in *Cursory Strictures*.

Eyre's address to the jury during Horne Tooke's trial also seems to have prompted Godwin to reflect upon some of his own rhetorical choices in *Cursory Strictures*. Despite claiming to "not repent of the publication," Godwin expresses reservations over the language used: "I did not altogether approve at the time, & still less approve now, the warmth of some of the expressions." In particular, Godwin regrets some of his stylistic choices as being offensive and, although he may have had his own use of "incroachment" in mind, he isn't explicit in identifying the actual language in *Cursory Strictures* he now regards as offensive. In mitigation for his warm rhetoric, Godwin casts himself as the "solitary voice of humanity" acting against six months of loyalist publications inculcating prejudicial opinions against the accused, including Eyre's charge. It is not just in the context of the republican/loyalist propaganda campaign waged in the build up to the treason trials that Godwin seeks to situate *Cursory Strictures*, drawing comparisons with what he describes as other "temperate controversial writings." It is also a work that gestures to the sort of speculative disquisition he would subsequently claim for *Political Justice*. With the threat of conviction over, Godwin, in reflective mode and anticipating his next incursion into the propaganda war, suggests that a less performative, more moderate and sober form of rhetoric be used in public discourse.

After the failure of the treason trials to secure even one conviction, the government put together an amendment to 25 Edward III along with a bill outlawing large assemblies. This legislation was designed, with one stroke of the king's pen, to crush the reform movement. In the first appendix to *Cursory Strictures*, Godwin predicts just such a move and responded more fully in his anonymous pamphlet, *Considerations on Lord Grenville's and Mr. Pitt's Bills*, published by Joseph Johnson. Commentators have discussed this pamphlet as an attempt by Godwin to distance *Political Justice* from the more radicalized elements of the reform movement. In addition, *Considerations* is rightly taken as an attack on the dangers of performative oratory at large gatherings. Godwin had in mind Thelwell's public lectures disseminating the tenets of *Political Justice*.³³ More recently, Mark Philp has argued that rather

than seeing *Considerations* as a betrayal of Thelwall, and more broadly the reform societies, it should be viewed as a reiteration of Godwin's notion of gradual reform. In line with *Political Justice*, *Considerations* is predicated on progressive liberation from "arbitrary rule, either by governments or by crowds."³⁴ An inflamed crowd roused by a persuasive orator such as a passionate lawyer, could be, Godwin suggests in *Considerations*, just as despotic as corrupt governments. By advocating a moderate, sober form of rhetoric in *Considerations*, Godwin tacks away stylistically from *Cursory Strictures* and moves toward the sort of "speculative disquisition" favored in *Political Justice*.

In closing, I want to suggest that in his response to Lord Grenville's bill, which became the Treasonable Practices Act, Godwin not only deploys a more temperate style, but also proposes a rhetorical middle ground between *Cursory Strictures* and *Political Justice*. No doubt influenced by Eyre's performance at Horne Tooke's trial, Godwin is careful from the outset of *Considerations* to distance himself from his earlier critique of what he terms "the judicial kind," claiming that it is the prosecuting advocates rather than the judges that use performative oratory to secure convictions. Godwin's concern with what he sees as the dangerous sophistry of lawyers seems to underlie much of *Considerations*, which may be taken as a pre-emptive defense of *Political Justice* in anticipation of a future charge of sedition or even treason. To this end, he attacks the sort of oratory "not consecrated by the mild spirit of philosophy," such as Thelwall's lectures, in favor of "quiet disquisition and mere speculative enquiry."³⁵ Yet, Godwin acknowledges that in public spaces such as theatres, halls of assembly, and the courtroom, "sober inquiry" cannot happen because of the audience, which "require a due mixture of spices and seasonings" – by which Godwin means the various rhetorical tricks used to excite the passions. The potential dangers of the sort of spiced and seasoned oratory used in these public spaces, especially in the courtroom, requires an "unbiased and impartial" judge to give clarity to the law and so keep in check the passions aroused by advocates.

With the sophistry of lawyers in mind, Godwin provides a detailed analysis of the wording of Grenville's bill. In particular, he is concerned with the incorporation of the word "dislike" in Grenville's description of treason. For Godwin, this is too capacious a term "that may mean any thing or every thing that the prosecutor shall be pleased to understand by it!" (220). Godwin goes on to imagine himself being prosecuted under this new definition of treason, claiming that the bill not only demonstrates how the law can be abused by prosecution lawyers, but also by its framers to negate all forms of opposition to government:

The spirit of this bill is evidently to put an engine into the hands of ministers, calculated for their use in every imaginable emergency. There is no case to which this bill may not be stretched; there is not offence, present or future, definite or indefinite, real or fictitious, that it may not be made to include. (223)

Godwin was, in essence, correct in so far as Grenville's bill made explicit Eyre's charge against Hardy *et al*, that a person could be guilty of treason even "if he imagine, only in thought the death of the king."³⁶ While not explicit, Godwin's paradigm of immutable law in *Political Justice* is behind his critique here. Through the machinations of ministers in parliament and lawyers in the courtrooms, 25 Edward III has been made mutable and indeterminate. It is at this point in *Considerations* that Godwin's rhetoric begins to slip back toward the hyperbole of *Cursory Strictures*. We find, for example, Godwin employing "incroachment" in his comparison of Grenville with various historical tyrants and even describing the minister as more extreme than Robespierre. Godwin also imagines David Hume being convicted and transported for his writings under the provisions of the bill, and fictionalizes an apocalyptic scenario where Grenville's definition of treason precipitates the end of authorship and conversation altogether. For Godwin, Grenville's bill makes that which is already "sufficiently complicated" (235), as shown by his own response to Eyre's original charge, more so. And in the face of

the consequent indeterminacy, Godwin laments that for our "lives and liberties" we can only rely on "a spectacle to which we have long been accustomed," the sophistry of advocates.

In *Cursory Strictures*, and to a lesser extent *Considerations*, Godwin draws on, expands, and occasionally departs from, his critiques of law and lawyers in *Political Justice*. These shorter works afforded Godwin the opportunity of disseminating his arguments against law and, in particular, lawyers and their use of performative oratory to a wider audience than *Political Justice* while concomitantly defending this earlier work as a form of speculative disquisition. Both *Cursory Strictures* and *Considerations* were published anonymously, but as Philp notes, Godwin displayed considerable courage for entering the fray in the build up to, and the aftermath of, the 1794 treason trials. Godwin's rhetorical flair, including his own use of "incroachment" and ventriloquization, intermittently lead him onto uncertain ground. In particular, his idealized configuration of law in *Political Justice* as immutable not only sees him valorize 25 Edward III and so misinterpret constructive for substantive treason, but also proposes an abstract, alternative "sovereign power" by which to measure the actual institution of law. While part of Godwin's strategy in *Political Justice* is to posit ideals that may be achieved collectively in time, his ideal of law conflicts with the institution he was critiquing. Just as he accuses Eyre of constructing virtual treason unrelated to any law, Godwin's critique is founded on an imaginary construct. Yet, like Eyre, Godwin's rhetorical flair enables him to convey what proved, for liberals and radicals, a persuasive riposte to the nation's top lawgiver and its chief lawmakers. As John Barrell puts it, in the case of *Cursory Strictures*, "Godwin won the argument with Eyre hands down"³⁷ and so succeeded in the view of contemporaries such as Horne Tooke and Coleridge in exercising "one of the first privileges of an Englishman, in the face of the perniciousness of law," its framers, and practitioners.

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Notes

¹ William Godwin, *Enquiry Concerning Political Justice*, 2 Vols. (London: G. and J. Robinson, 1793), 2:771. Hereafter referred to as *Political Justice*.

² See Samuel Taylor Coleridge, *The Collected Letters of Samuel Taylor Coleridge*, ed. E.L. Griggs, 6 Vols. (Oxford UP, 1956), 1:619.

³ Pierpont Morgan Library MA 1857 No. 10 Bound English.

⁴ 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* 62:253 (2010), 90-112.

⁵ As Mark Philp observes, Godwin was "strongly drawn to the view that progress is itself a collective enterprise." See Philp, "Godwin, Thelwall, and the Means of Progress," *Godwinian Moments, From the Enlightenment to Romanticism*, ed. Robert M. Maniquis and Victoria Myers (Toronto UP, 2011), 67.

⁶ For a helpful summary of the petitioning movement in support of Gray, see Albert Goodwin, *The Friends of Liberty: the English Democratic Movement in the Age of the French Revolution* (London: Hutchinson, 1979), 277-82. Hereafter referred to as Goodwin.

⁷ In the event, Pitt used the calls for universal suffrage in the petitions to defeat Gray's motion. See Goodwin 281.

⁸ For a detailed discussion of the Edinburgh convention and its political aftermath, see John Barrell, *Imagining the King's Death: Figurative Treason, Fantasies of Regicide, 1793-1796* (Oxford UP, 2000), 150-53. Hereafter referred to as *Imagining the King's Death*.

⁹ For a discussion of Gerrald's trial, see *Imagining the King's Death*, 159-64.

¹⁰ All quotes from Godwin's letter are from *The Letters of William Godwin*, ed. Pamela Clemit, 6 Vols. (Oxford UP, 2011), 1:90-92. Hereafter referred to as *The Letters of William Godwin*.

¹¹ For a helpful discussion of Godwin's changing conception of the civic function of oratory, see Victoria Myers, "William Godwin and the *Ars Rhetorica*," *Studies in Romanticism* 41 (Fall 2002), 415-44.

¹² As Jon Mee has noted, Godwin changes tack in *Considerations on Lord Grenville's and Mr. Pitt's Bills* (1795) to argue that the sort of philosophical conversation advocated in *Political Justice* "had little in common" with what was happening at large assemblies. See Mee, "'The Press and Danger of the Crowd': Godwin, Thelwall, and the Counter-Public Sphere" in *Godwinian Moments*, 85.

¹³ *A Complete Collection of State Trials*, Vol. 23, ed. T.B. Howell, (London: T.C. Hansard for Longman *et al*, 1817), 803-1012. For Gerrald's speech see 947-97. Hereafter referred to as *State Trials*.

¹⁴ See Goodwin, 315-17 and 328.

¹⁵ *The Parliamentary History of England*, ed. William Cobbett 36 Vols. (London, 1813-19), 31:688-879 (esp. 688-96, 710-27, and 740-41).

¹⁶ See *The Charge delivered by the Right Honourable Sir James Eyre, [...] to enquire of certain High Treasons, and Misprisons of Treason* (London: D.I. Eaton, 1794).

¹⁷ *Imagining the King's Death*, 290-300.

¹⁸ For a helpful summary of the law of treason up to and during this period see *Trials for Treason and Sedition, 1792-1794*, eds. John Barrell and Jon Mee, 8 Vols. (London: Pickering & Chatto, 2006), 1:xxvii-xxx.

¹⁹ After government pressure, Kearsley stopped selling the pamphlet. The radical bookseller, Daniel Isaac Eaton, took over publication and, as well as halving the price, inserted a short preface critical of the government's intimidatory tactics by claiming that *Cursory Strictures* contains "more law than the Charge on which it animadverts."

²⁰ In his diary, Godwin records working on *Cursory Strictures* on 17 and 19 October. See *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>.

²¹ On 7 October 1794, Godwin applied to the Privy Council for permission to visit Holcroft. See *The Letters of William Godwin*, 107.

²² All quotations from *Cursory Strictures* are from William Godwin, *Uncollected Writings* (1785-1822), ed. Jack W. Marken and Burton R. Pollin (Gainesville, Florida: Scholars' Facsimiles & Reprints, 1968), 147-

75 (147). Hereafter referred to as *Uncollected Writings*.

²³ See *Imaging the King's Death*, 302-7.

²⁴ Mark Philp, *Godwin's Political Justice* (London: Duckworth, 1986), 119.

²⁵ *Imaging the King's Death*, 305.

²⁶ Buller argued that Eyre had not invented a new form of treason because "subverting the monarchy" was an overt act of "compassing and imagining" the death of the king. For Buller's reply to *Cursory Strictures*, see *Uncollected Writings*, 177-84.

²⁷ *Imaging the King's Death*, 303.

²⁸ For a helpful discussion of Horne Tooke's trial, see Frederick Burwick, "The Language of High Treason: Thomas Hardy, John Horne Tooke, and the Edinburgh Seven," *Huntington Library Quarterly* 63:3 (2000), 263-75.

²⁹ *The Letters of William Godwin*, 1:109-10.

³⁰ *State Trials* 25:725.

³¹ *State Trials* 25:727.

³² *The Letters of William Godwin*, 1:109-10.

³³ Jon Mee, *Romanticism, Enthusiasm and Regulation, Poetics and the Policing of Culture in the Romantic Period* (Oxford UP, 2003), 115-16; and Mee, "The Press and Danger of the Crowd" 86-87 and 90'91. Rowland Weston has persuasively shown that for his critique of passions in public oratory Godwin drew on Edmund Burke. See Weston, "Politics, Passion and the 'Puritan Temper': Godwin's Critique of Enlightened Modernity," *Studies in Romanticism* 41 (Fall 2002), 445-70.

³⁴ Philp, *Godwin, Thelwall, and the Means of Progress*, 75.

³⁵ *Uncollected Writings*, 213-14. All quotes from *Considerations* are from this edition.

³⁶ *Imaging the King's Death*, 589.

³⁷ *Ibid.*, 305.

