THE ORIGIN OF INSANITY AS A SPECIAL VERDICT: THE TRIAL FOR TREASON OF JAMES HADFIELD (1800)

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The pivotal case in the history of the plea of insanity occurred in London during the reign of George III. In the year 1800, James Hadfield discharged a horse pistol at the king as he entered the royal box at Drury Lane Theatre. Hadfield pleaded insanity to a charge of high treason and was acquitted. The verdict caused much judicial concern, for the law's power over him was at best unclear. Hadfield was taken to Newgate Prison while Parliament hastily passed the Criminal Lunatics Act of 1800, which enabled the government to detain Hadfield for the rest of his life. No longer was a defendant found not guilty on the grounds of insanity entitled to a general acquittal. Insanity became a special verdict linked with automatic confinement for an indefinite period of time. Three other provisions of the act called for the detention of mentally ill persons who were arrested for criminal offenses or found in circumstances that suggested criminal activity.

I. INTRODUCTION

Prior to the nineteenth century, persons acquitted on the grounds of insanity were legally entitled to their release.[1] The criminal law had no direct power over them. If the presiding judge believed that they were too dangerous to be given their freedom, a separate civil commitment hearing had to be

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[1] Although the idea that insanity is an excuse for crime can be traced back at least as far as Justinian's *Digest*, it was not until the beginning of the sixteenth century that the English criminal law regarded insanity as grounds for exculpation (Walker, 1985: 27). Between the twelfth and sixteenth centuries the courts were required to convict mentally ill defendants, but they could refer cases to the king for possible pardon. By the late thirteenth century, it was customary for the Crown to grant a charter of pardon to mentally ill people found guilty of a felony (American Medical Association, 1983: 5). The first recorded case (Y.B. Mich. 21 Hen. 7, pl. 16 [1506]) of a defendant having been granted an acquittal on account of insanity took place in 1505. According to the Year Books of Henry VII, a man who had murdered an infant was allowed to go free (without having to await a pardon) after he was found to be of unsound mind (*de non saine memoire*).

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conducted before they could be confined as dangerous lunatics. Two justices of the peace might order their confinement under the Vagrancy Act of 1744, but the system was mainly informal and irregular, and it was difficult to detain insanity acquittees for long periods of time. Most insanity acquittees were sent home; some were placed under the care and protection of friends and relatives; only a few were confined in asylums or jails, or chained to walls of churches or public places.

Since a successful plea of insanity was considered a general acquittal, the verdict itself was difficult to obtain. In the eighteenth century the English law demanded that madness be both obvious and overwhelming before people could be excused from criminal responsibility. Defendants had to prove that they were totally incapable of distinguishing between "good and evil," and that they suffered from a disease of the mind that rendered them incapable of "forming a judgment upon the consequences of [their] actions" (Howell, 1794: 1817). This narrow test of insanity was designed to ensure that very few defendants availed themselves of the common-law defense of insanity.

Indeed, until the 1740s there were very few pleas of insanity in criminal cases. Then, for reasons that have never been adequately understood but probably have to do with social-structural changes brought about by the Industrial Revolution, the rate of insanity pleas rose dramatically.[2] In the last sixty years of the eighteenth century there were one hundred pleas of insanity entered at the Old Bailey, London's central criminal court. Over fifty of them resulted in acquittals (Walker, 1985: 29).[3] As a consequence, there developed a general apprehension that the doctrine of *mens rea*, which had served society so well as a justification for law and a rationale for punishment, was not entirely adequate to meet the needs of social defense.

The trial of James Hadfield for the attempted assassination of King George III had a lasting effect on the jurisprudence of

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[2] An alternative hypothesis, that the increase in successful pleas reflects empire building by the medical profession, is belied by Joel Eigen's study of the Old Bailey Sessions Papers for 1760-1815. The evidence of friends and relatives seemed far more important than that of the "mad-doctors." Many defendants were acquitted without the testimony of "mad-doctors," who often served merely a "legitimating" function (Eigen, 1983: 426).

[3] Most of the insanity pleas entered at the Old Bailey were for ordinary property offenses. As Joel Eigen has written: "although the jurisprudence of insanity may have originated in homicide or treason cases, the Old Bailey became familiar with the insanity defense as a result of . . . rather routine, garden-variety thefts" (Eigen, 1984: 12).

criminal insanity and political criminality. The reaction of the House of Commons to his acquittal on account of insanity led to the passage of both the Criminal Lunatics Act and the Treason Bill of 1800. The Criminal Lunatics Act made an insanity acquittee subject to automatic confinement for an indefinite period of time, and it also formalized the unfit-to-plead or incompetent-to-stand-trial statutes. The act also limited the right to bail of mentally ill persons apprehended for criminal offenses. Moreover, by reducing the murder or attempted murder of the king to an ordinary felony, the Treason Bill denied potential assassins the special rights otherwise granted defendants in political trials.

Most prior analyses of the case of James Hadfield have focused almost exclusively on its legal and medical aspects. After almost two centuries of scholarly research, there has been no detailed study of the case itself. No one has sought to explore the social and historical context in which the special verdict of insanity originated. No one has examined the political nature of Hadfield's crime or its connection with millenarianism during the period of the French Revolution; nor have legal scholars commented on the relationship between the origin of insanity as a special verdict and the loss of rights formerly enjoyed by both political defendants and mentally ill persons in pre-nineteenth-century England.

The time has come to enlarge and enrich our understanding of the origin of insanity as a special verdict; to reconnect James Hadfield, and his little known accomplice Bannister Truelock, with the political and social context of England during the reign of George III. Far from representing an enlightened humanitarian policy of the British government to provide for the care and protection of mentally ill defendants, insanity became a special verdict as a way of detaining those who otherwise would have been entitled to their freedom.

The story of James Hadfield and Bannister Truelock must be told in considerable detail if we are to appreciate how what was going on outside the courtroom influenced what happened inside. The various categories of explanations that must be imposed on Hadfield's case—legal, medical, religious, political, and moral—are woven together with interactions and connections that are comprehensible only as parts of a coherent narrative. What follows, thus, begins with a brief description of the social currents that stirred England at the start of the nineteenth century.

II. ENGLAND AT THE TURN OF THE CENTURY

At the close of the eighteenth century, Great Britain was beset with political and economic problems. The war with France, which began in 1793, had taken a heavy toll on the English. There was a shortage of grain and flour, and available scarce commodities commanded a high price. Increased taxation and inflation, as well as a rapid expansion of the national debt, had accompanied the war effort (Howitt, 1864: 182-83). The Whig opposition accused Prime Minister William Pitt's government of having jeopardized the future of the nation by pursuing a vision of England as the defender of all the world. On the foreign front, the campaign against the French had enlivened the struggle in Ireland and had increased the cost of the war in India (Watson, 1960: 383-405).

Fear that the revolution in France would spread dominated English political thinking during this period. In August of 1789 the French Constituent Assembly adopted *The Declaration of the Rights of Man and of the Citizens*, which heralded the end of feudalism in Europe and the dawn of the new age of liberty. In less than four years Louis XVI had been executed and the National Convention had declared war on England, the Netherlands, and Spain. Despite warnings by Robespierre and others that France needed to establish order at home before it carried the doctrine of liberty elsewhere, the French were determined to export their revolution (Brinton, 1938).

Englishmen who were sympathetic with the ideals of the French Revolution began to organize themselves into political clubs. The most famous club was the London Corresponding Society, founded in 1792 by the shoemaker Thomas Hardy. For inspiration, many of the English radicals read Tom Paine's *Rights of Man*, a powerful answer to Edmund Burke's *Reflections on the Revolution in France*, which strongly condemned the bloody struggle in Paris. Like Paine, Hardy and the London Corresponding Society were concerned with more than the political questions of suffrage and the right of the government to tax its people. The London Corresponding Society was also concerned with land reform and working conditions in the mills (Thompson, 1963: 19-24). In their *Address to the People* in 1792, they offered "taxes diminished, the necessaries of life more within the reach of the poor, youth better educated, prisons less crowded, [and] old age better provided for" (Briggs, 1983: 133). Collectively, these reformers were known as the English Jacobins after the name of their leading French counterparts.

Majority opinion in England was still opposed to reform. The terror unleashed by the Revolutionary Government in France served to harden Prime Minister Pitt's position against these Jacobins. In 1794, Thomas Hardy, of the London Corresponding Society, and Horne Tooke, of the Constitutional Society, among other members of the reform societies, were tried for high treason (Howell, 1794). Although they were acquitted of the charges, their trial marked the beginning of a long period of political repression. Political clubs were forced underground by fear of prosecution. Secret societies were formed, and, in 1799, banned because they "were inconsistent with public tranquility and with the existence of regular government" (Stephen, 1883: 294).

If the events of the last decade of the eighteenth century were disheartening to those who longed for a political millennium, they encouraged and supported those who yearned for a religious millennium. The French Revolution had kindled interest in apocalyptic symbolism. Some Biblical scholars began to interpret the conflict in Europe, the fall of the monarchy in France, and the gradual replacement of sacred authority by a secular "Age of Reason" as having been foretold in the books of Daniel and Revelation. According to these interpreters of the prophetic Scriptures, the current crises in Europe would result in a cataclysmic end to the world, the second coming of Christ, and the advent of a thousand years of heavenly peace on earth (see Rowley, 1944; Cohn, 1957).

Not everyone who endorsed millennial theology was a respectable scholar or Church of England clergyman. During the 1790s a number of self-styled prophets emerged claiming divine communication or inspiration as the source of their authority. Unlike their more orthodox colleagues, these popular millenarianists were prepared to predict that the end was near. A few millenarianists, including Bannister Truelock, who was to figure importantly in Hadfield's case, gave actual dates and specified events that would signify the beginning of the end. Several of these prophets of the final days were able to attract a large number of followers. Millenarianist sects and small religious communities sprang up all over England (Harrison, 1979).

Since belief in the millennium encompassed an ideology of change, religious fervor or enthusiasm carried with it broad political implications. Among the dispossessed and disenfranchised there was not always a clear division between religious millenarianism and political radicalism. The prophet

Richard Brothers found himself committed to a lunatic asylum when he failed to keep the two separated. In 1795 he was arrested and charged with the publication of "fantastical prophecies" calculated to cause social disruption (*Times*, March 6, 1795: 3). Brothers' declarations that God had commanded him to assume the throne occupied by George III, that radical reformers currently on trial were innocent of the charges of high treason, and that France would prevail in the war with England as prophesied in Daniel and Revelation brought him to the immediate attention of the Home Office. With the prosecution of seditious libel made more difficult by the passage of Fox's Libel Act of 1792, the Privy Council declared Brothers mad and had him imprisoned in an asylum, where he would attract much less attention (Harrison, 1979: 77-78).

III. THE SHOOTING AT DRURY LANE[4]

These, then, are the events and concerns that shaped the political situation when on the evening of May 15, 1800, King George III attended the theater at Drury Lane. As the orchestra played "God Save the King," the audience rose to welcome the royal family. At that moment when the king began to bow, an assassin who had been waiting in the pit stood on a second row seat, raised his arm, and fired a horse pistol in the direction of the royal box (*Times*, May 16, 1800: 2).

The leaden ball passed less than eighteen inches above the king's head. A great suspense hung over the audience until they came to realize that the king was unhurt. There was a general cry of "Seize the Villain! Shut all the doors!" (*Times*, May 16, 1800: 2). The musicians from the orchestra, with the assistance of a Bow Street officer, secured the assassin and hurried him over the palisades into the music room below the stage. George III remained calm. He placed his opera glass to his eye and studied the scene without the slightest loss of

[4] The following description of the crime, arrest, interrogation, and arraignment was pieced together from several contemporary sources, some primary and others secondary. Primary sources consulted were the Treasury Solicitor's Papers (T.S.) and the King's Bench Papers (K.B.) at the Public Record Office. It was the duty of the Treasury Solicitor's Office to prepare the legal papers for state prosecutions. In Hadfield's case they contain mostly signed statements of prosecution witnesses and the necessary legal documents associated with the plea of insanity and rulings in prior cases. The King's Bench Papers contain a transcript of Hadfield's examination before the Privy Council as well as the signed testimony of witnesses to the shooting at Drury Lane. Secondary sources, such as contemporary newspapers, have been employed to round out details. For the arraignment of Bannister Truelock, however, they were the only source. There was no file on Truelock's arraignment at the Public Record Office.

composure. Once again the orchestra played "God Save the King." They were joined in full chorus by every person in the house (*Bell's Weekly Messenger*, May 18, 1800: 158).

The would-be assassin had on a military waistcoat which identified him as a former soldier of the Fifteenth Light Dragoons. He gave his name as James Hadfield.[5] And he warned: "It is not over yet—there is a great deal more and worse to be done" (*Bell's Weekly Messenger*, May 18, 1800: 158). When the king's son, the duke of York, entered the music room, he was recognized immediately by the prisoner. Hadfield, a Chelsea pensioner, had fought alongside the duke in Flanders. At Lincelles, his wrist had been broken by a shot and he had sustained eight saber wounds in the head. Left for dead, Hadfield was taken prisoner by the French. He remained four years in a prisoner of war camp (K.B. 33/8/3/29).

Sir William Addington was the first magistrate to arrive at the theater. As the play continued overhead, he examined several witnesses to determine whether Hadfield's pistol was leveled at the king or merely fired at random. The former would be high treason, the latter only a misdemeanor. In apparent contradiction to his earlier statement concerning his intentions, Hadfield told the magistrate that he had "not attempted to kill the King" (*Bell's Weekly Messenger*, May 18, 1800: 158). As he was "as good a shot as any in England," he would have killed the king if that had been his design (*Bell's*, May 18, 1800: 158). Hadfield explained that he had grown weary of life, that "he wished for death, but not to die by his own hand" (*Bell's*, May 18, 1800: 158). He had hoped that the crowd at the theater would have fallen upon him and killed him (*Times*, May 16, 1800: 3).

The incident at Drury Lane Theatre was not the only time that day that the king's life had been in danger. In the late morning, during a field exercise of the Grenadier Battalion of the Guards in Hyde Park, a ball cartridge was fired, injuring a clerk of the Navy Pay Office who was standing near the king. As the man who fired the shot could not be discovered, it remained uncertain whether it had been intentional or not (*Times*, May 16, 1800: 2). When questioned concerning this incident, Hadfield denied that he had been the one who fired at the king in the park. He gave the answer that if he had, the

[5] Hadfield is sometimes incorrectly spelled "Hatfield," as in the House of Commons debate on the McNaughtan Rules. "Hadfield" is the correct spelling.

soldiers would have instantly trampled him to death (*Bell's Weekly Messenger*, May 18, 1800: 158).

Out of fear that Hadfield was part of a conspiracy to assassinate the king, a special session of the Privy Council[6] was called. At ten in the evening, on the night of the assassination attempt, Hadfield was reexamined in the duke of Portland's office. When asked if he belonged to the Corresponding Society—a group of about sixty persons who gathered at a public house in Moor Fields to celebrate the French Revolution—Hadfield answered that he did not belong to a political club. He added that he belonged to the Odd Fellows Club and to a benefit society. Asked if he had any accomplices, Hadfield placed his hand on his heart and swore to the Almighty God that he had none (K.B. 33/8/3/29). The twenty-eight-year-old would-be assassin was committed for trial on a charge of high treason. Accompanied by Charles Dickens, the messenger, and guarded by two Bow Street officers and a detachment of Horse Guards, Hadfield was taken by hackney coach to Newgate Prison (*Times*, May 17, 1800: 3).

Early the next morning, the Privy Council met in a special session at Whitehall to examine further the evidence against James Hadfield. Jeremiah Parkinson, a musician in the orchestra, told the council that Hadfield had tried to kill the king. He observed the accused "take a direct and steady aim" at George III (K.B. 33/8/3/29). More startling testimony, however, came from the clerk of Mr. Hoffman, the silversmith with whom Hadfield worked as a spoonmaker. The clerk told the council that on the Monday preceding the attempted assassination, Hadfield had been to White Conduit Fields to witness the flogging of two soldiers. There he met Bannister Truelock, a millenarianist, who prompted him to kill the king. The clerk testified that he had overheard Truelock tell Hadfield that "it was a shame there should be any soldiers; that Jesus Christ was coming; and [that] we should have neither King nor soldiers" (*Bell's Weekly Messenger*, May 18, 1800: 158).

Within an hour, Bannister Truelock was brought before the council. The cobbler from Islington spoke calmly and rationally on the various subjects of the day. He did not display the slightest sign of mental imbalance until he was asked to state his religious views. Truelock referred to himself as a

[6] The Privy Council members present were: the duke of Portland, who was the home secretary; the earl of Chatham; Prime Minister William Pitt; the speaker of the House of Commons; the attorney general and solicitor general; and two barristers, Messrs. King and Ford.

"true descendant of God" (*Bell's*, May 18, 1800: 159). Purporting to be the Supreme Being, he stated that he had "resolved to destroy this world in the course of three days" (*Bell's*, May 18, 1800: 159). He did not deny that he knew James Hadfield. Indeed, he boasted: "I told him he might be a very great man . . . by becoming my Son" (*Bell's*, May 18, 1800: 159). Truelock added that "the Virgin Mary was a bloody whore, that Jesus Christ was a thief, and that God Almighty was a blackguard" (*Bell's*, May 18, 1800: 159). After a brief struggle the cobbler-prophet was taken to the House of Correction at Cold Bath Fields. But no formal charge was brought against him.

The next witness, Sarah Lock, a respectable widow with whom Truelock lodged, told the council that on Christmas Eve day, Bannister told her that in either May or June King George III would be assassinated. Afterwards, according to Truelock, kings would be abolished in Great Britain and the price of provisions and the necessities of life would be much reduced (T.S. 11/223/030250). Mrs. Lock added that Bannister Truelock was a professional "Revolutionist or Jacobin,[7] that he was a great admirer of the new order of things; and that he was constantly reading seditious or treasonable books" (*The Albion*, May 26, 1800: 3; T.S. 11/223). In the six months that Truelock lived in her lodging house, she said that he often denounced Prime Minister William Pitt and the government of his country. He was a believer in the French Revolution and a staunch supporter of the *Rights of Man* (T.S. 11/223).

Against the background of the radical religious and political movements described in Part II, it is not surprising that Hadfield's attempt on the king's life heightened what was already substantial concern for the maintenance of the monarchy in England. And the Hadfield attempt was not the only reason for immediate concern. On the way back from the theater, George III had been pursued by an angry mob for over twenty yards until the Bow Street officers, who were protecting him, managed to disperse the crowd by arresting ten of its members (*St. James Chronicle*, June 14-17, 1800: 4). The following week, an inspection of the Grenadier Battalion of the

[7] The Jacobins were the best known of the political clubs of the French Revolution. When the Club Breton came to Paris to participate in the National Assembly, they rented the refectory of the monastery of the Dominicans, who were known as the "Jacobins." The name "Jacobins" was first applied to the club in ridicule, but its members later adopted it. Oddly enough, "Jacobins" was the name given to the Dominicans because their first house in Paris was on the Rue St. Jacques.

Guards revealed that five ball cartridges had been placed among the blank cartridges, packaged in the same blue paper. As the king had made known his intention of reviewing the guards that day, and as the cartridges had been sent from the Tower of London that morning, this too suggested an attempt on the king's life (*Times*, May 23, 1800: 3).

In the meantime, it came to the attention of the duke of Portland that on the Tuesday prior to the assassination attempt, a letter addressed to the Prince of Wales had been found by a servant of dowager Lady Albesmarle in the street opposite her house. The letter, which was without date or signature, stated that there was a conspiracy to assassinate the king, and, in two days' time, the life of the king would twice be in danger (*The True Briton*, May 17, 1800: 3). In addition, the duke received a letter from Ireland indicating that on Tuesday, May 13, two days before Hadfield made his attempt, there were reports in Dublin that King George III had planned initially to attend the theater on Tuesday (*Times*, May 22, 1800: 3). When, at the next session of the Privy Council, Mr. Wallis, a silversmith who was acquainted with James Hadfield, testified that the prisoner Hadfield was "always a supporter of the *Rights of Man*, and an admirer of the foolish doctrine of liberty" (*St. James Chronicle*, May 15-17, 1800: 4), the concern of the government ministers at Whitehall turned into alarm. The Privy Council immediately interrogated several of Hadfield's companions, all silversmiths who had been drinking with him at a public house on the afternoon of the attempted assassination. One of the men had lent Hadfield five shillings to attend the play (K.B. 33/8/3/29). But, he, like the others, denied prior knowledge of Hadfield's plan to shoot the king. The men said that they did not attach any special significance at the time to Hadfield's parting statements that he had "business of great importance" and that "you shall hear something of me" (*St. James Chronicle*, May 29-31, 1800: 4).

IV. SPECIAL PRIVILEGES IN TREASON TRIALS

James Hadfield owed the success of his insanity defense to the political nature of his crime. Had Hadfield attempted to kill an ordinary citizen, he would have been tried for attempted murder at the central criminal court of London, the Old Bailey, and Bannister Truelock, his accomplice, would have been tried for aiding and abetting him. They both probably would have been convicted and publicly executed within a week of the crime. But Hadfield had attempted to murder George III, and

an attempt on the life of the king was different. James Hadfield would be tried for high treason in Westminster Hall before the Bar of the Court of King's Bench, the supreme criminal court of the realm.

This circumstance proved to be of enormous value to Hadfield. Because treason was a crime committed mostly by men of rank and position, he was afforded privileges not extended to common criminals.[8] Under the statutes of 7 Ann., c. 21 (1708) and 7 Will. 3, c. 3 (1695) (the principal legal safeguards protecting defendants accused of treason), Hadfield was provided with a copy of the indictment against him and a list containing the names, professions, and places of abode of all prospective jurors and witnesses for the Crown. The requirement that these documents be delivered to the defendant at least ten days prior to the date of his trial ensured that Hadfield would have sufficient time to consider his plea and prepare his case. In addition, Hadfield was offered the privilege of thirty-five peremptive challenges of jurors, as well as the right to compel witnesses to appear in his behalf. (See Statutes of the Realm, 1820: 6-7; 1822: 93-95.)

The most important privileges extended to James Hadfield were the requirement that the charge against him be proved by the testimony of two witnesses and the entitlement to a defense by counsel. In an ordinary felony case, one witness was usually sufficient to prove the charge against a defendant. In treason cases, however, it was thought that defendants needed extra legal protection against possible false accusations by their political enemies; hence, the two witnesses requirement. In felony cases a defendant was required to conduct his own defense. A counselor could advise his client on points of law or even assist in the cross-examination of witnesses, but he could not interpret the evidence for the jury or speak for his client (Second Report from His Majesty's Commissioner on Criminal Law, 1836: 2-18). Under the treason statutes, Hadfield not only had the right to make his defense by counsel, but he also had the right to require the court to appoint two counselors who were guaranteed full and free access to him (K.B. 33/8/3/29).

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[8] John H. Langbein (1978: 309-10) has made the case that the legislation affording special protection should not be seen as merely class legislation. In his superb article "The Criminal Trial before the Lawyers," he pointed out that judges were less likely to be impartial in political cases; that the law of treason was extremely complex; that the defense was hindered because of restrictions on pre-trial access to accused traitors; and that the crown counsel prosecuted political cases, whereas in 1696, the year this legislation was passed, prosecuting counsel in ordinary felonies was still rare.

Hadfield made the most of his right to counsel.[9] At the arraignment he pleaded not guilty to a charge of high treason. Acknowledging his poverty, Hadfield presented the court with a petition asking that the Hon. Thomas Erskine and Mr. Serjeant Best be assigned as his counsel, and that Mr. Charles Humphries be appointed his solicitor. All three men were present in the court, although Messrs. Erskine and Best had no prior knowledge of Hadfield's intention to name them. Each accepted the request of the prisoner. The trial was set for June 26, 1800. Throughout the proceedings Hadfield remained composed, conducting himself with "decency and propriety" (*Morning Post and Gazetteer*, June 9, 1800: 3).

Hadfield's choice of Thomas Erskine as chief counsel was an excellent one. The renowned Erskine was perhaps the ablest barrister of his day. For the preceding twenty-two years he had distinguished himself as a powerful advocate of political rights. It was generally acknowledged that there was no one better at the presentation of evidence or in commanding the attention and sympathy of a jury. Erskine's achievements in political trials were legendary. He had successfully vindicated Lord George Gordon from a charge of treason after the riots of 1780 that bear his name. His defense of William Davis Shipley, dean of St. Asaph's, for seditious libel led to the passage of Fox's Libel Act. Erskine had also successfully defended Thomas Paine and members of the London Corresponding Society for unlawful assembly (Stryker, 1947).

V. THE TRIAL[10]

On June 26, 1800, six weeks after his arrest, James Hadfield stood trial for the attempted assassination of King

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[9] The treason statutes are silent on the question of attorneys' fees. From the arraignment report it appears that if a defendant could afford counsel, then he himself had to pay. If he was unable to pay, however, it is not clear whether the court paid or the appointed counselor or counselors worked without fee. Thomas Erskine's response to Hadfield's petition for counsel seemed to suggest that the latter was common practice. "My Lord, I have ever understood it to be the universal opinion and practice of the Bar, that if a person accused of a crime prays the Court to assign him counsel, and names any person *who practices in the Court in which the prisoner is arraigned*, he is bound to give him his professional assistance" (*Morning Post and Gazetteer*, June 19, 1800: 3).

[10] The report of the trial was taken from Howell's State Trials, volume 27, pp. 1281-1356, and will be cited in the text by page number only. The transcript of Hadfield's trial does not seem to suffer from the general problems of reliability described by Muddiman (1930), Clark and Roberts (1967), and Langbein (1978). By the beginning of the nineteenth century the reliability of the State Trials was high. Important trials were recorded by professional scribes and checked for accuracy and completeness by most of the major participants. The State Trials' transcript was compared against

George III. Chief Justice Lord Kenyon presided over the Court of the King's Bench. The newly appointed attorney general, Sir John Mitford, appeared for the Crown, and the Honorable Thomas Erskine appeared for the defense. Invoking the special privileges afforded his client in treason trials, Erskine challenged twenty of the forty potential jurors presented by the sheriff of Middlesex. The Crown elected to challenge only three. Five others were ruled ineligible to serve, mostly because they were not freeholders (1281-82).

In his opening remarks, the attorney general told the court that the crime James Hadfield had been charged with was "compassing and imagining the death of the king; for the law has made that imagination of the mind a crime . . . when it is demonstrated of any overt act" (1285). Sir John Mitford then said that he would prove that Hadfield committed the following three overt acts: 1) he purchased the pistol; 2) he went to the theater at Drury Lane; and 3) he fired a pistol at the king. He committed all three acts with the intention of depriving the king of his life (1285).

In anticipation of the defense's plea of insanity, the attorney general stated his opinion concerning the law:

> . . . if a man is completely deranged, so that he knows not what he does, if a man is so lost to all sense, in consequence of the infirmity of disease, that he is incapable of distinguishing between good and evil—that he is incapable of forming a judgement upon the consequences of the act which he is about to do, that then the mercy of our law says, he cannot be guilty of a crime (1286).

The attorney general observed further that idiots, or those who suffer from an "absolute privation of reason," were excused from criminal responsibility because they fail to understand the consequences of their actions. Likewise, children whose reasoning ability has not matured to the level that they can distinguish right from wrong were not deemed responsible to the law. A madman in a "phrenzy" or a person afflicted with a "violent fever" who committed an act of which he was "perfectly unconscious" should not be punished for his behavior. Yet, even in the above cases, the jury must measure

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transcripts available from several contemporary sources: e.g., *Bell's Weekly Messenger*, *The Morning Chronicle*, and *The Times* of London. No meaningful discrepancies were found to exist. Furthermore, since our focus here is a single trial, we do not have to concern ourselves directly with how representative it might be of the ordinary criminal trial.

the degree of discretion that the accused person possessed before it could determine if he qualified for exculpation (1286).

If an idiot, Mitford continued, had enough understanding to discern good from evil, although below the ordinary level of mankind, he could still be held responsible. In the case of children, it is not their actual age but their capacity for understanding the consequences of their actions that is the measure of their responsibility. If they know their acts are wrong, then they can be held accountable to the law even at a very tender age. Similarly, a lunatic, or "a person who is occasionally insane but has lucid intervals," may be found guilty of an offense if he committed the act during one of his lucid intervals (1287).

In support of this position the attorney general cited Lord Chief Justices Coke and Hale. In *Pleas of the Crown*, Coke had written that in order for a person to be excused from all responsibility there must be "absolute madness, and a total deprivation of memory." Lord Chief Justice Hale, in commenting on Coke's general statement, said that the jury must judge a lunatic in the same way it would a child, e.g., whether there remained a "competent degree of reason" which enabled the accused to know that what he did was wrong (1287).

In support of his arguments, the attorney general cited two early cases. The first was that of Edward Arnold, tried in 1723 for maliciously shooting at Lord Onslow. From the testimony presented in court, there was little doubt that Arnold's mind was deranged, or that at least it was deranged with respect to Lord Onslow. But Arnold was able "to form a steady and resolute design" and, as a consequence, he was found guilty of the offense. Mitford reminded the court that "not every frantic and idle humour of man" will exempt a person from punishment (1288). A man must "not know what he is doing any more than an infant, . . . a brute, or a wild beast" (1288).[11] This is how Mr. Justice Tracy, who presided at Arnold's trial, stated the law to the jury, and, Mitford noted, the law as Tracy stated it had "never been contradicted" (1288).

[11] This is commonly known as the "wild beast test" of criminal responsibility. Sometimes it is mistakenly portrayed as requiring an insanity equivalent to a wild, raving beast. Its actual meaning, however, is that of a lack of reason or understanding, as exhibited by a beast of burden. According to Anthony Platt (1965: 1), this misunderstanding came about "through a *misinterpretation* of [Henry de] Bracton's original use of the Latin term 'brutus,' used by him not to associate the insane with wild beasts, but to compare the insane to those who *lack reason*, i.e., brutes or animals."

The second case was that of Lord Earl Ferrers, who in 1760 was tried before the House of Lords for the murder of his steward.[12] Lord Ferrers' defense alleged that he was incapable of knowing the consequences of his act because he "laboured under the misfortune of insanity" (1289). After hearing the legal arguments of both the prosecution and the defense, the peers of Parliament found Ferrers guilty of murder. The lords were persuaded that Ferrers could distinguish between moral good and evil and, *at the moment* of the crime, was capable of forming a criminal intent, even if in former times he had been deranged in his mind (1289).

After briefly tracing the legal history of the plea of insanity, Mitford turned his attention to the case before him. He told the court that he would prove to its satisfaction that Hadfield had that competent degree of reason which was necessary to make a man guilty. Acknowledging that Hadfield had been discharged from the military service due to his abnormal mental condition, Mitford claimed that for "constant duty, a constant sanity" was required (1290). For the legal commission of a crime, however, only a small degree of sanity was necessary. Very few people suffer a total deprivation of reason. Good and evil make a "natural impression" upon the mind of man, an impression that the mind rarely relinquishes (1290).

From the conduct of the prisoner Hadfield, Mitford continued, it will be shown that he acted as an ordinary man would have acted during the commission of a crime. He purchased the pistols; he went to the theater; he gained admission to the pit without notice; he fired his pistol at the king from the most advantageous position; and he understood that under the law his life would be forfeited. Hadfield's ability to formulate a plan and to carry his plan through to its treasonous conclusion, Mitford argued, demonstrated that he retained the degree of competence required to make him guilty of a criminal offense (1290-92).

In support of his opening statement, Mitford called several witnesses. Four of the musicians testified that they saw Hadfield fire his pistol at the king. One of them, Mr. Jeremiah Parkinson, said that Hadfield appeared to take deliberate aim at the king and to curse the king with the words, "This is not the worst" (1295). Other witnesses testified that they had seen

[12] This was the first case in which a medical witness, Dr. John Monro of Bethlem Hospital, offered expert testimony at an insanity trial.

Hadfield drop the pistol after the shots, and that they had helped to secure him.

When his Royal Highness, the duke of York, took the witness stand, Hadfield became excited. He jumped up and shouted: "God Almighty, bless his good soul, I love him dearly" (1298). After Hadfield was quieted, the duke testified that Hadfield behaved rationally during the interrogation that followed his crime, and that Hadfield appeared to understand the consequences of his act. The duke said that during the three quarters of an hour it took to examine him, Hadfield spoke "connectedly" of his crime. He knew perfectly well that his life would now be forfeited (1299).

During cross-examination, Erskine pointedly asked the duke if it occurred to him to question Hadfield as to why he wanted to murder his uncle the king if he had such great affection for him. The duke said that Hadfield explained that he did not intend to murder the king, but that he was tired of life and thought he would be killed for his attempt. Erskine tried to elicit some acknowledgment from the duke that when Hadfield made this statement he was in an agitated state of mind, but the duke insisted that Hadfield was "perfectly collected" (1300).

After having established that the pistol used in the attempt on the king's life had been purchased by Hadfield and that it actually contained bullets, Attorney General Mitford rested the case for the Crown. Absent from his case was the testimony of medical experts concerning Hadfield's mental condition, or the influence that Bannister Truelock might have had on his behavior.

After a brief intermission, the Honorable Thomas Erskine, chief counsel for the defense, rose to deliver his opening speech. As was his custom, he began with an appeal to the jury's sense of fair play. He told them that as he knew them to be good English citizens, he was certain that they would render an impartial judgment. He observed that the current trial stood as a monument to national justice, that the prisoner Hadfield had been secured without "injury or reproach, for the business of this day" (1308), and that despite his murderous assault upon the king, he remained protected by the great principles of the English law. Erskine then recounted the special provisions afforded a defendant in a trial for treason, emphasizing that twice the evidence was necessary for a conviction. The defense counsel explained that in treason trials a "counterpoise" was necessary to give "composure and

impartiality" to the proceedings (1309). Hence, a fifteen-day waiting period between arraignment and trial was necessary in order to avoid any unwise rush to judgment (1309).

The duty of a defense counsel, Erskine continued, was to see that his client received the strictest protection of the law. Promising that he would not employ any "artifice of speech," Erskine stated that he had little disagreement with the attorney general over the principles of law that were to govern the verdict. Contending that he had no quarrel with the principle that the " 'Reason of Man' makes him accountable for his action; and that the deprivation of reason acquits him of crime," Erskine stated that his quarrel with the attorney general came over the application of legal principles (1309).

While Erskine claimed that he believed that Lord Coke and Lord Hale had been quoted correctly, he questioned the interpretation the attorney general had given to the words "total deprivation of memory and understanding" (1312). Erskine said that the words of Coke and Hale should not be taken literally, because "no such madness ever existed in the world" (1312). All madmen retain some memory and understanding. Indeed, some madmen have been remarkable for their "subtlety and acuteness" of mind (1313).

Delusions, Erskine continued, unaccompanied by "frenzy or raving madness, [were] the true character of insanity" (1314). A person may reason with great skill and subtlety, but if the "premises from which they reason" are uniformly false, and cannot be shaken even with the clearest evidence, then it can be said that he is suffering from the disease of insanity (1313-14). But in order for him to be excused from the law, his crime must be the "immediate, unqualified offspring of [his] disease" (1314). A man who merely "exhibited violent passions and malignant resentments" but who acted upon real circumstances must be held accountable for his behavior (1314).

In an effort to gain credibility with the jury, Erskine said that he accepted the evidence as presented by the attorney general. He would not dispute the fact that Hadfield knew that the pistol might cause the death of the king, that Hadfield appeared calm and collected to all those who examined him. Madmen, Erskine told the court, were often skillful at concealing their malady. He cited two cases to demonstrate this point (1315).

Next, Erskine attacked the notion that a person was responsible for his crime if he knew the difference between good and evil. As with the notion of total deprivation of

reasoning, Erskine said that he had no quarrel with this proposition in the abstract. He said, however, that it had to be applied with great care and skill. Suppose, Erskine continued, that a lunatic believed that a man he murdered was not a man but a potter's vessel, and suppose that he destroyed this potter's vessel with the malicious intent of injuring the property of the man—and that he had full knowledge of good and evil—would it be possible to convict him of murder? Erskine said he thought not. If the man was "utterly *unconscious*" of the fact that he had killed a human being, he could not be punished for murder (1317-18).

Having stated his position on the law of insanity, Erskine endeavored to demonstrate that Hadfield qualified for an acquittal. He told the court that James Hadfield was a former soldier who served in Flanders as a trusted orderly to the duke of York. While in battle about five miles from Lisle, Hadfield had risked his life for the very king that he now stood accused of having attempted to murder. In service to his homeland the soldier Hadfield received several wounds to the head. Placing his hand on the prisoner's head, Thomas Erskine described the nature of these injuries. He called the jury's attention to the scars that disfigured his face, and he showed them the exposed membrane of the brain.[13] A piece of Hadfield's skull had been sliced off by the sword of a Frenchman (1320).

Erskine claimed that injury to the brain caused Hadfield's disturbed mental condition. He reminded the court that Hadfield did not become insane through any fault of his own. His madness did not result from a "hereditary taint," "intemperance or . . . violent passions," but from a blow to the head received in defense of his country and his king (1320-21). Hadfield became insane through "*violence to the brain, which permanently affects its structure*" (1321; emphasis in original). He could never recover from the events of that fateful day in Flanders. His good sense had been forever lost to him (1321).

Immediately following his injury, Erskine continued, Hadfield imagined that he had "constant intercourse" with the Almighty (1321). He thought that the world would end soon, and that like Jesus Christ he was to sacrifice his life for the salvation of others. Erskine noted that Hadfield was discharged from the army on account of insanity, and that he received a small pension from the military to compensate him

[13] I could find no primary evidence for the often repeated statement that each member of the jury actually felt the exposed membrane of Hadfield's brain.

for his loss of mental powers. Indeed, two nights before his attempt on the life of the king, Hadfield had tried to kill his own infant child and had to be restrained by his family. Erskine emphasized that Hadfield became obsessed with the idea that "he must be destroyed, but ought not to destroy himself" (1323).

Erskine now sought to distinguish the case of his client Hadfield from those of Lord Ferrers and Edward Arnold. Once again adopting the strategy that he would not challenge the facts as presented by the attorney general, Erskine pointed to the reasons why these two cases were not analogous to Hadfield's. Lord Ferrers, Erskine said, did not, as his client had done, commit his act under the "dominion of uncontrollable disease" (1325). Ferrers was merely a man of "unreasonable prejudices," who was "addicted to absurd practices, and agitated by violent passion" (1325). Likewise, Arnold did not have a "morbid delusion" that "overshadowed his understanding." He did not try to kill his own infant son just two days before he shot Lord Onslow (1325). As a magistrate, Lord Onslow had been especially vigilant under the Black Act in suppressing political clubs (1325). Arnold's case was simply one of human resentment.

Returning to Hadfield, Erskine sought to explain how a man who loved his country and his king could nonetheless attempt to murder him. Erskine explained that Hadfield had come under the influence of Bannister Truelock, a millenarianist who "overpowered and overwhelmed" his mind (1327). Truelock told Hadfield that the Savior's second advent and the final dissolution of mankind were at hand. This "strain of madness," mixed with Hadfield's own insane delusions, prompted him to fire his pistol in the direction of the king (1327). Erskine assured the court that Hadfield had wished the king no harm. At the Drury Lane Theatre that evening, Hadfield had only contemplated his own destruction. Truelock had been committed to a lunatic asylum, and Erskine suggested by implication that a similar fate ought to await James Hadfield (1327).

Erskine reminded the court that no attempt on the life of the king had been made previously by political opponents of his government. Throughout history all would-be assassins had been "unhappy lunatics" (1329). The king's good character and conduct were a safer shield against assassination than armed guards or stringent criminal laws. Erskine told the jury that there was no need to convict Hadfield in order to ensure the

safety of the king. The impartial administration of justice was the greatest protector of the royal family. Public safety and social order did not require the conviction of James Hadfield for high treason (1329).

In support of his opening statement, Erskine called several witnesses. Messrs. Edward Ryan and Hercules Macgill, officer and soldier of the Fifteenth Light Dragoons, testified that before Hadfield was injured and left for dead in the battle near Roubaix, he was a good soldier who fought gallantly. It was only afterwards that he became "deranged in his mind" (1331). John Lane, who was a prisoner in France with Hadfield in 1795, said that he remembered the day that Hadfield was brought to the hospital in a fit, proclaiming himself to be King George III, but added that within a fortnight Hadfield had given up the idea and had returned to his senses (1332).

The most important medical witness to testify was Mr. Henry Cline, an eminent surgeon who said that at least three of the four head wounds that Hadfield had received in the war with the French were sufficient to cause damage to the brain. According to Mr. Cline, this was a frequent consequence of a blow to the head, especially if the blow penetrated the skull. Insanity arising from a violent wound to the head, once it persisted for a while, was, Cline told the jury, likely to remain permanent and non-reversible (1332-34).

Next, Doctor Creighton, a physician, testified that from his examination of the prisoner, he had not the "smallest doubt" that Hadfield was insane and that the wounds to his head were probably the cause of his insanity (1334). The physician testified further that Hadfield spoke rationally on all matters unrelated to the subject of his lunacy. On the subject of his illness, however, Hadfield thought that "he was ordained to die, and to die as Jesus Christ did" (1335). The doctor also said that the hot weather may have augmented Hadfield's disorder (1334). Another surgeon, Mr. Lidderdale, testified that Hadfield had been discharged from the army on account of insanity (1335-36).

Since a jury in an insanity trial usually gave more weight to the testimony of friends and relatives than to medical experts, Erskine continued to call to the witness stand those who knew the defendant best. Hadfield's commanding officer, Captain Wilson, said that he had been a brave and loyal soldier before the injuries to his head. David Hadfield told the court that in the hot weather when the moon was full, his brother

Jim had talked about Jesus Christ and proclaimed himself God (1336-39).

Mary Gore, sister of Hadfield's wife, supported the notion that the hot weather affected the mind of the prisoner. Repeating Hadfield's religious ideas to the court, she added that her sister's husband and Truelock planned to build a house in White Conduit Fields where they would live together, Hadfield as God and Truelock as Satan. She described in detail the evening that Hadfield tried to kill his eight-month-old child, saying that he was fond of the boy and that he had no memory of the event, even though immediately after the attack he had told her that "God had told him to kill the child" (1343).

When Mrs. Gore mentioned that she and her sister had been to see Bannister Truelock, Mr. Erskine held up a paper and informed the court that Truelock had been committed to Bethlem (also called "Bedlam") as a deranged person. At this point, Chief Justice Lord Kenyon took over the questioning. He asked what Hadfield's response was when she told him she had been to see the cobbler from Islington. Mrs. Gore told the chief justice that Hadfield repeated all the blasphemous things Truelock had told him about Jesus Christ and the Virgin Mary. She also told Lord Kenyon that on the afternoon of the attempted assassination, James Hadfield had been initiated into the Odd Fellows Club (1343-44). Since secret societies and clubs were closely associated with political activities, it was peculiar that the chief justice decided not to follow up this question.[14]

The testimony of two other family members and Hadfield's landlady followed, at which point Lord Kenyon interrupted the trial and asked Mr. Erskine if he was nearly finished with the presentation of his evidence. When Erskine replied that he had twenty more witnesses to examine, Lord Kenyon asked the attorney general if he planned to call any witnesses to contradict the evidence for the defense. Without waiting for an answer, the chief justice stated that the material question in the case was "*whether at the very time when the act was committed this man's mind was sane*" (1353; emphasis in original). Lord Kenyon added that the facts indicated that Hadfield was in a "very deranged state" (1353).

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[14] It is not known whether the Odd Fellows Club on Aldergate Street in London was involved in politics. They were soon broken up, however, for seditious activities by state prosecutions. They were reconstituted in Manchester in 1813 and the club still exists in England and America.

In what would today be regarded as an extraordinary breach of judicial propriety (but at the time was considered quite normal), Lord Kenyon began to think out loud: "I do not know that one can run the case very nicely: if you do run it very nicely, to be sure it is an acquittal" (1353).[15] Kenyon continued, however, "such a man is a most dangerous member of society" (1354). After receiving the attorney general's agreement, Kenyon uttered the words that were to echo throughout the ages. "The prisoner, for his own sake, and for the sake of society at large, must not be discharged" (1354).

Erskine, a champion of political rights, did not press for Hadfield's acquittal based on the evidence. Instead he endorsed the principle of detention espoused by the chief justice and attorney general, even though Lord Kenyon offered that he only had the authority to remand Hadfield back to Newgate. Kenyon hastily added, however, that "means will be used to confine him" (1356). Mr. Garrow, one of the attorneys for the prosecution who until now had remained silent, suggested that if the jury would state in their "verdict the grounds upon which they give it, . . . there would be a legal and sufficient reason for [Hadfield's] future confinement" (1356).

The jury never left the box. After only a few moments they presented the verdict: "We find the prisoner is Not Guilty; he being under the influence of insanity at the time the act was committed" (1356). This was probably not the first time a British or American jury had attached an explanation to the verdict of not guilty in an insanity case, but it was to have an enormous impact on the disposal of those defendants who would be found, in the soon-to-be-abridged phrase, "not guilty by reason of insanity."

The trial of James Hadfield for the attempted assassination of King George III took less than six hours. By late afternoon he was back in his cell at Newgate.

VI. THE AFTERMATH

Although Erskine had persuaded the court to accept delusion as a valid defense of insanity, the Hadfield case failed to establish viable legal precedent.[16] This is probably because the verdict can best be explained by the court's acceptance of the *physical* cause of Hadfield's mental disorder and not by the

[15] The chief justice presumably meant that if he followed the rules, Hadfield would be acquitted and entitled to immediate release.

[16] The defense of "delusion" did not figure prominently in subsequent cases until the trial of Daniel McNaughtan in 1843.

force of the legal or medical arguments. While standing in the dock, Hadfield must have appeared a pathetic and lonely figure. Anyone who saw his badly disfigured face or examined the exposed membrane of his brain must have felt tremendous sympathy for the man.

Unlike the verdict in the case of Daniel McNaughtan which was to follow forty-three years later, the acquittal of James Hadfield did not create a public outcry. After all, Hadfield had not actually injured the king (McNaughtan killed Edward Drummond, Sir Robert Peel's private secretary), and so his treasonous assault did not engender as much fear or public antagonism. Certainly, Chief Justice Kenyon's statement that the king's would-be assassin would be disposed of properly helped to calm public concern. Moreover, McNaughtan was believed by many to be a political criminal who feigned insanity in order to escape the stern hand of justice;[17] whereas Hadfield's insanity was accepted as entirely legitimate by all those who knew the severity of his wounds to the head. Hadfield had been discharged from the military service due to insanity, and he had been receiving a pension from the Chelsea Hospital. There was no overwhelming desire on the part of the public to make certain that he paid with his life for his crime.

Nonetheless, Hadfield's acquittal caused considerable judicial concern since the law's power over him remained unclear. At the conclusion of the trial, the attorney general had told the court that "It is laid down in some of the books, that by the common law the judges of every court are competent to direct the confinement of a person under such circumstances" (1355-56). However, Chief Justice Lord Kenyon, who had experience in these matters, was of the opinion that he only had the authority to remand Hadfield back to Newgate Prison, where other arrangements would have to be made if the prisoner were to be confined further (1356).

The procedure for the disposal of James Hadfield was not mandated by the Statutes of the Realm; rather it was governed by the practices of judges and courts (Smith, 1981: 21). Legally, the proper way to confine James Hadfield was for the Crown to take him before two justices of the peace, who could order his detention as a dangerous lunatic under the Vagrancy Act of

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[17] There is considerable evidence to suggest that Daniel McNaughtan was a Chartist who attempted to assassinate the Tory prime minister, Sir Robert Peel, in order to advance his political program of universal male suffrage (Moran, 1981: 41-59).

1744. The act provided the justices with the authority to lock up or chain dangerous lunatics in "some secure place," and to seize their property in order to pay for the cost of securing and curing them (17 Geo. 2, c. 5).[18] However, under the law Hadfield could only be confined until he recovered his senses. Since Hadfield was regarded as perfectly sane on all matters except religion and royalty, the subjects of his delusions, it was possible that he would be released during one of his lucid intervals. Although this was common practice, especially for pauper lunatics housed at the expense of local parishes, the authorities certainly would have found another way of detaining James Hadfield.[19]

The Crown did not choose to bring James Hadfield before two justices of the peace. According to the Treasury Solicitor's Papers, Hadfield was confined initially on the authority of the precedent established in the case of John Frith (1790) (T. S. 11/223/030250).[20] Frith, who believed himself to be St. Paul, was arraigned for throwing a stone at the coach of George III. Prior to his trial, Frith was examined by the physician to the king's household and determined to be mad (Macalpine and Hunter, 1969: 313). On the day set for his trial, Lord Kenyon conducted an inquest of office. He empaneled the twelve jurors who had been assembled to try the case. After hearing the evidence of Frith's mental condition, the jury said that they were of the opinion that John Frith was "quite insane" (K.B. 33/8/3/29 030238). Kenyon pronounced him unfit to plead and remanded Frith back to Newgate with the understanding that he would be released once arrangements had been made to confine him elsewhere as a lunatic (T.S. 11/223/030250).[21]

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[18] The act itself applied only insofar as it did not abridge the prerogative of the king, or the power of the lord chancellor, or lord keeper, or commissioners of the great seal of Great Britain. In addition, the act could not prevent a friend or relative from placing a lunatic under his own care and protection. Nor did it state specifically what was to happen if the prerogative of the king conflicted with the right of a friend or relative.

[19] When the formal mechanisms did not appear adequate to detain mentally ill defendants who might pose a danger to the community, informal mechanisms were usually employed (Dershowitz, 1974).

[20] The case of Robert Walcot was also cited as precedent. After having been found guilty on a plea of insanity, Walcot was thought to be too dangerous to be released. He was ordered to be taken before two justices of the peace to be dealt with "according to law" (K.B. 33/8/3/29 030238). Presumably, this meant under the Vagrancy Act of 1744.

[21] It was odd that the treasury solicitor should cite the case of John Frith as a legal precedent since no courtroom decision was ever made concerning Frith's guilt or innocence. (In 1877, Dr. D. Nicholson reported in the *Journal of Mental Science* that John Frith was tried in 1792 and found insane. There is no record of this, however, and it appears that Nicholson was mistaken.) The rationale for the authority to detain a person unfit to plead was that

With the law in such a state of disorder, Hadfield's acquittal became the occasion on which the procedures for dealing with criminal lunatics were formalized by statute. Within four days of Hadfield's acquittal, the attorney general had prepared a bill "regulating trials for high treason in certain cases [murder, or attempted murder of the king], and for the safe custody of insane persons charged with offenses" (*Parliamentary History of England*, 1819: 389). In introducing the treason part of the bill, the attorney general said simply that his aim was to make the attempted murder of the king an ordinary felony. This meant future Hadfields would not be granted the special rights afforded defendants in political trials. Referring to the second part of the bill, which provided for the continued confinement of accused criminals acquitted by reason of insanity, the attorney general said that it was important that a statute should provide for the post-acquittal incarceration of those found not guilty due to a derangement in their intellects. Several murderers, he noted, had been allowed to go free after receiving a verdict of not guilty on account of insanity (*Parliamentary History of England*, 1819: 390).

But while the bill provided the courts with the statutory power to confine insane offenders, it contained almost nothing about the rules or conditions that should govern their confinement. In an editorial, *The Times* of London, after expressing reservations about the lack of legal safeguards contained in the bill, concluded that sweeping powers were needed because all cases could not be anticipated (*Times*, July 1, 1800: 2).[22]

On the same day it was submitted to the Commons, the bill was read a first time. On the next day, it was read a second time, and the committee was empowered to divide the bill into two separate bills for the sake of simplicity (*Parliamentary History of England*, 1819: 391). This perhaps explains why legal historians and other scholars have overlooked the direct connection between the loss of legal rights of Englishmen in political trials and the origin of the plea of insanity as a special verdict. The connection highlights the concern for protection

unless he had the mental ability to understand the proceedings against him, and to conduct his own defense or assist in the preparation of it, he should not be tried (Smith, 1981: 20).

[22] Mr. Nicholls, a Tory M.P., was the only one to object to the treason section of the bill, saying that he believed it unwise to increase the difficulty of defense against charges of treason (*Parliamentary History of England*, 1819: 391). The *Albion* agreed, arguing that it was not necessary for Englishmen to surrender their political rights in order to safeguard the king (*Albion*, July 1, 1800: 1).

and social order that has always been central to the history of the insanity defense.

On July 11, 1800, the bills were again brought up in the Commons. Only seven or eight members were present to debate the new law that created the legal mechanism that still regulates and controls the disposition of criminal lunatics in the Anglo-American world. Mr. Windham, the secretary of war, began the debate by noting that some punishment ought to follow an attempt on the life of the king, even if the assailant had been acquitted due to insanity. He acknowledged that it was "revolting" to punish an insane person, but offered in defense of his position the fact that all punishment, particularly capital punishment, was revolting (*Parliamentary History of England*, 1819: 392). "It is a well-known saying," he continued, "that a man should be punished, not because he had stolen a horse, but that horses might not be stolen" (*Parliamentary History of England*, 1819: 392). Madmen, Windham continued, were capable of being influenced by fear of punishment, perhaps more so than ordinary men. In cases of insanity, he continued, the focus of the trial should be changed from the determination of the guilt or innocence of the defendant to whether the defendant could have been influenced by punishment. In Lord Ferrers' trial, according to Windham, the question for the jury to decide should not have been whether Lord Ferrers could tell the difference between "moral right and wrong," but whether "he was in a state in which he could feel a dread of punishment" (*Parliamentary History of England*, 1819: 392).

Mr. Nicholls, a Tory M.P., protested strenuously against the manner in which the secretary of war had characterized the purpose of the criminal law. He said that there never was a time when the law punished madmen. In order for the law to hold a person responsible for committing a crime, he must be capable of forming a criminal intent. *"Actus non est reus nisi mens sit rea"* (*Parliamentary History of England*, 1819: 393): no crime without a criminal intent. Mr. Nicholls concluded by saying that since punishment of a madman would not prevent crime, he hoped that the House of Commons would never again hear such opinions (*Parliamentary History of England*, 1819: 393).

The only other person who spoke was the solicitor general, Sir William Grant, a member of the prosecution team in Hadfield's trial. He said that in some cases in ancient law madness did not excuse a person from punishment. Grant

referred to Lords Coke and Hale, whom he said supported the notion that the life of the king was so important that it needed every possible protection that the law could provide. "Killing the King was treason, from whatever quarter it proceeded" (*Parliamentary History of England*, 1819: 393). He then agreed with the secretary of war that there were few people so mad as not to be influenced by the fear of punishment (*Parliamentary History of England*, 1819: 393).

The act passed into law without further debate. No one else spoke either for or against the new law. The Treason Bill passed without discussion.

VII. AN ACT FOR THE SAFE CUSTODY OF INSANE PERSONS CHARGED WITH OFFENSES

The Criminal Lunatics Act of 1800 contained four separate sections. The first section, made retroactive to apply to Hadfield, created the special verdict of insanity. It stated that if a person charged with treason, murder, or felony (not misdemeanors) was acquitted on account of insanity, the court shall order him kept in strict custody until "His Majesty's Pleasure be Known" (39 and 40 Geo. 3, c. 94). This maintained the tradition that the king embodied the justice and mercy of the realm. It meant that an insanity acquittee would be confined in a jail or asylum until George III or the secretary of state signed a warrant for his release. In theory, an insanity acquittee would be released from his place of confinement when he was deemed no longer dangerous to himself or others. In practice, it was a life sentence. Since those acquitted by reason of insanity were confined for retribution as well as treatment and societal protection, few, if any, were ever returned to the community. As far as can be determined, from the time the statute was enacted until his death twenty years later in 1820, George III never once let his pleasure be known.[23]

The second section of the act applied to persons indicted for any offense, including misdemeanors, who, upon arraignment, were found to be insane. This provided the court with the authority to keep such persons in strict custody until "His Majesty's Pleasure be Known." This section also included persons who upon trial appeared to be insane, as well as persons brought before any court to be discharged for want of prosecution. Nigel Walker has suggested that this part was

[23] From 1800 to 1820 there were approximately thirty insanity acquittals (calculated from data presented by Eigen, 1983: 7-9).

probably designed to foil the defendant, who might escape state prosecution by having a friend bring a private prosecution with the expressed purpose of deserting it (1968: 80). There was, however, another more important potential loophole, brought home by the situation with respect to Bannister Truelock, that it was designed to close. Under a strict reading of the common law Truelock should have been set free. Because of the two witnesses requirement for conviction in treason cases, Truelock could not be successfully prosecuted for his alleged part in the attempted assassination of George III. The government had only one witness against him, namely, James Hadfield. Whitehall usually detained apparently insane and dangerous people like Truelock through an irregular and informal system of detention. The new unfit-to-plead or incompetent-to-stand-trial statute was designed to regularize that system. It was to have a result on the disposition of mentally ill defendants far more dramatic than the insanity defense. Today most obviously mentally ill defendants are sorted out on arraignment long before they ever get to trial (National Institute of Mental Health, 1974).

A third section denied bail to "persons discovered and apprehended under circumstances that denote a derangement of mind, and a purpose of committing a crime" (39 and 40 Geo. 3, c. 94). If a justice of the peace has committed a person as a "dangerous person suspected to be insane," the person so committed cannot be bailed except by two justices of the peace, one of whom must be the judge who issued the original warrant, or by one of the several high authorities mentioned in the bill, i.e., by a justice of the King's Bench, the lord chancellor, the lord keeper, or the commissioners of the great seal. As Nigel Walker has observed, this sweeping power could be exercised without the requirement that the justices have medical evidence to support their finding of mental derangement (1968: 80).

Finally, the fourth section gave the Privy Council or one of the secretaries of state the authority to detain persons appearing insane who endeavor to gain admittance to His Majesty's palaces or places of residence. Such persons could be kept in custody until their insanity could be inquired into by a jury empaneled for that purpose. This section provided for what the staff at Bethlem Hospital used to call the Green Cloth patients—those sent there by the Board of Green Cloth. The board was mainly responsible for the financial affairs of the

royal household, but it also functioned as a court within twelve miles of the sovereign's residence (Allderidge, 1977: 103).

VIII. CONCLUSIONS AND IMPLICATIONS

Our examination of the case of James Hadfield and Bannister Truelock has yielded some fresh insights into the origin of the modern insanity defense. The rediscovery of the historical and political relationship between the law of treason and the defense of insanity places the special verdict not in the context of humanitarian reform, but in the context of a social control policy designed to limit the rights of defendants charged with criminal offenses. This largely unnoticed history forces us to reevaluate the ways in which we understand the purpose and function of the defense of insanity in our criminal justice system.

From the debate in the Commons it is evident that the special verdict of insanity was created to provide the court with the legal means to detain those acquitted on a plea of insanity. The attorney general, Mr. John Mitford, who drafted the bill, and the solicitor general, Sir William Grant, who strongly supported it, were concerned with the punishment of the insanity acquittee from both a moral and social policy point of view. They did not want an individual who had been found not guilty on account of insanity to escape the stern hand of justice. They believed that the insane could be deterred by fear of punishment. Although it was not expressed during the debate, there can be no doubt that incapacitation was also an important motive for the bill. There was no expressed concern for the welfare of the acquittee, no humanitarian interest in the plight of the mentally ill defendant. Just good deterrence theory!

The passage of the Criminal Lunatics Act of 1800 was motivated by the desires for retribution, deterrence, and incapacitation of criminally insane defendants. The act formalized the detention of alleged offenders otherwise beyond the statutory reach of the criminal law. No longer was a defendant found not guilty by reason of insanity entitled to his freedom. No longer was it necessary for a defendant to be convicted of a crime before the criminal law could order his confinement as a dangerous criminal lunatic. The right of bail could be readily denied to those found unfit to plead or incompetent to stand trial. And, in Hadfield's case, no longer did it seem necessary that the law in question be enacted prior to the commencement of the criminal act or trial.

The special verdict of insanity fixed a potential security problem in the criminal law. Although James Hadfield was acquitted of high treason, he spent the last forty-one years of his life locked in a cell.[24] Bannister Truelock was never even tried for a criminal offense, yet he spent the last thirty years of his life in confinement.[25] As Nigel Walker has observed: Hadfield's acquittal became an "acquittal in name only" (1968: 81). The inability of the public to comprehend fully the meaning of the words "not guilty" when employed in conjunction with the special verdict has been for almost two centuries a source of confusion and misunderstanding

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[24] On October 10, 1800, James Hadfield entered Bethlem Hospital, Moorfields. On April 3, 1802, *The Times* of London reported that he murdered a fellow patient, Benjamin Swain, by knocking him on the head. A hospital subcommittee, however, ruled that Swain died a natural death in an apoplectic seizure. Two years later (July 27, 1802), James Hadfield, along with another patient, John Dunlop, escaped from Bethlem. Both men were captured in Dover, waiting to cross the channel into France.

Hadfield was taken to Newgate Prison, where he remained until 1816, when Bethlem opened a criminal department. By now, he had grown weary of his confinement. He told E. J. Littleton, an M.P., that he "wished he had suffered at the time. The loss of liberty . . . was worse than death" (Aspinall, 1962-70: 350). Several times Hadfield petitioned the House of Commons for his release. In 1823, a staff member noted that he had shown no symptoms of insanity for a very long time (Anonymous, 1823: 18).

While in Bethlem, Hadfield received a six pence per day pension from the army. He sold straw baskets to visitors, wrote poetry, and painted in watercolors. Once he asked for "liberty to hold communications with a female through the railing." Permission was denied due to the "great indecency of his conduct on former occasions" (Bethlem Royal Hospital Archives, *Sub Committee Minutes*, June 15, 1826).

On January 23, 1841, at 11:00 p.m., James Hadfield died of tuberculosis at the age of sixty-nine (H.O./20/13).

[25] Under the treason statutes, Bannister Truelock could not be prosecuted for his part in the attempted assassination. Since the unfit-to-plead section of the new act had not been made retroactive, Truelock was dealt with under the old informal system. On December 20, 1800, he entered Bethlem with a letter from the duke of Portland stating that if he were not "thoroughly cured" within a year, the king wanted him placed on the incurable list and detained indefinitely (*Bethlem Hospital Case Notes*, 1800-1: 4).

While in Bethlem, Truelock was kept separate from the other inmate-patients. The hospital staff felt that his religious and political beliefs might promote a general disruption among inmates. However, he had the privilege of going to London with a porter to purchase leather for his trade as a cobbler. On December 8, 1821, Truelock escaped to London to secure the publication of his signs and prophesies. He failed. Before returning to Bethlem of his own accord, Truelock spent the night with a "vulgar, Billingsgate, and apparently abandoned woman who frequently came to visit him in the hospital" (Anonymous, 1823: 22).

Truelock once tried to bribe Dr. Edward Thomas Monro with a five pound note for his release. Dr. Monro noted in his casebook that Truelock realized that his religious ideas were the barrier to his release (Bethlem Royal Hospital Archives, *Case Book*, December 1816). Truelock was eighty years old when he died in Bethlem on November 2, 1830. He always signed his prophesies, "Bannister Truelock, 'Madman'."

concerning the purpose and function of the insanity defense.[26]

The confinement of James Hadfield and Bannister Truelock was not controlled by the Bethlem Hospital doctors, who did not have the authority to order the release of criminal patients. Because the king embodied the justice and mercy of the realm, that power was reserved for George III. Indeed, until the criminal department of Bethlem Hospital was opened in 1816, most of the dangerous lunatics were imprisoned in local jails. Those subsequently confined in Bethlem were supervised by the hospital staff, but they were now placed under the authority of the newly created home secretary. The criminally insane had to wait until Broadmoor opened its doors in 1864 before they had their own secure place of confinement.

If the place of confinement for criminals and criminal lunatics was likely to be the same, the special verdict of insanity did save the defendant from the death penalty. During the nineteenth century insanity would become a defense of last resort for defendants charged with capital offenses. But it is mistaken to suggest, as many scholars have done, that this was its original purpose. The special verdict of insanity was designed to deter the mentally ill through the fear or dread of punishment. It is perhaps one of the great ironies of legal history that such a device should come to be regarded as an important loophole through which manifestly guilty defendants have often escaped.

In closing, it might be said that the trial of James Hadfield marked the abolition of the insanity defense, not its origin, since in most jurisdictions a successful defense of insanity now leads to automatic confinement for an indefinite period of time.

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[26] The form of the special verdict remained "not guilty by reason of insanity" until the Trial of Lunatics Act of 1883 changed it to "guilty but insane." This was done to appease Queen Victoria, who felt that the law might have a deterrent effect if the insanity verdict sounded more like a finding of guilt (Walker, 1968: 189). The law continued to regard the special verdict as an acquittal even to the extent that a defendant could not appeal against it. In 1964 the Criminal Procedure Act restored the form of the special verdict to "not guilty by reason of insanity."

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