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THE STATE TRIALS OF LOUIS XVI & MARIE-ANTOINETTE

GERARD CARNEY*

Marie-Antoinette, born in Austria in 1755, at the age of 14 was married to the 15 year old Dauphin of France, the future Louis XVI. In January 1793, Louis was tried and executed. Nine months later, Marie-Antoinette was also tried and executed. This account compares the fairness of their separate trials. Louis received the fairer trial, even fairer than that of the English king, Charles I, a century earlier, whose trial is briefly outlined at the end of this account. At least in the trial of Louis, there was an attempt to pursue the rule of law, assisted by the distinguished role of his three defence counsel. The two defence counsel of Marie-Antoinette also deserve to be remembered for their role.

INTRODUCTION

The most striking feature of the separate trials of Louis XVI and Marie-Antoinette is how different they were in their legal process. Louis was tried by the elected representatives of the people, the National Convention, without a prosecutor or a judge. Marie-Antoinette was tried nine months later by a special tribunal constituted by at least three judges and a jury. He was tried as their former head of state; she was tried as a common citizen. Yet both demonstrated enormous courage, enduring the humiliation of their respective trial and execution with great dignity. Had the close vote on the execution of Louis gone the other way, Marie-Antoinette would probably have been spared a trial.

Each trial was undeniably a show trial to affirm their guilt and to punish. Yet both Louis and Marie-Antoinette seemed to harbour a modicum of hope that their own sense of innocence might redeem them. Apart from both trials being biased, each denied procedural fairness with inadequate notice of the charges and no reasonable period of time to prepare a defence.

Despite these obvious deficiencies, each trial attempted to present a form of legal process to ensure its legitimacy across France and throughout the western world. The National Convention was particularly concerned in relation to Louis' trial to avoid the

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criticism of the English trial of Charles I over a century earlier. A brief comparison of the trials of Charles I and Louis XVI is included at the end of this article.

Significantly, both French trials allowed the engagement of defence counsel; a facility of which Charles I refused to avail himself. The French lawyers, who offered to serve as defence counsel or who accepted the invitation to do so, deserve to be celebrated universally as outstanding models of professional commitment and integrity. Especially so, given that they appear not to have been royalists, seeking a return to the ancient regime. Rather, they believed that Louis and Marie-Antoinette were entitled to due process. Their performance, assisted no doubt by the dignity of their illustrious clients, should inspire future generations of lawyers.

These trials were probably the most significant public events to occur in the western world since ancient times; certainly the most widely publicised. Louis' trial was by no means inevitable after the fall of the Bastille on 14 July 1789. Subsequent events unfortunately precipitated his trial at the end of 1792. It is not possible to identify in this paper all those events nor the complex history that preceded the revolution itself. A mere outline is possible here.

BACKGROUND

Essential to understanding Louis' trial was his inability to adapt to the dramatic transformation from an absolute monarchy to a constitutional monarchy. While he initiated this process by convening for the first time in over 175 years the Estates General at Versailles for 3 May 1789, he lacked the political acumen and flexibility to navigate the monarchy successfully through the inevitable journey of change this unleashed. The vocal opposition of his wife exacerbated the turbulence which led to both their trials.

Louis lost the ability to navigate at the outset, having to respond to events as they unfolded both within the National Assembly and outside. Most significant was that the members of the first Assembly were elected to represent all the regions of France. This nationwide election, the most significant democratic event in history, albeit with a limited franchise, brought together the most talented cross section of the French people. As these representatives were ineligible to stand for re-election two years later, subsequent assemblies probably never matched the talent of the Assembly of 1789.

While outside events in 1789 were more prominent, in particular, the fall of the Bastille on 14 July and the women's march on Versailles on 5 October, the deliberations of the National Assembly had far more profound consequences. It began drafting the *Déclaration des droits de l'homme et du citoyen* (Declaration of the Rights of Man and of the Citizen) on 20 August. After moving to Paris, following the transfer of the royal family and the court to the Tuileries on 6 October, the National Assembly met for the first time in Paris on 19 October in the Archevêché where they nationalized church

property and excluded any deputies serving in the ministry. The Assembly then moved to the Manège on 9 November 1789.

During the next 18 months, the National Assembly devoted itself to drafting a constitution for a constitutional monarch. While Louis appeared to concede to this process, his true feelings opposed it. He remained hopeful that the process of constitutional reform would be thwarted either internally or by foreign assistance. His relative discreetness was undone with the royal family's flight to Varennes on the night of 20 June 1791. His position as King was suspended by the National Assembly as it quickly concluded the drafting of the new constitution. Louis attempted to rectify his position by formally accepting his limited role under a constitutional monarchy on 14 September 1791.

Nonetheless, suspicion of his insincerity only increased over the next 12 months, particularly his support of a foreign invasion to restore him as an absolute monarch. France declared war against Austria on 20 April 1792. Finally, what lit the fuse which destroyed the monarchy was the attack on the Tuileries by a large armed mob on 10 August 1792. This politically orchestrated attack massacred Louis' Swiss Guards and many others. Just before the mob ransacked their apartments, the royal family fled to the safety of the nearby Manège where the Legislative Assembly was meeting, leaving behind incriminating papers. From this point, they became prisoners in The Temple. In just over a month, the National Convention¹ abolished the monarchy on 21 September 1792 and so had to draft another constitution for the First Republic. At the same time, the future of the royal family had to be determined.

PREPARATION FOR THE TRIAL OF LOUIS XVI

On 1 October 1792, the National Convention, on the motion of Marat, established a Commission of Twenty-Four to investigate the State papers seized from the Tuileries with a view to bringing Louis to trial. At the same time, Mailhe reported to the Convention that its Committee of Legislation was investigating bringing Louis to trial and intended to submit its report within a week. Meanwhile, he warned:

Although this question should not meet with any difficulty, yet we ought to treat it with the utmost solemnity, not for the sake of Louis the XVIth, but to give a striking example to all nations. You know how much the English have been reviled, not for having brought *Charles Stuart* to the scaffold, but for having been too precipitate in judging him, and having evaded all forms. It is because Louis the XVIth is really guilty, that we ought to be more solemn in his judgment.²

¹ The assembly of elected representatives changed its name several times before finally becoming the National Convention after 10 August 1792 during the period of the First Republic from 20 September 1792 to 26 October 1795.

² Thompson at 5.

Translations of the Trial of Charles I appeared in booksellers outside the Manège and in the Palais-Royal. One of the oldest deputies, Rühl of Strasbourg, advised members to read Milton's *Defence of the English People*.

Valaze's Report of the Commission of Twenty-four was tabled on 6 November with findings of the King's corruption based on seized papers which proved that he had supported emigres, funded private militia, and promoted Prussia's declaration of war against France. The National Convention decreed the report to be published. In supporting this motion, Danton observed: "You *must* justify to the universe, and to posterity, the judgment you *must* pronounce upon such a perjured and tyrannical King."³

The Legal Opinion of Mailhe "one of the ablest lawyers of the Gironde"⁴ was tabled the following day on 7 November which addressed the fundamental issue: did the Constitution permit the King to be tried by the National Convention?

An examination of the relevant provisions of the Constitution of 1791 was not encouraging. According to Title III Chapter II Sect I Art II: "The person of the King is inviolable and sacred." And this immunity was lost under Art VIII only if the King abdicated: "After abdication ... the king shall rank as an ordinary citizen, and can be accused and judged as a citizen for acts committed subsequent to his abdication." Abdication was deemed to occur under Art V if the King failed to take the oath of allegiance to the nation and the law within one month of being asked to do so. Two further situations, by which the King was deemed to abdicate, were added after the flight to Varennes: under Art VI "if the king puts himself at the head of an army, and directs its forces against the nation, or if he fails formally to oppose such an enterprise executed in his name"; and under Art VII "if the king left the country, and failed to return within a time fixed by the legislature".

Those defending Louis XVI argued that he had not abdicated, and so remained inviolable; or if he had abdicated, although now an ordinary citizen, he remained immune for anything done before his abdication.

Mailhe's Report tried to circumvent these grounds by arguing that the inviolability in the Constitution was only there to accord the executive independence from the legislature; it did provide inviolability from the people – given that there is no reciprocity between the executive and the nation; the nation is sovereign without a constitution and a king: "It held its sovereignty from nature; it could not alienate it for a single moment."⁵ His Report also rejected any defence that Louis was being tried for a crime which did not exist at the time in breach of Article VIII of the *Declaration of the*

³ Ibid 18.

⁴ Ibid 325.

⁵ Ibid 20.

Rights of Man and of the Citizen (ie “no one can be punished but in virtue of a law established and promulgated previous to the crime, and legally applied”⁶: for he is to be tried under the penal code for treason.

Relying on “the great principles of natural and social justice”,⁷ Mailhe’s Report also appealed to the deputies’ unique role in history:

Do you not see all the nations of the universe, all present and future generations, crowding around you, and waiting with respectful and silent impatience, that you should inform them if he who was originally charged with causing the laws to be executed, could ever make himself independent of those who made the laws; if royal inviolability has the right of destroying citizens, and subverting societies, with impunity; if a monarch is a God whom we ought to bless for his blows, or a man whom we ought to punish for his crimes?⁸

The Report’s conclusion required some degree of procedural fairness:

1st Louis the XVIth can be tried.

2nd He shall be tried by the National Convention.

3rd Tree commissioners, chosen from the Assembly, shall be charged to collect all the papers, instructions, and proofs, relative to the crimes imputed to Louis the XVIth.

4th The commissioners shall terminate their report by an information, specifying the crimes of which Louis the XVIth is accused.

5th If this information is adopted, it shall be printed, and communicated to Louis the XVIth, and his defenders if he thinks proper to choose any.

6th The originals of these papers, if Louis the XVIth demands them to be communicated, shall be carried to the temple by twelve commissioners, after copies of them have been taken, to remain at the Archives; and afterwards carried back to the National Archives by them.

7th The National Convention shall fix the day on which Louis the XVIth shall appear before them.

8th Louis the XVIth, either by himself or his advisers, shall present his defence in writing, and signed by him, or verbally.

9th The National Convention shall give judgment by a majority of votes.

The National Convention debated these issues over the next two months. Most deputies wished to speak, and those who were unable to, published their views by pamphlet. Details of these debates, along with Mailhe’s Report, were published throughout France and translated abroad. Public pamphlets proliferated across a wide spectrum of opinion as to whether the King should be tried, ranging from doing

⁶ Ibid 21.

⁷ Ibid.

⁸ Ibid 21-22.

nothing, to executing him immediately - kingship being a crime in itself.⁹ Even the Paris Commune clamoured for his trial, lest they be accused of poisoning him!

On 20 November, Minister Roland was told by a locksmith, Gamain, of a secret safe (*armoire de fer*) in the Tuileries which Louis XVI commissioned six months earlier. Roland discovered over 650 pages of the King's private papers which increased the pressure for his trial, containing damning evidence of the arrangements for the flight to Varennes, instructions to refractory priests, correspondence between the Bourbon minister, Calonne, and British Prime Minister William Pitt the Younger, details of Mirabeau's propaganda advice, and support for bribing leaders Pétion, Santerre and others before the uprising of 10 August.¹⁰

On 21 November, Thomas Paine delivered his opinion as a member of the National Convention by letter as he was unable to speak French. He argued that to protect the new French republic and to liberate all Nations, Louis should be tried in order to expose the European monarchical conspiracy against the liberty of the people.¹¹

On 22 November, a few incriminating letters found in the Tuileries safe were tabled which showed that "Louis advised the massacre of Nancy".¹²

COMMENCEMENT OF LOUIS' TRIAL



The National Convention decided on 3 December that it would try Louis. On 6 December, it appointed the Commission of Twenty-One, composed of members of the National Convention, to prepare the case against him. This Commission acted like a grand jury, although its members later sat in judgment as well. The principal drafter

⁹ Ibid 327.

¹⁰ Ibid.

¹¹ Trapp at 35-37.

¹² Thompson at 38-39.

of the Act of Accusation (*acte énonciatif*) was Jean Lindet, a lawyer from Normandy. The charges of treason and duplicity focused on the chronology of events, commencing with Louis summoning the Estates-General in 1789 until the attack on the Tuileries on 10 August 1792. Once the Act of Accusation was read on 10 December to the National Convention, it decreed that Louis be brought before it the next day to answer the charges.¹³

Ignorant of the specific charges he was to answer, Louis was brought from The Temple in Mayor Chambon's coach to the bar of the National Convention on 11 December for three hours of questioning by the President of the House, Bertrand Barère.¹⁴ This interrogation was held in public proceedings witnessed by packed public galleries. The Act of Accusation was first read in full before Louis was interrogated about each of its charges. Being unaware until this moment of the specific accusations, Louis was unable to prepare for this interrogation. Nor was he assisted by any advisor or counsel. Despite these denials of procedural fairness, he maintained his calm throughout the interrogation, responding to each allegation, until aroused by the accusation that he was responsible for shedding French blood, which he passionately denied. When asked at the conclusion of the interrogation if there was anything he wished to add, Louis requested a copy of the charges and the documentary evidence relied on, as well as the right to choose his defence counsel. He returned to The Temple at 6.30pm.

SELECTION OF DEFENCE COUNSEL

Louis's request for counsel was agreed to the following day by the National Convention. A commission led by Alexis Thuriot visited Louis at the Temple and returned with two names.¹⁵ His first nominee, a distinguished lawyer who had defended Cardinal de Rohan in the Diamond Necklace affair in 1785, Guy-Jean-Baptiste Target, declined ostensibly on account of his age at 59 and infirmity. Louis' second nominee, François-Denis Tronchet, accepted as a matter of duty, despite being seven years older than Target. Tronchet was joined at the outset by the distinguished former Minister and judge, Lamoignon de Malesherbes, who volunteered at 72 to serve his former master as a matter of duty.

By 17 December, Tronchet and Malesherbes sought the assistance of a brilliant Bordeaux lawyer of 44 who had recently moved to Paris, Raymond de Sèze.¹⁶ The much stronger voice of this younger advocate was needed to convince the large assembly of over 700 members of the National Convention of his client's innocence.

¹³ Jordan at 101-108.

¹⁴ Trapp at 54-67.

¹⁵ David P Jordan, *The King's Trial (Louis XVI vs The French Revolution)* (Uni of California Press 1979) at 117.

¹⁶ Jordan at 124-5 notes he survived imprisonment during the Terror to retire from public life until the Restoration when he was highly honoured until his death at 80.

With only ten days to prepare the defence to the Act of Accusation, all three counsel worked daily with Louis, reviewing numerous documents sent by the Convention, seeking access to those missing, and planning their strategy. De Sèze worked through the last four nights to prepare his three hour speech, the *plaidoyer*. Renowned for his passionate perorations, de Sèze's first draft was rejected by Louis as too rhetorical and passionate: "I do not want to play on their feelings". As Jordan puts it: "Louis was willing to argue for his life, but not beg for it".¹⁷

THE TRIAL BY THE NATIONAL CONVENTION

On 26 December, Louis left the Temple in the Mayor's coach at 9 am accompanied by the Mayor of Paris, Nicholas Chambon, for the National Convention. The Convention met in a large vaulted chamber, the Salle du Manège, opposite the Tuileries Palace, which had been the royal equestrian academy. With the political groups assembled to the right and left of the President's desk, those terms became political descriptors. Its bear-pit atmosphere, similar to the UK House of Commons, and its poor acoustics offered not the ideal venue for mounting a defence in a state trial.

Before Louis arrived, the Convention had resumed at 9 am to learn that a set of keys had been discovered in the possession of one of Louis' former valets, Thierry, one of which opened the secretive armoire de fer.

The formal proceedings of the trial occurred this day before a packed public gallery, with no prosecutor, no jury other than the 721 members present of the National Convention, and no judge other than the President chairing the proceedings who changed every couple of days. There were no witnesses, other than Louis himself, who said nothing, leaving it to de Sèze to deliver the formal defence over the next three hours.

At 10 am the President, Defermon, warned the members and the public against any "murmur or approbation",¹⁸ before admitting Louis and his three counsel to the bar. Louis entered wearing the same yellow coat he wore on 11 December, "serene and undaunted"¹⁹:

The President: "Louis, the National Convention has decreed, that you should be finally heard this day, and produce your means of defence, either by yourself or counsel. ... Be seated."

Louis: "My counsel will read you my defence."²⁰

¹⁷ Jordan at 128.

¹⁸ Trapp at 85.

¹⁹ Ibid.

²⁰ Ibid.

After bowing to the Convention, de Sèze opened the defence, addressing all the deputies as “Citizens, Representatives of the Nation”. Speaking without interruption for over two hours, he began by identifying the unique context:

The moment is come at last, when Louis, accused in the name of the people of France, and surrounded by the counsel which humanity and the law have granted him, will cause his justification to be heard. The very silence which encompasses me, tells me that the day of prepossession has given way to the day of justice. The misfortunes of Kings have a certain something far more moving, and far more sacred, than the misfortunes of other men, and he who so lately occupied the brightest throne in the world, ought still to excite an interest far more powerful. You have called him amidst you; he came hither with calmness and with dignity, strong by his innocence, supported by the evidence of the whole tenor of his life. He has disclosed to you his very thoughts, in discussing without preparation, without enquiry, charges which he did not foresee; making his defence, as it were, unawares. Louis could but tell you his innocence; I come to demonstrate it; I bring the proofs of it. I wish that this enclosure might grow more spacious, that the multitude of citizens who have imbibed the most fatal impression against Louis, might receive a contrary impression. Louis knows that Europe awaits with anxiety the judgment which you are going to pronounce: he knows that posterity must record it on some future day; he knows it, but only considers his contemporaries: we, like him, forget posterity, and only have in view the present moment.²¹

Since Louis rejected reliance on emotional pleas, his defence relied on two technical grounds. Although at the time it was criticized as lacking the passionate rhetoric de Sèze was capable of, his speech two centuries later is one of profound and elegant advocacy.

First he argued that the trial was unconstitutional because, as King, Louis was inviolable both before and after his acceptance of the 1791 Constitution. De Sèze cited Title III Chapter II which recognized that the King forfeited his inviolability, conferred by Art II, only if he was deemed to have abdicated under the following articles: Art V by refusing to take the oath or recanting it; Art VI by heading an army against the nation, or if he does not oppose by a formal act such an enterprise undertaken in his name; and Art VII by leaving the kingdom and not returning when invited to do so. None of these applied to Louis. And even if he were an ordinary citizen after abdicating, he would be entitled under Art VIII to a proper trial by a court of law. Instead, the members of the Convention “had constituted yourselves judges of an accusation brought by yourselves.”²²

Secondly, the Defence specifically addressed and rejected at least 18 separate charges in the Act of Accusation, alleged to have occurred since June 1789. The last two

²¹ Trapp at 86-87.

²² Trapp at 87.

deserve special mention. De Sèze admitted his own doubt of Louis in relation to the penultimate charge, Louis paying his life-guards at Coblenz: "I own that this charge made a painful impression on me; I could have suspected the faith of Louis – the pieces appeared clear to me."²³ But a misplaced letter exonerating Louis was revealed by de Sèze. The last charge, most serious, was that Louis was responsible for the massacre at the Tuileries on that "disastrous day of the 10th of August" that year. De Sèze commented: "Had we believed that Louis had committed the crimes with which he stands charged, you would not see us at this bar, to afford him the assistance of our candid veracity."²⁴ De Sèze referred to the conspiracy behind that attack as well known to the Convention.

De Sèze culminated the Defence with this appeal to history:

Louis ascended the throne at the age of twenty, and at the age of twenty he gave to the throne the example of character. He brought to the throne no wicked weaknesses, no corrupting passions. He was economical, just, severe. He showed himself always the constant friend of the people. The people wanted the abolition of servitude. He began by abolishing it on his own lands. The people asked for reforms in the criminal law ... he carried out these reforms. *The people wanted liberty: he gave it to them.* The people themselves came before him in his sacrifices. Nevertheless, it is in the name of these very people that one today demands ... Citizens, I cannot finish ... I stop myself before History. Think how it will judge your judgment, and that the judgment of him will be judged by the centuries.²⁵

As soon as de Sèze concluded, the President asked Louis if there was anything he wished to add. After requesting a fresh shirt for his exhausted and perspiration-soaked counsel, Louis concluded his defence with this brief statement:

Citizens,

My means of defence have just been exposed to you, I shall not renew them. In speaking to you, perhaps for the last time, I do declare to you, that my conscience reproaches me with nothing; and that my defenders have told you the truth. I was never afraid of having my conduct publicly enquired into; but my heart is rent at finding in the act of accusation, the charge of having wished to shed the blood of the people; and above all, that the catastrophes of the 10th of August are imputed to me. I own that the multiplied proofs which I had at all times given of my love of the people, and the manner in which I always conducted myself seemed to me sufficient to evince that I did not fear to expose myself to spare their blood, and to discard forever from me, such an imputation.²⁶

Louis then returned to custody in the Temple. Amid high strategy, the National Convention debated for the next week the questions to be decided and the order in

²³ Trapp at 97.

²⁴ Trapp at 98.

²⁵ Jordan at 135; cf the translation in Trapp at 99-100.

²⁶ Trapp at 100. Cf Jordan translation at 136.

which they would be resolved. On 14 January 1793, the Convention finally settled on three questions for its members to decide by open ballot: (i) Is Louis guilty?; (ii) Should their decision be referred to the people?; and (iii) What punishment does Louis deserve?

Voting began the next day on 15 January with most deputies declaring their position from the tribune. Others submitted their vote in writing which was read to the Convention. The first question - Is Louis guilty? - was easily resolved that day: 683 voted yes; 37 qualified their answer, most doubting their right to try the King; and 28 were absent. Most significantly, *not a single deputy voted not guilty*. The second question - Should the decision be referred to the people? - aroused considerable debate so that the result was not known until 10 pm that first evening: 425 voted no; 286 voted yes.

The third question - What punishment shall Louis suffer? – was adjourned to the next day, 16 January. This involved the longest and most vigorous debate of the trial which lasted all day before voting began that evening. The debate opened on the requisite majority. Suggestions of a two-thirds' or three-quarters' majority were rejected in favour of a bare majority after Danton convinced the deputies that that had been sufficient to approve the war and the republic.

According to Trapp, a “nominal call” was held after 7 pm on 16 January and continued for over 24 hours until each deputy mounted the tribune to declare his vote. No member was permitted to leave the Hall until all votes were declared. This description by Mercier of the public gallery sets the scene:

The end of the hall ... was transformed into a sort of lounge, where ladies in charming *negligées* were eating ices and oranges, drinking liqueurs, and receiving the compliments and greetings of their friends. The public galleries were full of foreigners, and people of every class, who drank wine and brandy as if it had been a tavern. Bets were offered and taken in all the neighbouring coffee-houses.

As does Mercier's account of the deputies who were denied the pleasures of the public gallery, having to endure an all-night sitting on the most contentious issue of the trial – regicide:

The faces of those who went to the tribune were rendered more funereal by the pale gleam of the lights, as in a slow and sepulchral voice they uttered the one word, Death! Here were deputies calculating whether they would have time for dinner before they gave their vote. Here were women pricking cards with pins, to count the votes. Tired deputies fell asleep, and had to be woken up to vote.²⁷

The first vote, cast by Mailhe, caused a sensation as he qualified death with a possible reprieve. Referred to as the Mailhe Amendment, this complicated the options which ranged from exile, imprisonment, to death. The rigorous debate, sparked by the

²⁷ See Thompson at 332 citing Mercier's first hand account.

differences between the Jacobins and the Girondans, generated profound philosophical views on the nature of democracy and the legitimacy of a monarchy. Robespierre pronounced: "I do not recognize a humanity that massacres the people and pardons despots" while Louis' cousin, Philippe-Egalité, declared: "Those who attack the sovereignty of the people deserve death."²⁸

Voting continued through the evening of the 16th and throughout the next day until about 9 pm on 17 January when the tallies were declared. These vary between historians. The official figures given by Trapp²⁹ from the "nominal call" at 9 pm are:

Number of Members of the Convention	745	
Members present	721	
Absolute majority against death	361	
Members voting for death	<u>366</u>	
Majority for death		5

Thompson offers a narrower majority of one vote for death from the 721 deputies present and voting: 361 for death without qualification; and 360 for other than death (72 for death with reprieve and 288 for either exile or imprisonment).³⁰

Following this declaration of such a narrow majority, commotion ensued over a sick member, Duchatel, who was brought in to vote in favour of Louis. Undaunted, the President pronounced:

When Justice has spoke, let Humanity be heard in her turn. I do declare, in the name of the National Convention, that the punishment which LOUIS CAPET shall suffer, is DEATH!³¹

Louis' three counsel were then readmitted to the bar; sobbing, according to Trapp. De Sèze pleaded that the sentence be submitted to the people – especially given the slim majority of five votes. Tronchet argued that the law required a two-thirds' vote. Malesherbes sought to speak the next morning. All their requests were denied before the Convention adjourned around 10.30 pm until the following day to decide "whether or not the interest of the nation required that the execution of the sentence passed on Louis XVI be respited."³² The Mailhe Amendment had created a fourth issue to be resolved. It seems that Malesherbes at this late hour visited Louis in the Temple to advise him in tears of the outcome while still clasping for hope of a reprieve.

So on 18 January, further debate ensued on this final issue of a possible reprieve. At the same time, deputies were entitled to scrutinize the record of their earlier vote on Louis'

²⁸ Simon Schama, *Citizens: A Chronicle of the French Revolution* (Alfred A Knopf, New York 1989) at 662.

²⁹ Trapp at 160.

³⁰ Thompson at 332.

³¹ Trapp at 163.

³² Trapp at 165.

fate – given the diversity and complexity of voting. This review lasted until late evening on 19 January. The official pamphlet at p 65 states the “Result of the Third Scrutiny” as follows:³³

Total members 745, of which 24 did not vote as 1 dead, 6 sick, 2 absent without reason, 11 absent with leave, and 4 did not vote. Of the 721 who voted:

23 for death, timing to be determined.
9 for death with respite.
2 for death after a peace
2 for chains
319 for confinement
366 for death

Each member’s vote is recorded fully in this pamphlet as well as in an alphabetical index. This official list haunted the deputies for the remainder of their lives. Yet, having found Louis guilty of treason, there was no real option in law for other than death. The revolution for a republic necessitated as a matter of practical politics the elimination of both the King’s bodies: his mortal body, as well as the immortal body politic.³⁴

President Vergniault rose around 2 am on 20 January to declare on behalf of the Convention that Louis’ execution “shall not be respited”. Motions were then passed to require the Executive Council to notify Louis of his sentence, to arrange for it to be executed within 24 hours, and to allow Louis free intercourse with his family and a religious minister of his choice.³⁵

In solitary confinement at the Temple, Louis was officially advised at 2 pm on Sunday 20th by a delegation led by Garat, the Minister for Justice, that his execution was scheduled for the next morning. Louis unsuccessfully sought three days’ respite. Later that day he was permitted to receive his sister’s Irish born confessor, Abbé Edgeworth³⁶, then his wife, Marie-Antoinette, and their two surviving children for their last good-bye.

Around 9 am on Monday 21 January 1793, Louis, accompanied by Edgeworth, was escorted in a closed carriage to the Place de la Revolution (later renamed the Place de la Concorde). In accordance with an elaborate security plan, his entire route was lined with guards to preserve public safety. His procession, accompanied by the constant

³³ Historians differ on this count also: compare Thompson at p 332: 380 for death and 310 against; and Trapp at p 183 cites the result as: For a Respite 286 and For immediate Execution 380.

³⁴ Ernest Kantorowicz, *The King’s Two Bodies* (Princeton 1957).

³⁵ Trapp at 183.

³⁶ See his account in M V Woodgate, *The Abbé Edgeworth* (Browne & Nolan Limited, Dublin). Edgeworth agreed to serve Louis as confessor despite fearing that this would lead to his execution as well: Ibid 78.

beating of drums and trumpet sounds, took over an hour to travel from the Temple to the Place de la Revolution where an estimated crowd of 20,000 people surrounded the scaffold. Upon mounting the scaffold, it seems Louis obtained from General Santerre a moment to speak. With the drummers briefly silent, Louis managed to declare loudly: "My people, I die an innocent man" (*Peuple, je meurs innocent*).³⁷ Within two minutes of mounting the scaffold, Louis was decapitated by the guillotine.³⁸

His body and head were wrapped in common canvas and taken by cart to the guardhouse at the Tuileries. Meanwhile the Convention had received a request from Louis Leduc to hand over his body for burial in the Cathedral of Sens beside that of his father, Louis, Dauphin of France (1729-1765). In denying this request, the Convention followed the usual practice of ordering Louis' burial in the churchyard of the parish within which he was executed; in this case, the cemetery of the former Madeleine church. He was quickly buried there later that day in quicklime without ceremony beside the victims of the 10 August 1792.

TRIAL OF MARIE-ANTOINETTE³⁹

After the execution of Louis, Marie-Antoinette remained in the Temple with her two children and sister-in-law for the next six months. Amid growing anxiety of invasion, escape, and counter-revolution, she alone was transferred to the city prison, the Conciergerie, in August 1793. Even there, rumours of escape plans grew from a visit by an English actress, Mrs Atkyns. On 3 October, the National Convention ordered her immediate trial by the Revolutionary Tribunal that was established to try offences in March 1793.

On the evening of 12 October, Marie-Antoinette was aroused from bed to be taken to the Grand Chamber of the Hall of Justice, adjoining the Conciergerie, for a private interrogation by the President of the Revolutionary Tribunal, Joseph Herman, and the public prosecutor, Fouquier-Tinville.⁴⁰ Only at the conclusion of this interrogation, recorded by the clerk, Fabricius, was Marie-Antoinette asked if she wanted counsel. The Tribunal duly appointed Tronson du Coudray (1750-1798) and Claude Chauveau-Lagarde (1756-1841).⁴¹

Chauveau-Lagarde at the age of 37 was a respected defence lawyer by the time of the revolution, having defended Charlotte Corday who assassinated Marat.

³⁷ Cf Trapp at 205: "Frenchmen, I die innocent! I forgive mine enemies! may my death serve the people!"

³⁸ Trapp at 206.

³⁹ Generally see Thompson at 434-436.

⁴⁰ See Antonia Fraser, *Marie Antoinette – The Journey* (Phoenix, London 2001) at 510 and fn 14 which refers to Gerard Walter, *Le procès de Marie -Antoinette: 23-25 vendemiaire an II (14-16 October 1793)*, *Actes de tribunal revolutionnaire*, 1993, at 45ff.

⁴¹ ECCO text at 30.

Subsequently, he was investigated by the Committee for General Security for defending the Queen too well. Despite later arrests, he escaped the guillotine and continued his distinguished career, dying at the age of 85. He left this memoir of his first meeting with Marie-Antoinette on the eve of the trial on 13 October:

In presenting myself to the Queen with respectful devotion, I felt my knees trembling under me and my eyes wet with tears. I could not hide my emotion and my embarrassment was much greater than any I might have felt at being presented to Her Majesty in the midst of her court, seated on a throne and surrounded with the brilliant trappings of royalty.

Her reception of me, at once Majestic and kind put me at my ease and caused me to feel, as I spoke and she listened, that she was honoring me with her confidence.⁴²

At this first meeting on the eve of the trial, Lagarde asked Marie-Antoinette to write a letter to the Tribunal to seek an adjournment for a few days. She did so reluctantly but it was never delivered.

Unlike Louis' trial by the National Convention, Marie-Antoinette was tried by a criminal tribunal, the Revolutionary Criminal Tribunal, a court without appeal; composed of four judges including the President, Herman, with a public prosecutor and an all male jury of 12 from diverse trades.⁴³ The trial, which was held in the Grand Chamber⁴⁴ where her earlier interrogation occurred, lasted two days from the 14th until the early hours of 16 October⁴⁵, and heard 41 witnesses.⁴⁶ By modern standards, there was a denial of procedural fairness, having not received adequate notice of the charges in sufficient time to prepare a defence. Even her prosecutor, Fouquier-Tinville, received 900 documents on the morning of the 14th. The entry of Marie-Antoinette on that morning into the court room caused a sensation in the crowded public gallery. She was allowed to sit in an armchair on a platform.

⁴² Georges Pernoud and Sabine Flaissier, *The French Revolution*, translated by Richard Graves (New York: Capricorn Books, 1970), 203–5. His memoir has been questioned given that it was written after the restoration of the Monarchy. His devotion does seem incongruous as counsel appointed by the Revolutionary Tribunal.

⁴³ Rupert Furneaux, *The Last Days of Marie-Antoinette and Louis XVI* (John Day Company, New York 1971) at 151; Antonia Fraser, *Marie Antoinette – The Journey* (Phoenix, London 2001) at 513.

⁴⁴ Also where Cardinal de Rohan was tried, known then as the Hall of Freedom: Vincent Cronin, *Louis & Antoinette* (Collins, London 1974) at 383.

⁴⁵ Lagarde says he was advised of his appointment as defence counsel on 14 Oct with the trial starting 8 am on the 15th.

⁴⁶ Simon Schama, *Citizens A Chronicle of the French Revolution* (Alfred A Knopf, New York 1989), 799.



The principal charges against Marie-Antoinette were personal unlike the political crimes of Louis: squandering of public money on her “disorderly pleasures”; secret contributions to her brother the Austrian emperor; and her counter revolutionary activities, especially by teaching Louis how to “dissimulate” (ie to say one thing in public but act secretly against this).

The most dramatic accusation was made by the radical journalist, Jacques-René Hébert, who published *Père Duchesne*. He relayed the story from Simon in the Temple that the Dauphin had told him that he slept between his mother and aunt. Initially Marie-Antoinette ignored this charge until pressed by a juror for a response: “I remained silent on that subject, because nature holds all such crimes in abhorrence!” then turning “with an animated air to the people” she added: “I appeal to all mothers who are present in this Auditory – Is such a crime possible?”⁴⁷ The indecency of the charge and her dignified response created pandemonium in the public gallery, arousing public opinion in her favour. Robespierre rallied against Hébert: “The fool. He will save the woman yet!”⁴⁸

Others testified to her dignity:

⁴⁷ *The accusation, trial, defence, sentence, and execution, of Marie-Antoinette Late Queen of France* (ECCO reprint of English translation - Edinburgh: Printed for J Elder, T Brown, and Walter Berry, 1793), 18. (“ECCO text”)

⁴⁸ Furneaux at 153.

Marie-Antoinette, during the whole of her Trial, preserved a calm and steady countenance. During the first hours of her Trial, she played with her fingers upon the bar of the chair with an appearance of unconcern, and it seemed as if she were playing on the Forte-piano.⁴⁹

Marie-Antoinette's principal ground of defence was that she only supported the actions of the King as his wife, not as Queen. This she reinforced when asked at the conclusion of the evidence near midnight on the second day of the trial on 15 October if there was anything else she wished to add to her defence:

Yesterday I did not know the witnesses; I knew not what they were to depose against me; and no body has produced against me any positive fact. I finish by observing that I was only the wife of Louis XVI and it was requisite in me to conform myself to his will.⁵⁰

Only at this late stage of the trial were Marie-Antoinette's defence counsel given an opportunity to speak. Not surprisingly, no recorded account of their speeches seems to have survived.⁵¹ Each may have spoken for two hours⁵² "in profound silence".⁵³ They are likely to have relied, in addition to clemency, on the absence of any sound evidence of treason, documentary or otherwise.⁵⁴ The former was referred to by Hébert in his scandalous article in *Père Duchesne*, which included this attack on her defence counsel:

Is it possible, fuck, that a hardened enough blackguard could be found to dare defend her? And yet two palace louts had that audacity. One of them even had the effrontery to say that the nation had too many obligations towards her to punish her, and to hold out that without her, without the crimes with which we reproach her, we would not be free. I cannot conceive, fuck, how it can be suffered that these curs of Bazoche, lured by the stripping of villains, by a box of gold, a watch, some diamonds, should betray their consciences and try to throw dust into the judges' eyes. Have I not seen these two devil's advocates not only jig like hens in a hot griddle to prove the innocence of the monkey whose cause they pleaded, but even dare to lament the death of the traitor Capet, and say to the judges that it was enough to have punished the fat cuckold, that at least mercy should be shown to his slut. Show mercy to a villain covered with the blood of the French, let such a monster live! is it then so that she may immolate more victims? But I felt a joy I shall never be able to repay when I learned that these two mother-fuckers had been arrested by an order of the convention's general security committee. I hope that they will keep them in quod at least until peace.⁵⁵

⁴⁹ ECCO text at 75.

⁵⁰ ECCO text at 67.

⁵¹ Vincent Cronin, *Louis & Antoinette* (Collins, London 1974) at 390.

⁵² Furneaux at 153.

⁵³ ECCO text at 68.

⁵⁴ Evelyn Lever, *Marie-Antoinette – The Last Queen of France* (Portrait, London 2006) at 352-353 notes that documents discovered since the trial establish her guilt.

⁵⁵ P Huisman & M Jallut, *Marie-Antoinette* (Patrick Stephens Ltd, Lausanne 1970) at 238.

Marie-Antoinette was then taken from the Hall while the President summed up the case and instructed the jury to answer three questions:

First, is it proved that there existed machinations and private intelligence with powerful Foreign States, and other external enemies of the Republic; such machinations and intelligences tending to furnish succours in money, and to give them ingress into the French Territory, for the purpose of facilitating the progress of their arms?

Secondly, Marie-Antoinette, is also convicted of having cooperated with those machinations, and of having entertained those intelligences.

Thirdly, Marie-Antoinette, is she convicted of having had a share in that plot and that conspiracy.⁵⁶

The jury retired for an hour before returning to announce Marie-Antoinette guilty of all charges. She was brought back into the Hall and asked to read the verdict. The Public Accuser sought the death penalty. In response to being asked if she had any objection, she is said to have "bowed her head, in token of negative".⁵⁷ Her defence counsel, Trouson, conceded the sentence accorded with the law and declared his professional services terminated.⁵⁸ The President then announced the death sentence. It was 4.30 am on the morning of 16 October. Marie-Antoinette was taken back to the Conciergerie to prepare for her execution later that morning. Her composure briefly deserted her en route to her cell:

[H]er firmness forsook her on the way from the court to her dungeon. She burst into tears; as if ashamed of this weakness, she observed to her guards that though she wept at that moment, they should see her go to the scaffold without shedding a tear.⁵⁹

After returning to her cell, Marie-Antoinette wrote a final impressive letter to her sister-in-law. Instead of the comfort of a closed carriage which conveyed Louis, Marie-Antoinette was conveyed at 11.12 am as a common criminal in a normal cart drawn by one horse, hands tied behind her back, facing backwards, in a simple white frock and small cap, her white hair cut short. Accompanied by the executioner and a constitutional priest, her route to the Place of Revolution was lined by 30,000 troops. Marie-Antoinette's dignified calmness during her trial repeated itself according to this contemporary account of her journey to execution:

The Queen, without anguish or bigotry, was speaking to the Priest seated by her side. Her spirits were neither elevated nor depressed; she seemed quite insensible to the shouts of Vive la Republique! She showed even a kind of satisfaction to look forward

⁵⁶ ECCO text at 72-3.

⁵⁷ ECCO text at 73.

⁵⁸ ECCO text at 74.

⁵⁹ <http://alphahistory.com/frenchrevolution/williams-execution-of-marie-antoinette-1793/> accessed 2 Nov 2016.

for the moment which might rid her of her miserable existence. When she passed through the street called Rue St Honore, she sometimes attentively looked at the inscriptions of the words Liberty and Equality affixed to the outside of the houses. She ascended the scaffold with seeming haste and impatience; and then turned her eyes with great emotion towards the garden of the Tuileries, the former abode of her Greatness.⁶⁰

At 12.15 pm, Marie-Antoinette's misery ended with the executioner displaying her severed head – with tragic distinction - from all four corners of the scaffold.⁶¹ Her body and head were soon buried in quicklime in the Madeleine cemetery where Louis was buried nine months earlier.⁶²

POSTSCRIPT

Many of the principal players mentioned in this sad story followed Louis and Marie-Antoinette to the guillotine, including the presiding judge of Marie-Antoinette's trial, Herman, and her prosecutor, Fouquier-Tinville. Of their defence counsel, while all were imprisoned, the gracious Malesherbes was the only one to be executed for his services to the law.

In 1815, Louis XVIII had the remains of Louis and Marie-Antoinette transferred to the Basilica of Saint-Denis where they still lie surrounded by the tombs of the Kings of France. In 1826 Charles X built the Expiatory Chapel above the original burial plot near the Madeleine.

Since then all five defence counsel have been honoured with streets named after them in the 8th arrondissement, surrounding the Madelaine Church; the most prominent, appropriately, Boulevard Malesherbes.

POSTSCRIPT: COMPARISON OF THE TRIALS OF CHARLES I AND LOUIS XVI

Given the French National Convention's concern to conduct the trial of Louis as legally as possible, and to avoid the criticisms directed at the English trial of Charles I over a century earlier in 1649, a brief comparison of both royal trials is instructive. Precisely which criticisms the French had in mind is unclear. But it seems likely that the major criticism was the dubious authority of the special English court established to try and sentence the King – a court created by a reduced House of Commons,

⁶⁰ ECCO text at 76.

⁶¹ ECCO text at 77.

⁶² **Major Sources:** Marie-Antoinette, *The accusation, trial, defence, sentence, and execution of Marie-Antoinette ...* Translated from the French (ECCO 2016); Antonia Fraser, *Marie-Antoinette – The Journey* (Phoenix London 2001); David P Jordan, *The King's Trial: The French Revolution vs Louis XVI* (Uni of California Press, Berkeley, 1979); JM Thompson, *The French Revolution* (Basil Blackwell Oxford 1955) esp 324-334; Joseph Trapp, *Proceedings of the French National Convention on the Trial of Louis XVI* (London 1793); CV Wedgwood, *The Trial of Charles I* (1964 Collins London).

purged by the Army, without the concurrence of the House of Lords, to which were appointed 100 commissioners who were likely to find the King guilty.

The French National Convention adopted a completely different course in 1792 by conducting the trial itself, confident in its authority to do so as the elected representatives of the sovereign people of France. Apart from this fundamental difference, what other points of comparison can be made between the English trial of Charles I in 1649 and that of Louis XVI in 1792-93?

The most significant common feature is that each King forfeited his life for refusing to accept a reduction in the scope of his power, and did so, firmly in the belief that he was acting in accordance with his sacred oath. Furthermore, each King was strongly supported in his stand by his wife – a Queen despised by his subjects. Louis' resolve and dignity was no doubt reinforced from his reading of the history of the trial of Charles I during his own trial.

There are several other similarities of these royal trials. Neither was a fair trial - a guilty verdict was inevitable in each case. Both only became aware of the charges against them at the commencement of their trial with inadequate time to prepare a defence. Each trial was in public. Each faced their common fate with great dignity. And the common objective of their trial and execution, the substitution of a republic for a monarchy, failed in each country.

While both trials were for treason and involved a fundamental denial of procedural fairness, the nature of each trial and the circumstances which led to their instigation were very different.

Charles I deliberately shed the blood of his people in a prolonged civil war. Louis XVI abhorred bloodshed and never waged war against his people.

Charles I remained King until his execution. Louis XVI was deposed as King when the National Convention decreed the abolition of the monarchy in favour of a republic in September 1792. He was later tried and executed as a deposed King.

The trial of Charles I was instigated by a resolution of a purged House of Commons without approval from the House of Lords under the influence of the Army and in particular of Oliver Cromwell who believed that God required this trial. The trial of Louis XVI was instigated by the National Convention which also sat in on judgment.

Charles I was tried by a special court, the High Court of Justice, in Westminster Hall, composed of 100 Commissioners drawn from the House of Commons, the Army and leading citizens who acted as judge and jury. Louis XVI was tried by the National Convention composed of 750 elected representatives of the people.



Trial of King Charles I on 20 January 1649 in Westminster Hall

Charles I denied the authority of the court to try him; so he never mounted a defence, nor engaged counsel to assist him. Louis XVI did not challenge the authority of the National Convention other than to argue his immunity from prosecution for his actions as King; he mounted a detailed defence with the assistance of eminent counsel.

The refusal of Charles I to plead meant that his trial could not proceed in the usual fashion with the presentation of the prosecution evidence followed by a defence. Although a failure to plead to treason led to an automatic guilty verdict, evidence was taken publicly by a commission appointed by the Court without the presence of Charles I. The trial of Louis XVI began with a public interrogation of Louis by the President of the National Convention followed by a formal detailed defence delivered by counsel.

Intense opposition to the trial of Charles I waged publicly in England. Little if any opposition to the trial of Louis XVI was evident in Paris or across France.

The trial of Charles I lasted six days (Saturday 20 to Saturday 27 January 1649) before he was sentenced to death. Charles was present on four of those days. Execution was delayed until Tuesday afternoon 30 January on account of the need to sign the Death Warrant and to pass a law making it illegal to proclaim a new King. Louis XVI's trial including the National Convention's deliberations lasted 27 days (11 December 1792

and then 26 December 1792 to 20 January 1793), of which Louis was present only on two days. His execution occurred within 24 hours.

No other sentence other than death was considered for Charles I. The most protracted debate of Louis' trial was his sentence.

Charles I was given a dignified burial without ceremony in St George's Chapel, Windsor; fortuitously in a vault alongside the coffin of Henry VIII. Louis was dumped unceremoniously in a common graveyard at the Madelaine.

The Queen Consort, Henrietta (daughter of Henry IV, sister of Louis XIII and aunt of Louis XIV), and the two eldest sons of Charles I, the future Charles II and James II, escaped to the Continent during the Civil War and were able to return to England on the restoration of the monarchy in 1660. Louis's Queen and sister were guillotined, and his only surviving son, Louis-Charles (Louis XVII), died in captivity at the age of 10. Only his daughter, Marie-Therese, survived to marry her cousin, the eldest son of Charles X (Louis' youngest brother). Although France lurched between republic, monarchy and empire, it finally confirmed its republican system with the declaration of the Third Republic in 1870.

APPENDIX

DEFENCE COUNSEL OF LOUIS XVI



Francois Denis Tronchet (1726-1806) [buried in the Pantheon, Cave V, 1806], French jurist, was born in Paris. Became an avocat at the Parleme de Paris where he developed a high reputation. Member of the Third Estate of Paris then of the National Constituent Assembly where he rejected juries for civil trials. Interviewed Louis XVI after his unsuccessful flight to Varennes (June 1791) then surprisingly was selected by Louis XVI as one of his three defence counsel (along with Malesherbes and de Sèze) where he showed great courage and ability. During the Directory, he was a deputy at the Council of the Ancients where he

unsuccessfully opposed executive appointment of judges. President of the Tribunal of Cassation during the Consulate, he contributed significantly to the final version of the code civil. He introduced common law principles despite opposition from colleagues deeply imbued with Roman Law. He died in 1806 a year before the death of Portalis.

Guillaume-Chretien de Lamoignon de Malesherbes (1721-1794) [remains unknown], lawyer, minister, statesman, great-grandfather of Alexis de Tocqueville, was born in Paris to a famous legal family. Despite having retired, he acted in 1792 as defence counsel for Louis XVI along with Tronchet and Raymond de Sèze. He was guillotined after his daughter, son in law and grandchildren in 1794. His remains are lost but he is honoured by a statue in the Courts of Justice.



Raymond de Sèze (1750-1828) [Pere Lachaise Cemetery] was born in Bordeaux in 1750 where he attended Law School. He established his reputation defending Baron de Benseval in 1789 against treason charges. He was called out of retirement to assist the defence of Louis XVI. After the trial, he was imprisoned but was released upon the fall of Robespierre. He retired from public life, regarding both the Directory and the Empire as illegitimate. At the Bourbon restoration under Louis XVIII, he was made a peer, a judge and a member of the French Academy. He died at 78.

DEFENCE COUNSEL OF MARIE-ANTOINETTE



Claude Francois Chauveau-Lagarde (1756-1841) [Montparnepassee Cemetery], a lawyer, was born in Chartres in 1756. A respected defence lawyer by the time of the revolution, he defended Louis-Marie -Florent, Duc du Chatelet, Jean-Sylvain Bailly, Madame Roland and Charlotte Corday who assassinated Marat. He was instructed to defend Marie-Antoinette less than 24 hours before her trial despite his failed plea for an adjournment to prepare her defence. Subsequently, he was investigated by the Committee for General Security for defending the Queen too well. He justified his actions, publishing a moving account of his role in the trial. He later defended Madame Elisabeth (sister of Louis XVI). On two later occasions he

was threatened with the prospect of the guillotine for his close association with royalty. After hiding, he resumed his profession under the Directory and secured a number of high profile acquittals. With the Restoration of Louis XVIII, he was appointed Avocat au Conseil du Roi and councillor of the Court of Cassation. He died aged 85.

Tronson du Coudray (1750-1798), was born and educated in Reims. He pursued a diplomatic career before practicing as an advocate. He offered to defend Louis XVI but this was declined. The Revolutionary Criminal Tribunal appointed him as one of Marie-Antoinette's defence counsel. He survived the Terror, despite being imprisoned, and served the Council of Ancients. After the coup d'etat of 18 fructidor, he was deported to Guyana for royalist sympathies where he soon died in 1798.

