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‘Arson, Treason and Plot: Britain, America and the Law, 1770-1777’

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I

In 1971, when the death penalty was removed from the crime of arson in the royal dockyards, few in Parliament knew how this law had been created, or why it had been overlooked in the two earlier debates abolishing hanging for the far more serious offence of murder. Questions to the Home Secretary in 1966 had established that no one had been executed for this crime since criminal statistics began in 1856. Yet arson in dockyards was a crucial element in the politics of the 1770s in the Atlantic world.¹ Between the end of the Seven Years’ War and the start of armed conflict in North America, the British authorities were repeatedly troubled by fears of domestic sabotage by foreign agents, particularly to the naval dockyards. In part this reflected the repeated occurrence of fires in the dockyards themselves, but there was also a fear of attack by subversive, enemy forces. For nearly a century, political anxiety had been directed at the Jacobite threat supported by France but as this declined, the problems of security were redefined. In the official view, threats from abroad were everywhere, in the colonies and in Europe, and from the enemy within. This paper is concerned with the British government’s attempt to find legal solutions to threats to its security in England and its American mainland colonies in the years 1770 to 1777. During this time, Anglo-American relations further deteriorated resulting in military confrontation in 1775, despite which such legal efforts continued. Understanding this complex situation necessarily requires an exploration of British attempts to extend the law across the Atlantic.

Despite the triumphs of the Seven Years War, the first truly global conflict, a peculiar sense of insecurity, fear and even panic followed.² Within a few years of the peace of 1763,

the British state reacted nervously to rumours of plots and conspiracies, not just of rebellion, but of sabotage and destruction. This was accompanied by increasing official concern about printed criticism of government policies, much of which was about, or actually came from, the North American colonies. The crisis partly derived from the financial problems of public debt and the inability of the government to impose taxes on America.³ We attempt here to explore the growing culture of national paranoia and the state's legal response. The 'paranoid style' of British politics was fully revealed in the years after the peace of 1763. As Gordon Wood has suggested, this had long been characteristic of British (and American) political culture. The century or so following the Restoration was the great era of conspiratorial fears and imagined intrigues. Terror and plot had a long history but their origins and targets changed in this period. In the early part of the eighteenth century, as Julian Hoppit notes, 'there were frequent and vociferous complaints that immorality and irreligion was sweeping the nation: drunks and Dissenters, prostitutes and pamphleteers, actors and activists might all be censured. Anxiety bred censoriousness, uncertainty a vivid paranoia'. He called the period 'an anxious age'. Wood concurs: 'The Augustan Age, said Daniel Defoe, was "an Age of Plot and Deceit, of Contradiction and Paradox". Pretence and hypocrisy were everywhere, and nothing seemed as it really was.'⁴ These were more like moral panics, perhaps, than worries about national security, though the responses were very similar in seeking, through parliamentary legislation, what David Lemmings calls 'law solutions'. The legislative reflex accelerated as the century progressed with large numbers of laws of all kinds being passed in George III's reign. Laws were framed in the face of public pressure and political lobbying, as well as newspaper and pamphlet representations, and did not form a coherent or logical body of rules about crimes and their punishments (something which concerned Blackstone and formed the core of Bentham's critique of the criminals laws). Yet the responses were often in the form of new or modified criminal laws (like the Victorian garotting panic).⁵ The two

fires in Portsmouth naval dockyard in 1770 and 1776 were not merely criminal, however, for they struck at the heart of the British Empire's power, the Royal Navy on which British global reach depended.⁶ Similarly, the burning of the schooner the *Gaspee* in Rhode Island in 1772 evoked equal alarm. These incidents represent episodes in this changing culture of conspiracy, as rebellion seemed to presage revolution. With the exception of the Gunpowder Plot of 1605, this kind of deliberate sabotage by arson was rare. Fire struck terror, particularly in small towns and the countryside, because it was a typical 'crime of anonymity'.⁷ Equally significant, the 1770 fire occurred in a time of peace rather than war, suggesting a state of perpetual and secret hostility to Britain and its source of naval supremacy. In some ways the ground had been laid by the report a few years earlier that Portsmouth was a likely object of French attack, as a deliberate strike against the country's 'naval strength'.⁸ The British state had to face threats on both sides of the Atlantic.

II

The political response to these threats depended on the laws of treason which had undergone considerable development and procedural elaboration in the eighteenth century, and on the 1772 law making arson in naval dockyards a capital offence. Treason, under the 1351 Treason Act was making war on the monarch, planning, imagining or encompassing their death, working for their enemies, or having sexual intercourse with the monarch's consort, or trying to kill, or killing, the ministers of the crown (and justices or judges). Both necessitated some convoluted legal reasoning to be prosecuted successfully in the 1760s and 1770s, because, as essentially political crimes, there was always a danger of extending them to include many forms of political opposition and criticism. Defence counsel tried to restrict the definition of treason to the literal meaning of the 1351 law in the face of this expansion.⁹ Yet crucial protections for the accused had been introduced in the 1696 treason law, an important stage in the establishment of the rights of the accused. It had long been a conventional

safeguard that two witnesses were required to convict on a treason charge, but in addition, key rights under the 1696 Act were the rules to full disclosure of the indictment to defendants and their lawyers; sufficient time for them to frame a defence; and, above all, the right to allow defence witnesses to give evidence in court under oath, which was denied in cases of other crimes. However, the nature of the offence of treason was not itself altered by this procedural legislation.¹⁰ Outstanding issues remained: in the two Jacobite risings of 1715 and 1745-6 legal precedent had established that trials for treason need not be held in places where the alleged offences had been committed: protests against being tried in England rather than Scotland had been brushed aside in the Southwark trials of Scottish rebels in 1746. Secondly, there were attempts to broaden the concept of treason, primarily to include joining a foreign army but also to include support of a more passive kind for rebellion. ‘Making war on the king’ had become a rather elastic concept, as a result.¹¹

III

The fire in Portsmouth dockyard in the early hours of 27 July 1770 remained a mystery for some time, though the damage was estimated at £489,000. Wood’s ‘conspiratorial modes of explanation’ involving ‘plots by dissembling men’ dominated the first reports. The press immediately concluded that the fire had been so extensive that it was no accident. In Portsmouth, ‘French desperadoes’ were immediately suspected, perhaps acting in reprisal for the alleged plot by Alexander Gordon and others to burn the French port of Brest the previous year, for which he had been beheaded, and in which Lord Harcourt, the British ambassador to Paris, had been implicated. Gordon was thought by the French to be a British agent, though he vehemently denied it. Certainly his execution made it difficult for Harcourt to recruit new agents in the French ports. This theory provoked newspaper discussion of the rules of the *lex talionis* or law of reprisal.¹² Others thought that the fire was the fault of some ‘worthless workmen’ rather than the French. Though the fire was widely reported, and a large reward of

£1000 for information offered, with a free pardon for those informing on their co-conspirators, investigations led nowhere.¹³ More than a year later, in 1771, however, two men separately confessed to the sabotage, and at the same time made allegations of deep plots. Jonathan Britain (also known as William Unthank) wrote from Reading jail, where he was under arrest for a forgery committed in Bristol: ‘he pretends to be have been a principal actor in that dark scene, and insinuates that several persons of the first rank were concerned in it’. Simultaneously, Joshua Dudley, imprisoned for debt in a London prison, gave lengthy testimony of his own supposed involvement (and that of various sinister plotters). Jonathan Britain wrote large numbers of letters alleging plots from his jail cell, and his personal story survives in accounts written at the time of his trial and execution in Bristol in April 1772, when he told his life story to a clergyman visiting him in jail. He denied any knowledge of Joshua Dudley. It is clear that he was interrogated at the outset by two ‘under-secretaries of state’, suggesting that the authorities were contemplating a charge of treason. In addition to rather vague accounts of the arson, he also confessed to receiving payment in June 1770 (with four others) to shoot ‘a great man in Hyde Park’, which he would have done if the pistol had not misfired. In his final confession he admitted that the intended victim was the king himself. Originally arrested for the capital crime of forging promissory notes, Britain, like Dudley, sought to make himself an indispensable witness to a crime he did not commit. Having sought to negotiate with the authorities for a full pardon as a prelude to the full disclosure of what he knew, they called his bluff : he was hanged for forgery.¹⁴

Joshua Dudley’s persuasive story-telling was the core of his criminal activity. His talent led to his conviction for perjury and transportation to America in 1772 for alleging that he had evidence of the plot by French agents, including an Irish captain and a Catholic priest, instigated by the ‘Court of France’ to destroy the Portsmouth dockyards. He concocted his story while languishing in a debtors' prison, from where the authorities took him to

Portsmouth to test his account. As in the case of Britain, his interrogation also involved important people headed by the Lord Mayor of London, two aldermen, the secretaries of both the Earl of Rochford (Secretary of State for the Southern Department) and the Earl of Sandwich (First Lord of the Admiralty), and members of the Board of Admiralty. It seems from the transcripts that daily reports were given to the politicians on the progress of the questioning, and newspapers on both sides of the Atlantic followed the ‘parade of examination’.¹⁵ Diplomatic difficulties were caused by both sets of false accusations: the French ambassador was threatened because of the supposed plots, and demanded severe punishments for the slanderous allegations against his country. He had been driven out of London initially, only to complain a few months later about his ‘injured honour’.¹⁶

The whole process was followed in great detail by the press in both Britain and America, with almost weekly installments during the early months of 1772. There was some scepticism from the beginning about the two men’s ‘pretended discoveries’, which gained no credit ‘at the West end of the town’ (that is, in political circles). Both men were allegedly interested in escaping legal penalties of different kinds, and making money.¹⁷ Yet the authorities were cautious, taking Dudley to Portsmouth to challenge the details of his story at the place of the fire. Dudley himself left several long accounts of his activities in England, including the lengthy depositions in the legal records on the occasion of his investigation by the Lord Mayor and others, and a pamphlet of memoirs together with numerous newspaper accounts tracking his accusations step by step.¹⁸ In the end, the exciting allegations of Britain, that at least five ‘great men’ had been concerned in the fire, attracted most attention, and above all, his trial and execution were more titillating. The *Virginia Gazette* followed Britain and Dudley to their ends – noting when Dudley had been shipped out with 60 felons from Newgate.¹⁹ One American paper, most unusually, drew a dramatic conclusion from this stage of the story, to criticise the current administration –

Your Sovereign's life has been attempted by the hands of J. Britain; Portsmouth dock, with all the stores, have been burned, and plans deep and dark as hell have been laid to destroy the protestant interest, and the Administration charged with having a hand in it; yet no serious enquiry had been made about it, and the King persuaded by his ministers that all is a farce and he in no danger.²⁰

Little more was heard from Joshua Dudley until a two-column letter of great emotional content and dramatic force was published in the British press in 1774. This document, apparently sent from Winchester, Frederick County, Virginia, was accepted as a genuine letter from Dudley, correctly identified as the man who had been transported in 1772 for perjury concerning the Portsmouth fire. The story he spun at great length was of his virtual adoption by his new mistress in the colonies, who acquired him as an indentured servant from the Matthews brothers of Staunton, Augusta County, Virginia. Hired to educate some young people, he had acquired responsibility for a young woman on the death of her mother, the lady of the house. She in turn died, leaving him everything, and at the time of writing he was living alone with her tomb in the house. He also added some account of the political upheaval in the colony as well as the cruelties of Indian warfare. It is possible that, along with some other convicts, he sought to make peace with the authorities in England at this time. A copy of Dudley's letter appeared six months later in the *Virginia Gazette*, with the ironic comment

This very same Joshua Dudley (if the printer is rightly informed) is still with Messrs Sampson and George Matthews, in the capacity of a servant; ergo, the whole account of his good and bad fortune is a most notorious falsity.

Thereafter Dudley vanishes from the printed record.²¹

While the fate of Britain and Dudley still hung in the balance, the government ordered a bill on 23 March 1772 entitled 'An Act for the Better Securing and Preserving his Majesty's

Dockyards, Magazines and Stores', prepared by Lord North, chief minister, and the Attorney and Solicitor Generals, and signed by the king on 26 April. This Act reflected the panic and established the death penalty for both burning the royal dockyards and their stores. Also, anyone acting to 'cause to be set on fire, or aid, procure, abet or assist in the setting on fire' was as liable for the death penalty as the arsonists. Equally important were the provisions for trial, which could be held anywhere the government wished, either in the place where the offence occurred or elsewhere. Thus offences committed 'in any place out of this realm' could be tried in England or where they had been committed, a choice which reflected increasing uncertainty about the potential for successful prosecution in some of the colonies.²² In this way the 1772 dockyards law incorporated a key legal strategy of the authorities towards treason and rebellion in the eighteenth century, that is, the legal right to try 'rebels' and traitors where the government chose rather than in the places where the alleged acts had actually occurred. In January 1773, the *Boston Evening Post* reported disquiet in Massachusetts concerning the Act in the framing of which their legislature had had no share and which struck at

the greatest of Blessings, personal Security to the Innocent, as it exposes the Lives and Fortunes of the most virtuous, to the low Revenge of any who are vile enough to be guilty of Perjury . . . the Accused may be removed for Trial to any County in England where he, by being a Stranger, loses that benefit that would arise from his good reputation was the Trial by a Jury of the Vicinity. – One of the Justest Complaints against the Inquisitorial Court, in Romish Countries .

The problems of jurisdiction and location speedily became acute as conflicts in North America turned violent.²³

IV

In the summer of 1772, shortly after the dockyards act became law, there came news from Rhode Island of the destruction of the Royal Navy schooner *The Gaspee*. The law and the events in America were unconnected, although David Ramsay in his 1789 history thought they were, and at least one modern historian, J. Philip Reid, regards the act as being designed to frighten the whig leaders in the colonies. A little over a month after the ship's destruction in June, the first brief reports reached London, with the erroneous news that the captain had been killed.²⁴ Official discussions centred on the use of a Henry VIII act allowing treasonable actions designed or executed abroad to be tried at 'home', that is, in England. The 1746 Jacobite trials had set a precedent by enabling Scots to be tried in England. Just to be sure, special legislation had been passed in the middle of the rebellion.²⁵ Troublesome Americans, though, were threatened with the much earlier legislation from 1543. Historians have doubted whether this Act had survived subsequent repeals, but the legal advisers to the government in 1768 had no doubts. Certainly the law was well-known, being reproduced in lawbooks and, more significantly, listed among the extant treason laws which the government ordered published in the aftermath of the '45.²⁶

The law had been introduced into political debate in an 'Address to the King' adopted by the House of Lords on 16 December 1768, invoking the statute of 35 Henry VIII as a 'remedy' for the disorders in the American colonies in general and Massachusetts Bay in particular, in the wake of the adoption of the Townshend Duties.²⁷ Following an examination of the state of affairs in Massachusetts based on papers presented to it by Lord Hillsborough on 28 November and 7 December 1768 'by his Majesty's Command', the Lords adopted a series of resolutions and an address to the King supporting government policy. Nothing was more necessary to maintain royal authority, they argued, than to inflict 'condign punishment' on those responsible for the disorders, and the Massachusetts Governor should

take the most effectual Methods for procuring the fullest Information that can be obtained, touching all Treasons or Misprisions of Treason committed within his Government since the Thirtieth Day of December last, and to transmit the same, together with the Names of the Persons who were most active in the Commission of such Offences, to One of Your Majesty's Principal Secretaries of State.

The government could then form a special commission and prosecute those identified under the Henry VIII law.²⁸

A full debate on the merits of the Resolutions and the Address to the King took place in the House of Commons on 26 January 1769. The opposition attacked various aspects of the proposal, questioning the use of the Henry VIII law in the colonies, whether it was a fit response, and whether it undermined the practice of trial by jury given that it would be impossible to produce a jury of their peers. In addition, it would be difficult if not impossible for the accused to call witnesses in their defence. Above all, they challenged the idea that the disturbances in Massachusetts were really a case of treason. William Dowdeswell, spokesperson for the opposition, denounced the idea of using treason law and specifically addressed the adoption of the statute of 35 Henry VIII. 'We had no colonies at that time', he protested, and therefore the law could not apply to America. The government, in reply, asserted that since it was generally agreed that the colonists had carried with them the Treason Act of 25 Edward III, the same must apply to that of Henry VIII.²⁹ As Edmund Burke noted, however right their criticisms, opponents of the policy could not win: the opposition might have the speakers, but the government had the numbers. It 'behoved government to take strong, wise measures', but whatever they did in America would backfire. Inroads had already been made on the principle of using juries from the neighbourhood in cases of smuggling and the excise. Now trials for high treason threatened to take away the

privilege of a jury. 'I am pleading the cause of our ancient constitution, of our charters, of everything that is dear. There is a serpent creeping in the grass'.³⁰

The 1769 debates had the effect of alerting American critics to the danger of this legislation – this 'bugbear law', as the American newspapers came to call it. In the colonies in 1769 the Virginia Assembly was the first to repudiate the notion that men could be taken to England for trial. All trials for treason, they said

ought of Right to be had, and conducted in and before his Majesty's courts, held within . . . the said Colony . . . And sending such Person or Persons to Places beyond the Sea to be tried, is highly derogatory of the Rights of British Subjects as thereby the inestimable Privilege of being tried by a Jury from the Vicinage, as well the Liberty of summoning and producing Witnesses on such Trial, will be taken away from the Party accused.

The same week an almost identical motion was passed by Rhode Island. They pleaded with the king to avert 'those Dangers and Miseries, which will ensue from the seizing, and carrying beyond Sea, any Person residing in America, suspected of any crime whatsoever'. Even in Parliament the critics were blunt about the idea: the government's language showed, said one, that 'the intended object . . . was to bring the unhappy Americans to England to be tried, under the act of Henry VIII, and have them butchered in the King's Bench'. By 1776 the Henry VIII law was recalled in the American press as one of the 'antiquated' laws threatening America, while in April 1778 the *Pennsylvania Packet* carried a bitter comment, copied from the *Gentleman's Magazine*, that 'murder by form of law again takes root in Britain, by the revival of the bloody tyranny of Henry the Eighth'.³¹

V

The issue of treason and its prosecution resurfaced with the burning of the ship *Gaspee*, which was deployed against smuggling.³² On 9 June 1772, the *Gaspee* ran aground on a

sandbar some five miles below the town of Providence, Rhode Island, and twelve miles above Newport. Lieutenant Dudingston, its already unpopular commander, waited for a high tide to refloat the schooner but around midnight a number of rowing boats closed in on the vessel. Fighting broke out as men boarded the schooner, overpowering the crew who were bound and put ashore, along with Dudingston who had been seriously wounded. From a distance, they witnessed the burning of the *Gaspee*, which event, according to William Leslie, began a sequence of incidents that led directly to revolution.³³ Located to the south of Massachusetts, Rhode Island was no ordinary colony. Though small in size, and with a population of only 60,000, it was a corporate colony with greater powers of self-government than other colonies. Under its charter of 1663, it elected all its officials including its governor. George III in conversation with Thomas Hutchinson, former governor of Massachusetts, described it as having 'a strange form of government'. Dominated politically and socially by a wealthy merchant class, it had long enjoyed a dubious reputation as a nest of smugglers.³⁴

Governor Joseph Wanton and his deputy Darius Sessions moved to keep the investigation into the affair under their control, publishing a proclamation offering a reward of £100 for information. Wanton wrote to the Secretary of State, the Earl of Hillsborough, of his determination to 'detect and bring to justice the perpetrators of this violent outrage' and 'daring insult upon authority', but Whitehall overrode him.³⁵ After all, the *Gaspee* was a Royal Navy ship employed in the government's reinvigorated effort to enforce the Trade and Navigation Acts. Rhode Island authorities were instructed by Hillsborough to use the recent dockyards act, but the Privy Council, meeting on 20 August 1772, cancelled his orders after they had already been dispatched. Instead, they set up a commission of enquiry which was to investigate the charge of high treason on the basis of the Henry VIII Act. The switch in policy hinged on the receipt of an opinion dated 10 August from the Attorney and Solicitor Generals, Edward Thurlow and Alexander Wedderburn, who both agreed that the attack on

the *Gaspee* was an act of high treason, constituting levying war against the king; therefore the offenders could be indicted for high treason in England or in Rhode Island provided the ship was stationed within the boundaries of the colony. But they also judged that the dockyards act might be difficult to implement, as it extended only to ‘such ships as are burnt or otherwise destroyed in some Dockyard and not to ships upon active Service’. Interestingly, there was no suggestion that the law of piracy might have been applicable.³⁶

A high level inter-colonial commission was appointed consisting of the chief justices of Massachusetts, New Jersey and New York, a justice of the court of vice admiralty in Boston and Governor Wanton.³⁷ Members of the crew were interviewed, but despite the increase in the size of the reward for information to £500 and the offer of a free pardon to participants in the affair who would name others, the members of the commission failed to uncover any reliable information that would allow a legal case to be brought against the alleged perpetrators. Thus ‘this heinous crime’ went unpunished, but its consequences were significant. According to William Leslie, the appointment of the royal commission and the threat to carry culprits to England for trial led to the formation of a web of inter-colonial committees of correspondence. The *Providence Gazette* and the *Newport Mercury* published the following response. It was copied widely by other colonial newspapers and printed in the London press. The government’s strategy was a gift to New England radicals.

A court of inquisition more horrid than that of Spain and Portugal is established within this colony, to inquire into the circumstance of destroying the *Gaspee* schooner; and the persons who are the commissioners of this new-fangled court, are vested with most exorbitant and unconstitutional power. They are directed to summon witnesses, apprehend persons not only impeached, but even suspected! . . . To deliver them to Admiral Montague, who is ordered to have a ship in readiness to carry them to England, where they are to be tried.³⁸

How this episode was perceived by New Englanders is suggested by letters between Hannah Winthrop, the wife of John Winthrop, professor of Mathematics and Natural History at Harvard College and Mercy Otis Warren, patriot propagandist, wife of James Warren and sister of James Otis. 'One of the most extraordinary political maneuvers this century has produced', wrote Winthrop to her friend, 'is the Ministerial mandate transporting the Newportonians a thousand leagues for trial'. Events looked quite different, however, to Arthur Lee of Virginia, at that time resident in London. Though initially welcoming the attack on the *Gaspee*, he was horrified by the government's reaction fearing that it would bring matters to a head prematurely. 'An unsuccessful struggle now', he cautioned, 'might perhaps rivet our chains forever'. The northern colonies were pushing matters too far, though he conceded that the New Englanders 'have had more than their proportion of insult and oppression'. The official line however, was adopted by Thomas Hutchinson, who, writing to Commodore Gambier at the Boston station, welcomed the establishment of the commission of enquiry (despite its failure) on the grounds that 'if there should be another like attempt, some concerned in it may be taken prisoners and carried directly to England. A few punished at Execution Dock would be the only effectual preventive of any further attempts'.³⁹

The destruction of the *Gaspee* would not be forgotten. It reappeared during the subsequent crisis regarding the burning of the dockyards in Portsmouth and Bristol in 1776 when it too assumed mythic proportions. The attack on its captain and his injuries were described in gruesome detail while 'every man . . . that opposed the attackers was cruelly butchered'. These details though patently untrue were alleged in the *Hampshire Chronicle* in 1777 when, in reviewing the affair of John the Painter at great length, an anonymous author accused the Americans of always using fire.⁴⁰

Only a few months after the *Gaspee* commission of inquiry was disbanded came the more famous incident of the Boston Tea Party of 16 December 1773 when vast quantities of

tea belonging to the East India Company were dumped into Boston Harbour in defiance of the Tea Act. Without a specific crime such as arson, the legal difficulties the British authorities faced were almost identical: seemingly treasonable actions were beyond their power to prosecute successfully. The Earl of Dartmouth, Hillsborough's replacement as Secretary of State, sought the Attorney and Solicitor Generals' opinion on the acts and proceedings which had taken place in Boston. Their reply confirmed that some of the activities did amount to the crime of high treason, namely levying war against His Majesty, but others amounted only to 'High Misdemeanours'. Once again, sworn testimony was lacking. This was, as Neil York has suggested, the ultimate in 'imperial impotence'.⁴¹

VI

American and domestic threats came together in 1776, as arson in Portsmouth dockyards once again became a matter of terror and alarm. The case of John the Painter, or James Aitken, as he was also known, executed for arson as an American rebel and spy in 1777 seemed to epitomize the danger facing the British state.⁴² In December and January 1776-7, first Portsmouth then Bristol suffered serious fires, the second provoking official alarm. By this time, James Gambier had returned from America to run the Portsmouth dockyard and played an active part in the investigation. Suspicion fell on James Aitken, a native Scot and self-styled American patriot, otherwise known as John the Painter, the subject of a fine study by Jessica Warner. 'During a residence of some years in America he imbibed principles destructive to the interests of this country', claimed the *Newgate Calendar*. Aitkin reportedly received funding from Silas Deane, one of America's commissioners in France. As in the cases of Dudley and Britain in 1771, his initial interrogation was carefully conducted, this time by Sir John Fielding, with representatives of the Board of the Admiralty attending. Aitkin was examined with scrupulous care, being allowed to confront each witness as they

presented evidence against him, though he was also foolish enough to be tricked into making damaging admissions to a sympathetic visitor.⁴³ The final prosecution was not for treason but for arson, a crime without benefit of clergy, and it may have been a careful matter of political calculation that a conviction could be obtained on the less dramatic charge, either for damage to Portsmouth dockyard or the fires in Bristol. If that tactic did not succeed, there were still numerous thefts and burglaries for which he could be tried. Perhaps executing a Scot for treason at a time when they made up so many of the recruits to the armed forces might have been impolitic. Nevertheless, he was executed in naval style being hauled up on a masthead outside the dockyards where he had started the fire, which was an exceptional way of hanging a civilian.⁴⁴

As in 1770 and 1771, the role of the newspapers and the printing industry in general were highly influential in shaping the image of this affair. As before, suspicions were aroused very early – in Bristol, the *Morning Post* reported, there were some ‘violent Americans’. A huge reward of £1000 was offered in the newspapers for both fires to expedite the investigation. By the end of the first week in February, James Aitken was being interrogated at Bow Street, and witnesses from Portsmouth were brought to give evidence against him.⁴⁵ An unprecedented number of pamphlets was published to exploit the drama of his execution on 10 March 1777, many of them claiming to be based on the official shorthand transcript of the trial made by Joseph Gurney, whose more accustomed stamping ground was the Old Bailey. One pamphlet even told in verse the story of Aitken’s ghost which appeared to Lord Temple, who had assisted in the investigation, on the night of his execution. Less fancifully, most of the trial accounts record the examination and cross-examinations of the witnesses and the process of the prosecution and defence. His own words were supposedly given to a Mr Tomkins for publication after his death, consisting of a strange account of his ‘motives’ as well as his life story. He explained that Americans (like himself) had to come secretly into

the country, because ‘our side cannot do things openly and above board, as the Ministry does. Why can they not? Because they are not strong enough’. This kind of statement led Jessica Warner to call him the ‘first modern terrorist’.⁴⁶

William Gordon noted in 1788 in his early history of the American Revolution the connection between Aitken’s arson and the exceptional legislation of 1777 directed at American privateers and traitors, which suspended *habeas corpus* for suspected rebels. The Act ‘to secure and detain Persons charged with or suspected of, High Treason committed in North America, or on the High Seas, or the Crime of Piracy’, meant in effect that prisoners could be held without actually being prosecuted for treason. Though, like previous suspensions of *habeas corpus* there was actually no mention of the phrase in the title of the bill, the law in fact departed from previous practice in a number of ways, as Paul Halliday has pointed out. It distinguished one group of British subjects from others for the first time (American supporters or activists), and, renewed annually for six years until the end of the war, ran for an unprecedented period. There was no obvious rebellion inside Britain, unlike the brief periods of earlier suspensions during the Jacobite rebellions, but the coincidence of arson and trial of John the Painter provided a usefully emotive context. Opposition to the law in Parliament was fierce.⁴⁷ Charles James Fox, referred to the ‘improbabl[e] story’ of John the Painter, and remarked that ministers were ‘credulous in the extreme’, clearly a reference back to the falsehoods of Dudley and Britain. In reply, Lord North rejected the accusation, and argued that conspiracies were best stifled in their earliest stages. The Attorney General added, expressing a sentiment heard many times since with regard to exceptional ‘temporary’ measures, ‘no innocent man had anything to fear, the guilty man had everything’. That week, perhaps trying to regain the initiative, Burke proposed a motion to inflict severe punishment on those who *attempted* arson in the dockyards, the law, he argued, being insufficient for this purpose. The proposal was widely accepted initially, but fell after an initial hearing. In the

debate, the suggested law had been extended to include both attempted and successful arson in private docks as well as ships and warehouses. One critic of the death penalty proposal, however, William Meredith, noted that it would have been an ineffective deterrent in the case of James Aitken: ‘John the Painter was so far from fearing death, that he courted it’, he observed.⁴⁸

James Aitken created his own legend in the various statements published at his death, claiming ‘I cannot deny being very active in the riots at Boston, particularly in sinking the tea, and insulting the friends of government, in which I did not escape the notice of many principal persons among the Americans’, which has led two modern historians to claim him for membership of the revolutionary Atlantic. There is no record of his participation in the Tea Party, however.⁴⁹ Yet there can be no doubt of his desire for martyrdom. ‘The people of England may perhaps condemn my action as a very vile one. The Americans will extol it as very noble’, he claimed, predicting that he would be hailed as ‘a martyr to my country’. Some Americans at least recalled his sacrifice and used him as an example of the threat the individual could pose to the powerful oppressor. ‘Great Britain is not without her arsenals, her yards and magazines . . . Remember John the Painter’, warned one American patriot in 1780, addressing protests to a commander of despised Hessian mercenaries in New Jersey, printed in the *New Jersey Journal* and the *Pennsylvania Packet*: ‘he was a poor man, without friends, and unassisted by public council or money’. This writer supposed him to have lost property destroyed at Perth Amboy early in the Revolution, but almost certainly confused him with the portrait painter John Watson (c1685-1768) whose property, left to his loyalist nephew, was destroyed by patriots during the Revolution.⁵⁰

VII

Both the 1770 and the 1776 fires threatened the navy on which British power was based. The *Gaspee*, like the Tea Party, established the limits of British power in the colonies. Equally

importantly, all three incidents were the object of political panic and legal debate, as well as attempts at carefully-conducted investigations. Fire and fear drove the three legislative responses between 1770 and 1777, built on converging anxieties about naval supremacy and control of the American colonies. The legality of the political response was a continual concern in government circles: ensuring precise applications of the law was essential to the legitimacy that was proclaimed as fundamental to the Anglo-American world and, moreover, was ingrained in government practices. Arbitrary actions which stretched the legal interpretations too far would undermine that carefully-constructed regime. It might have been best, as it was said later, to have seized Americans and brought them over for execution in England (something that was not achievable even in the wartime conditions after 1777), but the concerns of legality and justice – a self-conscious legalism – restrained the government in England in the absence of war. Cautious legalism was one of the surprising responses to threats at this time: as E.P. Thompson put it, 'the essential precondition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation and shall seem to be just'.⁵¹ New laws were passed, but proved generally useless in the colonial setting of the 1770s, and the various laws of arson were never consolidated into a coherently defined crime in the eighteenth century.⁵² Paranoia took carefully-plotted legal routes. In London, Alexander Wedderburn, Solicitor-General, began proceedings against Virginian William Lee, a London alderman, suspected of a scheme to transport disaffected shipwrights in the naval dockyards to the rebellious colonies, but abandoned it. In addition, there was the failure in 1775 to prosecute a supposed plot to kidnap the king attributed to Stephen Sayre (a well-connected American and former sheriff of London) and to the radical MP John Wilkes. Sayre was locked up in the Tower of London but was released without charge, allegedly because further investigation threatened to expose

the existence of government agents embedded in a network of underground activities. Sayre sued the authorities for false imprisonment. Two years later, he left for France.⁵³

While the government pursued the conventional law in England, Massachusetts Governor General Thomas Gage had declared martial law in Boston in June 1775, following the fighting at Lexington and Concord. Even this step, though, was taken under the Massachusetts charter, but, importantly, before the King declared America in a state of rebellion. Such a tactic was dubious, and the pretext – that because of the ‘unnatural rebellion, justice cannot be administered by the common law of the land’ - clearly untrue, as all the normal judicial processes were intact.⁵⁴ This reinforces A.V. Dicey’s point, that martial law in the English tradition never involved a suspension of laws, even in an emergency or in what some have called a ‘state of exception’; though once common in the pre-1700 period, martial law had become deeply unfashionable in England, as the military customarily acted under the control, and in aid of, the civil powers. The Bostonians well remembered the Porteous affair in Edinburgh in 1736 when an officer had exceeded his legal authority.⁵⁵ For many Americans, therefore, legalism was also part of their culture of law, and repeatedly they felt that what was necessary was compelling the British government to follow the common rules. This continued into the revolutionary war when the ‘law of nations’ was frequently invoked by the Americans to oblige the British to observe the rules of war as understood by European nations.⁵⁶ As for the British government, the simple criminal prosecution of Aitken may have been deceptive. Despite a number of attempts to deploy the 1777 Act against Americans brought to London, none were successfully prosecuted. Exceptional times in fact proved remarkably difficult to incorporate in law.

¹ House of Commons, 21 December 1966, vol. 738 cc348-9W.

² Daniel A. Baugh, *The Global Seven Years War: Britain and France in a Great Power Contest* (London, 2011).

³ Jan Eloranta and Jeremy Land, ‘Hollow Victory? Britain’s Public Debt and the Seven Years’ War’, *Essays in Economic & Business History*, XXIX (2011), 101-118; Charles P. Kindleberger and Robert Z. Aliber *Manias, Panics, and Crashes: A History of Financial Crises* Fifth Edition (Hoboken, NJ, 2005), p.59, on both 1763 and 1770 crises.

⁴ Julian Hoppit, *A Land of Liberty? England, 1689-1727* (OUP, 2000), pp.2-5; Gordon S. Wood, ‘Conspiracy and the Paranoid Style: Causality and Deceit in the Eighteenth Century’, *William and Mary Quarterly*, 39/3 (1982), pp. 401-441, p.407.

⁵ David Lemmings and Claire Walker eds, *Moral Panics, the Media and the Law in Early Modern England* (Houndmills, Basingstoke, 2009), p.10, who notes, as does David Lieberman, the increase in laws passed after 1760; David Lieberman, *The Province of Legislation Determined: Legal Theory in Eighteenth-Century Britain* (Cambridge, 1989) Jennifer Davis, “The London Garotting Panic of 1862: A Moral Panic and the Creation of a Criminal Class in Mid-Victorian England,” in V.A.C. Gatrell, B. Lenman and G. Parker (eds.), *Crime and the Law: A Social History of Crime in Western Europe Since 1500* (London, 1980): 190-213.

⁶ Daniel Baugh, ‘Maritime Strength and Atlantic Commerce: The Uses of “a Grand Maritime Empire”’ in Lawrence Stone, ed., *An Imperial State at War: Britain from 1689 to 1815* (London, 1994), 185-223; Jeremy Black, *Natural and Necessary Enemies: Anglo-French Relations in the Eighteenth Century* (London, 1986).

⁷ Peter Borsay, *The Eighteenth-Century Town: A Reader in English Urban History, 1688-1820* (London, 1990) p.122; E.P. Thompson, ‘The Crime of Anonymity’, in Douglas

Hay et al., *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London, 1975), 255-344, p.275.

⁸ *Gentleman's Magazine*, 41 (1771), p.422, 6 and 7 September; *London Evening Post*, 17 September 1771; *Virginia Gazette* (Purdie and Dixon), 21 November 1771.

⁹ Lisa Steffen, *Defining the British State: Treason and National Identity, 1608-1820* (Houndmills, Basingstoke, 2001), p.9; Roger B. Manning, 'The Origins of the Doctrine of Sedition', *Albion*, 12/2 (1980), 99-121; John Barrell, *Imagining the King's Death: Figurative Treason, Fantasies of Regicide, 1793-4* (Oxford, 2000), pp.382-3.

¹⁰ John H. Langbein, *The Origins of the Adversarial Criminal Trial* (Oxford, 2003), pp.90-100; Steffen, *Defining the British State*, pp.50-7.

¹¹ M. Forster, *A Report of Some Proceedings on the Commission of Oyer and Terminer and Goal Delivery for the Trial of the Rebels in the Year 1746 in the County of Surry . . .* (Oxford, 1762).

¹² Wood, 'Conspiracy', p.408; *London Evening Post*, 28 July 1770, and 2 August 1770 'no accidental fire'; *London Evening Post*, 30 July and 2 August 1770; Jeremy Black, *British Diplomats and Diplomacy, 1688-1800* (Exeter, 2001), p140 on Gordon.

¹³ P.Levot, *Procès d'Alexandre Gordon, Espion Anglais, Décapité a Brest en 1769* (Brest, 1861); his last plea was published, *Middlesex Journal*, 4 January 1770; *Gentleman's Magazine*, 40 (1770), p.343, 27 July 1770; p.361 letter from 'Mr Urban', Portsea, 2 August 1770; also pp.387, 28 July and 389, 4 August 1770; *Lloyd's Evening Post*, 8 August 1770; *Pennsylvania Gazette*, 1 November 1770.

¹⁴ *London Evening Post*, 17 September 1771; *Exeter Flying Post*, 22 May 1772; letters were published in repeated editions of *The Whisperer*, Nos 86 to 92, between 5 October and 16 November 1771; *The Rev Mr Talbot's Narrative of the Whole of his Proceedings Relative*

to *Jonathan Britain* (Bristol: S. Farley, 1772) and *Some Particulars of the Life and Death of Jonathan Britain who was Executed at Bristol for Forgery, by a Gentleman who attended him, with a Preface by the Rev Mr. Rouquet* (Bristol, 1772). See *Home Office Papers (George III): 1770-2* (1881), pp. 70-84, 310-332, 494-505, British History Online, [http://www.british-history.ac.uk/report.aspx?compid=62441&strquery=dockyards fire](http://www.british-history.ac.uk/report.aspx?compid=62441&strquery=dockyards+fire) and <http://www.british-history.ac.uk/report.aspx?compid=62448&strquery=dockyards> 1772

Date accessed: 04 August 2014.

¹⁵ *London Evening Post*, 3 and 7 September 1771; TNA PRO SP/37/17 and TS 11/933 interrogations; *Annual Register 1771*, p.143, *Pennsylvania Packet* 16 December 1771, ‘parade’.

¹⁶ *New York Gazette*, 28 October 1771 Count de Guigne’s hasty departure from London; *New Hampshire Gazette*, 10 January 1772.

¹⁷ *Gentleman’s Magazine*, Vol.41, p.424, 30th September 1771; *Annual Register for 1771* (London: 1772), pp.137 and 143, 24 and 30th August.

¹⁸ *London Evening Post*, 31 August 1771; *Gentleman’s Magazine*, 41 (1771), p.422, 6 September 1771. *Memoirs of the Life of Joshua Dudley explaining Amongst other Particulars The Motives of his pretended Discovery of the Persons concerned in setting Fire to the Dock-Yard at Portsmouth in July 1770 written by Himself* (London, 1772); *The Rev Mr Talbot’s Narrative of the Whole of his Proceedings Relative to Jonathan Britain* (Bristol, 1772) and *Some Particulars of the Life and Death of Jonathan Britain who was Executed at Bristol for Forgery, by a Gentleman who attended him, with a Preface by the Rev Mr. Rouquet* (Bristol, 1772); TNA SP 37/17, and TS 11/933; Old Bailey Sessions Papers, February 1772 and 3-9 June 1772; *Gentleman’s Magazine*, vol.40, 343 and 361-3, July 1770,

41, 422-3, September 1771, 42, 339, July 1772; *London Evening Post*, 31 August, 3, 7, 10, 12 and 17 September 1771.

¹⁹ *New Hampshire Gazette, Connecticut Journal, and New London Gazette* 28 September 1770; *Boston Gazette*, 1 October 1770; *Providence Gazette*, 6 October 1770; *Boston Post-Boy* and *Boston Evening Post*, 21 October 1771; *Providence Gazette*, 2 November 1771; *Virginia Gazette* (Purdie and Dixon) 21 November 1771, and 24 September 1772.

²⁰ *Massachusetts Spy*, 30 January 1772; *Boston Evening Post*, 31 August 1772, from London datelined 26 July.

²¹ *Morning Chronicle and London Advertiser*, 18 Oct 1774; *Leeds Mercury*, 25 October 1774; *Cumberland Pacquet*, 27 October 1774; *Virginia Gazette* (Purdie), 10 March 1775; letter for Joshua Dudley, Augusta post office, *Virginia Gazette* (Rind), 17 February 1774; Gwenda Morgan and Peter Rushton, *Eighteenth-Century Criminal Transportation: The Formation of the Criminal Atlantic* (Houndmills, Basingstoke, 2004), pp.109-10.

²² ‘An Act for the better securing and preserving his Majesty’s dockyards, magazines, ships and stores’, *Journal of the House of Commons*, XXXIII, p.608; 12 Geo.III. c.24, *Statutes of the Realm*, Charles Eyre and William Strahan, Vol.8 (1786), p.170.

²³ *Boston Evening Post*, 4 January 1773.

²⁴ David Ramsay, *The History of the American Revolution* (Philadelphia, 1789), I, p.137 and J. Philip Reid, *A Constitutional History of the American Revolution*, I, p.54; *St James’s Chronicle, London Chronicle* 18 July 1772, *Daily Advertiser* 20 July 1772, first reports from Admiral Montagu.

²⁵ See Forster, *A Report of Some Proceedings . . . in the Year 1746 in the County of Surry*, p.1, 19 Geo.II c.9, ‘impowering HM to issue Commissions for Trying the Rebels in

any County of the Kingdom, in the same manner as if the Treasons had been committed in that County', and pp.15, and 19-21.

²⁶ Geoffrey R. Elton, *The Tudor Constitution: Documents and Commentary* 2nd edition (Cambridge,1982), p.61; J. Bellamy *The Tudor Law of Treason: An Introduction* (London, 1979), Ch.2 note 27, p.246; William Holdsworth *History of English Law* Vol.IV p.495-6; Coke, *Institutes*, Vol.3, pp.1ff suggests that some Henrician laws were in place; also see John Raithby (ed.), *The Statutes at Large from Magna Carta to the Union of the Kingdoms of Great Britain and Ireland*. (London, 1811), Vol.3, p.431; *A Collection of the Several Statutes and Parts of Statutes now in force relating to High Treason and Misprision of High Treason* (Edinburgh, 1746), pp.14-5; Peter D.G. Thomas, *George III: King and Politicians, 1760-1770* (Manchester, 2002), p.201.

²⁷ I. D. Thornley, 'The Treason Legislation of Henry VIII (1531-1534)', *Transactions of the Royal Historical Society*, Third Series, 11 (1917), 87-123.

²⁸ R. C. Simmons and P. D. G. Thomas (eds.), *Proceedings and Debates of the British Parliaments Respecting North America 1754-1783*, 6 Vols (White Plains, NY, 1984), Vol. III, p.52.

²⁹ Simmons and Thomas, *Proceedings and Debates*, III, pp.64-6, 68-9.

³⁰ Simmons and Thomas, *Proceedings and Debates*, III, 26 January 1769, pp.63 and 72; Peter D. G. Thomas, *The Townshend Duties Crisis; The Second Phase of the American Revolution* (Oxford, 1967), 114-20; Peter J. Stanlis, 'Edmund Burke's Legal Erudition and Practical Politics: Ireland and the American Revolution', *Political Science Reviewer*, 25/1 (2006), 66-93, pp.82-3; Edmund Burke *The Works of Edmund Burke* (Boston MA, 1836), I, pages 68-9; 91-3, 95, p.99 quoted, from 'The Letter to the Sheriffs of Bristol'.

³¹ *Journals of the House of Burgesses of Virginia*, ed. John P. Kennedy, XI, 1766-69 (Richmond VA, 1905), pp.214-6; *Acts and Laws of The English Colony of Rhode-Island . . . made and passed since the Revision in June 1767* (Newport, RI, 1772), pp.22-3; *Scots Magazine*, Vol.28 (Edinburgh, 1775), p.182; 'bugbear law', *Massachusetts Spy* 22 April 1774, *Essex Gazette* 26 April 1774, *Connecticut Journal* 29 April 1774, *Providence Gazette* 30 April 1774, *Pennsylvania Packet* 2 May 1774, *Newport Mercury* 9 May 1774, *New Hampshire Gazette* 13 May 1774; 'antiquated law', *New York Journal*, 18 January 1776; *Pennsylvania Packet* 1 April 1778 though the statement was signed by George Washington, the editor expressed scepticism about its providence (as have others) but he printed it because he endorsed the sentiment.

³² Bradley Chapin, 'The American Revolution as Lese Majesty', *Pennsylvania Magazine of History and Biography*, 79/3 (1955), 310-30, pp.318-321.

³³ William R. Leslie, 'The *Gaspee* Affair: A Study of its Constitutional Significance', *Mississippi Valley Historical Review*, 39 (1952), 233-56, p.233; Neil L. York, 'The Uses of Law and the *Gaspee* Affair', *Rhode Island History*, 50 (1992), 1-22.

³⁴ Peter O. Hutchinson, *Diary and Letters of Thomas Hutchinson* (Boston, 1884), p.172; Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture within the Empire* (Cambridge MA, 2008), pp. 5-6; York, 'The Uses of Law', 5, 3.

³⁵ Leslie, 'The *Gaspee* Affair', pp.236-37.

³⁶ Thurlow and Wedderburn, 10 August 1772; TNA PRO CO 5/ 159, ff. 26-27.

³⁷ York, 'The Uses of the Law', p.9.

³⁸ 'Americanus', *Providence Gazette*, 26 December 1772, from the *Newport Mercury* 21 December; *New York Journal*, 7 January 1773; *London Evening Post*, 23 March 1773.

³⁹ Hannah Winthrop to Mercy Otis Warren, January 1773 cited in Elizabeth F. Ellet, *Revolutionary Women in the War for American Independence* (1848), p.48; Governor Hutchinson to Commodore Gambier, Boston, 30 June 1770 cited in Mercy Otis Warren, *History of the Rise, Progress and Termination of the American Revolution*, ed. Lester H. Cohen (Indianapolis, IN: 1988 [1805], note no XI, pp.356-67; Arthur Lee to Samuel Adams, July 20, 1772 and to Richard Henry Lee, February 14, 1773 cited in Louis W. Potts, *Arthur Lee: A Virtuous Revolutionary* (Baton Rouge LA, 1981), p. 102.

⁴⁰ *Hampshire Chronicle*, 21 April 1777.

⁴¹ TNA PRO CO 5/160/ f. 40; Neil L. York, 'Imperial Impotence: Treason in 1774 Massachusetts', *Law and History Review*, 29 (2011), 657-70; Peter D. G. Thomas, *Tea Party to Independence: The Third Phase of the American Revolution 1773-1776* (Oxford, 1991), pp. 48-87; Viola F. Barnes, 'Francis Legge, Governor of Loyalist Nova Scotia 1773-1776', *New England Quarterly*, Vol. 4/3 (1931), pp. 420-447, 1775 disturbances.

⁴² Joseph Gurney, *The Trial of James Hill al. James Hinde or James Aitkin (known also by the name of John the Painter) for feloniously . . . setting fire to the Rope House of HM's Dock-yard . . . 6 March 17 Geo III, 1777*; Jessica Warner, *John the Painter: the First Modern Terrorist* (London, 2004).

⁴³ *Newgate Calendar* (London, 1825) III, p.41; Warner, *John the Painter*, pp.176 and 181; Neil L. York, *Burning the Dockyard: John the Painter and the American Revolution* (Portsmouth, 2001).

⁴⁴ Warner, *John the Painter*, p.183; Howell, *State Trials*, XX, pp.1317-1364, 1365-1368; York, *Burning the Dockyard*, p.11.

⁴⁵ *Morning Post*, 21 January 1777; *London Gazette* 25 January 1777, *Morning Chronicle and London Advertiser* 29 January 1777; *Morning Post*, 8 and 18 March 1777 (pamphlets advertised).

⁴⁶ *John The Painter's Ghost: How He Appeared on the Night of his Execution to Lord Temple* (London, 1777); *A Short Account of the Motives which determined the man called John the Painter and justification of his conduct, written by himself and sent to his friend Mr A. Tomkins, with a request to publish it after his execution.* (London, 1777), p.9; *The Trial of James Hill, Alias John the Painter, for Wilfully Setting Fire to the Ropehouse in the King's Yard at Portsmouth . . .* (London, 1777); *The Trial of James Aitken, commonly called John the Painter, an Incendiary . . .* (London: 1777); *The Trial at Large of James Hill otherwise James Hind, otherwise James Aitken, commonly known by the name of John the Painter . . .* (1777).

⁴⁷ See Steffen, *Defining the British State*, p.95; William Gordon, *The History of the Rise, Progress and Establishment of the Independence of the United States of America*, 3rd ed. (New York, 1801), II , pp.183-5; Paul D. Halliday, *Habeas Corpus: From England to Empire* (Cambridge, MA, 2010), pp.250-2.

⁴⁸ *Derby Mercury*, 14 and 21 March 1777; *Parliamentary Register* Vol.6 (London: 1777), p.181, pp.175-82.

⁴⁹ *The Life of James Aitken, commonly called John the Painter, and Incendiary . . .* (London, 1777), p.18; more briefly in *The Trial at Large of James Hill . . . Commonly Known by the name of John the Painter . . .* 2nd ed. (London, 1777), p.83; Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners and the Hidden History of the Revolutionary Atlantic* (London, 2002), p.221. For the participants in the Tea

Party, see Benjamin L. Carp, *Defiance of the Patriots: The Boston Tea Party in the Making of America* (New Haven, 2010).

⁵⁰ *A Short Account of the Motives which determine the man called John the Painter; and justification of his conduct, written by himself, and sent to his friends Mr Tomkins, with a request to publish it after his execution* (London, 1777), p.13; *Pennsylvania Gazette*, 19 July 1780, also in *Pennsylvania Packet*, 25 July. William A. Whitehead, *Contributions to the Early History of Perth Amboy* (New York, 1856), p. 126, and John Hill Morgan, 'John Watson, Painter, Merchant, and Capitalist of New Jersey, 1685-1768', *Proceedings of the American Antiquarian Society*, 50, (1940), 225-317; *The Trial of James Hill alias John the Painter* (London, 1777), p.18.

⁵¹ E.P. Thompson in *Whigs and Hunters: The Origin of the Black Act* (London:1975), p.263 and pp.258-65 generally.

⁵² *The Law Dictionary, originally compiled by Giles Jacobs*, ed. T.E. Tomlins (London, 1809) for the details: houses and outhouses were given protection, as were coalmines and mills.

⁵³ Julie Flavell, 'The Plot to Kidnap George III', *BBC History*, November 2006, 13-16; John Richard Alden, *Stephen Sayre: American Revolutionary Adventurer* (Louisiana, 1983), p.36 and Arthur H. Cash, *John Wilkes: The Scandalous Father of Civil Liberty* (New Haven, CT, 2006), pp.235, and 323-25.

⁵⁴ David E. Engdahl, 'Soldiers, Riots and Revolution: The Law and History of Military Troops in Civil Disorders', *Iowa Law Review*, 57 (1) (1971), p.28; Gage Proclamation in N. Niles, *Principles and Acts of the Revolution in America* (Baltimore, MD: 1822), pp.136-8.

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