

An Outline History of the Trials of Louis XVI & Marie-Antoinette¹

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 judge. Marie Antoinette was tried nine months later by a special tribunal constituted by three judges and a jury. He was tried as their former head of state; she was tried as a common citizen.

By modern standards, each trial denied procedural fairness on several accounts, in particular, adequate notice of the charges and a reasonable period of time to prepare a defence. Yet each trial attempted to present a form of legal process to ensure its legitimacy across France, as well as throughout the western world. The National Convention was concerned in relation to Louis' trial to avoid the criticism of the English trial of Charles I over a century earlier. 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 publicized. 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 150 years the States 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

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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 Declaration of Rights on 20 August. After moving to Paris, following the transfer of the royal family and the court to the Tuileries on 6 October, the Assembly met for the first time in Paris on 19 October in the Arceveché 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 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 Convention 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.

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 of the mob. Just before the mob ransacked their apartments, the royal family fled to the safety of the nearby Manège where the National Assembly was meeting, leaving behind incriminating papers. From this point, they became prisoners in The Temple. In just over a month, the National Convention 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 (not members of the Convention) to investigate the 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

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" (325) was tabled the following day on 7 November which dealt with the fundamental issue: did the Constitution permit the King to be tried by the Convention?

The Constitution of 1791 provided the following:

Tit III Cap II Sect I Art II "The person of the King is inviolable and sacred."

- A regency was authorized only upon the minority (Sect II) or madness of the King (Art XVIII).
- Abdication was deemed to occur 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:
- 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."
- Art VII "if the king left the country, and failed to return within a time fixed by the legislature".
- The consequence of abdication was provided in Art VIII: "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."

Those defending Louis XVI argued:

- 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

³ Thompson at 18.

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."⁴ His Report also rejected any defence that Louis was being punished a second time, and that Louis was being tried for a crime which did not exist at the time in breach of the declaration of rights (ie "no one can be punished but in virtue of a law established and promulgated previous to the crime, and legally applied"⁵: for he is to be tried under the penal code for treason.

Mailhe's Report relied on "the great principles of natural and social justice"⁶ before appealing 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?⁷

The Report concluded with nine steps which recognize some degree of procedural fairness:

1st Louis the XVIth can be tried.

2nd He shall be tried by the National Convention.

3rd Three 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 Assembly debated these issues over the next two months. Most deputies wished to speak, and those who were unable published their own views by pamphlet. Along with Mailhe's Report, which was published throughout France as well as in foreign languages, reports of these debates were published in multiple volumes. Public pamphlets proliferated across a wide spectrum of opinion as to whether the King should be tried, ranging from doing nothing, to executing him immediately - kingship being a crime in itself.⁸ 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 in the Tuileries which Louis XVI commissioned 6 months earlier. Roland discovered over 650 pages of the King's private papers which increased the pressure for his trial, containing damning

⁴ Thompson at 20.

⁵ Thompson at 21

⁶ Thompson at 21.

⁷ Thompson at 21-22.

⁸ Thompson at 327.

evidence of the arrangements for the flight to Varennes, instructions to refractory priests, correspondence between Calonne and Pitt [Bourbon Minister who founded the Compagnie des Indes 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.⁹

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 Louis should be tried to expose the European monarchical conspiracy against the liberty of the people in order to protect the new French republic and to liberate all Nations.¹⁰

On 22 November, a few incriminating letters found in the Tuileries safe were tabled which showed that "Louis advised the massacre of Nancy".¹¹

Commencement of Louis' Trial



On 11 December, Louis was brought from The Temple in Mayor Chambon's coach to the bar of the National Convention for three hours of questioning by the President of the House, Barrere.¹² Being unaware of the specific accusations in advance, 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

⁹ Thompson at 327.

¹⁰ Trapp 35-37

¹¹ Thompson at 38-39.

¹² Trapp 54-67

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.¹³ 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, Lamoignon de Malesherbes, who volunteered at 72 to serve his former master, as a matter of duty.

By 17 December, the two counsel sought the assistance of a younger brilliant Bordeaux lawyer of 44 who had recently moved to Paris, Raymond de Sèze.¹⁴ With only 10 days to prepare the defence, he worked through the last four nights to prepare his 2 hour speech, the *plaidoyer*. The three counsel worked each day with Louis, reviewing the numerous documents sent by the Convention, seeking access to those missing, and planning strategy. 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".¹⁵

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 hall of the National Convention. This venue was the former theatre in the Tuilleries Palace, known as the Salle des Machines, on account of its elaborate stage machinery. It had been built for the wedding of Louis XIV in 1661.

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 with no prosecutor, no jury other than the 600 odd members of the National Convention, and no judge other than the President chairing the proceedings. There were no witnesses, other than Louis himself, who said nothing, leaving it to de Sèze to deliver the formal defence over the next 2-3 hours.

¹³ David P Jordan, *The King's Trial (Louis XVI vs The French Revolution)*(Uni of California Press 1979) at 117

¹⁴ Jordan 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.

¹⁵ Jordan 128

At 10 am the President, Defermon, warned the members and the packed public gallery against any “murmur or approbation”¹⁶, 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”.¹⁷

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.”¹⁸

After bowing to the Convention, de Sèze opened the defence, addressing them as “Citizens, Representatives of the Nation”. Speaking without interruption for about 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.¹⁹

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 Art VIII which recognized that the King forfeited his inviolability 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.”²⁰

¹⁶ Trapp 85

¹⁷ Trapp 85

¹⁸ Trapp 85

¹⁹ Trapp 86-87

²⁰ Trapp 87

Secondly, the Defence specifically addressed and rejected at least 18 separate charges in the Act of Accusation, commencing in June 1789. The last two 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."²¹ 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."²² 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.²³

As soon as de Sèze concluded, the President asked Louis if there was anything he wished to add to his defence. After requesting a fresh shirt for his exhausted and perspiration-soaked counsel, Louis concluded his defence with this brief dignified 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 for ever from me, such an imputation.²⁴

The Convention entered a prolonged debate for the next week. On 14 January 1793, the Convention settled on three questions for its members to decide: (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 until 10 pm with most deputies declaring his vote from the tribune, while some sent in written absentee votes. The results from 748 deputies were:

²¹ Trapp 97

²² Trapp 98

²³ Jordan at 135; cf the translation in Trapp at 99-100.

²⁴ Trapp at 100. Cf Jordan translation at 136.

- (i) Is Louis guilty? Yes with 683 votes; 37 qualified their answer, most doubting their right to try the King; and 28 were absent.
- (ii) Should the decision be referred to the people? No with 425 votes; 286 Yes.

As for the final question - (iii) What punishment shall Louis suffer, this was preceded by a debate on the requisite majority. Suggestion of a two-thirds' or three-quarters' majority was 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 of the public gallery in the Convention 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 this portrait of the deputies themselves:

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.²⁵

The result on 17 January 1793 varies between historians. The official figures given by Trapp²⁶ 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.²⁷

Following this declaration, commotion ensued over a letter from the Spanish Charge d’Affaires seeking to persuade the Convention not to proceed with Louis’s trial, and over a sick member, Duchatel, who was brought in to vote in favour of Louis. Undaunted, the President pronounced:

²⁵ See Thompson at 332 citing Mercier’s first hand account.

²⁶ Trapp 160

²⁷

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!²⁸

Louis' three counsel were then readmitted to the bar, according to Trapp, sobbing. De Sèze pleaded that the sentence be submitted to the people – especially given the majority of five votes. Tronchet argued that the law required a two-thirds' vote. Malesherbes sought to speak the next morning. Their requests were rejected and the Convention adjourned 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.”²⁹

So a second and decisive vote was taken late on the evening of 19 January after further prolonged debate. The official pamphlet at p 65 states the “Result of the Third Scrutiny” as follows³⁰:

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 published list haunted the deputies for the remainder of their lives.

President Vergniault rose at midnight to declare on behalf of the Convention that his execution “shall not be respited”. Motions were then passed to require the Executive Council to notify Louis of his sentence and 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.³¹

In solitary confinement at the Temple, Louis was 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 Edgeworth³², then his wife, Marie -Antoinette, and their two surviving children for their last good-bye.

²⁸ Trapp 163

²⁹ Trapp 165

³⁰ Compare different figures in: Thompson around 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.

³¹ Trapp 183

³² See his account in M V Woodgate, *The Abbé Edgeworth* (Browne & Nolan Limited, Dublin).

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 beating of drums and trumpet sounds, took over an hour to travel from the Temple to the Place de la Revolution. Upon mounting the scaffold, Louis obtained from General Santerre a brief moment to speak. With the drummers briefly silent, Louis managed to declare loudly: "My people, I die an innocent man" (*Peuple, je meurs innocent*).³³ Within two minutes of mounting the scaffold, Louis was decapitated by the guillotine.³⁴

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. In denying this request, the Convention followed the usual practice of ordering his 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 Antoinette³⁵

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 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.³⁶ 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).³⁷

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. Subsequently, he was investigated by the Committee for General Security for defending the Queen too well. Despite later arrests,

³³ Cf Trapp at 205: "Frenchmen, I die innocent! I forgive mine enemies! may my death serve the people!".

³⁴ Trapp 206

³⁵ Generally see Thompson 434-436

³⁶ 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.

³⁷ ECCO text at 30.

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.³⁸

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.³⁹ The trial, which was held in the Grand Chamber⁴⁰ where her earlier interrogation occurred, lasted two days from 14 until the early hours of 16 October⁴¹, and heard 41 witnesses.⁴² By modern standards, there was at least a denial of procedural fairness in relation to adequate notice of the charges, having not received the acte d'accusation and 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.

³⁸ Georges Pernoud and Sabine Flaissier, *The French Revolution*, translated by Richard Graves (New York: Capricorn Books, 1970), 203–5.

³⁹ 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.

⁴⁰ Also where Cardinal de Rohan was tried, known then as the Hall of Freedom: Vincent Cronin, *Louis & Antoinette* (Collins, London 1974) at 383.

⁴¹ Lagarde says he was advised of his appointment as defence counsel on 14 Oct with the trial starting 8 am on the 15th.

⁴² Simon Schama, *Citizens A Chronicle of the French Revolution* (Alfred A Knopf, New York 1989), 799.



The principal charges brought against Marie Antoinette were personal unlike the political crimes of Louis: she squandered public money on her “disorderly pleasures”; her 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?”⁴³ 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!”⁴⁴

Others testified to her dignity:

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.⁴⁵

⁴³ *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”)

⁴⁴ Furneaux at 153.

⁴⁵ ECCO text at 75.

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.⁴⁶

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.⁴⁷ Each may have spoken for two hours⁴⁸ "in profound silence".⁴⁹ They are likely to have relied on the absence of any sound evidence of treason, documentary or otherwise,⁵⁰ and clemency. The latter 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.⁵¹

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.

⁴⁶ ECCO text at 67.

⁴⁷ Vincent Cronin, *Louis & Antoinette* (Collins, London 1974) at 390.

⁴⁸ Furneaux at 153.

⁴⁹ ECCO text at 68.

⁵⁰ 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.

⁵¹ P Huisman & M Jallut, *Marie Antoinette* (Patrick Stephens Ltd, Lausanne 1970) at 238.

Thirdly, Marie Antoinette, is she convicted of having had a share in that plot and that conspiracy.⁵²

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”.⁵³ Her defence counsel, Trouson, conceded the sentence accorded with the law and declared his professional services terminated.⁵⁴ 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 Concierge 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.⁵⁵

After returning to her cell, Marie Antoinette wrote a final 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. She was accompanied by the executioner and a constitutional priest, and guarded by 30,000 troops who lined the route to the Place of Revolution. 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 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 Tuilleries, the former abode of her Greatness.⁵⁶

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.⁵⁷ Her body and head were soon buried in quicklime in the Madeleine cemetery where Louis was buried nine months earlier.

Postscript

⁵² ECCO text at 72-3.

⁵³ ECCO text at 73.

⁵⁴ ECCO text at 74.

⁵⁵ <http://alphahistory.com/frenchrevolution/williams-execution-of-marie-antoinette-1793/> accessed 2 Nov 16

⁵⁶ ECCO text at 76.

⁵⁷ ECCO text at 77.

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, as well as. 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 Madeleine Church; the most prominent, appropriately, Blvd Malesherbes.

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)

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 and contributed to the final version of the code civil. According to Wikipedia: "He had a marked influence on the code, and succeeded in introducing common law principles in spite of the opposition of his colleagues, who were 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 later guillotined after his daughter, son in law and grandchildren in 1794. His remains are lost but there is a statue of him 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) [Montparnasse 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'état of 18 fructidor, he was deported to Guyana for royalist sympathies where he died in 1798.

