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Ronald L. Hayworth

University of Arkansas, Fayetteville

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THE INVIOIABILITY CONTROVERSY IN THE TRIAL OF LOUIS XVI

Ronald L. Hayworth
Arkansas College

The attempt at constitutional monarchy during the French Revolution ended abruptly on August 10, 1792, with the dethronement of Louis XVI in what has been termed the Second French Revolution.¹ One major problem that the new National Convention faced when it convened in mid-September was the determination of the fate of the *ci-devant roi*. The solution of this dilemma, generally designated by historians as Louis XVI's trial, falls between November 6, 1792, the date of the first full-scale report to the Convention on evidence against Louis, and January 21, 1793, the date of his execution.

The thesis of this paper is that much of the debate at the tribune of the Convention during Louis XVI's trial revolved around the issue of royal inviolability — that is, whether or not the king was inviolable and therefore not subject to trial — but that arguments in support of inviolability were in fact academic and dilatory: academic because they were largely theoretical and advanced without expectation of practical results, dilatory because they formed a part of the efforts of some Girondin deputies to delay the trial and save the king.

With few exceptions the royal inviolability controversy centered on the provisions on royalty in the Constitution of 1791. It is therefore appropriate to cite the pertinent articles of Section I: "Of the Royalty and the King":

Article 2: The person of the king is inviolable and sacred: his only title is **King of the French**.

Article 5: If, one month after the invitation of the legislative body, the King shall not have taken this oath [given in article 4], or if, after having taken it, he retracts it, he shall be considered to have abdicated the throne.

Article 6: If the King puts himself at the head of an army and directs the forces thereof against the nation, or if he does not by a formal instrument place himself in opposition to any such enterprise which may be conducted in his name, he shall be considered to have abdicated the throne.

Article 7: If the King, having left the kingdom, should not return after the invitation which shall be made to him for that purpose by the legislative body and within the period which shall be fixed

¹Georges Lefebvre, *The French Revolution from its Origins to 1793* (New York, 1962), pp. 227-247.

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by the proclamation, which shall not be less than two months, he shall be considered to have abdicated the throne.

Article 8: After the express or legal abdication, the king shall be in the class of citizens and can be tried like them for acts subsequent to his abdication.²

Discussion on these articles by the National Assembly aroused no heated arguments; none of the approximately eighty Constituents, subsequently deputies to the Convention, apparently raised a voice against them.³ But a vigorous challenge of royal inviolability followed the king's flight to Varennes in June, 1791. Several future conventionnels, among them Jerome Pétion de Villeneuve, Maximilien Robespierre, and François Buzot, attacked the dogma and demanded that Louis be tried by the legislative body or a specially-convened Convention.⁴

Inviolability became an official issue in Louis's trial with the presentation of a report by the Convention's Legislative Committee on November 7, 1792. In the first section the reporter Jean-Baptiste Mailhe listed as the first of several questions discussed by the committee: "Is Louis XVI **judgeable** for the crimes he is imputed to have committed on the constitutional throne?" The committee, in effect, had concluded in the affirmative. The Legislative Assembly suspended Louis and returned to the nation all the powers formerly confided in the monarch. The nation had in turn elected the Convention as the organ of its sovereign will, thereby effecting the negation of royal inviolability. In essence, continued Mailhe, "royal inviolability is as if it had never existed." The report further stated that the penal code, which stipulated death for treasonable activity, furnished the law whereby Louis could be judged. The committee report ended with a fourteen-article **projet** for consideration by the Convention, the first article of which read: "Louis XVI can be tried."⁵ The Convention rejected a Jacobin proposal to add "and **ought** to be tried," but it postponed discussion of the committee's report.⁶

²Frank Maloy Anderson (ed.), *The Constitutions and Other Select Documents Illustrative of the History of France, 1789-1907*. Second Edition (Minneapolis, 1908), p. 71.

³J. Mavidal and E. Laurent (eds.) *Archives Parlementaires de 1787 à 1860: Recueil complet des débats législatifs et politiques des Chambres françaises; Première série (1787 à 1799)* (Paris, 1867-1913), IX, 24-25; cited hereafter as *Archives*.

⁴Edward Seligman, *La Justice en France pendant la Revolution (1789-1793)*. Second Edition (Paris, 1913), II, 31.

⁵*Archives*, LIII, 275-281; *Procès-Verbal de la Convention Nationale* (Paris, 1793-1795), III, 6-7; cited hereafter as *Procès-Verbal*. For a brief summary of the report see Albert Mathiez, *The French Revolution* (New York, 1962), pp. 255-256.

⁶*Archives*, LIII, 282.

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The decision to concentrate attention only on the first article of the committee's **projet** came on November 13, as the result of a motion by Pétion, a former Jacobin now associated with the Right in the Convention. In the course of his brief comments he clearly attacked "the stupid dogma of inviolability," and cited his long-standing opposition to it. But, he concluded, it was important to prove, with the law in hand, that Louis could not invoke the law.⁷

In the course of the next two weeks ten deputies read prepared speeches on royal inviolability. Not all of those either for or against the dogma developed the same arguments respectively. Among the predominantly Girondin conventionnels supporting it, for example, Charles Morisson said that the death penalty prescribed for treason in the penal code was not applicable to Louis, since his crimes were committed while he was under the Constitution; also, there was no other **pre-existent** laws by which Louis could be tried. Therefore, the Legislative Assembly had applied the maximum penalty when it dethroned this "enemy of the French."⁸ Claude Fauchet put emphasis primarily on the need of a **pre-existent** law;⁹ Jean-Marie Rouzet admitted that Louis was probably **jugeable** in the sense of the committee's report, but argued that it was not in the interest of the nation to try him;¹⁰ and Pierre-Joseph Faure decried the existence of inviolability, that "loi barbare, loi absurde," but insisted that it did exist and had to be respected.¹¹

But if diversity existed among the speakers defending inviolability it was equally evident in opposition speeches. Antoine Saint-Just attacked as false not only Morisson's defense of the dogma, but the Legislative Committee's view that Louis could be tried as a citizen. The ex-king, he declared, should be tried as an enemy of France.¹² Taking another approach, Pierre François Robert cited the Declaration of the Rights of Man to the effect the law should be the same for all, whether it protected or punished. The nation, incensed at the grant of inviolability to the king, became a "living law" on August 10 and proclaimed by its action that Louis would be judged.¹³ But on December 3, in what is sometimes referred to as the "Montagnard thesis"

⁷*Ibid.*, LIII, 385.

⁸*Ibid.*, LIII, 387-389.

⁹*Ibid.*, LIII, 393-394.

¹⁰*Ibid.*, LIII, 421-422.

¹¹*Ibid.*, LIII, 638.

¹²*Ibid.*, LIII, 390.

¹³*Ibid.*, LIII, 395-396.

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on this subject,¹⁴ Maximilien Robespierre attacked not so much the validity of royal inviolability as its relevance to the case at hand. Louis XVI, he argued, was not an accused, the conventionnels were not judges. No trial was necessary since the king had already been tried by the people in the August 10 insurrection: "Louis cannot therefore be judged; he has already been condemned. . ."¹⁵

Parenthetically, the inviolability issue was by no means confined to debate at the tribune of the Convention. A number of contemporary pamphlets supported the king's inviolability, two of which are particularly noteworthy. Jacques Necker, the former finance minister of Louis XVI, argued that the king could not be tried as a particular, and that furthermore he had not violated any constitutional laws. He buttressed royal inviolability with historical references, noted that kings could not be tried by their peers and certainly not by partial men, and declared the doctrine both just and necessary.¹⁶ In response to Necker's published views, an anonymous pamphleteer claimed for Louis not only constitutional inviolability, but furnished an apparent rarity for this trial: an impassioned argument for inviolability on the basis of divine-right. Scolding Necker for avoiding this approach, the writer declared boldly: "Louis is both the most live image of and the minister of God. By virtue of this double title he is due a religious homage; to refuse to render it to him is to commit a sacrilege."¹⁷

The controversy seemed at an end on December 3 when the National Convention decreed not only that Louis could be tried, but that in effect the Convention itself would serve as both judge and jury. But the issue of royal inviolability reappeared in subsequent phases of the trial, particularly in arguments by Louis's counsel, and in some of the orations by conventionnels in the week that followed the formal defense.

¹⁴This phrase is used by G. Pariset, *La Revolution (1792-1799)* (Paris, 1920-), p. 18. The "Montagnard view" is the phrase used by M. J. Sydenham, *The Girondins* (London, 1961), pp. 135-136. Both refer to Robespierre's thesis that no trial was necessary since Louis had already been condemned. But François Robert, see above p. 4, a Paris Jacobin, insisted that Louis could be tried; and Jean-Paul Marat, also a Jacobin, concluded that Louis "soit promptement juge" in his paper, *Journal de la République française*, December 4-5, 1792.

¹⁵*Archives*, LIV, 74-75. Robespierre reiterated these views in a letter to his constituents on December 14, 1792; see *Oeuvres complètes de Robespierre* (Paris, 1912-1958), V, 135-136.

¹⁶Jacques Necker, *Réflexions présentées à la nation française sur le procès intentée à Louis XVI*. . . (Paris, 1792), pp. 12, 19-23, 29.

¹⁷M. M.***, *Response aux réflexions de M. Necker, sur le procès intentée à Louis XVI*. . . (Paris, 1792), pp. 26, 31-32.

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II

Louis XVI appeared at the bar of the Convention for the first time on December 11, where he heard the act of accusation and was asked to examine and respond to certain documents which had been submitted in evidence against him. Though the Convention voted after this first confrontation that the ex-king might choose one lawyer or defender, in the end he had a total of three: François-Denis Tronchet, who accepted Louis's bid after the refusal of the king's first choice; Lamoignon de Malesherbes, whose volunteered services Louis accepted; and Raymond Desèze, whom Louis and the Convention accepted at the request of the two other members of the defense counsel.

But the defense was handicapped from the outset by the king's decision to respond to the Convention's charges on December 11. Had he followed the example of the English King Charles I he would have refused to recognize the competency of the Convention to try him. His counsel, despite this handicap, attempted to exploit every possibility to save the king. The first section of the formal defense, read by Desèze on the occasion of Louis's second and final appearance before the Convention on December 26, claimed inviolability (thereby reopening what seemed a closed issue), the second part reiterated in detail Louis's responses of December 11 to the specific charges brought against him.

Desèze opened this impressive defense at the obvious point: he denied that the Convention's decision to try Louis had closed the issue of royal inviolability. He then proceeded to examine the constitutional articles which dealt specifically with royalty,¹⁸ and to build his conclusions around them. In the first place, he reasoned, a sovereign nation delegated the exercise of its sovereignty to its monarch (if, as in the case of France, it decided to give itself a king), which meant that the monarchical form of government itself presupposed that the king was inviolable. Second, there were no limits to that inviolability, no conditions which altered it. Third, even if the king should commit the crimes foreseen in the Constitution, that document contained nothing about the subsequent creation of a tribunal to try the king, nothing of a trial of any sort, but only of dethronement. Finally, if the king abdicated or was dethroned, he could be tried thereafter only for crimes committed after his downfall.¹⁹

These defense arguments apparently made little impression on the deputies, though some of the attention given to inviolability after December 26 was in part a reaction to the formal defense. But in the twenty-nine speeches given after Louis's second and final appearance, new issues crowded out the old; that is, inviolability took a back seat to the "appeal to the people" movement. Despite its secondary role, however, inviolability remained, on the surface at least, an issue in

¹⁸See above, p. 2.

¹⁹Raymond Desèze, *Defense de Louis, prononcée à la barre de la Convention nationale*. . . (Paris, 1792), pp. 4-13; *Archives*, LV, 618-621.

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many of the speeches delivered between December 27, 1792, and January 4, 1793. So frequently did mention of it occur, in fact, that one deputy suggested that the order of appearance at the tribune be based on defense or attack of inviolability.

That the issue had indeed taken on a less important role was evident in the decreasing number of deputies who mentioned it. The fact that only two Jacobins said anything on the subject would suggest that the Left considered the issue closed, though these deputies did spend considerable time in their attack. All seven of the deputies who supported royal inviolability after December 26 were Girondins, including Pierre Vergniaud; but such prominent Girondin leaders as Charles Barbaroux, Buzot, and Pétion spoke against the dogma.

But even among the speeches of the Girondins who supported the dogma there is evidence of an increasing loss of enthusiasm; their arguments showed no refinement and were much the same as those presented from November 15 to December 3. None incorporated any of the clear logic provided by the formal defense, though the Girondins could hardly afford to do so since their support of inviolability had already exposed them to charges of royalism. The academic nature of their arguments was again evident. For example, Rouzet, on December 27, termed the dogma "a monster in the social order," but declared it a reality nonetheless.²⁰ Hardly less original, Vergniaud called the dogma absurd but maintained that only the people could withdraw it since they had granted it initially.²¹ Petit, not to be outdone in this parade of clichés, pointed to the necessity of a **pre-existent** law, a law established prior to the crime, by which Louis could legally be tried.²²

The two Jacobins who attacked inviolability, on the other hand, at least made an effort to bring new arguments to bear. Jean-Bon Saint-André quizzed the supporters of inviolability as to their reasons for invoking it for the former king. Why claim inviolability for Louis if he was now only a common citizen? Further, he argued, the inviolability granted to the monarch had been destroyed when the king was dethroned and imprisoned; in short, the "general will" had released the citizens from what he termed an immoral oath.²³ In a more reasoned approach, Bertrand Barère put the capstone on the anti-inviolability case. Suppose for the sake of argument that royal inviolability did exist. Even then it would not be necessary to consult the people to deprive Louis of this constitutional shield, for the following reasons: 1) the Paris-sponsored August 10 insurrection had destroyed inviolability, the departments had applauded this action, therefore the entire French nation had spoken; 2) the Legislative Assembly had

²⁰Archives, LV, 711.

²¹*Ibid.*, LVI, 91.

²²*Ibid.*, LVI, 122.

²³*Ibid.*, LVI, 117, 120.

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suspended and imprisoned the ex-king, and the nation had approved; hence, the people had sanctioned a second time the end of royal inviolability; 3) the nation had given the Convention no mandate to respect or reestablish inviolability; and 4) even if it were admitted that those granting inviolability should revoke it, the decision should not go to the primary assemblies since they had not been convoked to ratify the Constitution of 1791 in the first place.²⁴

III

The fate of the inviolability issue, a controversy present throughout the trial of Louis XVI, is easily told. On January 15-17, 1793, the Convention voted on three questions, the first of which is of immediate concern: "Is Louis guilty of criminal acts against the French nation?" The results show that 683 deputies voted for the king's guilt, none voted against.²⁵ The Convention then rejected the appeal to the primary assemblies, voted death for Louis XVI, and defeated a move for reprieve. On January 21, 1793, the blade of the guillotine fell on **Louis le dernier**, as he was so often called during his trial. The tyrant, as one conventionnel put it, was no longer.

If one considers the royal inviolability issue only as seen in the course of the trial within the Convention, a few basic conclusions seem inescapable. First, the controversy illustrates that no disciplined parties existed in the Convention during the period of the trial. Lack of uniformity in presentation of arguments and emphasis, most noticeable among Girondins, excludes consideration of group opinion as that of organized political parties in the modern sense. Second, the declining homogeneity among Girondins on this issue, plus the lack of originality and ingenuity on the part of die-hard supporters of royal inviolability, would suggest that the initial Girondin leadership of the Convention was on the wane as the trial progressed. Third, the introduction of the issue by the Girondin Pétion, and the lip-service given by several other Girondin deputies, may be taken as part of the Right's poorly-structured attempt to delay the trial. Finally, despite all the attention to inviolability, its supporters did not carry their declarations to the logical conclusion in the final determination of Louis's fate. In short, it would appear to this writer that the dozen or so deputies who invoked inviolability for Louis XVI, if they had actually been serious in their defense of it, would either had voted against Louis's guilt — since in the legal sense he could hardly be considered guilty if truly inviolable — or else they would have refused to vote. None, however, took either action. These items do not provide conclusive proof that arguments in support of royal inviolability were merely academic and dilatory, but they leave this writer with something more than a strong suspicion that they were.

²⁴*Ibid.*, LVI, 203-204.

²⁵*Procès-Verbal*, V, 197-223.