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## SAMUEL HOLBERRY: CHARTIST CONSPIRATOR OR VICTIM OF A STATE CONSPIRACY?

*Catherine Lewis*<sup>1</sup>

### **Abstract:**

In January 1840, Samuel Holberry a Sheffield Chartist, was committed to trial at Sheffield Assizes for seditious conspiracy. A critical examination of the evidence presented at the committal hearing and subsequent Assize trial demonstrates that the court process was entirely one-sided. The quality of the evidence used to secure a conviction was, at the very least, suspect, and the prosecution appear to have withheld evidence that could have vindicated Holberry. An in-depth analysis of the case seeks to lay bare the workings of the coercive and judicial powers of the nineteenth century state.

**Keywords:** Chartism, Chartist movement, Sheffield Chartists, seditious conspiracy

### **Introduction**

Samuel Holberry was the alleged ringleader of the Sheffield Chartists' winter 'rising' of January 1840. Arrested in his bed by the police on the night of the alleged uprising he was convicted of being the leader of a seditious conspiracy to take possession, by armed force, of Sheffield Town Hall and the Tontine Inn, to fortify them against troops, and to set off a Chartist revolt which would trigger other insurrections in West Riding towns. When sentencing Holberry at York Assizes the trial judge said that from the evidence produced the jury might have been warranted in drawing the conclusion that Holberry had actually *levied war* against the Queen and was therefore guilty of High Treason.<sup>2</sup> Sentenced to four years in prison, Holberry managed just over two, dying (slowly), as a direct result of the harsh prison treatment received, at 26 years of age. Put bluntly, Holberry is viewed either as a (somewhat deluded) violent Chartist who harmed the Chartist cause by encouraging the use of physical force; or (by Sheffield based 1980s left wing writers whose political, and avowedly non-academic pamphlets, have entered the historical picture without any critical analysis) as a radical freedom fighter who should take his place alongside Watt Tyler, William Wallace and

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<sup>1</sup> Independent researcher, [catherine.lewis@ashtonmortonslack.co.uk](mailto:catherine.lewis@ashtonmortonslack.co.uk). This article is based on an extract from the author's MA (History) dissertation with the Open University which also examined in detail the policing of the Sheffield Chartists carried out by parish constables and the 'new' Sheffield police. This small uniformed police force was quick to adopt not only aggressive methods of watching and controlling the Chartists but spied on them and utilised informers and an *agent provocateur* whose use was then suppressed locally.

<sup>2</sup> *Sheffield Independent*, 28 March 1840, p. 3.

Tom Paine etc.<sup>3</sup> All, however, accept without question one absolute: that Holberry was indeed guilty. But what if he was not in fact guilty as charged? What if the court process was not simply a neutral setting where Holberry was dealt with dispassionately and fairly, but rather an insidious part of the State's armoury for the *furtherance* of its dispute with the Chartists?

Douglas Hay has criticised the complacency of historians' views of the English trial process and prosecutions.<sup>4</sup> He also highlighted the moral fallacy of considering criminal courts as neutral places, arguing that nineteenth century English criminal court procedure was extraordinarily open to malicious abuse.<sup>5</sup> Dorothy Thompson referred to Holberry's 'undoubtedly insurrectionary plans' but largely because she accepted unquestioningly the evidence of the co-conspirators who turned Queen's evidence in the case. However, as will be shown, there are very good reasons for doubting crucial parts of that evidence, not least because the detail of the plot is suspiciously weak.<sup>6</sup> It is acknowledged that Thompson recognised that the story of the Sheffield events was not yet fully written and this discussion aims to at least fill that gap in relation to Holberry.<sup>7</sup>

It will be argued here that, on the evidence examined, Holberry had not in fact planned a Sheffield 'rising' on the 12 January 1840. It is suggested rather that, convinced of Holberry's guilt, the police, magistrates and prosecution used the rules of criminal procedure and evidence in a grossly one-sided way to ensure a conviction. The Sheffield (and Rotherham) police played a direct role in obtaining the 'evidence' that led to Holberry's arrest. For example, the Chief Constable of Rotherham recruited a local publican and would be Chartist James Allen as a police informer, and later 'encouraged' Allen to act as an *agent provocateur* to find out details of the 'plot'.<sup>8</sup> Allen then told the police and a leading

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<sup>3</sup> See John Baxter, *Armed Resistance and Insurrection: The Early Chartist Experience* (Holberry Society Publications, 1984); Bill Moore, *Samuel Holberry and the Chartist Movement in Sheffield 1837-1851* (Holberry Society Publications, 1987) which actually offers remarkably little about Holberry himself.

<sup>4</sup> Douglas Hay, 'Prosecutions and Power: Malicious Prosecution in the English Courts 1750-1850,' in Douglas Hay and Francis Snyder (eds.), *Policing and Prosecution in Britain: 1750-1850*, (Clarendon Press, 1989), pp. 343-395 at 347.

<sup>5</sup> Hay, 'Prosecutions and Power,' p.379. Hay is concerned mainly with the ability of powerful men to pursue private malicious prosecutions i.e. the malicious use of *personal* power but the argument is even more forceful when one considers the use the State could make of the grossly unfair rules of criminal procedure then in place.

<sup>6</sup> Dorothy Thompson, *The Early Chartists*, (The Macmillan Press Ltd, 1971), p.18.

<sup>7</sup> Thompson, *Early Chartists*, p. 250. In her later book, *The Chartists* (Temple Smith, 1984), Thompson returned to Holberry and his treatment in prison and death but not to an analysis of his trial.

<sup>8</sup> The use of spies and agent provocateurs in the Chartist movement was in line with similar tactics used in the post-French Revolutionary period against, for instance, the Luddites and the Cato Street conspirators. See J.L. Baxter and F Donnelly, 'The Revolutionary "Underground" in the West Riding:

magistrate about the plan and arrests began, but his role was kept secret and he did not appear at the trial. Despite *The Times* all but naming Allen on two occasions in January 1840 as the source of the plot, the *Sheffield Independent* did not investigate further and it is suggested that in fact the paper deliberately ignored his involvement.<sup>9</sup> Some 24 years later Allen's role in the unmasking of the plot was revealed to Sheffield as a well kept secret. Did the Sheffield elite (magistrates, newspaper editor, trial prosecutor) take the view that the use of a police informer turned *agent provocateur* would have soured already strained relations with the working classes and weakened the moral victory of a guilty verdict?

John Saville argues that studies about the interaction of Chartism with the administrative and coercive powers of the early Victorian state have been seriously neglected.<sup>10</sup> He asserts that Chartism was finally broken by the physical force of the State and that the contemporary agencies of the media were extraordinarily effective in traducing this greatest of all mass movements.<sup>11</sup> This article examines only one Chartist trial but there seems little doubt that Holberry fared extremely badly at the hands of both the criminal justice system and the local media. The National Archives contain a selection of witness statements, presumably taken when the prosecution were building their case after arrest.<sup>12</sup> One of these is a statement from Edward Smith, a Sheffield printer. He was never called at either the committal or trial proceedings yet his evidence appears to contradict entirely any notion that Holberry had arranged an insurrection for that night. Presumably he was not called because his evidence did not suit the prosecution case and there was no obligation at that time to disclose 'unseen' evidence no matter how crucial for the defendant.

## 1 A Chartist Conspiracy?

Both Dorothy Thompson and D G Wright have described the period from the spring 1839 to early 1840 as a period of intense Chartist agitation across parts of the country, especially the industrial north, and Sheffield was no exception.<sup>13</sup> There were regular open air meetings at

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Myth or Reality,' *Past and Present*, 64(1) (1974) 124-132; John Belchem, 'Republicanism, popular constitutionalism and the radical platform in early nineteenth century England,' *Social History*, 6(1) (1981) 1-23; D Worrall, *Radical Culture: Discourse, Resistance and Surveillance 1790-1820*, (Wayne State University Press, 1992).

<sup>9</sup> The *Sheffield Independent* can be found in the Local Interest section of Sheffield Public Library. The dissertation and this article are based on three contemporary newspapers, the *Sheffield Independent*, *the Northern Star* and *The Times*. In addition crucial primary source documents were found at the National Archives.

<sup>10</sup> John Saville, *1848: The British State and the Chartist Movement* (Cambridge University Press, 1987), p. 1.

<sup>11</sup> *Ibid* p. 202.

<sup>12</sup> National Archives (NA), TS11/816/2688.

<sup>13</sup> Thompson, *The Early Chartists*, pp. 18, 40 and 249; D G Wright, *Popular Radicalism: The Working Class Experience 1789-1880* (Longman, 1988), pp.120-125.

Paradise Square, Sheffield, and soon Chartist meetings became an almost daily occurrence. Whig government policy had been to tolerate large meetings, as long they were peaceful, but then to later prosecute the speakers for sedition or attendance at an unlawful meeting.<sup>14</sup> As countrywide support grew and Chartist agitation increased it was considered necessary to use tougher measures and to prevent such meetings being held in the first place. Lord John Russell, the Whig Home Secretary, reminded magistrates in May 1839 of what constituted an unlawful assembly, namely 'all assemblies, not held by lawful authority, attended by great numbers of people, with such circumstances of terror as are calculated to excite alarm and to endanger the public peace.'<sup>15</sup> This clearly imposed a need for caution upon the Chartists. Sheffield magistrates appear to have remained somewhat more tolerant but 'in consequence of the alarm caused by these large meetings' they issued a placard on 19 July 1839 declaring such meetings illegal.<sup>16</sup> The meetings carried on regardless and throughout the troublesome months of August and September 1839 the police were often to be found patrolling or engaged in clashes alongside the military, armed with cutlasses and split into patrols, enabling them to better pursue the Chartists down narrow streets. The Sheffield police, newly reformed into a uniformed force in 1836 and so an unfamiliar and unpopular entity anyway, were particularly loathed by the Chartists because they came into 'more direct physical contact with the people than the military' who swept the streets indiscriminately.<sup>17</sup>

By January 1840 county magistrates, dragoons, yeomanry and infantrymen were remaining in the town to deal with the perceived disorder.<sup>18</sup> On the night of the 11 January 1840, arresting officers Thomas Raynor and James Wild accompanied by the Chief Constable of Rotherham, John Bland, went to arrest Samuel Holberry at his house. Prior to this Holberry's name rarely appeared in reports about Sheffield Chartists. Why had they arrested him? The *Sheffield Independent* referred to 'information received' which had led the police to apprehend Holberry.<sup>19</sup> At both committal and trial the prosecution evidence came from two co-conspirators (Thompson and Foxhall) with the physical evidence being a stash of arms found by the police at Holberry's house. Some 24 years later, on 16 February 1864, the Birmingham ex-Chartist John Taylor gave a paper entitled *The Chartists Conspiracy of 1840*:

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<sup>14</sup> F C Mather, *Public Order in the Age of the Chartists* (Manchester University Press, 1959), p.189.

<sup>15</sup> Mather, *Public Order in the Age of the Chartists*, p. 188.

<sup>16</sup> *Sheffield Independent*, 17 August 1839, p.2.

<sup>17</sup> *Ibid* p. 8.

<sup>18</sup> *Sheffield Independent*, 18 January 1840, p.1

<sup>19</sup> *Northern Star*, 18 January 1840 p.1; *Sheffield Independent*, 18 January 1840 p.1.

*How it was detected.*<sup>20</sup> Taylor asserted that John Bland, ‘the active and intelligent chief-constable of Rotherham,’ had actively recruited one of the Chartists, James Allen, as a spy. To then gain the group’s confidence it was ‘arranged’ that Allen would declare himself a supporter of ‘physical force’ and offer to bring 150 men with him at one or two day’s notice. As soon as the time and date for the ‘rising’ was disclosed, Allen went straight to the waiting John Bland and to Lord Howard (a Rotherham magistrate) who then galloped to the Sheffield police, consequently Holberry and a few other Chartists were rounded up. The obvious question was whether, possibly desperate to give Bland what he wanted, Allen had exaggerated violent talk into a planned insurrection, with other ‘co-conspirators’ persuaded to embellish the story and bring it to life summonsed as prosecution witnesses (who would escape charges if their evidence proved ‘satisfactory’). Did the police uncover a conspiracy and prevent an armed insurrection? Why was Allen’s identity and recruitment kept secret? Did the police/magistrates/prosecutors really believe that the co-conspirators, desperate to escape jail, would give only truthful evidence? It is surprising how many academic commentators have simply accepted the police and prosecution evidence as if this was somehow neutral without questioning the reliability or existence of any factual evidence to support Holberry’s insurrection.

## 2 Enemies of the State

As already pointed out the use of the law to demoralise and destroy popular movements was no new thing in the 1790s and its use continued into the late 1830s with the Chartists. During this period the type of political behaviour considered to be a threat to the state changed. The *actual* political expression of words and ideas was tolerated while state regulation concentrated on the *manner* in which those ideas were expressed and, specifically, the threat they posed to public order.<sup>21</sup> Thompson, in *The Early Chartists*, argues that on the whole the authorities were fairly undisturbed by spoken or written threats by national Chartist figures (with the notable exception of the Stephen case)<sup>22</sup> until the Newport rising in

<sup>20</sup> John Taylor, *The Chartist Conspiracy of 1840: How it was detected* (Sheffield, 1864, held at Sheffield Local Interest Library, Pamphlets vol. 64/13). The paper was given to the Townhead Street Young Men’s Book Society in Sheffield and later published.

<sup>21</sup> Michael Lobban, ‘From Seditious libel to Unlawful Assembly: Peterloo and the Changing face of Political Crime c.1770–1820,’ *Oxford Journal of Legal Studies*, 10 (1990) p.307.

<sup>22</sup> Joseph Rayner Stephen was a Methodist minister, noted for his radical views. He was associated with men like Richard Oastler, the campaigner for factory reform, and was a vocal critic of the Poor Law Amendment Act 1834. He was also associated with the Chartist movement, owning shares in the Chartist newspaper, the *Northern Star*, but he always rejected the label of being a Chartist. His inflammatory speeches and sermons, many published, led to his arrest in December 1838, charged with intent to disturb the peace, making a seditious speech, two counts of riot and one of being present at an unlawful assembly. He was tried at Chester Assizes on 15 August 1839, convicted and sentenced to 18 months imprisonment, which he served in Chester Castle.

November 1839 when Welsh Chartist John Frost was arrested.<sup>23</sup> The perceived seriousness of the Newport rising spurred the authorities in various localities including Sheffield into intensifying their efforts to find out about local Chartists which they did by increasing police surveillance and (probably) using spies.<sup>24</sup> The arrest of Chartists increased dramatically and by winter 1839 their membership was confused and disorganised.<sup>25</sup> In the localities, short of both leaders and information, there was much anger about Frost's arrest and trial, and a real concern with the need to maintain secrecy. It was within this immediate background context that Holberry was arrested.

The key question is whether, as has been generally assumed by Chartist historians, the anger over the killings at Newport and the trial of Frost for treason, pushed a hard core of northern militants along the road to insurrection, or whether there is at least room to doubt the evidence for a deliberate and intended violent insurrection in Sheffield?<sup>26</sup> Here Saville's regret at the lack of studies about the interaction of Chartism with the state has real force.<sup>27</sup> The rule of law was a potent symbol (and fiction) in the nineteenth century and the legitimacy of the court setting was a point of considerable aid for the authorities.<sup>28</sup> As elsewhere, the Sheffield Chartists were hopelessly outgunned right from the start: judicial/legal procedure concerned itself with the *appearance* of neutrality and fair play; but Holberry was denied the opportunity to either defend himself or reply positively to the evidence brought against him.

Like Frost, Holberry was initially charged with high treason but at trial the charge was downgraded to seditious conspiracy since he had been arrested before any actual violence had taken place. The essence of this common law offence required the perpetrator *to incite to violence with the intention of disturbing constituted authority*.<sup>29</sup> Proof of commission was commonly that some sort of organisation was formed in which the defendants took part and that assertions were written or said to effect the object in question. The legal concept of a seditious conspiracy was therefore very wide. Furthermore, once the defendant was found to

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<sup>23</sup> Thompson, *The Early Chartists*, p.18. The Newport Rising was the most serious of the Welsh Chartist events. The Chartist demonstration in Newport was broken up violently by the soldiery, resulting in around 22 Chartists being killed and about 50 wounded. Along with about 20 others, including the two other leaders, Zephariah Williams and William Jones, John Frost was arrested on a charge of high treason, convicted and sentenced to be hanged, drawn and quartered. However, public pressure ensured that Lord Melbourne's administration commuted the sentences of the three leaders to transportation. Frost was eventually given an unconditional pardon in 1856, enabling him to return to the UK, though he never again lived in Newport. He died in 1877, at the age of 93.

<sup>24</sup> *Ibid* p.249.

<sup>25</sup> Dorothy Thompson, *The Chartists* (Temple Smith, 1984) p.141.

<sup>26</sup> See, for example, D G Wright, *Popular Radicalism*, p.123; Thompson, *Early Chartists*, p.18.

<sup>27</sup> Saville, *1848: The British State and the Chartist Movement*, p.1

<sup>28</sup> The rule of law meaning that the law was an entirely neutral and benign force, above any political interference and applying equally whether rich or poor.

<sup>29</sup> See *Redford v Birley* (1822) 171 ER 773

be 'part of the conspiracy' he was answerable for what took place whether or not he *intended* that outcome. Thus the charge could be used as a devastating weapon. Clive Emsley has described how British radicals and reformers during the 1790s believed that they were experiencing a reign of terror and that one aspect of that terror was the use of the prosecution for sedition.<sup>30</sup> Most of the overtly political trials of the 1790s involved prosecutions for publishing seditious libels or uttering seditious words.<sup>31</sup> Emsley argues that this reflected the determination of both central and local authorities to stop the circulation of radical ideas promoting the individual as a political entity, notably Thomas Paine's *Rights of Man*.<sup>32</sup>

During the nineteenth century, however, the state began to concern itself more with regulating *the manner in which political ideas were expressed* rather than regulating the expression of the ideas themselves. Michael Lobban charts the difficult transformation from the punishment of words and ideas to the doctrine of unlawful assembly.<sup>33</sup> He argues that prior to Peterloo 'the public order issue had been the context in which to weigh up the danger of ideas, after 1820 the public order issue took centre stage.'<sup>34</sup> Martin Wiener has detailed how the decades after the 1820s saw heightened concern with unregulated human power, both personal and collective.<sup>35</sup> That traditional limitations and structures of society were being challenged and dismantled, and the advancing individualism of the age had a 'dark, anarchic side that few failed to sense'. John Belcham contends that by the time of Chartism, it was the massive occupation of public space, in what numbers and by whom, that caused alarm and transgressed elite views of order and legitimate participation.<sup>36</sup>

The main charges used against the Chartists were unlawful assembly and seditious conspiracy. The state sought to stop or suppress large Chartist meetings in public by use of the crime of unlawful assembly by which the *fear* caused by the assembly was the decisive

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<sup>30</sup> Clive Emsley, 'An aspect of Pitt's 'Terror': prosecutions for sedition during the 1790s,' *Social History* (May 1981), 151-175 at p. 155.

<sup>31</sup> *Ibid* at p.157.

<sup>32</sup> Paine himself was prosecuted for the seditious libel of publishing the *Rights of Man* in December 1792. Paine was convicted as soon as his defence was over, the jury saying that they did not want to hear either reply or summing up. See also Michael Scrivener, *Seditious allegories: John Thelwall and Jacobin writing* (Pennsylvania State University, 2001), pp. 1-3.

<sup>33</sup> Lobban, 'From Seditious libel to Unlawful Assembly,' p.307

<sup>34</sup> *Ibid* p.350. Peterloo was the name given to the yeomanry's violent breaking up of a radical reform meeting in Manchester on the 16 August 1819 at which eleven people were killed and over 400 wounded, see John Cannon (ed.), *The Oxford Companion to British History* (Oxford University Press, 1997).

<sup>35</sup> Martin Wiener, *Reconstructing the Criminal: culture, law and policy in England, 1830 – 1914* (Cambridge University Press, 1990), p.11,

<sup>36</sup> John Belcham, 'Radical language, meaning and identity in the age of the Chartists,' *Journal of Victorian Culture*, (Spring 2005), p.10.



factor that determined their illegality. In addition the Seditious Meetings Act 1817 prevented groups meeting or communicating with other similar groups, the state not wanting to encourage combinations of groups with a political agenda. All these prohibitions added up to a 'heavy legal constraint' on the Chartists who, to succeed, needed to build up a *national* movement.<sup>37</sup> To be able properly to analyse Holberry's trial it is necessary to grasp the importance of nineteenth century criminal procedure and rules of evidence, since it was the state's tactical use of these that helped ensure Holberry's conviction. David Bentley has argued that at the beginning of the nineteenth century there was much complacency about the criminal trial system and that its shortcomings were numerous. These included: the partial jury; lack of access to legal advice and assistance; lack of obligation on the prosecution to disclose any 'unused' evidence (here bear in mind the police informer Allen and the printer Edward Smith); lack of opportunity to test and challenge the prosecution evidence, prepare a defence and therefore answer the charges brought; and lack of protection from prejudicial pre-trial publicity.<sup>38</sup> These procedural rules were not introduced in order to combat the Chartists; they were longstanding rules and applied to all defendants, whether charged with political crimes or not. Their operation was grossly one-sided and when the state (with all its resources) was driving the prosecution they allowed the marshalling of a case almost impossible to withstand.

Nineteenth century rules of evidence also provide many frustrations for the modern reader eager to hear both sides of the story.<sup>39</sup> A judicial prohibition (from the seventeenth century) against the interrogation of the accused (to avoid defendants being bullied into condemning themselves out of their own mouths) had the extremely unfortunate consequence of rendering prisoners incompetent to testify in their own defence.<sup>40</sup> Likewise they could not call a spouse or a co-accused to testify for them. Bentley notes that it was not unknown for unscrupulous prosecutors to silence potential defence witnesses by indicting them along with the defendant.<sup>41</sup> It is also clear that once in custody, isolated and without legal assistance, the police and magistrates would continue to question the prisoners. *The Times*, published on the Wednesday after the arrests of Saturday night/Sunday morning, informs us that 'a private examination of some of the persons in custody was entered into last night, and

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<sup>37</sup> James Epstein and Dorothy Thompson (eds.), *The Chartist Experience: Studies in Working Class Radicalism and Culture, 1830 – 1860* (Macmillan Publishers Ltd, 1982), p. 360.

<sup>38</sup> David Bentley, 'Trial on Indictment in Nineteenth-century England' (unpublished doctoral thesis, University of Sheffield, 1993), p. 4; 'Acquitting the Innocent. Convicting the Guilty. Delivering Justice?' in Judith Rowbotham and Kim Stevenson (eds.) *Behaving Badly: Social Panic and Moral Outrage – Victorian and Modern Parallels* (Ashgate, 2003), pp. 15-30.

<sup>39</sup> Bentley's 'Trial on Indictment' is a very useful guide.

<sup>40</sup> *Ibid* p.3.

<sup>41</sup> *Ibid* p.132.

continued until near 4 o'clock this morning.<sup>42</sup> This was the stage when co-defendants would be persuaded to turn Queen's evidence and testify against their associates. The (spurious) arrest of Samuel Thompson's father was *the* factor that persuaded him to turn Queen's evidence and Thompson's evidence (devastating for Holberry) bought the freedom of father and son.

That co-conspirator's evidence could be exaggerated or even fabricated is beyond argument and the possibility has to be kept in mind at all times that (at least some of) the evidence of Thompson and Foxhall was simply not true. The fate of a witness lay directly with the usefulness to the prosecution of the evidence given. A complementary freedom for the prosecutor was the power to decide who should, or should not be charged, and on what basis. Thompson, on his own evidence, deeply involved in the planned insurrection, was never charged; if he had been he would have been prohibited from testifying against Holberry. Indeed Thompson was so actively involved in the plot that it appears to have been assumed by some that he was a police informer.<sup>43</sup> On the other hand Thompson's father was charged (on what grounds it is hard to see) no doubt to ensure that the son gave the required evidence. Immediately after Thompson had completed his evidence the prosecutor submitted that the case against the father was weak and would not be pursued.

Another Chartist, Samuel Foxhall, was charged but did not give evidence at committal, by the time of trial he was out of the dock altogether so that he too could give evidence against his co-conspirators. Both Foxhall and Thompson were locked up *together* until they had given evidence at the trial.<sup>44</sup> Under cross-examination, when asked if they had discussed the case, Foxhall conceded 'we may have said a few words.' While it is true to say that without the use of police informers and co-conspirators the authorities would have had difficulty proving a conspiracy, what was missing was any possibility of the defendant being able to challenge and counter the evidence. Indeed one looks in vain for Samuel Holberry's defence. Where is his story, his version of events? He spoke on occasion at committal, an exchange with Thompson mentioning, perhaps, a 'plan of attack' (what plan is unclear) but even this is uncertain since it was reported only in the profoundly anti-Chartist *Sheffield Independent*.<sup>45</sup> At trial Holberry was represented by a Mr Watson and therefore did not speak.<sup>46</sup> Cross-examination on his behalf was minimal and it is hard to see why Thompson

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<sup>42</sup> *The Times*, 17 January 1840, p.7.

<sup>43</sup> *Sheffield Independent*, 18 January 1840, p.2.

<sup>44</sup> *The Times*, 19 March 1840, p. 6

<sup>45</sup> *Sheffield Independent*, 18 January 1840, p. 2

<sup>46</sup> For reports on the trial see; *Sheffield Independent*, 21 March 1840, pp. 2-3; *The Times*, 19 March 1840, p. 6 ; *Northern Star*, 21 March 1840, p. 6.

in particular was not challenged as to the details of the insurrection. Had defence counsel had access to Holberry before the trial and time to prepare? It seems very unlikely. Mr Watson's name appears regularly at this Assize as counsel for various prisoners and presumably he received his brief at the last minute with little pre-trial access to his client(s) and little time to prepare. Holberry was effectively silenced at his own trial.

### 3 The Trial of Samuel Holberry

Following the arrest of Holberry at midnight on 11 January 1840 the newspapers reported in great and lurid detail the violent insurrection that had been narrowly averted. Yet, as a matter of fact, so little actually happened on that night that even the *Sheffield Independent* was forced to admit that it is difficult to reconcile the various and conflicting details given of the plot. The article explains that the reason for the lack of violent Chartists present on the street was that 'the men had not the hardihood to act out their murderous designs' or 'it was soon apparent that the spearmen had no stomach for the fight'.<sup>47</sup> The military and police spent the whole of Saturday night/Sunday morning out on patrol keeping the town peaceful and it seems inconceivable that this state of alarm was a charade. Indeed a letter to the Home Office of 11 January 1840 from Albert Smith, clerk to the Magistrates, refers to 'information received' to the effect that the Chartists were planning an insurrection along with other towns and that they also wanted to liberate Frost from his detention in Monmouth Gaol, where he was awaiting transportation.<sup>48</sup> As a result the police and military presence had been increased but at that point an immediate attack was not feared. That night Holberry was arrested, presumably after Allen had rushed to John Bland with his information. In fact it is clear from the Home Office documents that there was a generalised sense of fear throughout the country that risings were being planned.<sup>49</sup> The magistrates, police and army genuinely believed that a Sheffield rising was imminent. Yet the writer can find details of only eight other Sheffield men in addition to Holberry (William Booker, Thomas Booker, John Clayton, Samuel Bentley, John Marshall, Thomas Penthorpe, Joseph Bennison and William Wells) who were arrested for their part in the 'rising'.<sup>50</sup> Holberry was tried along with the two Bookers, Duffy and Wells, for riot and conspiracy.<sup>51</sup> There were it seems two or three groups of men (Chartists?) out and about but they never engaged with the military or police, and

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<sup>47</sup> *Sheffield Independent*, 18 January 1840, p. 2.

<sup>48</sup> NA, HO 40/57 Albert Smith (Magistrates Clerk) to Marquis of Normanby (Home Office) 11 January 1840.

<sup>49</sup> NA, HO 45/102 Metropolitan police reports of Chartist meetings July 1839 to September 1841.

<sup>50</sup> These three were John Clayton, Samuel Bentley, John Marshall, with the other two arrested being Thomas Penthorpe and Joseph Bennison, *The Times*, 17 January 1840, p. 7.

<sup>51</sup> Others were tried later in the same Assize. William Wells, John Clayton, John Marshall, Thomas Penthorpe, Joseph Bennison, and Charles Fox pleaded guilty, something which has undoubtedly added to the legend of Holberry's guilt.

surely men armed and organised for an insurrection in a town with a *known military* presence would not have all run to ground so quickly? Both Holberry and Booker had served in the army and would have been under no illusion as to the difficulties they faced. The hopelessness of the Sheffield rising is commented upon as evidence of cowardice and stupidity but could there not be another explanation? That perhaps something else had been planned – say a show of anger at the treatment of Frost, since his guilty verdict had just been announced? The 'co-ordinated risings' in Dewsbury and Bradford (as discussed below) suggest this possibility.

### **Evidence at Trial**

A measure of the importance accorded to the trial is that it was the Attorney General who prosecuted before Mr Justice Erskine and Mr Justice Coleridge. Of the evidence presented there is much that one could take issue with but space is limited. Four watchmen were called to report their sightings of small groups of armed men seen out and about that night. Two watchmen were injured but all reported they had seen the Chartists simply running off, even when challenged by a single watchman armed with a stick.<sup>52</sup> Thomas Raynor and James Wild, the arresting officers, testified that Holberry was arrested as he lay covered on his bed at midnight – although he was dressed. He did not resist arrest and nor did his wife, who opened the door, shout any warning that the police had arrived. When Raynor and Wild entered his bedroom on the first floor Holberry was still lying on his bed. What was he doing in bed, albeit dressed, two hours before he should have been about to start an armed insurrection? The two constables claimed that Holberry told them he was 'for physical force' and would 'kill for the Charter' – which he denied. To volunteer this to the police seems unlikely.<sup>53</sup>

The main prosecution witness was Samuel Thompson, a Chartist, who paints himself as being actively involved in the conspiracy. He had turned Queen's evidence by Monday (13 January); 'I principally told because my father was taken up'.<sup>54</sup> There is no doubt that Thompson's evidence convicted Holberry but it almost too convincing. His lengthy evidence flows and is predicated on a very large factual basis about meetings, oaths taken etc. He is detailed about grandiose plans but when explaining what actually happened *or more to the point should have happened* his evidence is weak. How, for example, were they going to tackle the military? According to *The Times* (on this occasion taking its information from *The Iris* a Sheffield newspaper) there was a troop of the 1<sup>st</sup> Dragoons on duty at the Town Hall

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<sup>52</sup> See evidence of John Adcock and Thomas Hague, *Sheffield Independent*, 18 January 1840.

<sup>53</sup> Though it is now reported as fact in the *Oxford Dictionary of National Biography*, vol.27, (Oxford University Press, 2004), pp. 589-591.

<sup>54</sup> *The Times*, 19 March 1840, p. 6.

and a troop in the yard of the Tontine Inn, with the rest, in readiness, at the barracks a mile away from the town centre.<sup>55</sup> In addition infantrymen were also on duty at the Town Hall, which was also the police headquarters. These were not buildings that would have been taken lightly. Thompson claimed 160 were to have taken the Town Hall, although on the night only 24 materialised, and they failed to meet up with any other groups.<sup>56</sup>

The plot was this: to avoid suspicion they would advance in ones and twos on the Town Hall and then at 2am rush in and assassinate every policeman and watchman they found. This is not a plan that convinces. Holberry questioned Thompson during the committal proceedings, one of the few opportunities when he was permitted to speak. He was adamant that it was Thompson who had proposed the motion for breaking into shops and getting arms. Thompson accepts this and also that Holberry opposed it because 'if the parties stopped to break into the shops we should lose the main object.'<sup>57</sup> The *Sheffield Independent*, however, then reported Holberry saying, 'Do you not remember when we were alone at my house, laying down this plan of attack and wish me to bring it forward at the next meeting of the council?' This was not reported by the other two newspapers. Was there a plan of attack and if so whose and what was it? William Wells, an 18 year old Chartist, also gave evidence at committal for the prosecution but he knew nothing about any planned insurrection. Since Foxhall later turned Queen's evidence, and could give greater detail, by the time of the trial Wells found himself in the dock alongside Holberry.<sup>58</sup> Samuel Foxhall (Chartist) was arrested when the elder Booker's (a co-defendant with Holberry) house was searched. He was charged at committal but seized the opportunity to turn Queen's evidence.<sup>59</sup> He too referred to secret meetings and oaths but simply stated that while they had discussed how to take on the military offered no specific details.

### ***Unseen Prosecution Evidence.***

Why was James Allen the police informer turned *agent provocateur* not put forward as a witness? It has been claimed that the involvement of Allen was kept a secret for 24 years.<sup>60</sup> Yet the existence of Allen was *not* a secret. *The Times* of 17 January 1840 stated clearly 'had it not been for the compunctious visitations of conscience in one of the delegates from

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<sup>55</sup> *The Times*, 16 January 1840, p. 6.

<sup>56</sup> Samuel Thompson explains this by saying that they were sent to Water Lane when perhaps it should have been Watery Lane, *Sheffield Independent*, 18 January 1840, p. 2

<sup>57</sup> *Sheffield Independent*, 18 January 1840, p. 2

<sup>58</sup> He pleaded guilty and received one year imprisonment.

<sup>59</sup> *The Times*, 19 March 1840, p. 6.

<sup>60</sup> Bill Moore, *How the Sheffield Chartists were betrayed: being an account of a vital aspect of the rising kept a secret for 24 years* (Sheffield, Holberry Society Publications, undated). John Taylor addressed the Townhead Street Young Men's Book Society and it was apparently printed in the *Sheffield Telegraph*.

the Rotherham Chartists, who made the vile intentions known to Lord Howard, the town would most probably have been sacked and burned by this time'.<sup>61</sup> True, Allen is not named, but since he was the only Rotherham man at these secret meetings his identity would have been obvious. Why did the *Sheffield Independent* connive in keeping this a secret? Did the magistrates/prosecutors/*Sheffield Independent* all agree that the use of a police spy/agent provocateur would lead to riots in the town? Or was his credibility so suspect that it would have embarrassed the prosecutors to use it? Bill Moore notes that the next issue of the *Sheffield Telegraph* printed a letter from Richard Otley in reply and included it in his pamphlet *How the Sheffield Chartists were betrayed*. Otley was a moral force Sheffield Chartist who claimed to have known most of those involved. He knew nothing of Allen's relationship with the police and is keen to point out that far from being a mere go between Allen played an active part. Otley reports how Allen, in front of five or six others, called upon William Gill to take a leading part in the outbreak 'which he must know would fail.' Further, that just before the arrests, when Otley was in the town centre on business, a man (who he believes was Allen) tapped him on the shoulder and said, 'We are going to rise and you are requested to take a part with us and become our leader.'

The evidence given by Thompson and Foxhall was eager to stress Chartist secrecy and oaths supporting evidence of bad intent, Allen's behaviour itself was also very suspicious. No sensible Chartist would have been so indiscreet and foolhardy. It is reasonable to suggest that Allen was either acting under police instruction to talk up a rising to involve more people to arrest, or was desperate to get Chartists on the street to support his exaggerated information.<sup>62</sup> Finally, we turn to the evidence of Edward Smith, the Sheffield printer.<sup>63</sup> At committal Thompson had referred to Holberry wanting to get some bills printed, 'for a lecture by a Scotch delegate, on Monday night, and a sermon on Sunday,' but had not been asked to elaborate, and it is likely that he may not have known the contents of the bill.<sup>64</sup> At the trial, from the newspaper reports examined, it would appear he said even less.<sup>65</sup> No doubt Thompson, when questioned on arrest, had mentioned these bills and the police and/or prosecution had, quite rightly, tracked down the printer and interviewed him. Edward Smith's evidence, however, would not have helped the prosecution case at all. Holberry had taken a document for printing on Friday 10 January to be ready for Saturday 11 January. Indeed Holberry returned on Saturday afternoon (before his arrest that night) to ensure that the bills would be printed and posted up around town. The deposition attached a verbatim

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<sup>61</sup> *The Times*, 17 January 1840, p. 7 and, again, on the 18 January, p. 6.

<sup>62</sup> See, for example, the *Northern Star*, 11 January 1840, p. 4, which regularly warned of such risks.

<sup>63</sup> Found at the NA, TS11/816/2688, Queen v Holberry documents.

<sup>64</sup> *Sheffield Independent*, 18 January 1840, pp. 2-3.

<sup>65</sup> See, for example, *Sheffield Independent*, 21 March 1840, p. 2.

note of this bill. Entitled 'Universal Suffrage v Anti-Corn Laws' it 'respectfully informed' the public of Sheffield that on Sunday 12 January at 10am Reverend William Hill would deliver a divine service and that on Monday 13 January at 7 pm Mr Lowery (from Scotland) would be proud to meet any gentlemen connected with the Anti-Corn Law League 'to discuss the merits of the Corn Law question in juxtaposition with that of the franchise.'<sup>66</sup> Is this the voice of a physical force insurrectionist? Would such an insurgent be arranging a sermon to start eight hours after a rising, followed on the Monday by a civilised debate about suffrage versus the Corn Laws? It seems very unlikely that Holberry would have been concerning himself with such matters if he was intending to take any part in an armed rising. Finally the poster informs the reader that a collection is to be made after the Sunday service towards defraying the expenses of Messrs Frost and Foden, (the latter was another Sheffield Chartist arrested for unlawful assembly in August 1839).

What about the other simultaneous West Riding risings? In Dewsbury on 11 January 1840 the *Northern Star* reported that the Frost verdict in Monmouth had caused much 'sorrowing excitement' and 3-4,000 people approached the town in the early hours of Sunday morning armed with muskets, pikes and pistols firing volley after volley.<sup>67</sup> This 'mob,' as described by the *Northern Star*, moved on and quietly dispersed. Similarly in Bradford groups of armed Chartists marched into town but again there was no attempted rising. In Bradford a delayed 'rising' on the 27 January 1840 was betrayed by informers in the pay of the Head Constable. One of them, Harrison, had earned about £80 for infiltrating the Bradford Chartists.<sup>68</sup> The Bradford rioters defence counsel 'ridiculed the idea of an army of less than a dozen men marching out with pikes, and guns, and pistols, to take Bradford by storm and then to proceed to take even London itself, and to overawe the Government'.<sup>69</sup> Even so they were convicted. Interviewed in prison a year later, William Brook was vehement about his unjust conviction at the hands of Harrison.<sup>70</sup>

The evidence would suggest that Holberry had *not* planned a violent insurrection for the night of 11 January 1840. The bill he wanted printed, and the meetings he had clearly arranged, indicate a man eager for political debate, not one interested in fighting the significant military presence. It is insufficient to explain the obvious lack of planning and

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<sup>66</sup> NA, TS11/816/2688, Queen v Holberry deposition of Edward Smith (printer).

<sup>67</sup> *Northern Star*, 18 January 1840, p.1.

<sup>68</sup> Stephen Roberts, *Radical Politicians and poets in early Victorian Britain: The voices of Six Chartist Leaders* (Edwin Mellen Press, 1993), p. 62.

<sup>69</sup> *Sheffield Independent*, 21 March 1840, p. 3

<sup>70</sup> NA, HO 20/10 Confidential reports, made by the Inspector of Prisons, upon the cases of all 'political prisoners' in custody on the 11 January 1841, p. 26.

delusional aspirations as merely indicative of Holberry's poor 'organisational ability'.<sup>71</sup> Maybe there was to be a demonstration of solidarity for Frost. This, it seems, is what actually took place in Dewsbury and Bradford. Of significant interest is not that a Sheffield 'insurrection' was coldly concocted by the police and abetted by the prosecution but that *it was genuinely believed* to have occurred. A form of mass anxiety, more easily generated in the 1830s and 1840s as a consequence of large scale urbanization and industrialisation was that the classes lived physically separate lives, fed and in turn feeding the use of police informers, exaggerated media reports and cynical legal tactics to secure arrests, evidence and conviction. The Chartists, denied any legal method of operating politically, and prosecuted liberally throughout the late 1830s to early 1840s, would have considered, surely correctly, that the State was bent on destroying them.

## Conclusion

An analysis of the events leading up to Samuel Holberry's arrest and his subsequent trial throws into relief the operation of the coercive and judicial powers of the State. Holberry was a Chartist, implicated by a police informer and then prosecuted by the Attorney General. The Sheffield Police were a small force in 1840 and had only been a full-time and uniformed force for just over three years. As well as responsibility for watching they were also responsible for lighting and cleansing. Yet during these summer months of 1839, when there was much Chartist agitation, they quickly adopted quasi-military methods, patrolling with the army and chasing down retreating groups of Chartists through the narrow alleyways where the cavalry could not follow. They were not a neutral force; they allied themselves very firmly with the authorities, which is hardly surprising as they were paid for by the same local ratepayers who felt threatened by the Chartists. At times there seemed little, if any, distinction between the military and the police presence and such anger was roused against them that for a while they patrolled armed with cutlasses. The police were also quick to spy on the Chartists at both their public and private meetings, either listening in themselves or paying, or pressurising, others to attend, listen, and report back. This was undertaken both openly and surreptitiously. The authorisation, by the Chief Constable of Rotherham, of the employment of Allen as a police informer turned *agent provocateur* transgressed the boundaries of discretion still further and it was as a direct result of Allen's 'intelligence' that Holberry was arrested and an insurrection alleged.

Once Holberry and a few other Chartists had been arrested, they were kept isolated in custody, and without legal advice or assistance the police and magistrates continued to

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<sup>71</sup> Thompson, *Early Chartists*, p. 250.



question them. This was also when Wells and Thompson were persuaded to give evidence for the prosecution in the hope of securing their freedom. Thompson proves to be the fatal witness for Holberry and an examination of the committal proceedings strongly suggests that the only reason Thompson's father was charged and brought before the magistrates was to ensure that his son was 'persuaded' to give the required prosecution evidence. While the evidence was weak in certain key areas, there was no one to challenge it on behalf of the defendants. Using Chartists to give evidence against their fellow Chartists was clearly advantageous for the State: it was a further blow to the movement since its members implicated each other and allowed the State to distance itself from their internecine betrayals. The lack of proper legal representation for defendants was not unusual; it was standard. Holberry neither had the means to secure legal representation or to build a defence by seeking out witnesses and then paying for them to attend the Assize court in York. Holberry's defence counsel was no doubt allocated to him at the last moment with no time to prepare. The State prosecution, on the other hand, was well prepared and at trial was untroubled by any evidence other than its own. Holberry's arrest and prosecution illustrate clearly how such early nineteenth century English criminal courts were not necessarily a neutral setting where the evidence was simply presented and dealt with dispassionately by judge and jury. At times of political unrest the courts could be used by the State, albeit implicitly, as another part of its weaponry in the *furtherance* of its disputes. To the present day historians have too willingly accepted the veracity of the evidence given against Holberry without subjecting it to the same detailed and critical analysis that they would arguably not hesitate to employ with different material. Holberry and his treatment within the criminal justice system deserves a much more critical consideration.