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Biography: Kenyon, Lloyd, first Baron Kenyon (1732–1802)

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Kenyon, Lloyd, first Baron Kenyon (1732–1802), judge
by Douglas Hay
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Kenyon, Lloyd, first Baron Kenyon (1732–1802), judge, was born at Gredington, near Hanmer, Flintshire, on 5 October 1732, the second (but first surviving) son, and heir, of Lloyd Kenyon (1696–1773) and Jane (1703–1771), the eldest daughter and coheir of Robert Eddowes, of Eagle Hall, Cheshire, and his wife, Anne. Kenyon's father, the son of a Manchester barrister, was educated at St John's College, Cambridge, and admitted to Gray's Inn, but became a landed gentleman and a justice of the peace. Lloyd, as his younger son, was educated at the village school in Hanmer and then at Ruthin grammar school before being articled to Mr Tomkinson, or Tomlinson, an attorney in Nantwich, Cheshire, for five years. The exact chronology is unclear; Kenyon's elder brother, Thomas, died in 1750, apparently the year after Kenyon began his articles. Kenyon was admitted to the Middle Temple on 7 November 1750 but seems to have remained in Nantwich to finish his articles and probably moved to London in 1753. As a student for the bar he followed the common practice of taking notes of cases in Westminster Hall; they were edited and published after his death as Kenyon's Reports, and covered the period from 1753 to 1759. In February 1755 he was living in Bell Yard, Carey Street, near the Temple. He was called to the bar on 9 February 1756, and through his long professional life worked and then presided in the highest courts of equity and the common law.

The bar and politics
Kenyon’s earnings at the bar rose from £17 to only £80 after seven years, as he followed the north Wales and Oxford assize circuits and attended quarter sessions. He was good friends with John Dunning and came to the notice of Edward Thurlow, both of whom respected his knowledge of the law. In the 1760s they began relying on him heavily, recommending him to solicitors and rapidly forwarding his career. By the late 1770s his income approached £6000; his earnings from chancery business and arguing briefs was almost matched by fees for opinions. In 1778 and 1780 he refused judicial appointment at Westminster, which would have ended private practice and probably not led to the highest posts, which usually followed a parliamentary career. His eminence was recognized by Lincoln’s Inn, where he was admitted in 1779. When he declined a justiceship of common pleas early in 1780 he was promised the chief justiceship of Chester, which would not have barred him from practice. Thurlow, by then lord chancellor, appointed him to Chester that summer; he had been named king's counsel on 10 July. He defended Lord George Gordon on the charge of high treason in 1781 but the verdict was won by Thomas Erskine, his junior, who made his reputation in the case. Kenyon much preferred office work. His opinions on stated cases were prompt, practical, and succinct—on the game laws for Henry Paget, earl of Uxbridge, patent issues for Richard Arkwright, land titles, conveyancing, divorce, and all the other questions crucial to a wealthy clientele. As counsel and as judge Kenyon was decisive and expeditious, the epitome of a hard-working, practical lawyer. Wilberforce wrote of him bringing home cases to be answered ‘as another man would crack walnuts, when sitting tête-à-tête with Lady K. after dinner’ (Kenyon, Life, 137). ‘Lady K.’ was Kenyon’s wife, his first cousin Mary (1741–1808), the daughter of George Kenyon, of Peel Hall, Lancashire, a barrister, and Peregrina Eddowes; they married at Deane, Lancashire, on 16 October 1773.

Kenyon practised for over twenty-five years before becoming a parliamentary crown lawyer, an unusually long period for a future chief justice. An expected vacancy in the Commons for Flint Boroughs in 1774
disappeared, but in 1780 he was elected for the borough of Hindon, in Wiltshire, where Thurlow managed the interest of the Beckford family. His opponents unsuccessfully alleged bribery. Kenyon seems to have been loyal to the North ministry until after the fall of Yorktown, and from December 1781 opposed the continuation of the American War of Independence in the Commons. In April 1782 the incoming home secretary, William Petty, second earl of Shelburne, offered Kenyon the post of attorney-general in the second Rockingham administration, which he accepted on Thurlow's advice (17 April 1782). As chief law officer, to the dismay of some colleagues, he pursued the former paymaster-general of the forces, Richard Rigby, and the former treasurer of the navy, Welbore Ellis, for failing to account for monies, and advised the prosecution of John Powell and Charles Bembridge, the cashier and accountant in the pay office. The episode provided an opportunity to harass Edmund Burke, whose campaign against Warren Hastings Kenyon deplored. Burke, then paymaster-general, unwisely defended his clerks: one committed suicide and the other was later convicted. Kenyon remained attorney-general in Shelburne's administration, resigned when the Fox–North coalition took office in April 1783, and voted for William Pitt's motion for parliamentary reform in May. When Pitt took office at the end of the year he persuaded a reluctant Kenyon to serve again as attorney-general from 26 December, with the expectation of appointment as master of the rolls, a common reward for politically useful lawyers since it could be held by a member of the Commons. Kenyon spoke rarely in the House, explaining the law with respect to a few proposed tax bills, defending his reputation for giving independent opinions, urging Thurlow's case for a tellership of the exchequer, and calling for an account of monies held by Rigby. His principal role was giving detailed legal advice—as he had done for many years—to Thurlow.

Kenyon gave up the chief justiceship of Chester when he was appointed master of the rolls on 30 March 1784. He was sworn of the privy council on 2 April, elected to the Commons for Tregony, in Cornwall—a Treasury seat—on 5 April, and created a baronet (he was never knighted) on 28 July. He was appointed a lord commissioner of trades and plantations on 6 September 1786. He had a long professional association with the court of chancery, and as master of the rolls he impressed with his speed of decision and his impatience with professional delay: he once struck out an entire list of causes owing to the absence of counsel and solicitors.

Twenty-four of Kenyon's speeches are recorded in the 1784 parliament. Nine dealt with the Westminster scrutiny of 1784, where he defended the government's position vigorously enough to move Charles James Fox to speak scornfully of his 'losing sight of the sanctity of his station both in this House and out of it' (Cobbett, Parl. hist., 24.886). He subsequently was satirized in The Rolliad, where a mock portrait enlivens the title-page. In the Commons most of his speeches were legal arguments or assertions of his integrity as a lawyer and judge. He spoke frequently against the impeachment of Hastings and also against the proposed impeachment of Sir Elijah Impey, a friend; Burke referred sarcastically to the evident eagerness of the master of the rolls for elevation. Kenyon also spoke on the Ecclesiastical Courts Bill (with some feeling on the evils of defamatory accusations) and on the shop tax of 1788. He clearly resented the attacks on his integrity that were part of parliamentary debate. His appointment as chief justice of king's bench meant that he never endured such treatment again, and he rarely spoke in the Lords. He surrendered the rolls on 7 June 1788 and, made serjeant-at-law, was appointed lord chief justice; he was created 'Lord Kenyon, Baron of Gredington' on 9 June.

**Lord chief justice**

Kenyon's appointment as lord chief justice had been delayed, and disputed, in spite of Thurlow's and Pitt's support. His predecessor, William Murray, first earl of Mansfield, had wanted Francis Buller, a puisne
justice of king's bench, to succeed to the chief justiceship, and stayed on the bench longer than might have been the case had he not wished to exclude Kenyon. The Times reflected some of the considerable opposition to Kenyon's appointment, citing his lack of criminal practice and reporting from May 1786 on Mansfield's determination not to resign. In a parody of this jockeying the paper eventually reported the triumph of 'Sir Lloyd Kenyon's Sound Doctrine' in 'the King's Bench Plate' (The Times, 4 July 1788). That summer James Boswell heard it said that Kenyon did not deserve appointment because he lacked 'elegance of manners and a knowledge of the world'. Boswell differed: Kenyon was a hardworking 'real lawyer' who would be 'a good fuller's mill to thicken and consolidate the law, which was very necessary after the loose texture which Lord Mansfield had given it' (English Experience, 234–5). This view of Mansfield, not uncommon, was undoubtedly Kenyon's. He believed law and equity should be entirely distinct in their separate courts, and in a direct criticism of the former chief justice he said 'I confess I do not think that the Courts ought to change the law so as to adapt it to the fashions of the times' (Ellah v. Leigh, 1794).

In his personality as in his traditionalism he also differed greatly from Mansfield. Kenyon was abrupt in speech and temper, often rude to counsel, not given to oratory unless it concerned an issue that touched him deeply. Usually his judgments were relatively short expositions (in part because he was likely to give an immediate and succinct oral judgment) of the technical points at issue, with fairly frequent references to manuscript cases in his own possession.

Concern for moral principle appeared to govern Kenyon's decisions at least as much as concern for the letter of the law. In Read v. Brookman (1789), he heard arguments that he could have sent to chancery. In Pasley v. Freeman (1789) he agreed with Sir William Ashurst and Sir Francis Buller to develop the tort of deceit to allow suits against third parties. The early nineteenth-century lord chancellor John Scott, earl of Eldon, later thought the case undermined distinctions between common law and equity, but the judgment was entirely consonant with Kenyon's great attachment to moral principle. He tried subsequently to extend the doctrine even further, an attempt repudiated by his brethren in Haycraft v. Creasy (1801), to his great annoyance, Kenyon declaring 'that laws were never so well directed as when they were made to enforce religious, moral, and social duties between man and man'. He reversed a number of Mansfield's decisions in the area of land law. In contract law he strongly upheld the ancient common-law rule against the transferability or assignment of debts, repudiating moves made by Mansfield and Buller (Johnson v. Collings, 1800). But it was in the law of marriage and that of markets that he most visibly rejected Mansfield's views, in seeking to impose his deeply held moral convictions on English society.

Kenyon abhorred adultery, and in criminal conversation actions he allowed more weight to circumstantial evidence and encouraged juries to award huge punitive damages that effectively turned a civil suit into a criminal punishment. Such cases had been increasing in number before Kenyon was appointed but awards over £2000 increased fourfold while he was chief justice, and the increase in litigation that he encouraged merely reinforced his conviction that sexual misconduct was undermining social order. In 1799 he remarked that he wished adultery was punishable by death; he associated it with revolutionary irreligion and political sedition. His views were shared by many of his brethren on the legal and episcopal benches. By 1800, however, critics of Kenyon's crusade included Sir Richard Pepper Arden (master of the rolls) and Richard Brinsley Sheridan, who declared that exemplary damages in civil suits were exemplary nonsense.

As master of the rolls in the 1780s Kenyon moderated some aspects of the law of dower that had gone against widows' interests in mid-century cases, a reflection of his conservative view of marriage. In 1792
he rejected the idea that a husband could get damages for adultery by his wife after a separate
maintenance agreement, a doctrine reversed by his successor. Kenyon’s judgment perhaps was influenced
by his clear hostility to the implications of separation agreements: he may have thought that a husband
willing to make one was inviting betrayal by his spouse. As early as 1797 he expressed doubts about the
validity of separation agreements, and in 1800 established a precedent, in the case of Marshall v. Rutton,
that strongly reaffirmed the ancient common-law idea of the legal unity of husband and wife. In doing so
he overturned a line of cases by Mansfield in which contract ideology had permeated more traditional
notions of marriage, making it possible to enforce separate maintenance agreements that gave the
separated wife power to contract, and to sue and be sued for her debts. Kenyon objected that this would:
place the parties in some respects in the condition of being single, and leave them in others subject to the
consequences of being married; and ... would introduce all the confusion and inconvenience which must
necessarily result from so anomalous and mixed a character. (Marshall v. Rutton)
The courts in other areas found no difficulty in making distinctions in such ‘mixed’ cases; it seems likely
that Kenyon reaffirmed marital unity for the same reasons that he deplored the prevalence of divorce. His
stance was shared by Eldon and by Kenyon’s successor as lord chief justice, Edward Law, first Baron
Ellenborough; both subsequently worked from Marshall to more refined rules that none the less
confirmed the diminished autonomy of the separated wife.

Kenyon’s hostility to market reasoning appeared most strongly in the last decade of his life. In 1857 John
Campbell, first Baron Campbell of St Andrews, published a hostile biography of Kenyon in the third
volume of his Lives of the Chief Justices; in it he expressed incredulity that Kenyon had sought in 1801 to
reaffirm as common-law offences the crimes of forestalling, regrating, and engrossing foodstuffs,
famously compared by Adam Smith to the crime of witchcraft. Kenyon’s decision responded to the two
great dearths of 1795–6 and 1800–01, which presented courts and parliament with a political as well as a
social crisis. Kenyon believed that immoral speculators had driven prices to artificial heights; he deplored
the fact that Edmund Burke had led parliament to repeal the old criminal legislation in 1772. The chief
justice encouraged successful prosecutions in 1800 of John Rusby, a dealer in the Mark Lane corn market,
and Samuel Ferrand Waddington, a dealer in hops in Kent and Worcestershire. Kenyon believed that
convictions in these cases would save the poor from starvation, establish precedents for the future, and
prevent disorder by showing the mob that the state would protect them. The denunciations of the chief
justice and the other judges in fact encouraged the mob. Huge food riots took place in London in
September 1800, and the rioters celebrated Lord Kenyon in song and graffiti. Most of the cabinet were
horrified by Kenyon’s doctrine and its results. As popular disorder and political criticism grew in 1801, the
judges began to draw back, and by 1802 the prosecutions still before the courts died with the chief justice,
as did his doctrine of market criminality. Kenyon took a similar view of labour markets, in which he
denounced the criminality of trade union activity (‘combination’) but equally strongly condemned
combination by masters, and threatened to punish them more severely:
The law of England held the balance even, upon the scale of Justice, between the rich and poor. Those
who were to administer that justice, from their feelings as men, which he hoped he should always carry
about him, were naturally led to protect the lower orders of the community, and who, some of them, had
perhaps no other protection than the Law. (Morning Chronicle, 23 Feb 1799)
Kenyon was acutely aware that it was a revolutionary age. His family’s letters express fear of the Jacobin
mob, notably during the protests against the so-called Two Acts, in November and December 1795, in May
1796, and in November 1800. Kenyon took precautions: early in 1799 he ordered from Birmingham,
presumably for his domestic defence, six huge blunderbusses—‘deadly instruments each capable of killing
50 men at a shot (more I believe than his Lordship’s mouth ever sent from this world at one judgement)’
In court he presided at several of the most important state trials of the period. His charge to the jury in *R. v. Stockdale* (1789) gave the whole issue of seditious libel to the jury, an apparent rejection of Lord Mansfield's insistence that libel was a matter of law for the judge, and led to suggestions that he sympathized with the defendant, the bookseller John Stockdale, a supporter of Warren Hastings. His apparent inconsistency in subsequently opposing the Libel Act in 1792—he was joined in a formal protest by Thurlow and several others that it could lead to 'the confusion and destruction of the law of England' (Cobbett, *Parl. hist.*, 29.1537–8)—can probably be explained by his belief that the judges should be able to adapt the doctrine to the necessity of the case, including the dangers of a period of revolution. Among his other state trials were those of John Frith in 1790, for throwing a stone at the king's carriage; of Patrick William Duffin and Thomas Lloyd in 1792, for a satiric squib held to be seditious; of Daniel Isaac Eaton in 1793, for *The Rights of Man*, part 2; of John Frost in 1793, for seditious words; of John Lambert, James Perry, and James Gray, also in 1793 (the *Morning Chronicle* case), for advertising a meeting of the Society for Constitutional Information, allegedly constituting a seditious libel. In the *Morning Chronicle* case Kenyon strongly supported the government view of the law of seditious libel and condemned the 'horrid doctrines' (Howell, 22.1017) abroad in the country; the jury none the less acquitted, after prolonged deliberations. In the trial of John Frost of the Corresponding Society for seditious libel, in May 1793, Kenyon supported the argument of the prosecution that words on the face of it seditious threw the burden on the defence to disprove intent. He emphasized also that the seditiousness of particular words changed with the danger of the times; the jury convicted. In the trial of Daniel Isaac Eaton in July 1793, for selling Paine's *Rights of Man*, part 2, in spite of his clear support of the prosecution and a charge arguably contrary to the Libel Act, an acquittal followed.

Kenyon was later criticized for attending the pretrial examinations of Hardy and Horne Tooke by the privy council, but did not sit on the cases, reputedly because of fears that he would be intemperate on the bench. He heard several cases after the passage of the Treasonable Practices Act, in November 1795, and the Seditious Assemblies Act, the so-called Two Acts (36 Geo. III c. 7, 8), which he supported. The law of conspiracy was developed rapidly by the judges in these years, and in the trial in 1796 of William Stone, for treason, justices Sir Nash Grose and Sir Soulden Lawrence, also on the bench, persuaded Kenyon to accept evidence of conspiracy that he was at first inclined to exclude. He also heard the cases of John Reeves in 1796, on the charge of libelling the constitution, and Thomas Williams in 1798, for publishing Paine's *Age of Reason*, in which he advertised his own deep religious beliefs in his charge to the jury. In the trial of John Cuthell for seditious libel (1799) Kenyon denounced the redundancy of the Libel Act, claiming that it added nothing to the existing doctrine of the common law. In 1800 he presided over the acquittal of John Hadfield, on grounds of insanity, for firing at the king, and had him held until the enactment of statutory authority for such confinements.

**Public and private character**

Chief justices frequently dominate their courts, and Kenyon was no exception, sometimes clearly piqued when his court did not follow him, which happened a half-dozen times in the fourteen years that he was chief justice. His profound Christian beliefs were often expressed in court. He had been a member of the Proclamation Society (founded in 1787 to enforce the proclamation of George III against immorality and idleness) until appointed chief justice, never failed to attend Sunday worship, and invoked the deity frequently in his later cases. Sir Richard Hill, Samuel Glasse, William Wilberforce, and other prominent evangelicals were among his friends and correspondents. Kenyon led a quiet private life, did not fit easily
in polite society, and disliked and distrusted the world of fashion. He entertained seldom and rarely invited members of the bar to dine. His religious earnestness, lack of a university education, and parsimony all appeared ridiculous in a wealthy lawyer and leading judge. It was reported in 1786 that: The Master of Rolls, says a correspondent, keeps house with even greater strictness than any of the primitive Christians; for in his honour’s mansion the domestics experience the Passion all the year in the parlour, and Lent all the year in the Kitchen. (The Times, 4 July 1786)

The stories grew with his years, and after his death were preserved in the biography by W. C. Townshend. His unpopularity with many barristers and even more attorneys encouraged anecdotes about his ignorance of Latin, coarseness, and bad temper. His partiality toward some members of the bar, notably Thomas Erskine, was notorious, as was his disdain for other counsel, including Edward Law. On one occasion he was bested. John Horne Tooke had been a companion of Kenyon when they were students at law, and in 1792 (though not a barrister) he defended himself in an action brought by Fox. His wit and subtle insolence toward the bench led Kenyon to shed tears of frustration.

Condemning gaming, aristocratic divorce, and duelling, Kenyon attracted much hostility from the fashionable world. The prince of Wales (afterwards George IV) rebuked him for alluding to his support of a gambling club in 1799. In the same year the barrister Henry Clifford (1768–1813), a nephew of the fourth Baron Clifford of Chudleigh, made a reference to newly created peers in R. v. Flower, tried before Kenyon. Kenyon in turn made a slighting allusion to Thomas Clifford, first Baron Clifford of Chudleigh. Clifford retaliated in print:

we seldom observe in our hereditary peers, those pedantic notions of impracticable morality, or that boisterous impetuosity of manners, which sometimes accompany and disgrace, even in the highest situations, those who have been raised to them from the desk, merely on account of their industry and professional success. (Howell, 27.1066)

In the following year, charging a jury in an adultery case, Kenyon criticized the loose morals of the opponents of the bill to criminalize adultery brought by William Eden, first Baron Auckland. One of them, Frederick Howard, fifth earl of Carlisle, complained of breach of privilege in the Lords. Pitt had to ask the king to restrain the prince of Wales and the royal dukes, who apparently supported Carlisle. Kenyon confided to his diary: ‘That puppy and adulterous profligate the Earl of Carlisle was to bring on his Motion ... against me for breach of privilege in alluding to his infamous speech on the Bill against adultery, but he withdrew his Motion’ (10 June 1800; A. Aspinall, ed., Later Correspondence of George III, vol. 3, 1967, 358). George III liked Kenyon and in 1795 asked him whether the coronation oath prevented him assenting to measures for Catholic emancipation from the penal laws (the chief justice thought not); the king appears also to have been sympathetic to Kenyon’s stand on the marketing offences.

Kenyon’s relationship with his wife was one of great mutual respect and affection. They corresponded frequently when Kenyon was on circuit or when they were apart for other reasons. During the demonstrations against the ‘Two Acts’ Lady Kenyon wrote from Bath: ‘If there are Riots or danger let me come to you directly and share every danger with the Man of my Heart’ (25 Nov 1795; Kenyon MSS, Lancashire RO, quarto box 18). She followed his reputation closely in the press and wrote to other members of the family in praise of his jury charges; she particularly admired his rhetoric in the adultery case of Arthur Annesley, ninth Viscount Valentia. In 1796 Kenyon threatened to punish gambling even when committed by the fashionable world, and provoked a spate of caricatures, including several of Lady Buckinghamshire (Albinia Hobart) and Lady Archer in the pillory. Lady Kenyon observed that one of them was ‘a very ridiculous good print if it will but deter from deserving the reality of it’ (Lady Kenyon to the Hon. George Kenyon, Christchurch, 20 May 1796, misdated 1795; Kenyon MSS, Lancashire RO,
quarto box 19). In spite of such satires Kenyon enjoyed good press. His hostility to dishonest attorneys and legal chicanery was frequently praised. He was considerate of the students who attended his court (in Guildhall they sat in a box near the bench) and explained the issues in the record while counsel were speaking. Many men and women of evangelical persuasion wrote to him of their appreciation of a godly chief justice, particularly after his attack on market speculators.

Kenyon made one of the great judicial fortunes. In 1782, when chief justice of Chester and attorney-general, he earned £11,542, £7555 of it from private clients. His earnings—rivalled by very few other lawyers—came largely from opinions on cases, rather than advocacy, for which he had no particular gifts. His judicial posts also were immensely remunerative. The mastership of the rolls was worth between £2500 and £4000 a year in salary and fees. The chief justice of king's bench received £4000 a year and had offices in king's bench worth about £15,000 a year in his gift. Kenyon (like other chief justices) named his sons and other relatives to several: Lloyd (1775–1800) as filazer; George Kenyon (1776–1855), later second Baron Kenyon, as joint chief clerk. In 1804 Lord Ellenborough appointed Kenyon's youngest son, Thomas (1780–1851), as filazer, and in 1810 shared the post of custos brevium, now in his possession, with George. Members of the family still occupied several offices in the mid-1830s.

Kenyon made shrewd purchases in Flintshire and Denbighshire, and extensively rebuilt Gredington Hall. From 1796 to 1798 he was lord lieutenant of Flintshire, and from 1796 to 1802 custos rotulorum of that county. He invested in government securities and lent money to landowners, and was the first judge to invest in canals. At his death, in 1802, his fortune was about £260,000, the sixth largest of the 139 judges for whom figures are available in the eighteenth and nineteenth centuries. The illness and death of his eldest son, Lloyd, who died on 15 September 1800, almost overwhelmed Kenyon with grief. In his will he asked to be buried with him; he left £30,000 to his surviving younger son, Thomas, a jointure of £2500 to his widow, and the rest as a life estate to his elder son, George. His own health and strength declined, and he sat at assizes for the last time, on the home circuit, in the summer of 1801. In the spring of 1802 he went to Bath for the waters, and died there on 4 April. Lady Kenyon died on 8 August 1808 at her home near Ellesmere, Shropshire. They are buried at Hanmer, where a memorial commemorates Lord Kenyon's devotion to 'Religion, Law, and Order'.

DOUGLAS HAY

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Wealth at death


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