PAPERS READ AT THE 49th LAMAS LOCAL HISTORY CONFERENCE HELD AT THE MUSEUM OF LONDON, 22 NOVEMBER 2014: 'COPPERS, CROOKS AND COUNSEL: LAW AND ORDER IN LONDON'

PORTALS OF THE LAW: ACCESS TO THE LAW IN MEDIEVAL LONDON

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According to the mayor and aldermen of London in 1417, nobody was justified in resorting to self-help in London 'since the portals of the law [are] wide open to all who need [it]'. But even a wide open door offers no entry to someone unable to get over its threshold, if it is very high. So just how accessible really were medieval London's portals of the law – its courts and legal or quasi-legal tribunals – to the ordinary man or woman?[1]

There were several factors that could affect accessibility, beginning with the 'portals' themselves. Since all the City courts were in London, naturally enough, non-Londoners who were involved in lawsuits and prosecutions in them encountered an immediate obstacle: they had either to travel to London or to find and pay an attorney to stand in for them. The general principle was, however, that non-Londoners who wished to bring cases in the City could only do so if the source of the dispute originated there – for example, a sale had been made there or a debt was supposed to be paid there. So it may well be that strangers who were plaintiffs, at least, had other business in the capital.

By 1300, the City had three principal courts of law: the Court of Husting, which specialised in property-related lawsuits, the Sheriffs' Court, which held a common court for London citizens and a court for 'foreigns' (for everyone else), and the Mayor's Court. By 1550 the Husting was almost moribund as a court of law. The other two main City courts, however, grew considerably over the next couple of centuries. By 1550, there were two more formal law courts, the Court of Requests, for low-value cases (in which no jury trial was available), and the Court of Bridewell, which dealt with (theoretically) minor miscreants who had been arrested and incarcerated in the City's new institution, established in 1548.

With the exception of Husting, the courts also sat frequently. The Mayor's Court in fact sat whenever required, on any day of the week. It was also relatively easy for anyone to find and get to a City court. They were all held at Guildhall, with Husting at one end of the main hall, the Sheriffs' Court at the other, and the Mayor's Court, latterly, in an upper room behind the main hall. So they were easy to find, if awe-inspiring.

There was another characteristic of these courts that was no doubt daunting for poorer people and could well have proved an obstacle to access: the use of French instead of English. This lasted until the mid 14th-

century in the case of the Sheriffs' Court, when its use was prohibited, but it seems to have continued to be used in Husting and the main Mayor's Court, possibly until the early 15th century.

Secondly, there is the little matter of the costs and benefits of litigation. There is not much evidence of outright corruption in the City's courts and administration, but at every level and at every stage of private litigation, including private prosecutions, office-holders expected to be paid to act. Costs were of three main types: court fees, such as those which were charged to begin and to progress a case; lawyers' fees, paid for professional legal representation and advice; and expenses, such as those paid to jurors and no doubt also to witnesses for attending court.

Individual fees could be low and remained fixed throughout the Middle Ages. For example, it cost 4d for an entry in the court record and an attorney charged a set fee of 1s 4d for each case in which he stood in for his client. Especially after 1500, inflation reduced the real value of fixed fees. The attorney's fee, equivalent to roughly £30 at today's values in the 1270s, was worth little more than £2 by 1600.

What also matters when considering the costs of litigation is how easy it is to litigate and, of course, your chances of winning. The Sheriffs' Court seems to have been the cheapest of the City courts, and fast. The odds of winning or achieving a negotiated settlement with the court's permission were apparently not far short of 50%. The Mayor's Court, being the most prestigious of the City courts, remained quite expensive. The chances of winning seem to have been about the same as in the Sheriffs' Court. Husting was the slowest and most expensive court and the chances of winning started quite low, at around 30% in the early 1300s, and got worse thereafter.

What is missing from all three courts is any trace of arrangements to provide free legal advice or representation to poor litigants, as was done in some other medieval courts. However, by the end of the 14th-century, plaintiffs with small claims and smaller purses could avoid formal legal process and petition the mayor and aldermen for justice 'in conscience'. The emergence of the Court of Requests in the 16th century provided similar benefits in a formal court of law.

The third potential obstacle to access to justice was the legal status of litigants. City law and custom distinguished City freemen from everyone else ('foreigns'): other London residents, Englishmen and women who were not resident in London and foreigners, both naturalised and alien, wherever they lived. Freemen had access to all the City courts and the privilege of being able to insist on being sued in some of them. In theory, by contrast, everyone else enjoyed unrestricted access only to the Sheriffs' Court for Foreigns. In practice, however, strangers could sue freemen in any of the City's courts; it was just fellow non-freemen who could only be sued in the Sheriffs' Court for Foreigns. Nor was there any particular obstacle to women or children suing or being sued in the City's courts, children being represented by family members or guardians.

On the other hand, litigants were expected to employ City office-holders as legal representatives, even though they could employ 'foreign' representatives as well. This could potentially create problems as well as increasing costs because City office-holders were not allowed to take on cases which were damaging to the interests of the City.

So, after all that, what was the actual experience of getting access to justice in London's courts for an ordinary man: for example, Henry Hodges, chapman of Whitchurch, Buckinghamshire?

Hodges almost certainly had business that brought him to the capital on a regular basis. He was an itinerant hawker, and it looks as though he was receiving goods from London merchants on credit, which he then sold before paying for them. What he chose to do was not to sue – as we will see, he would have had no chance of success in a court of law – but to petition the 'equitable' side of the Mayor's Court in 1462 about the allegedly usurious terms and harsh enforcement of a £50 loan made to him by a London mercer.

He may not have had to pay anything at all for his day in court: he seems to have made his complaint orally in person. The mayor and aldermen took the matter seriously, ordering a committee to examine Hodges and the mercer. Once it emerged that Hodges had neither written evidence nor witnesses

to support what he said – not even the two Whitchurch men who had acted as surety for him when he was lent the money, apparently – they did as much as they could do. The mercer was ordered to swear on oath that he was not guilty of the charges against him and to find two other citizens to swear in support of him. Four other citizens also volunteered to support his oath. Whether that was just Londoners closing ranks is impossible to tell. What we can say is that it does look as though the medieval civic authorities genuinely regarded it as important to ensure that the portals of the law were open to all.

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Note

1 For a general discussion and explanation of these conclusions, see Tucker (2007).

Bibliography

Tucker, P, 2007 *Law Courts and Lawyers in the City of London 1300–1550*, Cambridge

THE CRISIS OF THE 1780s AND REMAKING OF CRIMINAL TRANSPORTATION

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Perhaps the single most moving artefact of 18th-century crime – a stark representation of the cruelty of the Bloody Code – is *Smugglerius*, the plaster cast now in the Royal Academy of Arts, London, of the posed body of either Thomas Henman or Benjamin Harley, hanged for murder in the early summer of 1776. Both were coal heavers from Deptford, who had lived in lodgings on Church Street and supplemented their meagre earnings by hurrying smuggled goods into London. In May 1776 they were found guilty at the Old Bailey of the brutal murder of a customs officer, Joseph Pierce, who had been beaten to death by a gang of men including Edward or Gypsy George Lovell and two brothers, Benjamin and Robert Harley, in company with Henman. One of the gang turned King's evidence, and ensured that first Henman and Benjamin Harley, and later Gypsy George and Thomas Harley, were convicted and sentenced to hang, followed by dissection.

As a result, one of their lifeless bodies was eventually laid out on the dissection table at the Royal College of Surgeons for the appreciation of William Hunter and his students. But Hunter did not cut. Instead he decided to pass Henman's body on to the recently established Royal Academy of the Arts, where Agostino Carlini was charged to turn the body into an *écorché*.

As it was seized in rigor mortis, Carlini first stripped the body of its skin and posed the lifeless corpse as a gruesome caricature of a famous statue, before casting the figure in plaster of Paris. The pose Carlini chose was one many were familiar with from Rome and the Grand Tour, and which 18th-century connoisseurs knew as the 'Dying Gladiator'. The body was literally recast as a slave and a celebrity; to be admired for his strength, but mocked by a death engineered to preserve the social order by entertaining the multitude.[1]

However, even as the body was being flayed, the power and hubris that led to this kind of macabre spectacle was beginning to unravel. The American Revolution was well underway by the time *Smugglerius* was created, and in the next few years Britain's Empire seemed to collapse, taking with it Britain's favourite form of punishment. In the preceding ten years over twenty-seven hundred out of some forty-eight hundred convictions at the Old Bailey had resulted in a sentence of transportation to North America, for either seven or 14 years, or for life.[2] With the American Revolution, Britain suddenly had to find room for 250 people a year in prisons designed to simply hold defendants prior to trial. In part the answer was the hulks, decommissioned East Indiamen, transports and warships, adapted to holding men. In the winter of 1775–6 the first hulks were commissioned, and the Hulk Act was passed later that year.[3]

This effectively created a floating prison that could be expanded as demand required. But the crisis was not solved. The hulks served as an inadequate stopgap at best, and Britain's leaders were forced to try almost any alternative. All of the solutions that followed can perhaps be best illustrated in the life of a single individual – Thomas Limpus.[4]

Limpus was born into modest circumstances on 23 July 1760, to parents who fre-

quently relied on the parish to make ends meet. He shared his 14th Christmas with 25 boys and men from eight years old to 80 in the mixed men's ward at St Martin in the Fields workhouse. In 1777, at 17 years old, Limpus stole a handkerchief and was sentenced to three years hard labour on the hulks. Within months of his release, now 20, he was once again caught stealing a handkerchief, and was held for three months in Tothill Fields, Bridewell. Following an appearance before the Westminster sessions he was charged with 'Petit Larceny' and spent most of the next year in New Prison.

The authorities just did not know what to do with him. The prisons were full. The hulks were full, and America was closed. By early September 1782, Limpus was once again at liberty on the streets of Westminster, and was once more caught stealing a handkerchief. This time, however, his sentence was transportation. Since exile to America was no longer possible following the American Revolution, he was sent to 'Africa, for the term of seven years', to Gorée Island on the west coast, the centre of the slave trade, and at this moment a contested fort in a war zone.

On his arrival, with about forty others, Limpus was told by the captain of the garrison that as his own troops were starving, Limpus and his fellow prisoners could not remain. They were told they were 'free men' and would have to 'do the best [they] … could'. Limpus managed to return to London within a few months, a living demonstration of the failure of the policy of transporting criminals to Africa.

He was then caught again, and tried for 'returning from transportation'. This time he was sentenced to hang, along with 57 other men and women – the largest number ever sentenced to death at the Old Bailey in a single session. However, realising that hanging this many people would lead to social unrest, Limpus and the rest were once again slated for 'transportation'.[5]

This was a moment of real social crisis. The Gordon Riots had erupted some two years earlier on 2 June 1780, resulting in the death of at least 285 men and women with a further 173 seriously injured. The riots form the single most deadly and damaging instance of civil revolt in modern British history and the closest Britain has ever come to revolution. They also resulted in the effective destruction of the prison system – adding crisis to crisis.

In a desperate gamble to invigorate criminal transportation, the authorities even thought they could get just a few more shiploads of convicts to the now victorious United States, and loaded up two transport ships, the *Swift* and the *Mercury*. Limpus was on board the *Mercury*. Of course, they couldn't tell the prisoners where they were heading, and most believed they were destined for Africa. As a result – uniquely in 18th-century transportation history – the prisoners on both ships mutinied. Most were eventually recaptured and, along with Limpus, were committed once again to the ever more unsavoury hulks.[6]

Following almost three years in a convict hulk and a foiled escape attempt in November 1784, in 1787 the criminal justice system finally won its unequal battle with Thomas Limpus by sending him to the far side of the world to a new-style penal colony. Thomas Limpus was one of at least 283 men and women from London (over a third of the total) shipped to distant exile in Australia on the First Fleet. After a period of penal servitude on Norfolk Island, he earned a conditional pardon and appears to have lived the rest of his life there.

The point about lives such as Thomas Limpus is that they illustrate both the crisis faced by the state in the 1780s and the ways in which new forms of digital resource can be used to research individuals. Through research using websites, such as Old Bailey Online and London Lives,[7] a government decision (to create a new penal colony in New South Wales) becomes a personal narrative and individual crisis, rather than a matter of simple state policy.

Over the next 80 years, Britain would send ship after ship to New South Wales. Sixty-six thousand men and women, from London alone, were shipped to the far side of the world; few were likely to ever see home again. By exploring a series of individual lives, and putting their experience at the centre of our analysis, it is possible to trace the evolution of criminal transportation from 'below'. And by way of conclusion, perhaps that single type of artefact, that like *Smugglerius* for the Bloody Code, symbolises

Fig 1. David Freeman's 'love token': 'David Freeman Born the year 1798 Banished 17th June 1818'; 'Dear Sarah when this you see Rembr me When In some foreign Country' (© David Millett & the Trustees of the Australian National Museum)

the new system created in the wake of the 1780s, is the 'convict love token', left behind by those thousands of men and women (Fig 1).[8] Created from flattened copper pennies, they recorded the human cost of criminal transportation; and with David Freeman,[9] transported to Australia in 1818, ask us all, 'when this you see, Rembr me'.[10]

Notes

1 On the creation of *écorché* from the executed bodies of criminals see Trusted (1992; 1993). For the trials see Old Bailey Proceedings Online, May 1776, trial of Benjamin Harley and Thomas Henman (t17760522-32). For 'Gypsy George', see Young. For a wider discussion see Executed Today. See also McGowen (1987).

2 Old Bailey Online, statistics function: tabulating year against punishment category where verdict category is guilty, between 1766 and 1776. Counting by defendant.

3 Campbell (2001).

4 Christopher (2011, 226–7, 253–4).

5 Christopher (2006, 79); Gillen (1989, 221). For links to the original evidence see London Lives.

6 Ekirch (1984).

7 Old Bailey Online is available at www.oldbaileyonline.org; London Lives is available at www.londonlives.org.

8 Convict love tokens, http://love-tokens.nma.gov.au/highlights/2008.0039.0027.

9 For Freeman's trial, see Old Bailey Proceedings Online, 'John Clark, David Freeman' 17 June 1818 (t18180617-166).

10 Field & Millett (1998).

Bibliography

Campbell, C, 2001 *The Intolerable Hulks : British Shipboard Confinement, 1776–1857* 3rd edn, Tucson

Christopher, E, 2006 'Steal a handkerchief, see the world: the trans-oceanic voyaging of Thomas Limpus' in A Curthoys & M Lake *Connected Worlds: History in Trans-National Perspective*, Canberra, 79; epress.anu.edu.au (accessed 30 December 2013)

Christopher, E, 2011 *A Merciless Place : The Lost Story of Britain's Convict Disaster in Africa*, Oxford

Ekirch, R A, 1984 'Great Britain's secret convict trade to America, 1783–1784' *American Hist Rev* 89, 1285–91

Executed Today, '1776: Benjamin Harley and Thomas Henman, Smugglerius?' www.executedtoday.com (accessed 27 May 2012)

Field, M, & Millett, T (eds), 1998 *Convict Love Tokens : The Leaden Hearts the Convicts Left Behind*, Kent Town

Gillen, M, 1989 *The Founders of Australia: A Biographical Dictionary of the First Fleet*, Sydney

London Lives, 'Thomas Limpus' www.londonlives.org (accessed 23 April 2015)

McGowen, R, 1987 'The body and punishment in eighteenth-century England' *J Modern Hist* 59, 651–79.

Old Bailey Online, [Statistics function], http://www.oldbaileyonline.org/forms/formStats.jsp (accessed 23 April 2015)

Old Bailey Proceedings Online, www.oldbaileyonline.org (accessed 20 April 2010)

Trusted, M, 1992 '"A man of talent": Agostino Carlini (*c*.1718–1790)' *Burlington Mag* 134, 776–84

Trusted, M, 1993 '"A man of talent": Agostino Carlini (*c*.1718–1790)' *Burlington Mag* 135 (1993), 190–201

Young, W, 'George Lovell, alias Gypsy George' *London Lives, 1690–1800,* www.londonlives.org (accessed 17 June 2012)