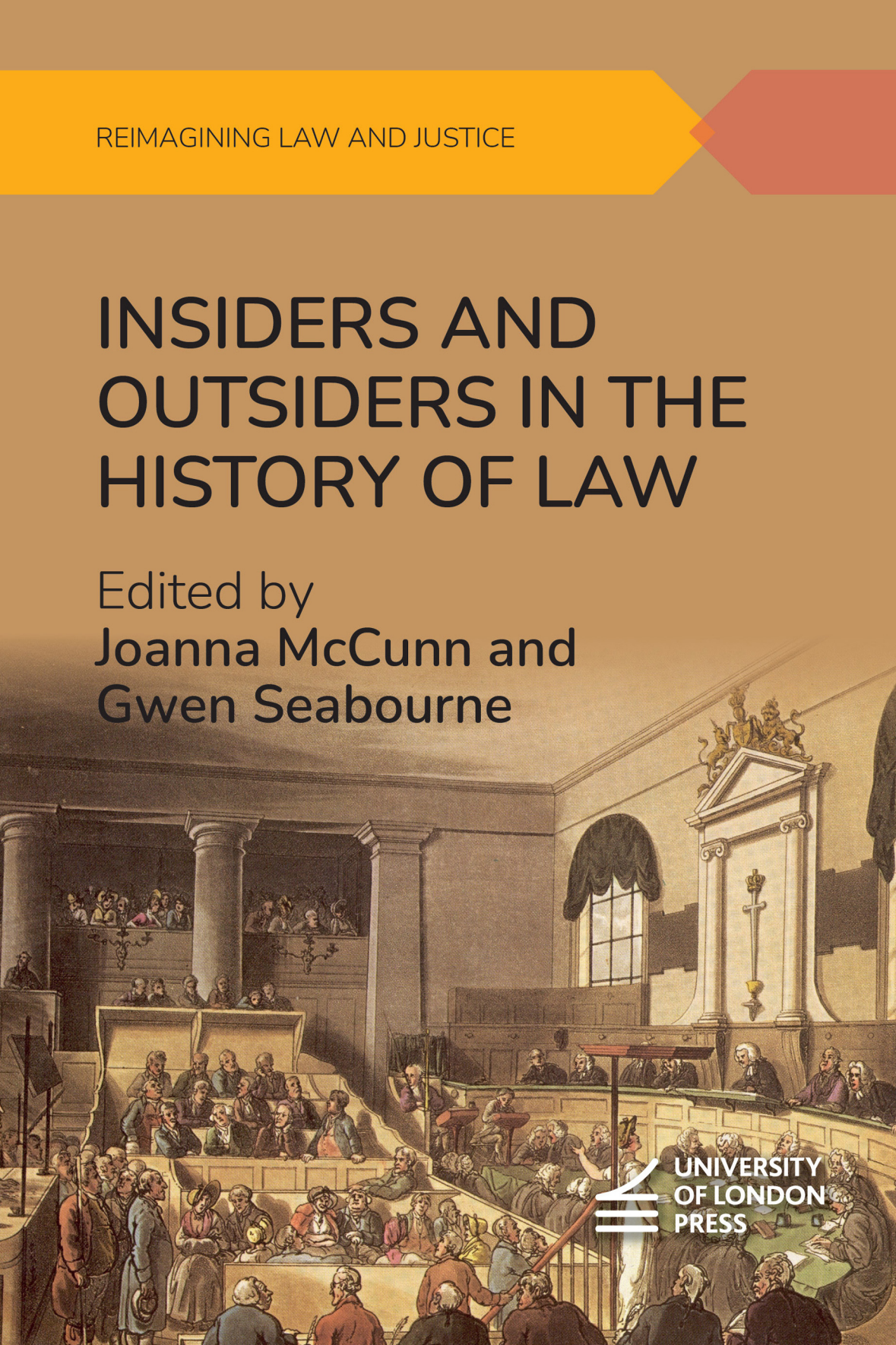
REIMAGINING LAW AND JUSTICE

# INSIDERS AND OUTSIDERS IN THE HISTORY OF LAW

Edited by
Joanna McCunn and
Gwen Seabourne



UNIVERSITY OF LONDON PRESS

# Insiders and Outsiders in the History of Law

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**Kirsty Wright** is a historian specialising in the political and architectural history of early modern England. She is a post-doctoral research assistant at Historic Royal Palaces and completed her PhD at the University of York on the 'Exchequer of Receipt in the Palace of Westminster, 1548–1662'.

# Preface

No book comes without its backstory. The immediate origin of this particular book lies in our work as convenors of the 26th British Legal History Conference, held in Bristol in July 2024. This conference is an institution with its own history. It was first held in Aberystwyth in 1972[1] and has taken place (usually) every two years since, hosted by a range of UK universities. For those whose work is focused on legal history, it is a very significant fixture in the calendar.

Organising the conference is both a big responsibility and an important opportunity to contribute to the development of scholarship in legal history. When we took on the task, our hope was to open up the BLHC (as 'insiders' know it) to a wider group of scholars. In its early days, the conference may have been largely the preserve of 'tweed clad men' from law schools,[2] but legal history, and the historical study of law, have changed in many positive ways over the last half-century. We wanted to reflect and encourage those changes, in the strong belief that weaving new subject matter, perspectives and methods into our discipline can only strengthen and enrich it.

With that in mind, we chose as our conference theme 'Insiders and Outsiders in the History of Law'. The papers and discussions inspired by that theme were themselves inspiring, and it was clear that the conference had captured something of a moment in legal history. There is, however, scope for further, wider and more enduring consideration of this theme, and this collection is another way to sustain conversations begun at the conference, as well as starting new ones.

It was important to us, both as a matter of general principle, and also in view of the theme, that this collection should be made as widely available as possible. We are therefore very glad to publish it with University of London Press as an open-access publication. We are grateful to Emma Gallon and colleagues for their support and advice throughout the publication process.

We would also like to take this opportunity to thank all those who supported the 2024 BLHC in Bristol. The conference was sponsored by the Bristol Centre for Law and History Research, the Bristol Centre for Medieval Studies, Bristol University Press, Burges Salmon, the Irish Legal History Society, the Journal of Legal History, the Selden Society, the University of Bristol Law School and VWV.

We are grateful for the support of the BLHC continuation committee, as well as our colleagues in Bristol, especially Andrew Bell, Chathuni Jayathilaka, Ellie Claypole and Jacqueline Nichols. We thank our plenary

speakers: Foluke Adebisi, Amanda Bevan, Edson Burton, Carissa Harris, Krista Kesselring, Michael Lobban, Richard Stone and David Sugarman. Thanks are also due to our team of student assistants, and to our Legal History students, past and present, for their insights and enthusiasm.

Finally, we are grateful to all of the speakers, chairs and delegates who contributed to the success of the conference. We were especially pleased that a third of our delegates were attending the BLHC for the first time and that the conference brought together scholars with a wide range of interests and backgrounds, at different career stages and from inside and outside academia. We hope that the thoughtful and generous discussions that were fostered there prove fruitful long into the future.

—Joanna McCunn and Gwen Seabourne
Bristol, January 2026

## Notes

1. Dafydd Jenkins, 'Legal History at Aberystwyth' *Cambrian Law Review* 34 (2003): 27, 46–50. The conference was first hosted by the University of Bristol in 1981.

2. Patrick Polden, '"Forty Years On": The British Legal History Conference, 1972–2011' in Matthew Dyson and David Ibbetson (eds), *Law and Legal Process: Substantive Law and Procedure in English Legal History* (CUP 2013): 317, 319.

## References

Jenkins, Dafydd, 'Legal History at Aberystwyth' *Cambrian Law Review* 34 (2003): 27–55

Polden, Patrick, '"Forty Years On": The British Legal History Conference, 1972–2011' in Matthew Dyson and David Ibbetson (eds), *Law and Legal Process: Substantive Law and Procedure in English Legal History* (CUP 2013)

# List of abbreviations

| | |
|---|---|
| **BL Add MS** | British Library Additional Manuscript |
| **BL Cotton MS** | British Library Cotton Manuscript |
| **BL Harl MS** | British Library Harley Manuscript |
| **BL Harg MS** | British Library Hargrave Manuscript |
| **Car & K** | Carrington & Kirwan's Nisi Prius Reports |
| **Cl & F** | Clark & Finnelly's House of Lords Cases |
| **Cowp** | Cowper's King's Bench Reports |
| **Cox CC** | Cox's Criminal Cases |
| **CUL MS** | Cambridge University Library Manuscript |
| **CUP** | Cambridge University Press |
| **Dougl** | Douglas' King's Bench Reports |
| **El & Bl** | Ellis & Blackburn's Queen's Bench Reports |
| **ER** | English Reports |
| **HMSO** | His Majesty's Stationery Office |
| **Lofft** | Lofft's King's Bench Reports |
| **Moo PCNS** | Moore's Privy Council Cases, New Series |
| **OUP** | Oxford University Press |
| **TNA** | The National Archives (UK) |
| **YB** | Year Books |

# Introduction

Joanna McCunn and Gwen Seabourne*

Writing the history of law involves choices: whose stories are to be told, how and by whom? In England, for example, much legal history has followed outlines laid down in a particular period and intellectual milieu: that of socially elite white men of the high imperial age. For F W Maitland, writing at the end of the nineteenth century, it was self-evident that the history of English law was the history of legal doctrine – of pleading, procedure and conveyancing – and that trained lawyers were the best people to write it.[1] The materials were primary legal sources: court records, case reports, legal treatises and readings from the Inns of Court.

Legal history which chooses to focus on common law doctrine inevitably 'concentrates on the law of the landowner and the businessman, of the rich rather than the poor, of men rather than women'.[2] However, since the mid twentieth century, and in the last four decades in particular, significant work has been done to expand legal history's horizons, considering the law's impact on, for example, women;[3] racialised, colonised and enslaved people;[4] and those of diverse genders and sexualities.[5] The separate but intertwined histories of the law in Wales, Scotland and Ireland have also been explored in important and stimulating works.[6]

New methods have also been brought to bear: witness, for example, the recent revival of interest in biographical studies, with its focus on exploring untold stories rather than on recounting 'great' lives.[7] Historical work which has nuanced ideas around masculinity has begun to reinvigorate and enrich discussions of the 'insiders' of the legal profession.[8] As the writers of these histories have cast a wider net for sources, so too have legal materials been put to use outside traditional legal and historical scholarship. In recent years, there has been a significant expansion of interest in legal history amongst scholars of literary history, for example, whether focusing on the legal content of

historical literature or the involvement of literary figures with the law. The methods and insights of scholars of literature have also broadened the horizons of legal history.[9]

However, it is unnecessary to draw sharp divisions between different approaches to legal history, seeing scholars as either externally minded sheep or classically inclined goats: the latter interested only in matters 'within the box of distinctive-appearing legal things', the former primarily in matters outside the box.[10] Certainly, 'classical' legal history should not be straw-manned as a discipline holding itself aloof from other bodies of scholarship. Maitland's 'eclectic' work was interested in law in its social and political context,[11] and a tendency to connect English law with other legal systems can be seen from the start.[12] Although its centre of gravity remains in law schools, legal history has always had contact with, and significant input from, history faculties.[13] This was encouraged by the 'new legal history' of the later twentieth century in particular,[14] and, as the range of papers presented at legal history conferences now shows, it is not particularly controversial to suggest that it is worth taking note of law's effects on those beyond elite groups or presenting a narrative more nuanced than that of the linear and triumphant development of the centralised common law.

Instead, it is fast becoming commonplace to observe that neither 'internal' nor 'external' legal history scholarship can hope to succeed without reference to the other.[15] Links between new, innovative work and the classical legal historical tradition are growing but have the potential for further development. This collection both reflects and builds on the growing body of scholarship and public communication on the history of law which draws the two fields of work together. Our contributors engage with a variety of complementary topics, methods and sources to conduct a nuanced and rigorous investigation of law's past. It is not enough simply to add a section about 'the others' as an afterthought to accounts of elite doings; nor should explorations of the development of legal ideas be denigrated as the preserve of dusty eccentrics. Rather, our book celebrates a diversity of approaches to enriching our understanding of the history of law. As the editors of one handbook recently remarked, '[l]egal history today comes in a wonderful spectrum of shapes and sizes, flavors and tones'.[16] This collection aims to offer a taster.[17]

This book reflects an exciting moment in legal history and the history of law, which we have chosen to capture in a provocative binary between 'insiders' and 'outsiders'. We do not intend to use these terms in the sense of exclusive and specialised academic jargon.[18] Instead, we offer them as a flexible and open-ended prompt, encouraging legal historians to reflect

on dividing lines drawn in the history of the law and on who, or what, is within and without them. What follows shows that our contributors were inspired to use the terms in their own overlapping and intersecting ways, examining how people became legal insiders or outsiders; how the law treated them; and how they sought to wield legal processes to their advantage. Our authors also seek to trouble the borderline between insiders and outsiders, demonstrating the malleability and contingency of any such binary. Ultimately, we are not interested in establishing prescriptive lists of legal insiders and outsiders, but in asking how thinking about insiders and outsiders can stimulate and reinvigorate legal history and promote the connections between legal history and wider legal and historical discourse.

The chapters deal with some topics which might seem to fall into either 'insider' or 'outsider' categories, though they also show many instances of movement between the two, and are built upon an awareness of the interactions and intersections between different types of exclusion. As intersectionality theory recognises, identity is complex.[19] People experience different kinds of advantage and disadvantage, and people who belong to multiple disadvantaged groups have different experiences to those who are disadvantaged along only one axis.[20] The complexity of identity means that any individual might have elements of both the 'insider' and the 'outsider', as each of our chapters demonstrates. Existing as an 'outsider' to any dominant group brings disadvantages, although of course the seriousness of these disadvantages varies according to how society views and treats members of the 'outsider' group. Across our collection, we see that some such groups are broadly tolerated and even, to a limited extent, empowered, while others are marginalised, deprived or exploited.[21]

Focusing on 'insiders' and 'outsiders' encourages us to acknowledge the 'insider' characteristics of some individuals or families, rather than treating inherited privilege, the transmission of power and access to legal influence as matters that go without saying. Legal historians have, quite naturally, been drawn to discuss those who worked in and wrote about the law, and especially those who made a strong impression on the written records that remain to us. These people were, on the whole, privileged and powerful. A consideration of 'insiders' and 'outsiders' does not rule out the study of such individuals, but it does encourage legal historians to make their subjects' privilege an explicit part of their analysis.

Thus, in his chapter, Philip Handler considers squarely the 'insider' nature of a particular nineteenth-century judicial dynasty, the Coleridges. Handler highlights the financial support, professional connections and career advice that John Duke Coleridge received from his father on his path to becoming Lord Chief Justice. As legal, political and cultural insiders,

the Coleridges had the opportunity to wield the common law to promote their own moral and religious views – and to leverage the press when they were met with criticism. Identifying and critically engaging with the legal profession's networks of inclusion, and their implications for those left out, is crucial to understanding the law and lawyers of the past.

Even the powerful subjects of traditional legal history might have a degree of 'outsider' experience. As Handler notes, John Taylor Coleridge's High Church sympathies may have won him powerful political friends, but they also attracted suspicion. Ashley Hannay's subject, John Vavasour, was another 'insider' who owed his access to legal practice and office in no small part to his family connections, but Hannay also examines an 'outsider' aspect of his life: his roots in and ties to the north of England. As Hannay points out, these made Vavasour a rarity amongst fifteenth-century English judges. While Vavasour's northern connections offered him legal and political opportunities, they may also have led to his being singled out as an object of popular humour.

Hannay's chapter is a useful reminder of the importance of identity at the sub-'national' level in medieval and later periods, which can easily be masked by the early centralising tendencies of the English common law. Dealing with a much later period, Kay Crosby shows us that regional variations in legal institutions within England remained, and were tolerated, well into the twentieth century; her chapter focuses on Bristol as an 'outsider' jurisdiction with unusual rights and an independent legal culture.

Patricia McMahon's chapter, meanwhile, considers the work of another man who might appear to be a quintessential legal insider: Henry Brougham, Lord Chancellor between 1830 and 1834. McMahon describes Brougham's 'insider/outsider' status as paradoxical. Shaped in some of his inclinations and activities by his Scots background, he was committed to legal and political reform throughout his career, taking on anti-establishment clients; steering reforming bills through Parliament; and later founding societies to press for further reforms. Brougham was a difficult fit as Lord Chancellor and seems to have preferred to operate as a campaigning 'outsider', albeit one with 'insider' knowledge and connections. Individuals rarely fall wholly on one side of the 'insider/outsider' divide, and McMahon's chapter demonstrates that the binary can also be helpful in refining our accounts of those who sit on the borderline.

In a similar vein, Anthony Musson and Kirsty Wright examine the legal position of Henry VIII's wives. This was clearly one of great privilege in many respects when compared to the population of Tudor England in general and to contemporary women in particular. However, the chapter also explores the women's 'outsider' aspects: many were foreigners, unpopular or unprepared for their role; all lived with the risk of change

to their status as a result of the displeasure, or demise, of their royal husband. Musson and Wright consider the movement of Henry's queens along an 'insider–outsider' spectrum. At times, they were at the centre of political and legal power: exercising lordship over their estates; associating themselves with Biblical heroines; or even wielding legal, political and military power in the king's absence. A queen's 'insider' status, however, was wholly dependent on her relationship with her husband. At other times, Henry's wives found themselves wholly excluded from power and had the force of the law directed against them more intensely than was the case even for most 'outsiders'.

Musson and Wright's chapter explores the very particular and peculiar position of a queen consort. She was set apart from other women in many respects, yet she was also obliged to conform to the social and legal role of a wife. A number of other chapters deal with questions around gender, exploring the complexities of intersecting statuses. Kay Crosby considers the gradual, contingent and contested process by which some women became legal 'insiders' of a sort, having been permitted to sit as jurors by the Sex Disqualification (Removal) Act 1919. Crosby highlights a considerable level of tolerated inconsistency in the use of women jurors and the informal means by which male officials could choose suitable women to become 'insiders'. Her chapter observes that even favoured women were kept on the margins of legal experience, being significantly less likely than men to be summoned as jurors multiple times.

Daniel Gosling's chapter considers the enigmatic Chevalier d'Éon, a person whose sex was a matter of great curiosity and dispute in eighteenth-century England. It shows that gender nonconformity was not necessarily a disadvantage to, nor even the most important factor influencing, the Chevalier's legal position. D'Éon was an 'outsider', as a foreigner who was inexperienced with English law, and had incurred the hostility of the French regime. On the other hand, d'Éon had the wealth and status to pursue disputes, both in the courts and in the press, and the benefit of diplomatic connections. Gosling demonstrates that the English courts offered processes by which foreigners like d'Éon could access justice on a similar basis to English parties and that nationality, rank and personal rivalries could be significant factors in shaping a person's legal encounters.

Jennifer Pearce's chapter addresses access to the courts in a very different context: that of the medieval Latin Kingdom of Jerusalem. The religiously and ethnically diverse Levantine population was only permitted to engage with the Latins' courts in limited ways. Pearce shows that Levantines participated extensively in the lower courts but were largely excluded from the highest levels of the court system. Latin jurists were reluctant to accept Levantines as trustworthy witnesses, and only

exceptionally did Levantines who were of high rank, or who had close relationships with the Latin community, succeed in having their cases heard in the elite *Haute Cour*. Pearce's chapter sketches the complex relationships and inequalities between different 'insider' and 'outsider' groups in this early settler-colonial polity.

Race-based categorisation and exclusion is also the subject of Justine Collins' chapter. She explores the system of minute distinctions used to classify people of colour in colonial Jamaica. Some mixed-race Jamaicans were permitted to enjoy the same privileges as white settlers, and free people of colour, as well as the white fathers of mixed-race children, petitioned the Jamaican legislature for private Acts that granted specific, limited privileges. Private Acts could also be used to manumit enslaved people, as a reward for reporting on planned uprisings. Collins makes it clear, however, that the accommodations granted to some individuals did not help people of colour as a whole; in fact, they ultimately served to entrench the racist system to the benefit of the white minority. Her chapter demonstrates that the dividing lines drawn in Jamaican society were not necessarily impassable but were manipulated to serve the interests of white colonists. She concludes by describing the impacts of these 'insider' and 'outsider' distinctions in Jamaica today.

This collection does not claim, or aim, to be comprehensive. The idea is not encyclopaedic coverage of all possible 'insider' and 'outsider' groups and approaches, but the gathering of new and stimulating work, in the hope of encouraging further discussion both within and beyond the traditional confines of legal history.

The focus of most of our chapters is on English common law. This serves the coherence of the collection, but it also reinforces the value of considering 'insiders and outsiders' within a long-established jurisdiction and field of academic study, demonstrating the complexity of these categories and their evolution over time. Of course, the approach is not unknown, or of less value, in other jurisdictions. Indeed, recent work demonstrates that focusing our attention on England's 'lower' jurisdictions, conciliar courts or the law of the church brings additional 'insider/outsider' dynamics into play.[22]

We are also aware that not all 'outsider' perspectives can be represented within the scope of this collection. Important insights into the history of law can equally be supplied by consideration of additional 'outsider' groups: for example, people with disabilities;[23] the poor;[24] Gypsy, Roma and Traveller groups;[25] and those whose sexual desires or activities did not follow socially and legally regarded norms.[26]

Our chapters take a diverse range of approaches to legal historical scholarship, including, in particular, biographical and prosopographical methods. They also draw on a wide range of sometimes-overlooked sources, from the records of the medieval Common Pleas of Lancaster (Hannay) to Bristol's twentieth-century juror summoning books (Crosby); from nineteenth-century judges' letters and journals (Handler) to the records of Tudor queens' landed estates (Musson and Wright) and the legal treatises of a medieval Crusader polity (Pearce). They demonstrate the value of an expansion of the source base for legal history research, as well as openness to different ways of looking at familiar material.

The range of possible approaches to legal material suggests a proliferation of opportunities for future exploration.[27] The diversity of options may seem bewildering or even intimidating, but that diversity can be exploited and incorporated into legal history scholarship through collaborative, as well as individual, projects. Additional valuable insights and perspectives can be gained by involving experts from beyond academia. There are obvious advantages to encouraging the input of professionals from both the archives and heritage sectors: their immersion in and access to legal historical sources, as well as their focus on public engagement, can inform and inspire academic work. It is also valuable, for both the present and the future of legal history, to garner the perspectives of those at different career stages within academia. We are delighted to have brought together the work of contributors from a range of backgrounds in this collection.

Taken as a whole, the chapters in this volume highlight the complex, contingent and multivalent nature of 'insider/outsider' ideas and labels and the ways in which, if used judiciously and with sensitivity, they can contribute to an ever richer legal history, on both the social and the doctrinal sides of the discipline. As David Sugarman remarked at the British Legal History Conference 2024, 'the creation of "insiders" and "outsiders" is not natural, absolute and fixed but is necessarily relational, artificial and manufactured over time'.[28] Our collection draws attention to the creation of these categories, and to how they may be problematised or transcended. Across our chapters, we see that those who appear to be classic 'insiders' may have 'outsider' qualities, while 'outsiders' are often very capable of turning the law to their advantage.

McMahon's chapter suggests that the combination of 'insider' and 'outsider' aspects in one individual can lead them to especially active efforts to bring about change. We hope that bringing into conversation these studies of a selection of 'insiders' and 'outsiders' in the history of law will produce a similar level of energy and interest. Ultimately, this book argues that legal historians should be more attentive to the 'insider/outsider' boundaries in their discipline and intends to prompt conversation

between those engaged in legal and historical studies and beyond. It seeks to demonstrate the potential for a reinvigorated and representative legal history to contribute to scholarship in other fields and, increasingly, to public discourse.

## Notes

* We are grateful to David Foster, Emily Ireland and the anonymous reviewer for their comments on a draft of this introduction, and to David Sugarman for his helpful suggestions.

1. F W Maitland, *Why the History of English Law Is Not Written: An Inaugural Lecture Delivered in the Arts School at Cambridge on 13th October 1888* (CUP 1888): 16–19.

2. David Ibbetson, 'Historical Research in Law' in Mark Tushnet and Peter Cane (eds), *The Oxford Handbook of Legal Studies* (OUP 2005): 875. See, for example, Maitland's rather cursory sections on 'Jews', 'Lepers, Lunatics and Idiots', and 'Women': Frederick Pollock and F W Maitland, *The History of English Law before the Time of Edward I* (CUP 1895), vol. 1, chapter 2.

3. See, for example, Tim Stretton, *Women Waging Law in Elizabethan England* (CUP 2009); Tim Stretton and K J Kesselring (eds), *Married Women and the Law: Coverture in England and the Common Law World* (McGill-Queen's University Press 2013); Erika Rackley and Rosemary Auchmuty (eds), *Women's Legal Landmarks* (Hart 2018): 186–211; Gwen Seabourne, *Women in the Medieval Common Law c.1200–1500* (Routledge 2023); Rosemary Auchmuty, 'Whatever Happened to Miss Bebb? *Bebb v The Law Society* and Women's Legal History' *Legal Studies* 31, no. 2 (2011): 199–230. See also, on women legal historians, Lorren Eldridge, Emily Ireland and Caroline Derry (eds), *Celebrating Women in Legal History: Making and Shaping a Discipline* (Hart 2026).

4. See, for example, Christian R Burset, *An Empire of Laws: Legal Pluralism in British Colonial Policy* (Yale University Press 2023); Foluke Adebisi, *Decolonisation and Legal Knowledge: Reflections on Power and Possibility* (Bristol University Press 2024); Neil Jones, 'The *Zong*: Legal, Social and Historical Dimensions' *Journal of Legal History* 28 (2007): 283; Holly Brewer, 'Creating a Common Law of Slavery for England and Its New World Empire' *Law and History Review* 39 (2021): 765–834; Adam Crymble and Emma Azid, 'Black Lives, British Justice: Black People in London Criminal Justice Records, 1720–1841' *Journal of Slavery and Data Preservation* 2 (2021): 1–10.

5. See, for example, Caroline Derry, *Lesbianism and the Criminal Law: Three Centuries of Regulation in England and Wales* (Springer 2020); Ruth M Karras and Tom Linkinen, 'John/Eleanor Rykener Revisited' in Laine E Doggett and Daniel E O'Sullivan (eds), *Founding Feminisms in Medieval Studies: Essays in Honor of E. Jane Burns* (Boydell & Brewer 2016): 111–22; Caroline Derry, '"Female Husbands", Community and Courts in the Eighteenth Century' *Journal of Legal History* 38, no. 1 (2017): 54–79; Ruth M Karras, 'The Regulation of "Sodomy" in the Latin East and West' *Speculum* xcv (2020): 969–86.

6. See, for example, Janet Sinder, 'Irish Legal History: An Overview and Guide to the Sources' *Law Library Journal* 93 (2001): 231–60; Thomas Glyn Watkin, *The Legal History of Wales* (University of Wales Press 2007); Andrew Simpson and Adelyn Wilson, *Scottish Legal History: Volume One, 1000–1707* (Edinburgh University Press 2017); David Capper, Conor McCormick and N M Dawson (eds), *Law and Constitutional Change* (CUP 2025).

7. See, for example, David Sugarman, 'From Legal Biography to Legal Life Writing: Broadening Conceptions of Legal History and Socio-Legal Scholarship' *Journal of*

*Law and Society* 42 (2015): 7–33; Rosemary Auchmuty and Erika Rackley, 'Feminist Legal Biography: A Model for All Legal Life Stories' *Journal of Legal History* 41 (2020): 186–211; Victoria Barnes, Catharine Macmillan and Stefan Vogenauer, 'On Legal Biography' *Journal of Legal History* 41, no. 2 (2020): 115–21; Victoria Barnes and Emily Whewell, 'Judicial Biography in the British Empire' *Indiana Journal of Global Legal Studies* 28 (2021): 1–27.

8. See, for example, Katie Barclay, *Men on Trial: Performing Emotion, Embodiment and Identity in Ireland, 1800–45* (Manchester University Press 2018); E Amanda McVitty, 'Engendering Erudition: Masculinity and Legal Authority at England's Medieval Inns of Court' *Gender and History* 32 (2020): 447–64.

9. See, for example, Lorna Hutson (ed.), *The Oxford Handbook of English Law and Literature, 1500–1700* (OUP 2017); Candace Barrington and Sebastian Sobecki (eds), *The Cambridge Companion to Medieval English Law and Literature* (CUP 2019); Melissa J Ganz (ed.), *British Law and Literature in the Long Eighteenth Century* (CUP 2025); Clare Egan, *Performing Libel in the Provinces: Community Conflict in Early Modern England* (OUP 2025); Sebastian Sobecki and Euan Roger (eds), 'The Case of Geoffrey Chaucer and Cecily Chaumpaigne: New Evidence' *The Chaucer Review* 57 (2022) special edition.

10. Robert W Gordon, 'J Willard Hurst and the Common Law Tradition in American Legal Historiography' *Law & Society Review* 10 (1975): 9, 11.

11. Jonathan Rose, 'Studying the Past: The Nature and Development of Legal History as an Academic Discipline' *Journal of Legal History* 31 (2010): 101, 114.

12. See Maitland, *Why the History of English Law Is Not Written* (n 1), amongst many others.

13. The convenors of the British Legal History Conference 1983 described legal history as a 'very diverse discipline': Michele Slatter and Roger Virgoe, 'Preface: A Note on the British Legal History Conference' *Journal of Legal History* 5, no. 3 (1984): v. Wilfrid Prest notes that legal history since the 1970s has been characterised by a 'broadly interdisciplinary element', but adds that lawyers have tended to be numerically dominant at legal history conferences and in legal history journals: Wilfrid Prest, 'Lay Legal History' in Anthony Musson and Chantal Stebbings (eds), *Making Legal History: Approaches and Methodologies* (CUP 2012): 198, 207. The task of assigning individuals to 'legal scholar' and 'historian' camps, is, of course, complicated by the different positions of legal study in different jurisdictions, as well as by careers which see movement between the two fields, and indeed beyond the academy.

14. See, for example, Gerry R Rubin and David Sugarman, 'Introduction: Towards a New History of Law and Material Society in England, 1750–1914' in Gerry R Rubin and David Sugarman (eds), *Law, Economy and Society 1750–1914: Essays in the History of English Law* (Professional Books 1984): 1–123. It is worth noting that many of these developments have a longer history in US scholarship than in the UK.

15. See, for example, Charles Donahue, 'Whither Legal History?' in Daniel W Hamilton and Alfred L Brophy (eds), *Transformations in American Legal History* (Harvard University Press 2009): 339; Russell Sandberg, *Subversive Legal History: A Manifesto for the Future of Legal Education* (Routledge 2021): 44–5; Michael Lobban, 'The Tools and the Tasks of the Legal Historian' in Andrew Lewis and Michael Lobban (eds), *Law and History: Current Legal Issues 2003* (vol. 6, OUP 2004) 1–32; Michael Lobban, 'The Varieties of Legal History' *Clio@Themis: Revue Électronique d'Histoire du Droit* 5 (2010): http://journals.openedition.org/cliothemis/1727, accessed 30 January 2026.

16. Markus D Dubber and Christopher Tomlins, 'Editors' Preface' in Markus D Dubber and Christopher Tomlins (eds), *The Oxford Handbook of Legal History* (OUP 2018): v.

17. As a terminological note, the discipline is often described as 'legal history' within law faculties and as 'history of law' by historians; we use the two terms interchangeably.

18. For 'insiders' and 'outsiders' as terms of art, see, for example, Assar Lindbeck and Dennis J Snower, 'Insiders versus Outsiders' *Journal of Economic Perspectives* 15 (2001): 165–88; for similar terms used to discuss the positionality of researchers, see, for example, Lynette J Chua and Mark Fathi Massoud, *Out of Place: Fieldwork and Positionality in Law and Society* (CUP 2024).

19. Additional complexities arise because identity groups are not fixed and stable over time; people in the past might have had no concept of a group to which modern commentators see them as belonging. See, for example, Ruth Mazo Karras and Katherine E Pierpont, *Sexuality in Medieval Europe: Doing unto Others* (4th ed., Routledge 2023): chapter 5; G V G K Tang, 'Sexuality' in *The Inclusive Historian's Handbook* https://inclusivehistorian.pressbooks.sunycreate.cloud/, accessed 30 January 2026.

20. Kimberlé W Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' *University of Chicago Legal Forum* (1989): 139–67.

21. It should be remembered, however, that intersectionality theory is not an attempt to create a hierarchy of oppression, but rather to understand different patterns of disadvantage: Shreya Atrey, *Intersectional Discrimination* (OUP 2019): 44.

22. See, for example, S M Waddams, *Sexual Slander in Nineteenth-Century England: Defamation in The Ecclesiastical Courts, 1815–1855* (University of Toronto Press 2000); Teresa Phipps, *Medieval Women and Urban Justice: Commerce, Crime and Community in England, 1300–1500* (Manchester University Press 2020); Bronach Kane, *Popular Memory and Gender in Medieval England: Men, Women, and Testimony in the Church Courts, c.1200–1500* (Boydell Press 2021); Cordelia Beattie, 'Your Oratrice: Women's Petitions to the Late Medieval Court of Chancery' in Fiona Williamson and Bronach Kane (eds), *Women, Agency and the Law, 1300–1700* (Routledge 2013) 17–29; K J Kesselring, 'Consent and Coercion, Force and Fraud: Marriages in Star Chamber' in K J Kesselring and Natalie Mears (eds), *Star Chamber Matters: An Early Modern Court and Its Records* (University of London Press 2021) 97–114.

23. See, for example, Cory James Rushton (ed.), *Disability and Medieval Law: History, Literature, Society* (Cambridge Scholars Publishing 2013).

24. See, for example, Lorie Charlesworth, *Welfare's Forgotten Past: A Socio-Legal History of the Poor Law* (Routledge 2010).

25. See, for example, David Cressy, 'Trouble with Gypsies in Early Modern England' *Historical Journal* 59, no. 1 (2016): 45–70.

26. See, for example, Sean Brady and Mark Seymour (eds), *From Sodomy Laws to Same-Sex Marriage: International Perspectives since 1789* (Bloomsbury 2019), and references in n 5 (above).

27. See, for example, recent work on law and the history of performance: Julie Stone Peters, *Law as Performance: Theatricality, Spectatorship, and the Making of Law in Ancient, Medieval, and Early Modern Europe* (OUP 2022); the history of art: Linda Mulcahy, 'Watching Women: What Illustrations of Courtroom Scenes Tell Us about Women and the Public Sphere in the Nineteenth Century' *Journal of Law and Society* 42 (2015): 53–73; and the history of emotion: Katie Barclay, 'Narrative, Law and Emotion: Husband Killers in Early Nineteenth-Century Ireland' *Journal of Legal History* 38, no. 2 (2017): 203–27.

28. David Sugarman, 'Insiders and Outsiders in the History of Law' (unpublished paper, British Legal History Conference, Bristol, July 2024).

# References

## Printed sources

Adebisi, Foluke, *Decolonisation and Legal Knowledge: Reflections on Power and Possibility* (Bristol University Press 2024)

Atrey, Shreya, *Intersectional Discrimination* (OUP 2019)

Auchmuty, Rosemary, 'Whatever Happened to Miss Bebb? *Bebb v The Law Society* and Women's Legal History' *Legal Studies* 31, no. 2 (2011): 199–230

Auchmuty, Rosemary and Rackley, Erika, 'Feminist Legal Biography: A Model for All Legal Life Stories' *Journal of Legal History* 41 (2020): 186–211

Barclay, Katie, 'Narrative, Law and Emotion: Husband Killers in Early Nineteenth-Century Ireland' Journal of Legal History 38, no. 2 (2017): 203–27

Barclay, Katie, *Men on Trial: Performing Emotion, Embodiment and Identity in Ireland, 1800–45* (Manchester University Press 2018)

Barnes, Victoria, Macmillan, Catharine and Vogenauer, Stefan, 'On Legal Biography' *Journal of Legal History* 41, no. 2 (2020): 115–21

Barnes, Victoria and Whewell, Emily, 'Judicial Biography in the British Empire' *Indiana Journal of Global Legal Studies* 28 (2021): 1–27

Barrington, Candace and Sobecki, Sebastian (eds), *The Cambridge Companion to Medieval English Law and Literature* (CUP 2019)

Beattie, Cordelia, 'Your Oratrice: Women's Petitions to the Late Medieval Court of Chancery' in Fiona Williamson and Bronach Kane (eds), *Women, Agency and the Law, 1300–1700* (Routledge 2013) 17–29

Brady, Sean and Seymour, Mark (eds), *From Sodomy Laws to Same-Sex Marriage: International Perspectives since 1789* (Bloomsbury 2019)

Brewer, Holly, 'Creating a Common Law Of Slavery for England and Its New World Empire' *Law and History Review* 39 (2021): 765–834

Burset, Christian R, *An Empire of Laws: Legal Pluralism in British Colonial Policy* (Yale University Press 2023)

Capper, David, McCormick, Conor and Dawson, N M, (eds), *Law and Constitutional Change* (CUP 2025)

Charlesworth, Lorie, *Welfare's Forgotten Past: A Socio-Legal History of the Poor Law* (Routledge 2010)

Chua, Lynette J and Massoud, Mark Fathi, *Out of Place: Fieldwork and Positionality in Law and Society* (CUP 2024)

Crenshaw, Kimberlé W, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' *University of Chicago Legal Forum* (1989): 139–67

Cressy, David, 'Trouble with Gypsies in Early Modern England' *Historical Journal* 59, no. 1 (2016): 45–70

Crymble, Adam and Azid, Emma, 'Black Lives, British Justice: Black People in London Criminal Justice Records, 1720–1841' *Journal of Slavery and Data Preservation* 2 (2021): 1–10

Derry, Caroline, 'Female Husbands', Community and Courts in the Eighteenth Century *Journal of Legal History* 38, no. 1 (2017): 54–79

Derry, Caroline, *Lesbianism and the Criminal Law: Three Centuries of Regulation in England and Wales* (Springer 2020)

Donahue, Charles, 'Whither Legal History?' in Daniel W Hamilton and Alfred L Brophy (eds), *Transformations in American Legal History* (Harvard University Press 2009): 327–43

Dubber, Markus D and Tomlins, Christopher, 'Editors' Preface' in Markus D Dubber and Christopher Tomlins (eds), *The Oxford Handbook of Legal History* (OUP 2018)

Egan, Clare, *Performing Libel in the Provinces: Community Conflict in Early Modern England* (OUP 2025)

Eldridge, Lorren, Ireland, Emily and Derry, Caroline (eds), *Celebrating Women in Legal History: Making and Shaping a Discipline* (Hart 2026)

Ganz, Melissa J, (ed.), *British Law and Literature in the Long Eighteenth Century* (CUP 2025)

Gordon, Robert W, 'J Willard Hurst and the Common Law Tradition in American Legal Historiography' *Law & Society Review* 10 (1975): 9–55

Hutson, Lorna (ed.), *The Oxford Handbook of English Law and Literature, 1500–1700* (OUP 2017)

Ibbetson, David, 'Historical Research in Law' in Mark Tushnet and Peter Cane (eds), *The Oxford Handbook of Legal Studies* (OUP 2005): 863–79

Jones, Neil, 'The *Zong*: Legal, Social and Historical Dimensions' *Journal of Legal History* 28 (2007): 283

Kane, Bronach, *Popular Memory and Gender in Medieval England: Men, Women, and Testimony in the Church Courts, c.1200–1500* (Boydell Press 2021)

Karras, Ruth M, 'The Regulation of "Sodomy" in the Latin East and West' *Speculum* xcv (2020): 969–86

Karras, Ruth M, and Linkinen, Tom, 'John/Eleanor Rykener Revisited' in Laine E Doggett and Daniel E O'Sullivan (eds), *Founding Feminisms in Medieval Studies: Essays in Honor of E. Jane Burns* (Boydell & Brewer 2016): 111–22

Karras, Ruth Mazo and Pierpont, Katherine E, *Sexuality in Medieval Europe: Doing unto Others* (4th ed., Routledge 2023)

Kesselring, K J, 'Consent and Coercion, Force And Fraud: Marriages in Star Chamber' in K J Kesselring and Natalie Mears (eds), *Star Chamber*

*Matters: An Early Modern Court and Its Records* (University of London Press 2021) 97–114

Lindbeck, Assar and Snower, Dennis J, 'Insiders versus Outsiders' *Journal of Economic Perspectives* 15 (2001): 165–88

Lobban, Michael, 'The Tools and the Tasks of the Legal Historian' in Andrew Lewis and Michael Lobban (eds), *Law and History: Current Legal Issues 2003* (vol. 6, OUP 2004): 1–32

Lobban, Michael, 'The Varieties of Legal History' *Clio@Themis: Revue Électronique d'Histoire du Droit* 5 (2010): http://journals.openedition.org/cliothemis/1727

Maitland, F W, *Why the History of English Law Is Not Written: An Inaugural Lecture Delivered in the Arts School at Cambridge on 13th October 1888* (CUP 1888)

McVitty, E Amanda, 'Engendering Erudition: Masculinity and Legal Authority at England's Medieval Inns of Court' *Gender and History* 32 (2020): 447–64

Mulcahy, Linda, 'Watching Women: What Illustrations of Courtroom Scenes Tell Us about Women and the Public Sphere in the Nineteenth Century' *Journal of Law and Society* 42 (2015): 53–73

Peters, Julie Stone, *Law as Performance: Theatricality, Spectatorship, and the Making of Law in Ancient, Medieval, and Early Modern Europe* (OUP 2022)

Phipps, Teresa, *Medieval Women and Urban Justice: Commerce, Crime and Community in England, 1300–1500* (Manchester University Press 2020)

Pollock, Frederick and Maitland, F W, *The History of English Law before the Time of Edward I* (CUP 1895)

Prest, Wilfrid, 'Lay legal history' in Anthony Musson and Chantal Stebbings (eds), *Making Legal History: Approaches and Methodologies* (CUP 2012): 196–214

Rackley, Erika and Auchmuty, Rosemary (eds), *Women's Legal Landmarks* (Hart 2018)

Rose, Jonathan, 'Studying the Past: The Nature and Development of Legal History as an Academic Discipline' *Journal of Legal History* 31 (2010): 101–28

Rubin, Gerry R and Sugarman, David, 'Introduction: Towards a New History of Law and Material Society in England, 1750–1914' in Gerry R Rubin and David Sugarman (eds), *Law, Economy and Society 1750–1914: Essays in the History of English Law* (Professional Books 1984): 1–123

Rushton, Cory James (ed.), *Disability and Medieval Law: History, Literature, Society* (Cambridge Scholars Publishing 2013)

Sandberg, Russell, *Subversive Legal History: A Manifesto for the Future of Legal Education* (Routledge 2021)
Seabourne, Gwen, *Women in the Medieval Common Law c.1200–1500* (Routledge 2021)
Simpson, Andrew and Wilson, Adelyn, *Scottish Legal History: Volume One, 1000–1707* (Edinburgh University Press 2017)
Sinder, Janet, 'Irish Legal History: An Overview and Guide to the Sources' *Law Library Journal* 93 (2001): 231–60
Slatter, Michele and Virgoe, Roger, 'Preface: A Note on the British Legal History Conference' Journal of Legal History 5, no. 3 (1984): v–vi
Sobecki, Sebastian and Roger, Euan (eds), 'The Case of Geoffrey Chaucer and Cecily Chaumpaigne: New Evidence' *The Chaucer Review* 57 (2022) special edition
Stretton, Tim, *Women Waging Law in Elizabethan England* (CUP 2009)
Stretton, Tim and Kesselring, K J (eds), *Married Women and the Law: Coverture in England and the Common Law World* (McGill-Queen's University Press 2013)
Sugarman, David, 'From Legal Biography to Legal Life Writing: Broadening Conceptions of Legal History and Socio-Legal Scholarship' *Journal of Law and Society* 42 (2015): 7–33
Sugarman, David, 'Insiders and Outsiders in the History of Law' (unpublished paper, British Legal History Conference, Bristol, July 2024)
Tang, G V G K, 'Sexuality' in *The Inclusive Historian's Handbook* https://inclusivehistorian.pressbooks.sunycreate.cloud/, accessed 30 January 2026
Waddams, S M, *Sexual Slander in Nineteenth-Century England: Defamation in The Ecclesiastical Courts, 1815–1855* (University of Toronto Press 2000)
Watkin, Thomas Glyn, *The Legal History of Wales* (University of Wales Press 2007)

Chapter 1

# ‘All those men who are not of the law of Rome’: Levantine groups in the courts of the Latin Kingdom of Jerusalem (1099–1291)

Jennifer Pearce

This chapter explores the extent to which Levantine outsiders participated, as plaintiffs, defendants, witnesses and court employees, within the courts of the Latin Kingdom of Jerusalem. The kingdom was founded along the Levantine coast at the end of the First Crusade (1096–99), along with the Principality of Antioch and counties of Edessa and Tripoli. The latter three polities of the ‘Latin East’ were relatively autonomous, though the Kingdom of Jerusalem maintained significant relations with them, as it did with the latterly founded Latin Kingdom of Cyprus. The kingdom existed in various forms until 1291, when its last remaining territories were lost to the Mamluk Sultanate. The intervening two centuries saw periods of crusade and counter-crusade over surrounding territories, interspersed with periods of relative peace. During this time, a small Latin population ruled over, and lived amongst, the numerically far greater religiously, denominationally, ethnically, tribally and linguistically diverse pre-existing populations of the Levant.[1]

The nature and quality of cross-cultural relationships between the Latins and their Levantine subjects have been much debated by crusades historians. In the late-nineteenth and early-twentieth centuries, parallels were drawn between the western European Latins’ historical rule over their conquered Levantine subjects and contemporary European

colonists' rule over modern Middle Eastern peoples. Wishing to justify the latter, Emmanuel Rey and his Francophone and Anglophone followers claimed that the Latins' treatment of their Levantine subjects was exceedingly positive: that Levantine populations thrived under Latin rule and that Latin and Levantine groups lived peacefully side by side throughout the 'Franco-Syrian' Kingdom of Jerusalem.[2] Later historians, writing during the decolonisation era and the beginnings of the Israeli–Palestinian conflict in the Levant, drew the same parallels between the medieval Latins and modern European colonisers, but approached them very differently. They argued that the Latins segregated themselves from, violently oppressed and economically exploited Levantine communities to the extent that, in Joshua Prawer's view, the Latin East constituted a kind of medieval 'apartheid'.[3] More recent scholars have tended to take a middle ground between the dichotomous views of their predecessors, and have emphasised the complexities and variability of cross-cultural relationships in the Latin East: that, as Ronnie Ellenblum first suggested, the Latins are likely to have integrated and cooperated with Christian Levantine groups but not with Levantine peoples of other faiths and, as Alex Mallett has stated, that the extent to which Levantine groups peacefully coexisted or conflicted with their Latin rulers is likely to have varied over time depending on external factors.[4]

This chapter reexamines the complexities of cross-cultural relationships in the Latin East through a juristic lens. The judicial functions of the Kingdom of Jerusalem were divided between the *Haute Cour* and various lower courts. The former constituted the kingdom's 'feudal' *curia generalis*, at which decisions regarding taxation, military expeditions and fief distribution, confiscation and boundaries were made, and at which court cases of interest to the monarch were heard.[5] The latter consisted of the *Cour des Bourgeois* (Court of the Burgesses), *Cour de la Fonde* (Court of the Market) and *Cour de la Chaine* (Maritime Court), as well as the *Cour des Suriens* (Court of the Syrians), at which cases involving members of different Levantine populations were heard.[6] The customs and procedures of these various courts were outlined and elaborated upon by numerous thirteenth-century royalist, baronial and burgess jurists, who composed a series of legal treatises.[7] This chapter asks to what extent do these treatises suggest that Levantine outsiders participated within, or were excluded from, the Latin courts, as litigants, witnesses and, indeed, court employees? And what does their participation, or lack thereof, suggest about cross-cultural relationships between Latin insiders and Levantine outsiders in the Kingdom of Jerusalem? Juxtaposing the extensive participation of different Levantine groups within the various lower

courts with their far more restricted participation as outsiders within the elite *Haute Cour*, it re-emphasises the complexities of cross-cultural integration, conflict and social hierarchies in the Kingdom of Jerusalem. In doing so, it seeks to emphasise the usefulness of surviving laws and legal texts for historians of the Latin East, as well as for scholars of wider medieval legal history.

## Background: demographics

The Latins who conquered and ruled over the Kingdom of Jerusalem were so named because they followed the rites of the Latin (Catholic) Church of Rome: many hailed from the various duchies and counties of the Kingdom of France, and, as such, the ethnic term 'Frank' was often used synonymously with 'Latin'.[8] Others came from the Holy Roman Empire, Italian peninsula, Scandinavia, British Isles and other western European polities.[9] Following the successful culmination of the First Crusade, many Latins considered their work complete and returned home to their various places of origin. Only a small proportion remained to live in, and rule over, the Latin East.[10]

The pre-existing Levantine population over whom the Latins now ruled was significantly larger, and exceedingly diverse. The two largest religious groups were undoubtedly Eastern Christians, in whose aid the Latins had nominally crusaded, and Muslims, whom they had crusaded against.[11] These two religious groups were themselves denominationally diverse. Eastern Christian communities included Syriac Orthodox, Greek Orthodox, Armenian Apostolic and Nestorian Christians; Muslim communities included Sunni, Shi'a and Nizari Muslims.[12] Several such communities living under Latin rule shared the same faith as rulers of powerful neighbouring polities: the Armenian Apostolic Kingdom of Cilicia, Greek Orthodox Byzantine Empire, Sunni Seljuk, Ayyubid and Mamluk sultanates and Shi'a Fatimid Caliphate. There were, additionally, smaller populations of various denominations of Jews, Samaritans and Druze living under Latin rule. Ethnically, the adherents of these various different religious and denominational communities consisted of Arabs, Turks, Turcomen, Armenians, Syrians, Greeks and other Palestinian groups; they spoke a range of languages, including Arabic, Armenian, Coptic, Hebrew, Greek, Syriac and Turkic languages. The concentration of these diverse ethnic, religious, denominational and linguistic populations varied throughout the Levant and Upper Mesopotamia. There were also nomadic groups, such as Bedouin, whose locations varied.[13]

## Background: juristic culture

The Latins who settled in the Levant and ruled over this diverse Levantine population were geographically, and increasingly culturally, isolated from western Latin Christendom. The legal and juristic culture of the Kingdom of Jerusalem therefore developed tangentially to that of the Latin West. In the latter region, interest in surviving Roman, or civil, law had been revived by the rediscovery (circa 1135) of a manuscript containing Justinian's *Digest* in the Italian peninsula. Following this event, universities were founded and dedicated to the *Digest*'s study, and occidental jurists placed far greater emphasis on the creation and enforcement of legislation.[14] This did not occur in the Latin East. Though numerous individual written assises, or statutes, were enacted between the immediate aftermath of the First Crusade in 1099 and the end of the Third Crusade in 1192, these were not consolidated into a singular known collection, and no thirteenth-century legislation was composed.[15] The latter crusade was primarily fought by newly arrived occidental Latin crusaders, rather than by the settled Latins, many of whose forces had been lost during the preceding 1187 Ayyubid invasion.[16] Though the crusaders regained much territory which had been lost to the Ayyubids, the coveted city of Jerusalem remained lost, and the Kingdom of Jerusalem's capital was moved to Acre, and it was thereafter known as the Kingdom of Acre.

In the wake of these tumultuous events, Acre's king, Aimery of Lusignan (r. 1198–1205) feared that the kingdom's old assises and customs were in danger of being forgotten.[17] His jurists therefore composed a legal treatise, the *Livre au Roi*, in which the assises, customs and procedures of the *Haute Cour* were preserved, described and commented upon. As the thirteenth century progressed, the Latin nobility became significantly more powerful at the expense of the Latin monarch.[18] Within this period, a series of baronial jurists composed additional legal treatises, which built from the *Livre au Roi* and from each other's works, and selectively preserved and discussed those assises, customs and court procedures which benefitted the nobility. A further treatise, the *Assises de la Cour des Bourgeois*, was also composed in the mid-thirteenth century: this concerned the customs and procedures of the kingdom's various lower courts. When the final Latin territories on the Levantine mainland fell in 1291, many such treatises were brought to the surviving Kingdom of Cyprus and adapted for use there. As descriptive treatises, these works present some difficulties, since they reflect various jurists' interpretations of customs rather than actual law. Yet they also discuss court procedures and describe real cases brought before the various courts. Furthermore, unlike more commonly consulted chronicles, which primarily concerned members of the Latin

elite and military events, such texts by necessity referred to everyday life and to the Levantine groups over whom the Latins ruled. They therefore provide a useful window into ongoing relationships between the Latins and their Levantine subjects, and their respective obligations – and whether Latin jurists approved of these or not.[19]

## The *Haute Cour*: litigants

The treatment and representation of Levantine groups within treatises of the *Haute Cour* suggest that it was rare – though not unheard of – for Levantine groups to have cases heard in the Latins' high court. This state of affairs was, in part, because members of different faiths and denominations were, to an extent, able to follow their own 'laws' or customs: *Haute Cour* jurists distinguished between their own co-religionists, as followers of 'the law of Rome' (that is, members of the Latin Church); 'Saracens', who followed the 'law of Mohammed'; and 'Greeks and Syrians and all other Christians', who followed 'their "law"'.[20] That members of different faiths were able to follow their own customs in the Latin East was noted with interest by Latins from the far more religiously homogenous Latin West. In 1210, an occidental visitor to affiliated Antioch, Bishop Wilbrand of Oldenburg, witnessed 'Franks and Syrians, Greeks and Jews, Armenians and Saracens' all living in the principality: observing that 'the Franks are lords of all of them'. Wilbrand noted that, nevertheless, 'all of them observe their own laws'.[21] The Kingdom of Jerusalem was so known for its legal pluralism abroad that, when the Latin Empire of Constantinople was founded by occidental Latins during the Fourth Crusade, its jurists specifically requested copies of, and extensively borrowed from, Jerusalem's legal treatises, in order to learn how to likewise rule over 'many kinds of people, and especially . . . people who do not obey the laws of Rome'.[22] Members of different faiths and denominations would therefore appear to have quite consistently been able to follow their own separate 'laws' – that is, their own religious customs – in the Latin East.

This meant that there were, by extension, separate courts for different faith groups, so that court cases could be heard and judged according to a religious community's separate 'laws' and customs. Since cases brought before the *Haute Cour* were of a decidedly 'feudal' bent – many concerned the inheritance, division, confiscation and distribution of fiefs, and trial and punishment of those who failed to perform the obligations expected of fief holders – the *Haute Cour* likewise effectively functioned as a separate court for members of the Latin elite, since very few fief holders were

not Latins. The language used to describe plaintiffs and defendants within *Haute Cour* treatises therefore treated them as Latin by default.[23] For instance, those who received fiefs, or who were summoned to court on related issues, were required to swear oaths on the Christian gospels: no allowance was made for them to swear upon alternative religious texts. As we shall see, this state of affairs was in stark contrast to oaths sworn in the various lower courts, in which litigants were entitled to swear oaths upon the religious texts and artefacts of their own faith. Since *Haute Cour* treatises indicate that no such allowance was made in that court, this suggests that, unlike in the lower courts, it was not expected that anyone other than a Latin would appear there as a plaintiff or as a defendant. That plaintiffs in cases heard at the *Haute Cour* were near-exclusively Latin is reinforced by the short treatise of Geoffroy le Tort. A jurist of middling nobility, who composed his lesser known *Livre* in around 1265, Geoffroy went into significant detail regarding the people 'who cannot bear witness in the *Haute Cour* against Franks', namely, 'all those men who are not of the law of Rome', amongst many other groups.[24] We shall discuss the intricacies of cross-cultural witness testimony within the courts later (Parts 5 and 6). What is notable here is the specific attention Geoffroy paid to cases involving, and testimony against, 'Franks' within the *Haute Cour*. Geoffroy did not discuss who could, or could not, bear witness against Eastern Christians, Muslims, Jews or Samaritans within the same court. This again contrasts with the repeated, in-depth discussions of cases involving non-Latin plaintiffs within the *Assises de la Cour des Bourgeois*.[25] This reinforces the fact that, unlike cases heard in the various lower courts, those brought before the *Haute Cour* near-exclusively involved Latin plaintiffs and defendants.

The Latins' numerically superior subjects were to seek justice elsewhere. Jean d'Ibelin, a member of the prominent Ibelin family, composed his *Livre des Assises* in around 1264. Within this lengthy treatise, Jean discussed the early establishment of the separate *Cour des Suriens* for Levantine communities in some depth. According to Jean, and to the later anonymously written *Clef des Assises*, which summarised his work, the court was established immediately after the First Crusade:

> [T]he Syrian people came before the king of Jerusalem [Godfrey of Bouillon, r. 1099–1100], and appealed to him and requested that they should be led according to the customs of the Syrians, and that they should have a judge and jurors of the court and by this court they should be led according to their customs of disputes. . . . Thus was it established for all of the lordships of the kingdom. And the judge of this court is called *reys* in their Arabic language . . . the pleadings

> of the Syrians concerning disputes come before him and are decided by the jurors of this court, and the *reys* have the power to decide in such cases, just as the Viscount who leads the Syrians does.[26]

It is not necessarily clear who, precisely, the *Clef* referred to by the term 'Syrians': this word, like the oft-used 'Saracens', could be employed as a religious term for Syriac Christians or as a wider term for Christians of various denominations, and sometimes as an ethno-geographic term to denote Levantine groups of various faiths within the region of 'Syria'.[27] The reference to 'their Arabic language' does not help us specify further, since many Levantine populations of different faiths are known to have spoken Arabic at this time.[28] Despite this ambiguity, this chapter nevertheless suggests that at least some Levantine communities accessed justice in their own separate court (or courts), presided over by their own judge and jurors, according to their own separate customs, rather than those of their Latin rulers. This was apparently the case from the very earliest years of Latin rule: since this state of affairs was recorded in the *Clef des Assises*, which was composed in the 1260s–70s, it was apparently still the case a century-and-a-half later. *Haute Cour* treatises therefore suggest that, as a general rule, the *Haute Cour* was reserved for cases involving Latins, whilst Levantine groups were expected to seek justice elsewhere.

There were, however, some exceptions to this rule. In certain circumstances, cases involving non-Latins were brought before the *Haute Cour*. Cases involving certain crimes, for instance, could not be brought before the separate *Cour des Suriens* regardless of the denomination of the defendant. Jean d'Ibelin and, later, the author of the *Clef* both ended their discussions of the *Cour des Suriens* with the addendum that its use was only permissible 'except in disputes of blood and disputes where a man loses his life or limb or in disputes of the [b]urghers, which [the king] wished be argued and decided before him or before his Viscount'.[29] This suggests that cases involving 'Syrians' could only be brought before the separate *Cour des Suriens* if they pertained to internal or relatively minor matters. Latin authorities maintained the right to have cases involving violent crimes such as murder, or involving the *burghers* (merchants, upon whose activities the Kingdom of Jerusalem's finances were heavily reliant), heard in the Latin courts. Similarly, a chapter of the *Assises de la Cour des Bourgeois* dictated that Venetian, Pisan and Genoan communes within the Kingdom of Jerusalem could not have their own separate courts 'other than for their own people exclusively, in cases in which they have litigation among themselves over sales and purchases', but that 'no commune has a court for cases of bloodshed, that is for open wounds, for theft, for conspiracy or for heresy, as in cases concerning heretics or *paterini*,

nor for the sale of houses . . . since all these things should be judged, concluded or sold before the crown court' – likely a Latin lower court – and any attempts to have them judged separately were to be invalidated by the 'royal court', that is, the *Haute Cour*.[30] Different religious groups and communes could therefore have cases heard in their own separate courts only where they pertained to lesser or internal matters; otherwise, Latin customs and the Latin judicial system overrode their own.

In other instances, certain Levantine groups may have directly sought justice in the Latin *Haute Cour*. For example, a small number of Levantine individuals could have cases heard in the *Haute Cour* if they were of sufficient rank. On one occasion, the twelfth-century Syrian nobleman and writer, Usamah ibn Munqidh, appears to have done this. Usamah recorded that, whilst living in Damascus, he went to the 'audience-chamber' of Fulk of Jerusalem in order to accuse the Latin lord of Banias of theft of his cattle. Hearing that Usamah was 'a great knight', Fulk agreed to have his case heard and asked several Latin knights, whom Usamah describes as 'masters of legal reasoning, judgment and sentencing', to discuss it. Finding the lord of Banias guilty, they ordered him to pay Usamah compensation.[31] Usamah's descriptions of the king's 'audience chamber' and of knights (that is, members of the nobility) deliberating upon cases clearly indicate that his case was heard in the *Haute Cour*, rather than a lower court or the *Cour des Suriens*. As an individual nobleman and 'knight', who retained friendships with several Latin peers, Usamah was therefore able to bring a case against a Latin nobleman in the *Haute Cour* where a non-Latin of the lower orders may not have been able to do so.

There may also have been greater access to the *Haute Cour* by certain Levantine Christian groups. The *Assises d'Antioche*, the only legal treatise known to have been composed in that principality, survives only via an Armenian translation, composed by Smbat, the constable of Armenian Cilicia. According to Smbat, he made this translation since 'ordinarily our people and our Court made use of these *Assises*' but, over the years, they had steadily fallen out of use. Smbat therefore requested a copy of the *Assises* from Latin jurists of his acquaintance and translated them for use in the Armenian courts.[32] Smbat therefore did not suggest that there were separate courts and customs for Armenian Christians and Latins who had settled within Cilicia, only that there was a separate *Haute Cour* and lower courts, as was the case in Latin territories.[33] Since the *Assises d'Antioche* were re-transcribed in Cilicia on multiple occasions after Smbat's death, it is possible that there remained some blurred lines between courts for Armenians and Latins there for quite some time. Alan Murray notes that, of all the Eastern Christian groups the Latins interacted with, Armenian Christians were those they became closest to, since they retained a

powerful nobility with whom numerous Latins intermarried.[34] With this in mind, and since Smbat indicates that Latins and Armenians did not follow separate courts and customs within Cilicia, it is possible that there was likewise some integration of courts and customs for Armenian and Latin Christians within neighbouring Antioch. Though Smbat acquired his copy of the *Assises d'Antioche* from Antiochene Latin jurists, he was himself the brother-in-law of Jean d'Ibelin, the author of the *Livre des Assises*, to whom he wrote regarding judicial matters.[35] It is not, therefore, impossible that there was some overlap between the courts and customs followed by Armenians and Latins within the Kingdom of Acre. Overall, therefore, it would seem that Levantine plaintiffs generally sought justice within their own courts, and not the Latin *Haute Cour*. However, in some instances, such as where a Levantine individual's case involved violent crime or financial matters, or where the individual was someone with whom, for reason of denomination or rank, the Latins retained closer relations, their case would be heard in the *Haute Cour* despite the plaintiffs not being Latin.

## The lower courts: litigants

Levantine litigants had cases heard more commonly within the various lower courts. We have seen that one such court was the *Cour des Suriens*, before which 'Syrians' could bring cases, but that there were some limits to the cases which could be brought before that separate court. Crimes such as murder, for instance, were to be brought before the king's viscount regardless of the denomination of the perpetrator. Levantine merchants were likewise, in many instances, expected to follow the customs and rulings of the *Cour de la Fonde*. For instance, the *Assises de la Cour des Bourgeois* suggest that Latin and Levantine merchants were, regardless of their own separate 'laws', obliged to follow the Latin monarch's own rulings regarding fees levied upon merchants:

> The kings and all other persons ordained in common that no Syrian, nor all others from among the men and women obliged to give dues at the court of the covered market [*Cour de la Fonde*], such as Syrians, Greeks, Nestorians, Jacobites, Samaritans, Jews and Egyptians . . . can do so in accordance with his own laws and assizes. For the ruler will quite rightly not acknowledge any law other than his own as regards what it has been established to be taken from them.[36]

This suggests that, regardless of a particular Levantine group's separate 'laws' and customs, merchants belonging to each and every different

denominational community within the Kingdom of Jerusalem were obliged to pay dues to the market court as dictated by the monarch. Since Levantine merchants were expected to adhere to the monarch's customs, rather than their own, cases involving them were similarly generally not heard in the separate *Cour des Suriens*. For instance, regardless of the denomination of the defendant, cases involving merchants' debts and lost goods were to be tried by their peers in the *Cour de la Fonde*:

> There should be six trustworthy persons as judges in the marketplace, four Syrians and two Latin Christians [who] are obliged to pass judgement over all cases brought before the *bailli*, such as those regarding debt or things lost or destroyed . . . or any other action done by a Syrian, or a Jew, or a Muslim, a Samaritan, a Nestorian, a Greek, a Jacobite or an Armenian . . . the law judges and decrees that none belonging to any of the confessions stated above can bring charges against anyone over any action which anyone has committed against them before any court other than the court of the marketplace, with the exception of charges of murder, conspiracy, or the drawing of blood. The law decrees that such accusations should be brought before the court of the burgesses.[37]

Levantine merchants were therefore unable to have cases involving debts heard at any court other than that of the *Fonde*, by both Syrian and Latin judges, just as they, like all non-noble Latin and Levantine peoples, could not have cases involving violence heard anywhere other than the Latin *Cour des Bourgeois*. A chapter on debt therefore outlined that:

> Whatever fault one party finds with the other, whether over sale or purchase, or incomes or other things [this] must be judged [as] prescribed for the assessors in the court of the burgesses, and not otherwise. For though they be Syrians and Greeks, Jews and Samaritans, or Nestorians, or Muslims, they too are people just like the Latins, liable to pay and to hand over whatever they are judged to owe, as is ordained in the present book and in the court of the burgesses.[38]

This chapter expresses familiarity with the different denominational groups living in the Latin East. Unlike *Haute Cour* treatises, which presented various Levantine groups in vague, black and white, hyperbolic terms, non-noble Latins were here presented in mundane terms as merchants and tradespeople conducting financial operations, liable to be taken to court over everyday debts but also entitled to due process. This more mundane treatment of Levantine litigants within the *Assises de la Cour des Bourgeois* highlights the far greater frequency with which Levantine communities had cases heard in the various Latin lower courts than in the *Haute Cour*, as does the number of chapters of the *Assises*

*de la Cour des Bourgeois* which outlined procedures to be undertaken where members of specific faith groups took members of other faith groups to court: such as 'if a Muslim has a Latin summoned to court over something the Latin owes him', and vice versa.[39] Not dissimilarly, numerous chapters of the *Assises de la Cour des Bourgeois* discussed Eastern Christian, Jewish, Samaritan, Syrian and Muslim slaves, whose attempts to attain freedom were, depending on circumstance, either prohibited or accepted by the *Cour des Bourgeois*, as were their inheritance rights post-emancipation: such cases therefore fell under its jurisdiction, rather than under that of the separate *Cour des Suriens*.[40] This suggests that, though in some instances Levantine groups accessed justice through the separate *Cour des Suriens*, and not in the *Haute Cour*, in practice, many cases involving Levantine communities, as well as non-noble Latin groups, fell under the Latin *Cour de la Fonde* and *Cour des Bourgeois*.

## The *Haute Cour*: witnesses

We have seen that only certain cases involving Levantine groups were heard within the *Haute Cour*. But could non-Latins bear witness there? As we have seen, in many cases witnesses were required to swear upon the Christian gospels (and not on other religious texts or artefacts), which would somewhat preclude the possibility of non-Latin witnesses swearing oaths in the court. Indeed, *Haute Cour* jurists consistently stated that, where witness testimony was required, it should come from 'loyal witnesses of the law of Rome', and not members of other faiths.[41] According to Geoffroy le Tort, the list of potential witnesses who did not fall under this category was rather extensive:

> The people who cannot bear witness in the *Haute Cour* against Franks are all those men who are not of the law of Rome . . . and all those men who have denied God, and all those men who served Saracens or other miscreants in arms against Christians . . . and those who are not born of wedlock . . . and all those who have religion, and are not under the judgment of the Church, and all those men who are involved in vices.[42]

Geoffroy's predecessor, Jean d'Ibelin, listed similar restrictions on non-Latin witnesses, though extended said restrictions to 'those who have served Saracens against Christians, or Greeks, for a year and a day; or those of a nation not obedient to Rome: Greeks, Syrians, Armenians, or Georgians'.[43] Whilst Jean's predecessor, the Italian-born Philippe de Novare – from whose *Livre de Forme de Plait* Jean borrowed much of his own *Livre* – was unsure whether those who had served the 'Greeks' (the

Byzantine Empire) against the Latins should be excluded, Jean explicitly prohibited this, whilst somewhat undermining the Byzantines' status as fellow Christians.[44] Unlike Geoffroy, Jean also more explicitly named the Eastern Christian denominations who were ineligible to bear witness. It would appear, therefore, that anyone not of the 'law of Rome' was generally ineligible to bear witness against 'Franks' in the *Haute Cour*, even members of other Christian denominations. Since, as we have seen, cases involving 'Franks' constituted the vast majority of those heard within the *Haute Cour*, such prohibitions more or less restricted non-Latins from bearing witness there in general.

This state of affairs was not actually unique to the *Haute Cour*. As we shall see, members of different faiths and denominations were also generally unable to testify against one another in the lower courts.[45] Nor could members of different 'laws' testify against each other in other religiously diverse Mediterranean polities, such as the Kingdom of Castille, at this time.[46] Yet Geoffroy's treatment of non-Latin witnesses as on par with heretics, sinners, and those born outside of wedlock not only excluded them from giving testimony because they belonged to a different law from the (presumably 'Frankish') accused, but also because doubt was implicitly placed upon the reliability of their testimony.

But to what extent did prohibitions on non-Latin witnesses prevent their speaking in practice? Andrew Jotischky suggests that medieval legal texts were generally reactive, rather than creative, documents: they therefore generally responded to ongoing issues, rather than to hypothetical scenarios. The fact that numerous *Haute Cour* jurists, many of whom based their treatises on one another's, repeatedly stated that non-Latins were unable to bear witness in the *Haute Cour* might reflect these jurists' own views regarding who should not be able to speak amongst their peers, rather than ongoing procedures of the court: were it universally known and accepted that only Latins could bear witness in the *Haute Cour*, these jurists may not have quite so repeatedly included prohibitions against their testimony within their works.[47] Indeed, in some circumstances, we know that the testimony of non-Latin witnesses *was* allowed. As we have seen, many restrictions placed upon non-Latin witnesses in the predominantly Latin *Haute Cour* were due to difficulties presented by witnesses who belonged to one set of 'laws' demonstrating that a defendant who adhered to another set of 'laws' had broken the latter. But what about those rare occasions when non-Latins' cases were brought before the *Haute Cour*, whether because they involved violent crime, or because they involved elite Levantine individuals? Though Philippe de Novare agreed that non-Latins could not bear witness against Latins in the court, he acknowledged that 'against Greeks and Syrians and all other

Christians who are not of the "law of Rome" can the people of their "law" bear testimony, unless they are disqualified by the faults listed above', that is, being born out of wedlock or serving 'Saracen' forces against Christians.[48] A trustworthy 'Greek' or 'Syrian' Christian therefore *could* bear witness in the *Haute Cour*, so long as the defendant was not a Latin but a co-religionist. The testimony of non-Latins was also permitted in cases brought before the *Haute Cour* which did not entail bearing witness against a defendant. For instance, in cases concerning the establishment of a *devise* – that is, a procedure for confirming historical property and fief boundaries – jurists preferred confirmation by a 'loyal witness of the law of Rome'.[49] Yet Philippe de Novare conceded that, if no such witness could be found, a non-Latin witness could testify instead:

> If they do not find a Franc of the law of Rome, and they find a Syrian whom they consider worthy of faith . . . they should follow him. If they do not find a Syrian and they find a Greek, similarly. If they do not find a Greek and they find some other Christian of what ever denomination . . . similarly. If they do not find a Christian and they find a Saracen who swears according to his law and they consider him worthy of faith . . . they should follow him and organise the *devise*.[50]

Since proving the historical boundaries of a fief or property did not entail testifying against a Frankish individual, trustworthy non-Latin witnesses could testify on them in court. Indeed, charter evidence suggests that the testimony of indigenous Christians regarding property boundaries appears to have been favoured during the earlier years of Latin rule, since they were more familiar with the land than the relatively newly arrived Latins.[51] Philippe likewise stated that, should a Latin have an *essoin* (an excuse for their absence from court, such as an illness) which prevented them from attending court when summoned, this should likewise be confirmed by a witness 'of the law of Rome'. However, if one was unavailable, 'another man of whatever Christian denomination' could bear witness instead: where that was not possible, 'it is said that a Saracen can do it', with the justification that the Latin might have become unwell whilst travelling in a location where no Christian could be found.[52] In both instances, Philippe showed a clear preference for Latin witnesses, and a particular antipathy for non-Christian witnesses, but nonetheless accepted that the testimony of adherents of other 'laws' was permissible, so long as the witness was reliable. Overall, therefore, non-Latins, and in particular non-Christians, were unable to bear witness against Latins in the *Haute Cour*, since they could not bear witness against members of other faiths. Cases brought before the court which did not concern Latin defendants or which entailed giving testimony that

was not directed against an individual could, however, be witnessed by non-Latins.

## The lower courts: witnesses

As in the *Haute Cour*, adherents of different 'laws' could not bear witness testimony against one another in the various lower courts. However, since cases involving Levantine groups appear to have been brought before said courts with far greater frequency, the testimony of non-Latins within the lower courts was nevertheless far more commonplace. The *Assises de la Cour des Bourgeois* facilitated the testimony of non-Latin witnesses within the lower courts by explicitly allowing them to swear upon their own separate religious texts or artefacts:

> The oath to be taken by these people in the court of the covered market must be as follows. The Jew must swear upon the Torah of his law, the Muslim must likewise swear upon the Quran of his law, the Armenian and the Syrian and the Greek must swear upon the holy cross and on the books of the Gospels written in their respective letters . . . All those belonging to other laws should take the oath upon the books of their respective laws . . . the Samaritans should swear upon the five books of Moses.[53]

Whilst *Haute Cour* jurists referred to non-Latins infrequently and suggested that oaths must be made upon the Christian gospels in court, the *Assises de la Cour des Bourgeois* explicitly named a variety of religious texts upon which adherents of the numerous faith groups living within the Latin East could swear as alternatives. Members of other Christian denominations were likewise explicitly able to swear oaths upon religious artefacts and upon gospels written within their own languages. This would indicate far greater understanding, on the part of the *Assises*' authors, of the Muslims, Eastern Christians, Jews and Samaritans over whom their courts had jurisdiction, which indicates in turn that witness testimony by these groups within the lower courts was far more commonplace.

But who could testify against whom? The *Livre Contrefais des Assises* was composed shortly after the fall of Levantine Latin territory in early-fourteenth-century Latin Cyprus and was strongly derived from the *Assises de la Cour des Bourgeois*. According to the *Livre Contrefais*, 'Franks of the law of Rome can witness against Greeks and Syrians, and against all other Christians'.[54] The *Livre* did not indicate that Christians of other denominations could, in turn, bear witness against 'Franks'. The *Assises de la Cour*

*des Bourgeois* likewise stated that, if 'a Syrian, or a Jacobite, or a Nestorian, or a Greek, or someone of another creed commits a transgression in front of the viscount, or in front of the assessors, witnesses can indeed be summoned from among them. For the Latins are assessors against the Syrians, against the Muslims, and against all the other creeds'.[55] This would suggest that Latins, particularly those who worked in the judiciary, could bear witness against members of other faith groups.

In most circumstances, however, it was explicitly and repeatedly laid out that, regardless of the law of the accuser, 'witnesses are required who are of the same law as the defendant'.[56] Since the earlier Latins incorporated pre-existing Eastern Christian legislation into their own legal works – and Benjamin Kedar suggests this was intended to placate local Eastern Christian groups – it is possible that the strict requirement that witnesses be of the same faith as the accused was likewise intended to ensure that Levantine groups felt they would have a fair trial in the Latins' lower courts.[57] It is also likely that this requirement was enforced to ensure that the defendant had committed a transgression according to their own 'law', of which witnesses of other faiths would be unaware. Thus, when cross-cultural court cases were discussed within the *Assises de la Cour des Bourgeois*, it was repeatedly laid out, in painstaking detail, that regardless of any and all circumstances, witnesses *must* be of the same 'law' as the defendant:

> If a Latin has a Greek summoned to court, over an issue of any kind, and has no Greek witnesses with whom to prove the charges, other witnesses are not acceptable . . . for no Latin can bring testimony against a Greek, nor can any Greek do the same against a Latin. . . .
>
> Should it happen that a Greek has an Armenian summoned to court over something he has given as a loan to the Armenian, yet he has no Armenian witnesses, other witnesses are not acceptable, for a Greek cannot bear witness against an Armenian. . . .
>
> Should it happen that a Samaritan summons some Muslim to court over some debt that he owes him, and the Muslim denies his indebtedness, the Samaritan requires Muslim witnesses.

Chapters outlining such requirements were repeated in all conceivable forms: a Nestorian could not bring a Jacobite to court, a Greek a Jew, a Nestorian a Samaritan and so on, unless they could provide witnesses of the same faith as the defendant, since 'a Muslim cannot offer testimony against a Jew, nor a Jew against a Muslim, nor a Samaritan against a Jacobite, nor a Jacobite against a Syrian'.[58] Since cross-cultural litigation within the lower courts seems to have been quite commonplace, this

does, however, mean that witness testimony from members of different faiths was likewise commonplace.

## The lower courts: court workers

The employment of non-Latin judges and clerks was not discussed within *Haute Cour* treatises. However, their employment within the lower courts was discussed far more explicitly within the *Assises de la Cour des Bourgeois*. Whilst the *Assises*, like various *Haute Cour* treatises, stated that whomsoever wished to 'administer justice' as ruler of the land must be a Latin, this was not the case for court judges.[59] In certain cases involving members of different denominations, Latin judges were certainly permissible, since 'the Latins are assessors against the Syrians, against the Muslims, and against all the other creeds'.[60] Yet we have seen already that the *Cour de la Fonde* should have 'six trustworthy persons as judges', who should consist of 'four Syrians and two Latin Christians', who were to judge all cases brought to them by Christians of various denominations, Muslims, Jews and Samaritans.[61] Again, precisely who was meant here by 'Syrians' is somewhat unclear – Ann Zimo suggests it probably referred to Syrian Christians – but whether this referred to Syrian Christians as a denomination, or people from 'Syria', they had to outnumber their Latin peers.[62] This, like the requirement that witnesses be of the same faith as the defendant, was likely to have been intended to ensure that Levantine Christians did not feel disadvantaged by the Latin judicial system. Since the *Assises de la Cour des Bourgeois* described cases brought by members of numerous different faiths and denominations, this suggests that judges within the lower courts could be remarkably diverse.

A wide variety of religious groups were likewise employed as clerks within the lower courts. A chapter of the *Assises de la Cour des Bourgeois* concerning clerical theft discussed the existence of 'Muslim, Latin or Greek clerk[s]', who might be employed within various courts, including 'the covered market, or in the Court of the Chain, that is the customs house, or in some village'.[63] This casual reference to Latin, Greek Orthodox and Muslim clerks working together within various courts, mentioned only with relation to potentially criminal activity, suggests that members of different faith groups working together as clerks was considered to be routine. That this was the case is further supported by the itinerary of the Andalucian traveller Ibn Jubayr, who witnessed Arab-speaking clerks working in customs houses throughout the Kingdom of Jerusalem when he travelled there in the late twelfth century.[64] It is also suggested by the fact that a fourteenth-century Cypriot copy of Jerusalem's *Assises*

*de la Cour des Bourgeois* was transcribed entirely in Greek: an additional manuscript contained additions in the Greek language, but written in the Latin alphabet.[65] This indicates that Greek notaries and clerks were commonly employed within Latin Cyprus's courts. Though Cyprus's Greek population was particularly high, the kingdom was closely affiliated with the Kingdom of Acre until its eventual loss, and its courts borrowed extensively from Acre's legal treatises. Greek (and other Eastern Christian) notaries and clerks therefore seem to have generally been commonplace across the Latin East. The lower courts therefore appear to have quite routinely employed judges and clerks of various faiths and denominations.

## Conclusion

The extent to which Levantine outsiders participated within Latin courts as litigants, witnesses and court employees emphasises the complexities of cross-cultural relationships within the Kingdom of Jerusalem. Since Levantine groups generally did not constitute members of the kingdom's elite, they quite rarely brought cases before the *Haute Cour*; nor were they generally called before the court as witnesses. Levantine outsiders were to seek justice in their own separate courts. In some circumstances, however, whether due to the severity of the crime committed by the accused or because of their rank, cases involving Levantine litigants *were* heard in the Latins' *Haute Cour*. Where cases did not require testimony against Latins or against any individuals, Levantine outsiders could also appear as witnesses. However, cases involving Levantine litigants were heard within the various Latin lower courts with far greater regularity. They could, and did, give witness testimony in these courts far more frequently – though only against members of their own faith. They were also widely employed within the lower courts as judges and as clerks.

This state of affairs emphasises the complex social inequalities of the Kingdom of Jerusalem. As a general rule, Latins constituted the elite, so the *Haute Cour* was their domain. At least some Levantine outsiders were, however, of sufficiently high rank to have cases heard in the court. The widespread participation of Levantine litigants within the *Cour de la Fonde* likewise highlights the extent to which many Levantine persons thrived as merchants alongside Latin peers. In short, few Levantine outsiders were members of the kingdom's elite, but nor were they all impoverished. The complexities of cross-cultural integration are also emphasised. Levantine groups had their own separate courts and customs but could use these only with regards to minor or internal cases. Otherwise, their cases were brought before the same courts used by Latins. They could

not give testimony against anyone not of the same faith as themselves, yet Levantine groups frequently gave testimony within the lower courts.

The extent to which cross-cultural conflict occurred within the Kingdom of Jerusalem was likewise complex. Latin insiders often, though not always, viewed non-Latin witnesses with some suspicion. Members of outsider faith groups clearly regularly took one another to court over disputes, though court procedures were developed to attempt to ensure that their cases were handled in a relatively fair manner, regardless of the litigants' faith. Overall, therefore, the intricacies of the Latin courts, and the variable extent to which Levantine outsiders engaged with them, highlight the complexities of cross-cultural social hierarchies, integration and conflict between the Latins and different Levantine communities within the Kingdom of Jerusalem.

## Notes

1. Benjamin Kedar, 'The Subjected Muslims of the Frankish Levant' in James M Powell (ed.), *Muslims under Latin Rule 1100–1300* (Princeton University Press 1990): 148.

2. 'franco-syrienne', Emmanuel Rey, *Les colonies franques de Syrie au XIIme et XIIIme siècles* (A Picard 1883): 95–104, 286–91; Louis Madelin, 'La Syrie franque' *Revue des deux mondes*, 38 (1916): 314–58; Gaston Dodu, *Histoire des institutions monarchiques dans le royaume latin de Jérusalem 1099–1291* (Librairie Hachette et Cie 1894); Claude Conder, *The Latin Kingdom of Jerusalem, 1099–1291 A.D.* (Palestine Exploration Fund 1897): 414–15, 427–8.

3. Joshua Prawer, *The Crusaders' Kingdom: European Colonialism in the Middle Ages* (Phoenix 2001) 524; Claude Cahen, *Orient et Occident aux temps des croisades* (Aubier 1983): 169.

4. Ronnie Ellenblum, *Frankish Rural Settlement in the Latin Kingdom of Jerusalem* (CUP 1998): 285; Alex Mallett, *Popular Muslim Reactions to the Franks in the Levant, 1097–1291* (Ashgate 2014).

5. Peter W Edbury, *Jean d'Ibelin and the Kingdom of Jerusalem* (Boydell Press 1997).

6. Nicholas Coureas (ed., tr.), *The Assizes of the Lusignan Kingdom of Cyprus* (Cyprus Research Centre 2002) 28–37.

7. Adam Bishop, 'Criminal Law and the Development of the Assizes of the Crusader Kingdom of Jerusalem in the Twelfth Century' (unpublished doctoral thesis, University of Toronto, 2011).

8. Sophia Arjana, *Muslims in the Western Imagination* (OUP 2015): 39; John Tolan, *Saracens: Islam in the Medieval European Imagination* (Columbia University Press 2002): xix.

9. Alan Murray, 'The Army of Godfrey of Bouillon, 1096–1099: Structure and Dynamics of a Contingent on the First Crusade'. *Revue belge de philologie et d'histoire* 70 (1992): 301–29.

10. Kedar (n 1): 148; Prawer (n 3): 505.

11. Joshua Prawer, 'Social classes in the Crusader States: The "Minorities"' in Norman P Zacour and Harry W Hazard (eds), *A History of the Crusades, vol. V:*

*The Impact of the Crusades on the Near East* (University of Wisconsin Press 1985): 65–70; Ann Zimo, *In Plain Sight: Muslims of the Latin Kingdom of Jerusalem* (University of Pennsylvania Press 2024): 12.

12. Christopher MacEvitt, *The Crusades and the Christian World of the East: Rough Tolerance* (University of Pennsylvania Press 2008): 3.

13. Joshua Prawer, 'Serfs, Slaves and Bedouin' in Joshua Prawer (ed.), *Crusader Institutions* (Clarendon Press 1980): 201–14.

14. Kenneth Pennington, 'Roman Law, 12th-Century Law and Legislation' in Gisela Drossbach (ed.), *Von der Ordnung zur Norm: Statuten in Mittelalter und Früher Neuzeit* (Brill Schöningh 2010): 17–38; Susan Reynolds, 'The Emergence of Professional Law in the Long Twelfth Century' *Law and History Review* 21, no. 2 (2003): 350–52.

15. Bishop (n 7): 91–2.

16. Philip of Novare, *Le Livre de Forme de Plait* (Peter Edbury ed., tr., Cyprus Research Centre 2009): 259–61.

17. Munich, Bayerische Staatsbibliothek, BSB Cod. gall. 51; Myriam Greilsammer (ed.), *Le Livre au Roi* (L'Académie des Inscriptions et Belles-Lettres 1995): 73.

18. Prawer (n 3): 107.

19. Andrew Jotischky, 'Ethnic and Religious Categories in the Treatment of Jews and Muslims in the Crusader States' in James Renton and Ben Gidley (eds), *Antisemitism and Islamophobia in Europe: A Shared Story?* (Palgrave Macmillan 2017): 27.

20. '[L]alei . . . de mahoumet', in BSB Cod. gall. 51: f 171r; Philip of Novare (n 16): 237.

21. 'quibusomnibus Franci dominantur, et quilibet eorum suas leges observan', Wilbrand of Oldenburg, 'Wilbrand of Oldenburg's Journey to Syria, Lesser Armenia, Cyprus, and the Holy Land (1211–1212): A New Edition' (Dennis Pringle ed.) *Crusades* 11 (2012): 123.

22. Georges Recoura (ed.), *Les Assises de Romanie* (Bibliothèque de l'École des hautes études 1930): 19.

23. Jacques d'Ibelin, 'Livre de Jacques d'Ibelin' in Auguste-Arthur Beugnot (ed.), *Recueil des Historiens des Croisades: Lois*, vol. 1 (Académie Royal des Inscriptions et Belles-Lettres 1841): 454.

24. '[q]ui ne pevent porter garentie en la Haute Court contre Frans', 'Toz ciaus qui ne sont de la lei de Rome', Geoffroy le Tort, 'Livre de Geoffroy le Tort' in Beugnot (ed.) (n 23): 443.

25. *Assizes of Lusignan Cyprus* (n 6): 216.

26. 'li peuples des Suriens vindrent devant un des rois doudit royaume, et li prierent et requistrent que il vousist qu'il fussent menés selonc leur usage des Suriens, et qu'il eust chevetaine et jurés de court, et que parcelle court il fussent menés selonc leur usage des querelles qui verroient des uns de yaus as autres. . . . Et ensi fu establi par toutes les seignouries dou royaume: et le ehevetaine de celle court est apelé rays en leur lengage Arabie [. . .] les plais des Suriens des quereles avant dites vienent devant lui et sont determinés par les jurés de celle court, aussi coume les rais qui vaut autant à dire en cest cas come visconte à mener les Suriens' in 'La Clef des Assises de la Haute Cour du royaume de Jérusalem et de Chypre' in Beugnot (n 23): 577 (hereafter Jean d'Ibelin, *Livre des Assises*).

27. John Tolan, 'Part I: Saracens and Ifranj: Rivalries, Emulation and Convergences' in John Tolan, Henry Laurens, Gilles Veinstein and Jean Esposito (eds), *Europe and the Islamic World: A History* (Princeton University Press 2013): 20.

28. Zimo (n 11): 30.

29. Jean d'Ibelin, *Livre des Assises* (n 26): 577.

30. *Assizes of Lusignan Cyprus* (n 6): 304.

31. Usama ibn Munqidh, *The Book of Contemplation: Islam and the Crusades* (Paul M. Cobb, trans.; London: Penguin, 2008), pp. 64–5.

32. '[P]uisque d'ordinaire notre peuple et notre Cour se servaient de ces Assises, que cependant par ignorance il y avait des fautes et péril des âmes, et que par paresse on négligeait de recourir aux grands tribunaux, moi, avec un grand désir et beaucoup de sollicitude, j'ai trouvé (enfin) ce livre, et je me suis appliqué beaucoup à le traduire', in Sempad the Constable, *Assises d'Antioche* (Leon Alishan ed., tr.; Imprimerie arménienne médaillée 1876): 2.

33. Peter Edbury, 'The *Assises d'Antioche*: Law and Custom in the Principality of Antioch' in Keith Stringer and Andrew Jotischky (eds), *Norman Expansion* (Routledge 2016): 241–248.

34. Alan Murray, 'Franks and Indigenous Communities in Palestine and Syria (1099–1187): A Hierarchical Model of Social Interaction in the Principalities of Outremer' in Albrecht Classen (ed.), *East Meets West in the Middle Ages and Early Modern Times: Transcultural Experiences in the Premodern World* (De Gruyter 2013): 291–310; Natasha Hodgson, 'Conflict and Cohabitation: Marriage and Diplomacy between Latins and Cilician Armenians, c.1097–1253' in Conor Kostick (ed.), *The Crusades and the Near East* (Routledge, 2010).

35. Edbury (n 33).

36. *Assizes of Lusignan Cyprus* (n 6): 222; Marwan Nader, *Burgesses and Burgess Law in the Latin Kingdoms of Jerusalem and Cyprus (1099–1325)* (Taylor and Francis 2016): 255.

37. *Assizes of Lusignan Cyprus* (n 6): 216; Marwan Nader, 'Urban Muslims, Latin Laws, and Legal Institutions in the Kingdom of Jerusalem'. *Medieval Encounters* 13 (2007): 250.

38. *Assizes of Lusignan Cyprus* (n 6): 217.

39. *Assizes of Lusignan Cyprus* (n 6): 105.

40. *Assizes of Lusignan Cyprus* (n 6): 192, 360, 328, 257.

41. 'loiaus garens de la loi de Rome', in Philip of Novare (n 16): 71.

42. 'w': Geoffroy le Tort (n 24): 445.

43. 'Ceaus qui . . . ont servi an et jor sarrasins contre crestiens, ou gres, a ou gens de tel nacion qui ne sont obeissans a Rome: gres ne suriens ne ermins ne jacopins', in Jean d'Ibelin, *Livre des Assises* (n 26): 167.

44. Philip of Novare (n 16): 236–7.

45. *Assizes of Lusignan Cyprus* (n 6): 216.

46. Robert Burns (ed.), *Las Siete Partidas, Volume 3: The Medieval World of Law: Lawyers and Their Work* (Samuel Scott tr, University of Pennsylvania Press 2001): 669.

47. Jotischky (n 19): 27.

48. Philip of Novare (n 16): 236–7.

49. Jean d'Ibelin, *Livre des Assises* (n 26): 149.

50. Philip of Novare (n 16): 267.

51. Geneviève Bresc-Bautier (ed.), *Le Cartulaire du chapitre du Saint-Sépulcre de Jérusalem* (Paul Geuthner 1984): 178–83, no 77; J Delaville Le Roulx (ed.), *Cartulaire général de l'Ordre des Hospitaliers de St-Jean de Jérusalem*, vol. I (Durand 1894); 121–2, no 150.

52. Philip of Novare (n 16) 233.

53. *Assizes of Lusignan Cyprus* (n 6): 216–17.

54. 'Encontre Gres et Suriens, et encontre tous autres Crestiens pevent porter garentie les Frans qui sont de la loi de Roume': 'Abrégé du Livre des Assises de la Cour des Bourgeois' in Auguste-Arthur Beugnot (ed.), *Recueil des Historiens des Croisades: Lois*, vol. 2 (Académie Royal des Inscriptions et Belles-Lettres 1843): 227–352, XXIV, 325.

55. *Assizes of Lusignan Cyprus* (n 6): 134.

56. *Assizes of Lusignan Cyprus* (n 6): 216.

57. Benjamin Kedar, 'On the Origins of the Earliest Laws of Frankish Jerusalem: The Canons of the Council of Nablus, 1120'. *Speculum* 74 (1999): 315.

58. *Assizes of Lusignan Cyprus* (n 6): 216; 272–3.

59. *Assizes of Lusignan Cyprus* (n 6): II, 34.

60. *Assizes of Lusignan Cyprus* (n 6): 134.

61. *Assizes of Lusignan Cyprus* (n 6) 216; Nader, 'Urban Muslims' (n 37): 250.

62. Zimo (n 11): 101.

63. *Assizes of Lusignan Cyprus* (n 6): 212.

64. Ibn Jubayr, *The Travels of Ibn Jubayr: A Medieval Journey from Cordoba to Jerusalem* (Ronald Broadhurst ed., tr.; Bloomsbury Publishing 2019): 337.

65. *Assizes of Lusignan Cyprus* (n 6): 390; Edith Brayer, 'Un manuel de confession en ancien français conservé dans un manuscrit de Catane (Bibl. Ventimiliana, 42)'. *Mélanges de l'école française de Rome* 59 (1947): 160.

# References

## Printed sources

Arjana, Sophia, *Muslims in the Western Imagination* (OUP 2015)
Beugnot, Auguste-Arthur (ed.), *Recueil des Historiens des Croisades: Lois*, vol. 2 (Académie Royal des Inscriptions et Belles-Lettres 1843)
Bishop, Adam, 'Criminal Law and the Development of the Assizes of the Crusader Kingdom of Jerusalem in the Twelfth Century' (unpublished doctoral thesis, University of Toronto, 2011).
Brayer, Edith, 'Un manuel de confession en ancien français conservé dans un manuscrit de Catane (Bibl. Ventimiliana, 42)', *Mélanges de l'école française de Rome* 59 (1947): 155–95
Bresc-Bautier, Geneviève (ed.), *Le Cartulaire du chapitre du Saint-Sépulcre de Jérusalem* (Paul Geuthner 1984)
Burns, Robert (ed.), *Las Siete Partidas, Volume 3: The Medieval World of Law: Lawyers and Their Work* (Samuel Scott tr, University of Pennsylvania Press 2001)
Cahen, Claude, *Orient et Occident aux temps des croisades* (Aubier 1983)
Conder, Claude, *The Latin Kingdom of Jerusalem, 1099–1291 A.D.* (Palestine Exploration Fund 1897)
Coureas, Nicholas (ed., tr.), *The Assizes of the Lusignan Kingdom of Cyprus* (Cyprus Research Centre 2002)
Delaville Le Roulx, J (ed.), *Cartulaire général de l'Ordre des Hospitaliers de St-Jean de Jérusalem*, vol. I (Durand 1894)
Dodu, Gaston, *Histoire des institutions monarchiques dans le royaume latin de Jérusalem 1099–1291* (Librairie Hachette et Cie 1894)
Edbury, Peter, 'The Assises d'Antioche: Law and Custom in the Principality of Antioch' in Keith Stringer and Andrew Jotischky (eds), *Norman Expansion* (Routledge 2016): 241–8
Edbury, Peter W, *Jean d'Ibelin and the Kingdom of Jerusalem* (Boydell Press 1997)
Ellenblum, Ronnie, *Frankish Rural Settlement in the Latin Kingdom of Jerusalem* (CUP 1998)
Greilsammer, Myriam (ed.), *Le Livre au Roi* (L'Académie des Inscriptions et Belles-Lettres 1995)
Hodgson, Natasha, 'Conflict and Cohabitation: Marriage and Diplomacy between Latins and Cilician Armenians, c.1097–1253' in Conor Kostick (ed.), *The Crusades and the Near East* (Routledge, 2010): 83–106
Ibelin, Jacques d', 'Livre de Jacques d'Ibelin' in Auguste-Arthur Beugnot (ed.), *Recueil des Historiens des Croisades: Lois*, vol. 1 (Académie Royal des Inscriptions et Belles-Lettres 1841)

Jotischky, Andrew, 'Ethnic and Religious Categories in the Treatment of Jews and Muslims in the Crusader States' in James Renton and Ben Gidley (eds), *Antisemitism and Islamophobia in Europe: A Shared Story?* (Palgrave Macmillan 2017): 25–49

Jubayr, Ibn, *The Travels of Ibn Jubayr: A Medieval Journey from Cordoba to Jerusalem* (Ronald Broadhurst ed., tr.; Bloomsbury Publishing 2019)

Kedar, Benjamin, 'The Subjected Muslims of the Frankish Levant' in James M Powell (ed.), *Muslims under Latin Rule 1100–1300* (Princeton University Press 1990)

Kedar, Benjamin, 'On the Origins of the Earliest Laws of Frankish Jerusalem: The Canons of the Council of Nablus, 1120', *Speculum* 74 (1999): 310–35

MacEvitt, Christopher, *The Crusades and the Christian World of the East: Rough Tolerance* (University of Pennsylvania Press 2008)

Madelin, Louis, 'La Syrie franque', *Revue des deux mondes* 38 (1916): 314–58

Mallett, Alex, *Popular Muslim Reactions to the Franks in the Levant, 1097–1291* (Ashgate 2014)

Munqidh, Usama ibn, *The Book of Contemplation: Islam and the Crusades* (Paul M. Cobb, tr.; London: Penguin, 2008)

Murray, Alan, 'The Army of Godfrey of Bouillon, 1096–1099: Structure and Dynamics of a Contingent on the First Crusade', *Revue belge de philologie et d'histoire* 70 (1992): 301–29

Murray, Alan, 'Franks and Indigenous Communities in Palestine and Syria (1099–1187): A Hierarchical Model of Social Interaction in the Principalities of Outremer' in Albrecht Classen (ed.), *East Meets West in the Middle Ages and Early Modern Times: Transcultural Experiences in the Premodern World* (De Gruyter 2013): 291–310

Nader, Marwan, 'Urban Muslims, Latin Laws, and Legal Institutions in the Kingdom of Jerusalem', *Medieval Encounters* 13 (2007): 243–70

Nader, Marwan, *Burgesses and Burgess Law in the Latin Kingdoms of Jerusalem and Cyprus (1099–1325)* (Taylor and Francis 2016)

Philip of Novare, *Le Livre de Forme de Plait* (Peter Edbury ed., tr., Cyprus Research Centre 2009)

Wilbrand of Oldenburg, 'Wilbrand of Oldenburg's Journey to Syria, Lesser Armenia, Cyprus, and the Holy Land (1211–1212): A New Edition' in Dennis Pringle (ed.), *Crusades* 11 (2012): 109–37

Pennington, Kenneth, 'Roman Law, 12th-Century Law and Legislation' in Gisela Drossbach (ed.), *Von der Ordnung zur Norm: Statuten in Mittelalter und Früher Neuzeit* (Brill Schöningh 2010): 17–38

Prawer, Joshua, 'Serfs, Slaves and Bedouin' in Joshua Prawer (ed.), *Crusader Institutions* (Clarendon Press 1980)
Prawer, Joshua, 'Social classes in the Crusader States: The "Minorities"' in Norman P Zacour and Harry W Hazard (eds), *A History of the Crusades, vol. V: The Impact of the Crusades on the Near East* (University of Wisconsin Press 1985): 59–115
Prawer, Joshua, *The Crusaders' Kingdom: European Colonialism in the Middle Ages* (Phoenix 2001)
Recoura, Georges (ed.), *Les Assises de Romanie* (Bibliothèque de l'École des hautes études 1930)
Rey, Emmanuel, *Les colonies franques de Syrie au XIIme et XIIIme siècles* (A Picard 1883)
Reynolds, Susan, 'The Emergence of Professional Law in the Long Twelfth Century', *Law and History Review* 21, no. 2 (2003): 347–66
Sempad the Constable, *Assises d'Antioche* (Leon Alishan ed., tr.; Imprimerie arménienne médaillée 1876)
Tolan, John, *Saracens: Islam in the Medieval European Imagination* (Columbia University Press 2002)
Tolan, John, 'Part I: Saracens and Ifranj: Rivalries, Emulation and Convergences' in John Tolan, Henry Laurens, Gilles Veinstein and Jean Esposito, *Europe and the Islamic World: A History* (Princeton University Press 2013): 9–108
Tort, Geoffroy le, 'Livre de Geoffroy le Tort' in Auguste-Arthur Beugnot (ed.), *Recueil des Historiens des Croisades: Lois, tome premier* (Paris: Académie Royal des Inscriptions et Belles-Lettres, 1841): 433–50
Zimo, Ann, *In Plain Sight: Muslims of the Latin Kingdom of Jerusalem* (University of Pennsylvania Press 2024)

## Manuscript source

Munich, Bayerische Staatsbibliothek, BSB Cod. gall. 51

Chapter 2

# Sir John Vavasour (d. 1506): lawyer, judge, northerner

A J Hannay

Born into a minor gentry family in the mid-fifteenth century, Sir John Vavasour was in many ways the archetypal insider of the late medieval common law. He entered the Inner Temple in the early 1450s, advised the leading men of his day and went on to sit as a Justice of the Peace (JP) and an MP. In 1489, he was appointed a Justice of the Common Pleas (JCP), where he served for seventeen years until retiring shortly before his death in 1506. However, in one aspect he was very much an outsider – he was northern. Of the thirty-seven judges who served in Common Pleas from the beginning of Edward IV's second reign (1471) to the death of Henry VIII (1547), only two came from the seven historic northern counties.[1] When this was extended to the King's Bench and Exchequer it became six of eighty-five judges.[2] This chapter seeks to explore the life of Sir John Vavasour with a particular focus on the extent to which his Northern origins affected and influenced his career.

From the Danelaw and the Harrying of the North in the Middle Ages to the Industrial Revolution and the workers' rights movements of the nineteenth century and beyond, the north–south divide has been a key economic, social and political feature throughout English history. The late fifteenth and early sixteenth centuries were no different. Indeed, the period in which Vavasour lived and worked was one of heightened tension between north and south. The establishment of the Tudor dynasty, following the battles of Bosworth (1485) and Stoke Field (1487), ended the Wars of the Roses which had dominated the second half of the fifteenth century.

An important factor in the descent into the chaos of civil war was the rise of overmighty subjects, in particular the two great northern houses of Neville and Percy.[3] Moreover, in the later fifteenth century, the memory was still fresh of the northerners' violent descent on the south following the Battle of Wakefield in 1461,[4] and of Richard III's plantation of his northern supporters in the south in 1484–85,[5] with early Tudor chroniclers describing northerners as 'ingrates' and 'savages' and the north as the place from where 'every evil takes its rise'.[6] This was a world in which Vavasour not only lived but thrived.

## The Vavasours of Spaldington

The progenitor of the Vavasour family was Malger le Vavasour, who had accompanied the Conqueror.[7] A vavasour was an important vassal or tenant of a baron[8] who, according to *Bracton*, ranked between barons and knights.[9] At the time of the Domesday Survey, Malger le Vavasour held land from William de Percy centred on Hazlewood Castle near Tadcaster in the West Riding of Yorkshire.[10] By 1166 this had been greatly expanded when William le Vavasour, the great-nephew of Malger and a prominent judge under Henry II,[11] held land of the Percys around Hazlewood, of the de Lascys near Hessle and of the Honour of Skipton.[12] The main line of the Vavasours continued to reside at Hazlewood Castle into the nineteenth century.[13] Prominent cadet branches were established in the twelfth and thirteenth centuries at Denton and Weston, in the West Riding,[14] and in the fifteenth century at Spaldington, in the East Riding.

The lands at Spaldington came into the Vavasour family through the marriage of Sir John Vavasour's father, John Vavasour Sr, to his mother, Isabella de la Hay, the eldest daughter and co-heiress of Thomas de la Hay (d. c. 1426). In 1431, on the death of Peter de la Hay, Thomas's father, the estates were divided between Thomas's daughters and co-heiresses, including the eldest, Sir John's mother.[15] In 1481, Sir John was able to consolidate the Vavasours' position at Spaldington by securing a release from his cousin Sir Richard Hilyard, son and heir of Katherine, the second daughter and co-heiress, and his aunts, Elizabeth Knight, the third daughter, and Anne Thwaites, the fourth daughter, of their interests in Spaldington.[16]

John Vavasour Sr was the second son of Sir Henry Vavasour of Hazlewood (d. 1413) and his wife Margaret Skipwith (d. 1414).[17] Ascertaining the connection between John Vavasour Sr and the Vavasours of Hazlewood has been complicated by contradictory pedigrees from visitations of Yorkshire in circa 1480, 1530, 1564–5, 1584–5 and 1665–6.[18] In the circa 1480 pedigree

Sir John's father is correctly identified as the second son of Sir Henry (d. 1413), whereas, in the pedigrees from the 1564–5 visitation, John Sr is the grandson of Sir Henry and Margaret, via their second son, another John.[19] In Dugdale's 1665–6 pedigree, he is also the grandson of Sir Henry and Margaret, but this time as the second son of Henry (d. 1452). Alternatively, Sir John's father was identified as the second son of a William Vavasour, a younger son of Sir Henry and Margaret, in pedigrees from visitations in 1530, which was followed in the pedigree from 1584–5 and in a nineteenth-century pedigree commissioned by the family.[20] However, this appears to be an error from the 1530 pedigree which has been repeated,[21] and there is strong evidence from the Vavasours' wills and inquisitions following the death of Sir Henry (d. 1413) which confirm that John Sr was the second son of Sir Henry and his wife Margaret (d. 1414).

In the will of Margaret Vavasour née Skipwith, a John Vavasour is mentioned, alongside his elder brother Henry (d. 1452), as her son.[22] Inquisitions which followed the death of Sir Henry (d. 1413) show that Henry Vavasour (d. 1452), the son and heir of Sir Henry, was born in April 1402.[23] This means that the John identified in Margaret's will as their younger son was born between 1403 and 1413. Moreover, John Vavasour Sr died in circa 1482,[24] which means that the accuracy of the circa 1480 visitation is supported by the fact that it took place either during his lifetime or very shortly after his death, and certainly in the lifetimes of his sons Sir John (d. 1506) and William (d. 1495). The accuracy of Dugdale's later identification of John Sr as the grandson of Sir Henry (d. 1413) is further undermined by the will of Sir Henry Vavasour (d. 1500), the younger son of Henry (d. 1452), in which Sir John Vavasour 'the juge' is identified as the testator's 'cousyn'; if Dugdale's pedigree was accurate Sir John would have been Sir Henry (d. 1500)'s nephew, rather than his cousin.[25]

We cannot be certain of the date of Sir John Vavasour's birth but, as the eldest son, he was probably born early in his parents' marriage. It is likely that Isabella was a similar age to her husband. Sir John's maternal great-grandfather, Peter de la Hay, was born in 1355.[26] Allowing for an estimate of twenty-five years per generation,[27] this would put Isabella's date of birth at around 1405. It has been suggested that Sir John was born in circa 1440 but this may be a little late.[28] Evidence from Sir John's later career, particularly his first reading in the mid- to late 1460s,[29] suggests a date of birth in the early 1430s, which would align with a marriage around the time that Isabella entered into her inheritance. In addition to their eldest son, John Sr and Isabella Vavasour had at least three other sons, William Vavasour of Gunby, Richard Vavasour and Henry Vavasour, and probably at least three daughters who survived to adulthood.[30]

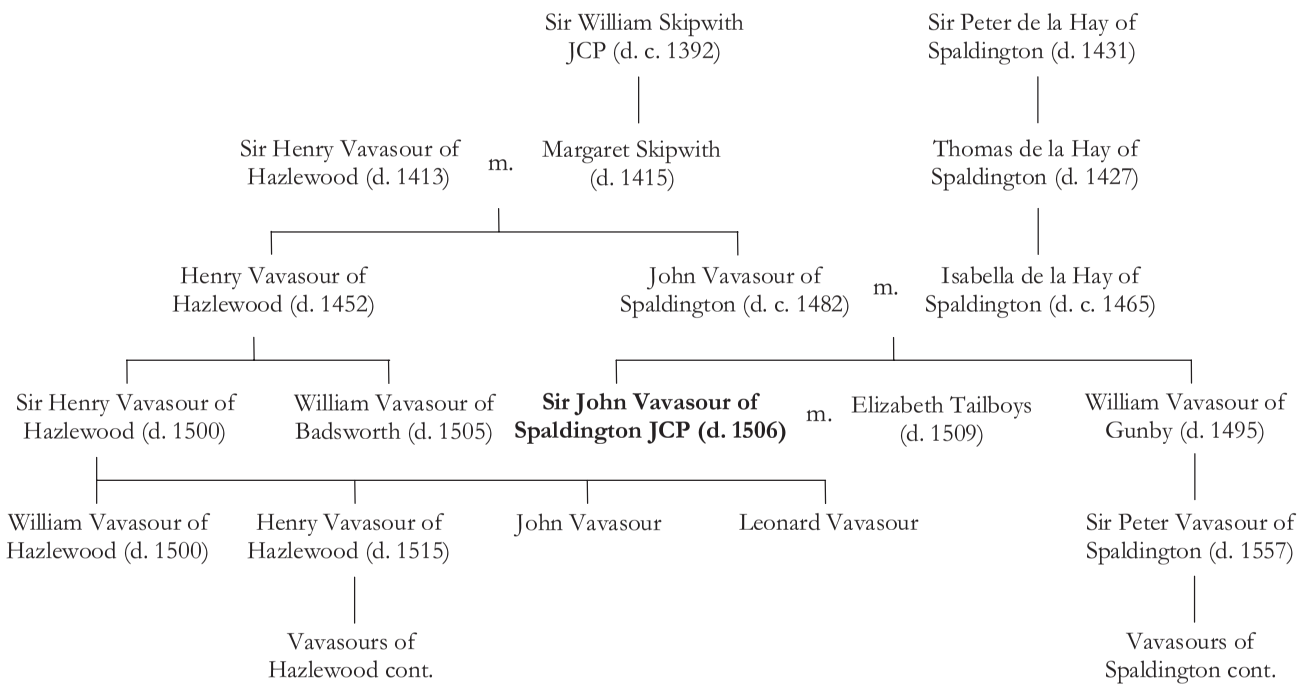



**Figure 2.1:** The Vavasours of Hazlewood and Spaldington and the de la Hays of Spaldington. Credit: A J Hannay

Isabella Vavasour was alive in the 1460s when she was left a silver belt in the will of Eufemle Langton,[31] and it appears that she may have entered the Cistercian nunnery at Sinningthwaite by 1465–6,[32] after which there is no further reference to her.

Sir John Vavasour married Elizabeth, the daughter of Sir Robert Tailboys, a Lincolnshire knight, seemingly as her second husband; they may have had issue, but none that survived to adulthood.[33] They appear to have separated by 1494 but were reconciled by 1502 when Sir John granted his manor at Badsworth to feoffees to the use of himself and his wife for the term of her life, remainder to himself and his heirs.[34] The Vavasours' position at Spaldington was consolidated when Sir John secured the release of his cousin's and aunts' interests in Spaldington and the land was resettled on John Sr for life with successive remainders to Sir John, his brothers and their respective heirs.[35] On his death in 1506, Sir John's heir was his nephew Sir Peter Vavasour, the eldest son of his brother William.[36] In addition to the lands at Spaldington, the inquisition following Sir John's death demonstrates that the Vavasours of Spaldington held lands at Atwick, Badsworth, Holme, Pontefract, Skelbroke and Willitoft in Yorkshire,[37] as well as lands at Halton and Killingholme in Lincolnshire,[38] Langwith Basset and Houghton in Derbyshire,[39] Woughton in Buckinghamshire and in London.[40] In the decades that followed, the Vavasours of Spaldington went on to become prominent Catholic recusants,[41] and the heirs of Sir Peter continued to live at Spaldington into the twentieth century.[42]

The Vavasours were an ancient and prominent Yorkshire family, but in the early fifteenth century their Spaldington line was a cadet branch with a relatively modest landed income.[43] It was common for the sons of landed gentry to enter the Inns of Chancery and Inns of Court in the fifteenth century.[44] Most did not pursue legal practice, and the profession was rather more egalitarian than Fortescue's description from 1470–71 of the law as a career for gentlemen would suggest.[45] It is likely that John Sr entered Staple Inn in the 1420s. From 1437 to 1454 he served as clerk of the warrants and estreats in Common Pleas;[46] he was retained by Fountains and Selby Abbeys and the city of Kingston-Upon-Hull in the 1450s,[47] acted as an arbitrator in 1461[48] and was regularly included in commissions for East Yorkshire and Lincolnshire.[49] It was common for the descendants of clerks and attorneys also to pursue legal careers,[50] and in the fifteenth and sixteenth centuries, the Vavasours of Spaldington were a legal family. John Sr was the first of at least five generations who undertook legal training,[51] and Sir John Vavasour, the family's 'most noted careerist',[52] was by far the most successful.

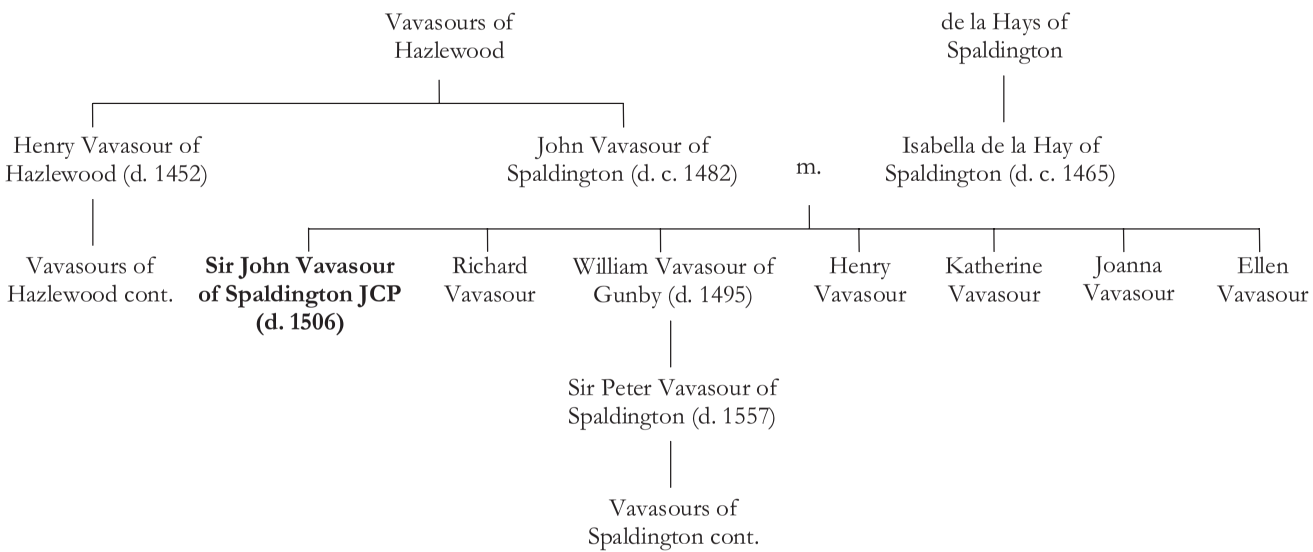



**Figure 2.2:** The Vavasours of Spaldington. Credit: A J Hannay

## Life, career and reputation

Sir John Vavasour's legal career would have begun in circa 1450, at 18 years old, when he entered one of the Inns of Chancery.[53] In the mid-fifteenth century there were 'ten or more' Inns of Chancery;[54] unfortunately there are no surviving records of admissions before 1620,[55] but it is possible that Vavasour would have followed his father to Staple Inn or, like his younger brother William, was admitted to Clifford's Inn.[56] Training at the Inns of Chancery took around eighteen months to two years, in which students would become familiar with the writs and forms of pleading, followed by a further five or six years of training at an Inn of Court before being called to the utter bar.[57] Vavasour was admitted to the Inner Temple in circa 1452–3 and he would have been an apprentice from circa 1457–8.

Establishing the details of the early career of a fifteenth-century common lawyer is difficult. Their activities were not generally the type which attracted record keeping.[58] What does survive is generally concerned with later career landmarks, such as readings in the Inns of Court or judicial and crown appointments, or with speaking in reported cases. As such, the precise details of Vavasour's career up to the late 1460s are uncertain. There is nothing to suggest that his early career was atypical, but there is no reference to his practice before the mid- to late 1460s so any account must be conjecture. Although there was no concept of pupillage in the modern sense in the fifteenth century, some new barristers shared chambers with more established lawyers, often relatives or wider connections,[59] and it was common for young lawyers to spend time learning procedure with the protonotaries and other senior clerks of the central courts.[60] As his father had been a significant clerk in Common Pleas, it is likely that John Sr played a prominent role in his son's early career and, under his father's patronage, Vavasour served as a more junior clerk within the Court in the first years of his practice.[61]

Another way in which apprentices established careers at the Bar was through local connections and the patronage of a great lord.[62] During his early career, it is very likely that Sir John would have worked as an attorney in Yorkshire, either alongside or through the professional connections of his father. From 1471 onwards, Richard, duke of Gloucester, as the heir to the Nevilles, was the undisputed lord of the north, and Vavasour was among the lawyers advising him. Sir John may have first come to the attention of Gloucester in 1467,[63] or it may have been through a long-standing Neville connection,[64] and by 1473–4 he was retained by Gloucester at Middleham, and he later served as the duke's receiver at Skipton and within the duchy of Lancaster, north of the Trent.[65] It is likely that Vavasour was a member of Gloucester's council.[66] He was certainly

retained by the duke, but he does not seem to be among his most prominent legal supporters such as Miles Metcalfe, Richard Pygot or William Catesby.[67] That Gloucester would seek to engage the services of a talented lawyer with local connections, and that Vavasour would welcome the patronage of the north's leading magnate, is perfectly understandable and it does not have to mean more. That Sir John succeeded Miles Metcalfe as the Recorder of York in 1485, as a compromise between candidates proposed by Henry VII and the Earl of Northumberland, has been attributed to Vavasour's Ricardian connections and the city's relationship with Richard III.[68] Whilst this may be true, it may equally be the city seeking to assert its independence by electing a highly respected, senior lawyer who had longstanding connections to York and the north.[69]

It has also been said that Vavasour's marriage to Elizabeth Tailboys can be attributed to their Ricardian connections.[70] Indeed, it has even been suggested that John and Elizabeth's marital difficulties were perhaps due to his reconciliation with the Tudor regime.[71] There is simply no evidence to support this, and the evidence for any Ricardian link is suspect. The Tailboys were a Lancastrian family who had become reconciled to the Yorkists in the 1470s.[72] Although Gloucester was a significant political force in Lincolnshire, there is limited evidence to support the suggestion that Sir Robert was a prominent supporter of Richard; nor does he seem to have fought at Bosworth.[73] That the Vavasours of Spaldington held land in Lincolnshire is perhaps a more likely explanation for the marriage than any Ricardian connection.[74]

In addition to his work outside of London, Vavasour continued to regularly attend the learning exercises at the Inner Temple as well as the central courts at Westminster Hall.[75] Although pleading in Common Pleas was the exclusive right of the order of serjeants,[76] apprentices were able to plead in the other Westminster courts, and from the late 1460s, Vavasour had established a successful practice in Chancery, King's Bench and the Exchequer Chamber.[77] Around this time, Vavasour achieved the next major advancement in his career by being invited to read by the Inner Temple. He gave his first reading towards the end of the 1460s and his second, as serjeant-elect, in 1478.[78] By the mid-to late fifteenth century, the system of readings on thirteenth-century statutory texts in the Inns was well established.[79] Unfortunately, it is not possible to ascertain which statutes Vavasour read on; the only notes that survive are brief marginalia that are likely to relate to his second reading.[80] Although Vavasour left the Inner Temple upon becoming a serjeant,[81] he continued to regularly attend readings for the remainder of his career.[82]

Vavasour's public career also began in the 1470s. It seems that he had by this time become associated with Thomas Grey, marquis of Dorset.

He would later act as one of Dorset's feoffees,[83] and it may have been through this connection that, in 1472, he was elected MP for Bridport, in Dorset, a county in which Grey held significant influence but where Vavasour had no connection.[84] Vavasour was first appointed as a JP for the East Riding of Yorkshire in 1477, where he continued to serve until his death.[85] In 1480, he was appointed as an assize justice on the Midland Circuit,[86] which also led to his appointment as JP for the midland counties.[87] He was also regularly appointed in commissions in Yorkshire and the Midlands, as well as London and the south.[88] On 15 June 1483, Vavasour was made King's Serjeant by Edward V, perhaps as a result of Gloucester's influence, which was renewed by Gloucester (as Richard III) a few weeks later and again, by Henry VII, in 1485.[89] He was appointed as a Justice of the Common Pleas in 1489, he was knighted in 1501 and he retired shortly before his death in 1506.[90]

Notwithstanding his rise to Common Pleas and his interests elsewhere, Vavasour remained a Yorkshireman,[91] and he maintained professional connections with the north throughout his career. From the mid-1470s, Vavasour was retained as counsel for the York assizes and regularly acted on behalf of the city, both as an arbitrator and as counsel.[92] As Recorder of York (1485–9), Vavasour represented the city's interests in legal and political matters.[93] During the 1487 rebellion, he procured cannon for the defence of York and soon after gave the speech welcoming Henry VII on behalf of the city.[94] Moreover, throughout his career Vavasour acted as a feoffee for prominent Yorkshire families,[95] and was regularly involved in arbitrations.[96] Much like other contemporary senior Yorkshire lawyers, Vavasour's connections to the north extended beyond his home county.[97] From 1485, Vavasour was also closely associated with the County Palatine of Lancaster when he was appointed to succeed Miles Metcalfe as second Justice at Lancaster, serving alongside Sir Guy Fairfax, before being promoted to Chief Justice in 1495 on Fairfax's death.[98] On rare occasions he also sat on as a clerk on the Northern Circuit[99] and as a justice in the County Palatine of Durham.[100]

History has not been kind to Sir John Vavasour. Although the reputation of lawyers throughout history has not generally been positive,[101] Vavasour, perhaps not unreasonably, does seem to have been particularly singled out. For the editor of *Testamenta Eboracensia*, Vavasour was a 'cautious, niggardly man . . . of a miserly disposition'.[102] Later historians further cemented Vavasour's reputation. For Ives, he was 'the surly Yorkshire judge',[103] Horrox noted his 'notorious meanness',[104] whereas Kirby referred to his 'reputed meanness'[105] and Sutton described him as the 'notorious miser'.[106]

The origins of Vavasour's modern reputation lies in the early sixteenth century jestbook *C Mery Tayls* (c. 1525), in which Vavasour is described

as 'a homely man, rude of convictions [who] loved never to spend much money'.[107] In the tale 'of the woman that poured potage in the judges male', Vavasour instructed his servant, Turpin, to put any leftover bread and meats following their meal into his sack; upon seeing this, the innkeeper's wife also poured in the leftover potage, ruining Vavasour's robes. Responding to Vavasour's outrage, the innkeeper's wife retorted that 'I know well you are a judge of the realm [. . .] if I should keep anything from you that he has paid for [. . .] you would trouble me in the law another time.'

Shortly after the publication of *C Mery Tayls*, a second jestbook, the markedly more humanist *Tales and Quick Answers* (c. 1532), also featured Vavasour.[108] Both works were first published by John Rastell, the brother-in-law of Sir Thomas More, and it is likely that their origins lie in the literary-humanist circles which surrounded both More and the Inns of Court.[109] In the tale 'of Master Vavasour and Turpin his man', Vavasour is portrayed in a similarly unflattering light by deceiving Turpin into paying his expenses;[110] whereas in the tale 'of the merchant that lost his bodgette', Vavasour is portrayed rather more favourably as 'the good judge' who intervened between a deceitful merchant and an honest man.[111] That Vavasour was one of only two near-contemporary figures named in either jestbook is very interesting.[112] The avarice of lawyers and their obstruction of somewhat abstracted and idealised notions of justice were common features in contemporary literature.[113] Yet the tales concerning Vavasour were rather more personal and pointed.[114]

There is a degree of otherness and targeting of regional outsiders in both Tudor jestbooks,[115] and one might wonder the extent to which northern stereotypes or prejudices, whether contemporary or later, influenced perceptions of Vavasour. That Vavasour was targeted for his apparent miserliness may well reflect broader societal attitudes towards northerners. Yet there is little to indicate that Vavasour's contemporary reputation was entirely unwarranted. Indeed, there is evidence to suggest that his conduct had become problematic in his later years. In 1502, it is well known that Vavasour engaged in a 'large-scale conspiracy' to skew the court in favour of Sir Richard Empson in the Plumpton inheritance dispute.[116] He was also fined heavily for taking a bribe whilst sitting as chief justice in Lancaster in 1502–3.[117] In 1500, Cardinal Morton, Sir Richard Guilford and Sir Reginald Bray had sought to secure Vavasour's resignation,[118] but the judge was able to hang on until shortly before his death in 1506.

By the time of his death, Vavasour had been at the very centre of the English legal system for almost thirty years, but his life and career demonstrate an important duality. He was among the most prominent of

early Tudor legal insiders yet continued, both in life and particularly in death, to be defined as a northern outsider. The evidence relied upon by previous historians in establishing Vavasour's notoriety is in fact quite limited and probably reflects a degree of northern stereotyping.[119] The working hypothesis for this chapter was probably that Vavasour was an unfortunate outsider, a victim of his northern identity. Although the historiography has revealed a ready willingness to accept Vavasour as 'the surly Yorkshire judge', further evidence from his career, particularly of bribes, of conspiracy and of his attempted removal by Cardinal Morton, suggests that Sir John Vavasour may be rather deserving of his dour reputation.

## Notes

1. Sir Guy Fairfax (JCP 1477–95) (Yorkshire) and Sir John Vavasour (JCP 1489–1506) (Yorkshire).

2. The other four were: Sir Richard Broke (CB Exch 1526–9) (Cheshire); Sir William Fairfax (JKB 1510–14) (Yorkshire); Sir John Needham (JCP 1457–71; JKB 1471–80) (Cheshire); Sir Thomas Urswich (CB Exch 1472–9) (Yorkshire).

3. Ralph A Griffiths, 'Local Rivalries and National Politics: The Percies, the Nevilles and the Duke of Exeter, 1452–55' in Ralph A Griffiths (ed.), *King and Country: England and Wales in the Fifteenth Century* (Hambleton Continuum 1991): 321.

4. James Gairdner (ed.), *The Paston Letters AD 1422–1509*, 6 vols (Chatto & Windus 1904), vol. 3: 249; Sir Frederic Madden, 'Verses on the Battle of Towton' *Archaeologia* 2 (1842): 343–7; Henry T Riley (ed.), *Ingulph's Chronicle of the Abbey of Croyland with the Continuations by Peter of Blois and Anonymous Writers* (George Bell and Sons 1908): 421–3. See also A J Pollard, 'North, South and Richard III' *The Ricardian* 5 (1981): 384.

5. Rosemary Horrox, *Richard III: A Study of Service* (CUP 1989): 178–225.

6. Denys Hay (ed.), *The Anglica Historia of Polydore Vergil* (Camden Third Series, vol. 74, 1950): 11; Nicholas Pronay and John Cox (eds), *The Crowland Chronicle Continuations: 1459–1486* (Allan Sutton 1986): 190–91; Riley (n 4): 509.

7. A S Ellis, 'Biographical Notes on the Yorkshire Tenants Named in Domesday Book' *Yorkshire Archaeological Journal* 5 (1875): 289, 313–14.

8. Examples of 'vavasour' being used in this context can be seen in Wace's *Roman de Rou* (c. 1160). Glyn S Burgess and Elisabeth van Houts (eds), *The History of the Norman People: Wace's Roman de Rou* (Boydell and Brewer 2004): 189. Sir Henry Spelman, while acknowledging that 'valvasour' could mean 'feudal lord', thought that the term derived from 'door keeper': Sir Henry Spelman, *Glossarium Archaiologicum* (1664): 549.

9. Henry de Bracton, *On the Laws and Customs of England* (G E Woodbine and S E Thorne eds, 1968–77), vol. 2: 32.

10. William Farrer and Charles Travis Clay (eds), *Early Yorkshire Charters*, 13 vols (Yorkshire Archaeological Society 1914–65) (hereafter *EYC*) vol. 9: 118–19; Ellis (n 7): 313–14.

11. Examples of Vavasour sitting as a king's justice in the 1180s can be seen: *EYC*, vol. 1 no. 339 (1186–7); vol. 2 no. 701 (1188–9); vol. 4 no. 97 (1187); vol. 5, nos 148n, 263 (1187); vol. 7, no. 176 (1184). For further detail see *EYC*, vol. 7 166–7, esp. 167, n 3.

12. TNA E 164/2, f. 119, printed in Hubert Hall (ed.), *The Red Book of the Exchequer*, 3 vols (Eyre and Spottiswoode 1896), vol. 1: 423–4. For detailed accounts of the full Vavasour holdings see *EYC*, vol. 7: 166–72; vol. 11: 118–22.

13. The last of the Vavasours of Hazlewood was Sir Thomas Vavasour, 7th Baronet of Hazlewood (1628) who died in 1826. The estate passed by will to a maternal cousin of Sir Thomas, Edward Stourton, who took the name Vavasour and was created Baronet Vavasour of Hazlewood (1826). The baronetcy is extant but neither Sir Edward, as a maternal cousin of the 7th Baronet (1628), nor his heirs, are descended from the Vavasours. For further detail see G E Cokayne (ed.), *Complete Baronetage*, 5 vols (William Pollard & Co 1902), vol. 2: 61–2; *Burke's Peerage*, 3 vols, 107th ed. (Burke's Peerage 2003), vol. 3: 3985.

14. Bodleian Library MS D D Brocas 479; *EYC*, vol. 7: 166–72; *EYC*, vol. 12: 119, n 2, 123–5, 132–3; W Paley Baildon and Francis J Baildon (eds), *Baildon and the Baildons; A History of a Yorkshire Manor and Family*, 3 vols (Percy Lund, Humphries & Co 1912), vol. 1: 505–552.

15. Thomas's will is dated 1 July 1426, suggesting that he died shortly afterward, and there is no reference to Thomas in his father Peter's will, dated 8 August 1426: James Raine et al. (eds), *Testamenta Eboracensia A Selection of Wills from the Registry at York*, 6 vols (Surtees Society,1836–1902) *(hereafter Testa. Ebor.)*, vol. 2: 11–12. The other four daughters were Katherine, Elizabeth, Alice and Dorothy: *Testa. Ebor.*, vol. 1: 155, n 1. The youngest daughter, Dorothy, became a nun so that the estate was divided in 1/4 shares between the four eldest daughters. The editor of the *Testamenta Eboracensia* thought that Thomas's second daughter was Joan rather than Katherine, although this seems to have been an error. She is identified as Catherine in a discussion of her husband Robert Hilyard's family and in a release of his interest in Spaldington by her son in 1481: *Testa. Ebor.*, vol. 4: 12; Lancashire Archives DDTO K 19/18, printed in *Proceedings of the Society of Antiquaries of London*4 (1868): 79.

16. Lancashire Archives DDTO K 19/18.

17. *Testa. Ebor.*, vol. 1: 361 (Sir Henry), 362–4 (Margaret); W Paley Baildon and J W Clay, *Inquisitions Post Mortem relating to Yorkshire of the Reigns of Henry IV and Henry V* (59 Yorkshire Archaeological Society, Record Series, 1918): 97–8 (Sir Henry), 113–14 (Margaret). Margaret was the daughter of William de Skipwith JCP (1359–1365; 1376–1388), Chief Justice of Ireland (1370–1376) who was therefore Sir John's great-grandfather.

18. Bodleian Library MS Ashmole 831, ff. 34v-35, 38; Bodleian Library MS Dodsworth 81, f. 148. Printed in Charles Henry Hunter Blair (ed.), *Visitations of the North, Part III A Visitation of the North of England circa 1480–1500* (144 Surtees Society 1930): 59–61. A date closer to 1480 is preferred as there is no mention of Sir Peter Vavasour, the nephew and eventual heir of Sir John who was born in 1483–4: see Sir John Baker, *The Men of Court, 1440–1550* (18 Selden Society Supplementary Series 2018), 2 vols (hereafter *Men of Court*), vol. 2: 1592–3. W Hylton Dyer Longstaffe (ed.), *Heraldic Visitation of the Northern Counties in 1530 by Thomas Tonge Norroy King of Arms* (41 Harleian Society 1863): 56; Charles Best Norcliffe (ed.), *The Visitation of Yorkshire in the Years 1563 and 1564 Made by William Flower, Esq Norroy King of Arms* (16 Harleian Society, Visitation Series 1881): 329–33, 331; Joseph Foster (ed.), *The Visitation of Yorkshire Made in the Years 1584/85 by Robert Glover, Somerset Herald; To Which Is Added the Subsequent Visitation Made in 1612 by Richard St George, Norroy King of Arms, with Several Additional Pedigrees* (Joseph Foster 1875): 235–7, 236.

19. This is one of a number of errors which are repeated in Hawkes' Vavasour family tree: Emma Hawkes, 'Younger Sons, Illegitimate Sons and the Law: A Study of Three Yorkshire Gentry Families, 1480–1540' *Parergon* 17 (2000): 125, 140, 145.

20. University of Leeds Library Yorkshire Archaeological Society MS 609. Printed in Joseph Jackson Howard (ed.), *Miscellanea Genealogica et Heraldica*, 2 vols (Mitchell and Hughes 1868–76), vol. 1: 193–6, 194.

21. For a correction of the nineteenth-century pedigree by A S Ellis, who notes the erroneous inclusion of William as Sir John's grandfather: Howard (n 20), vol. 2: 133. Ellis correctly identifies John's father as the son of Sir Henry (d. 1414). There were three known Williams in the immediate family: William Vavasour of Badsworth (d. 1505), the younger son of Sir Henry (d. 1452): *Testa. Ebor.*, vol. 4: 228–30; William Vavasour of Gunby (d. 1495), Sir John's brother: Borthwick Institute for Archives, University of York (hereafter Borth. York), *Register of Wills proved in the Exchequer and Prerogative Courts of York*, 1389–1514, 8 vols (hereafter *Reg. Test. Ebor.*), vol. 5: 465; William Vavasour of Hazlewood (d. 1500), the son and heir of Sir Henry Vavasour (d. 1500): *Calendar of Inquisitions Post Mortem and Other Analogous Documents Preserved in the Public Record Office, Henry VII*, 3 vols (HMSO 1898–1955) (hereafter *CIPM*, *Henry VII*) vol. 2: 258–60. There are two others: William Vavasour of Thornton (d. 1476) and William Vavasour of Pontefract (and/or of Knottingley). They are very likely younger sons of the Hazlewood line but their place in the family is unclear: *Testa. Ebor.*, vol. 4: 138 n; *Reg. Test. Ebor.*, vol. 5: 6 (Thornton); *Testa. Ebor.*, vol. 4: 166, n (Pontefract/Knottingley).

22. *Testa. Ebor.*, vol. 1: 362–4. For the will of Henry (d. 1452) see *Testa. Ebor.*, vol. 2: 162–3. Professor Baker thought that Sir John's father was the son or grandson of Henry Vavasour (d. 1452) but the evidence of the Vavasour wills suggests that this seems to be incorrect; he was more likely the brother or nephew of this Henry: Baker, *Men of Court* (n 18) vol. 2: 1591. Dugdale also identified Sir John's father as the son of Henry (d. 1452): J W Clay (ed.), *Dugdale's Visitation of Yorkshire with Additions*, 5 vols (William Pollard & Co 1889–1901), vol. 2: 225.

23. These inquisitions are cited from Inquisitions Post-Mortem 'Mapping the Medieval Countryside: Properties, Places & People' http//:inquisitionspostmortem.ac.uk/, accessed 11 July 2025, and take the form *eCIPM*, vol. no., inquisition no.: *eCIPM*, vol. 20, nos 26, 27 (Sir Henry), 465, 466 (Margaret); vol. 22, no 350 (Sir Henry). Henry (d. 1452)'s date of birth was proved by writ of *de etate probanda*: vol. 22, no. 362.

24. John Sr's date of death is estimated from his last appointment: *Calendar of Patent Rolls* (hereafter *CPR*), *1476–85* 319 (1482).

25. *Testa. Ebor.*, vol. 4: 164–7.

26. *CIPM*, vol. 12, no 340, n 24.

27. The estimate of 25 years is based on the European Marriage Pattern. For more detail see JM Bennett, 'Wretched Girls, Wretched Boys and the European Marriage Pattern in England (c. 1250–1350)' *Continuity and Change* 34 (2019): 315; J Hajnal, 'European Marriage Patterns in Perspective' in D V Glass and D E C Eversley (eds), *Population in History: Essays in Historical Demography* (Edward Arnold 1965): 101.

28. Philippa C Maddern, 'Social Mobility' in Rosemary Horrox and W Mark Ormrod (eds), *A Social History of England, 1200–1500* (CUP 2006): 113–33, 120.

29. See n 78 below.

30. There is reference to four living brothers, John, Richard, William and Henry Vavasour, in a deed from May 1481: *CIPM*, *Henry VII*, vol. 3: 173–75. Two daughters, Katherine Wombwell and Ellen Langholme, are identified alongside John Sr in an entry from Archbishop Rotherham's register in 1481: Borth. York, Abp Reg. 23, f. 202v. In the northern visitations there are references to John, Richard, William and

a Nicholas Vavasour, but not Henry, as well as two daughters. The 1490, 1565–6 and 1585–6 visitations record Sir John, Richard, William and two sisters, Joanna, wife of Thomas Lawson, and Janet (likely a split for Katherine), wife of John Wombwell: Hunter Blair (n 18): 59; Norcliffe (n 18): 331; Foster (n 18): 236. Another son, Nicholas, is identified in the 1565–6 visitation: Norcliffe (n 18): 331. Dr Bastow identified four daughters, Katherine (as the wife of John Wombwell), Anne/Jane (as the wife of Thomas Lawson), Ellen and Jane, although her evidence for doing so is unclear: Sarah L Bastow, 'Aspects of the History of the Catholic Gentry of Yorkshire from the Pilgrimage of Grace to the First Civil War' (unpublished PhD thesis, University of Huddersfield, 2002): 523.

31. *Testa. Ebor.*, vol. 2: 258–60, 259.

32. *Testa. Ebor.*, 270–272, 272.

33. The pedigree from Tonge's visitation in 1530 states that they had issue but does not name them: Longstaffe (n 18): 56. No other reference to any children could be found and the reliability of Tonge's pedigree can be questioned (n 30). Elizabeth's first husband was an unnamed Greystoke, possibly Sir Robert (d. 1483). For the will of Elizabeth see *Testa. Ebor.*, vol. 5: 3–4. For Sir Robert Tailboys see Josiah C Wedgwood (ed.), *History of Parliament Biographies of the Members of the Commons House, 1439–1509* (HMSO 1936): 834–5.

34. In his will (1494) Sir John excluded her unless she returned £700 she had taken: *Testa. Ebor.*, vol. 4: 89. For the 1502 deed see *CIPM*, *Henry VII*, vol. 3: 173.

35. *CIPM*, *Henry VII*, vol. 3: 173–5; Lancashire Archives DDTO K 19/18.

36. Vavasour died on 26 November 1506: *CIPM*, *Henry VII*, vol. 3: 173–5.

37. The lands at Holme, Spaldington and Willitoft formed part of the de la Hay inheritance: Lancashire Archives DDTO K 19/18. In his will, Sir John mentions land at Newland, East Riding, around four miles from Spaldington and therefore likely to also be part of the de la Hay inheritance: *Testa. Ebor.*, vol. 4: 89. The lands at Welbroke and Atwick were purchased in 1495 and 1496: Francis Collins (ed.), *Feet of Fines of the Tudor Period, pt. I 1486–1570* (2 Yorkshire Archaeological Society, Record Series 1887): 10; Doncaster Archives DD/DC/D/896. The Vavasours' possession of Badsworth was complicated by the fact that the manor was split between two heiresses in the twelfth century, with one part being entailed in the fifteenth century, and that, by the 1480s, both parts of the manor were in the hands of different Vavasours, before being reunited by Sir Peter Vavasour in 1529. Sir John purchased the entailed half in 1481: CP 40/881, m. 153. William Vavasour of Badsworth married the heiress to the non-entailed half in 1455: A S Ellis, 'Yorkshire Deeds' *Yorkshire Archaeological Journal* 17 (1903): 96, 119–20 (marriage settlement); *Testa. Ebor.*, vol. 4: 228–30 (William's will). Sir Peter Vavasour inherited Sir John's half and purchased the other half from William Vavasour's feoffees in 1529: TNA E 40/716. For further detail see: John M Watson, 'The Descent of the Manor of Badsworth' *Foundations* 8 (2016): 15.

38. *CIPM*, *Henry VII* vol. 3: 173–5 The lands in Lincolnshire seemingly came to the Vavasours of Spaldington through Margaret Skipwith, the mother of John Sr, who held them at her death in 1414, as they were not held by her elder son Henry (d. 1452) at his death: *CIPME*, 19, 255. In 1447 and 1449, John Vavasour Sr sat as an MP for Lincoln which suggests that they were held by him then: Wedgwood (n 33): 904.

39. *CIPM*, *Henry VII* vol. 3: 445, 597. Sir John seems to have acquired the lands in Derbyshire from Henry Gray, Lord Codnor by 1493: Joseph Tilley, *The Old Halls, Manors and Families of Derbyshire*, 4 vols (Simpkin, Marshall, Hamilton, Kent, & Co 1899) vol. 3: 171; TNA C 142/18/25.

40. *Testa. Ebor.*, vol. 4: 89–92.

41. Sir Peter Vavasour of Spaldington was involved in the Pilgrimage of Grace in 1536, and both the Vavasours of Spaldington and of Hazlewood were involved in the Rising

of the North in 1569 and in the Gunpowder Plot: Sarah L Bastow, *The Catholic Gentry of Yorkshire, 1536–1642: Resistance and Accommodation* (Edward Mellen Press 2007): 25–7, 39–40, 56–8. The most notable Vavasour recusant was Sir Peter's younger son Dr Thomas Vavasour: Richard Rex, 'Thomas Vavasour MD' *Recusant History* 20 (1991): 436.

42. The male line of the Vavasours of Spaldington ended in 1679. The lands at Spaldington descended four generations down the female line to Anne Ashton Yates, whose husband Henry Nooth, took the name Vavasour in 1791 and was created 1st Baronet Vavasour of Spaldington in 1801. The last Vavasour Baronet of Spaldington was Sir Henry M Vavasour (d. 1912) who sold the lands at Spaldington to Lord Londesborough before 1873: Joseph Foster (ed.), *The Peerage, Baronetage and Knightage of the British Empire for 1881* (Chapman & Hall 1881): 623; J T Ward, *East Yorkshire Landed Estates in the Nineteenth Century* (23 East Yorkshire Local History Series 1967): 17, 35; see n 17 above.

43. In 1369 the lands at Spaldington brought an income of £7 1s 8d, but William Butler held a charge held for life worth 8 marks (£5 1s 8d): *CIPM*, vol. 12: 331. John Sr and Isabella increased their holdings near Spaldington with purchases from the Knights and the Loundes: TNA CP 25/1/281/160 (1449).

44. J H Baker, *Oxford History of the Laws of England*, *1483–1553*, vol. 6 (OUP 2003) (hereafter Baker, *OHLE*): 445–72.

45. John Fortescue, *De Laudibus Legum Anglie*, S B Chrimes (ed.) (CUP 1942): 116; Baker, *OHLE* (n 44): 449–50; E W Ives, *Common Lawyers of Pre-Reformation England* (CUP 1983): 23–35.

46. *CPR, 1436–1441*, 302 (named as clerk of warrants and escheats in King's Bench in March 1442: *CPR, 1441–1446*, 56. For example of John Sr suing in Common Pleas see (1440) YB Mich 19 Hen VI, f. 4v, pl. 9; (1440) YB Mich 19 Hen VI, f. 19, pl. 40.

47. N L Ramsay, *The English Legal Profession c. 1340– c. 1450* (unpublished PhD thesis, University of Cambridge 1985) app. XI; J T Fowler, *Memorials of the Abbey of St Mary of Fountains*, 3 vols, vol. 3 (130 Surtees Society 1918): *passim*.

48. Doncaster Archives CD/417.

49. For example: *CPR*, *1461–1467*: 35 (1461), 102 (1462), 451 (1465); *CPR*, *1467–1477*: 428 (1473); *CPR*, *1477–1485*: 183 (1479). For further detail see Baker, *Men of Court* (n 18) vol. 2: 1591; Wedgwood (n 33): 904.

50. The most extreme example was the Ropers. Successive generations of Ropers held the office of Chief Clerk in King's Bench for 118 years: Ives (n 45): 210.

51. Both of John Sr's sons, Sir John and William, as well as William's son, Peter, his grandsons, Andrew and John, and his great-grandsons John, Richard and Peter all undertook legal training: Baker, *Men of Court* (n 18), vol. 2: 1591–3.

52. Maddern (n 28): 120.

53. Sir John Baker, *The Inns of Chancery, 1340–1640* (19 Selden Society Supplementary Series 2017): 1–98.

54. Fortescue (n 45): 116. Fortescue described the 'ten or more' inns as '*hospicia minora*'. Professor Baker has identified reference to fourteen Inns: Barnard's Inn, Clement's Inn, Clifford's Inn, Furnival's Inn, Long Entry, Lyons Inn, New Inn, Outer Temple, St Mary's Inn, Staple Inn, Strand Inn, Strange's Inn, Thaives Inn and White Hall. Some of these Inns had ceased to exist before the Tudor period (Long Entry; St Mary's Inn; Strange's Inn) and others were seemingly a later fiction (White Hall). For descriptions of each Inn see Baker, *Inns of Chancery* (n 53): 14–51; J H Baker, 'The Inn of the Outer Temple' *Law Quarterly Review* 124 (2008): 384.

55. Baker, *Inns of Chancery* (n 53): 66.

56. Baker, *Men of Court* (n 18): 1591, 1593.

57. For details on legal training in the fifteenth century see J H Baker, 'The English Legal Profession, 1450–1550' in J H Baker (ed.), *The Legal Profession and the Common Law: Historical Essays* (Hambledon Press 1986): 75 (reprinted in J H Baker, *Collected Papers on English Legal History*, 3 vols (CUP 2013) vol. 1: 19); Baker, *OHLE* (n 44): 445–72; Ives (n 45): 36–59; Ramsay (n 47). 'Call to the bar' is perhaps a little anachronistic here; it would perhaps be more accurate to say that he was recognised as 'learned in the law' and as an apprentice (a barrister below the rank of serjeant) by this point.

58. Ives (n 45): 93.

59. A later example of this can be seen with Peter Vavasour (grandson of Sir Peter) being in chambers with his uncle, Andrew Vavasour: Baker, *Men of Court* (n 18) vol. 2: 1591–3.

60. Baker, *OHLE* (n 44): 451.

61. Baker, *OHLE* (n 44): 451–2.

62. For example, Thomas Kebell's work for the Hastings family in Leicestershire: Ives (n 45): 93–103.

63. Vavasour is reported as speaking in support of Gloucester's servant in Common Pleas: (1467) YB Trin 7 Edw IV, f. 13v, pl. 5.

64. There may have been an earlier connection to the Nevilles through Baron Greystoke, from whom the Vavasours held lands at Spaldington. For details on the connection between the Nevilles and the Greystokes, see A J Pollard, *North-Eastern England during the Wars of the Roses: Lay Society, War and Politics, 1450–1500* (Clarendon Press 1990): 124, 163–4, 213. A John Vavasour (possibly John Sr, although John was a common name amongst the Vavasours of Weston) was listed amongst Lord Fauconberg's troops in 1438: Bibliothèque Nationale, Paris MS Fr 25775/925, cited in N Jamieson, 'The Recruitment of Northerners into English Armies, 1400–1450' (unpublished PhD thesis, University of Liverpool, 1993): 439. The Neville connection may also explain the pardon issued to Sir John in 1471 following the fall of the Neville brothers at the battle of Barnet, 14 April 1471: TNA C 67/48, m. 26.

65. BL Harl MS 433, f. 204v. Printed in Rosemary Horrox and P W Hammond (eds), *British Library Harleian Manuscript 433*, 4 vols (Richard III Society 1993), vol. 2: 196; TNA DL 29/295/4848; TNA DL 29/648/10485.

66. Rosemary Horrox, 'Richard III and the East Riding' in Rosemary Horrox (ed.), *Richard III and the North* (University of Hull 1986): 82, 87; Horrox (n 5): 88.

67. Carole Parkhouse, 'The Career of a Fifteenth Century Lawyer: Miles Metcalfe of Wensleydale' *The Ricardian* 8 (1989): 174. Both Metcalfe and Pygot are named as Gloucester's councillors in a dispute from 1480–81; no similarly explicit reference to Vavasour could be found: William Brown (ed.), *Yorkshire Deeds, vol. 3* (63 Yorkshire Archaeological Society Record Series 1922): 143. Furthermore, unlike Catesby and Metcalfe, there is no evidence that Vavasour took part in Richard's military campaigns culminating in Bosworth in 1485.

68. Angelo Raine (ed.), *York Civic Records*, 2 vols: 98, 103 (Yorkshire Archaeological Society, Record Series, 1939, 1941) (hereafter *YCR*): vol. 1: 152–3; David Palliser, 'Richard III and York' in Horrox, *Richard III and the North* (n 66): 51, 59; Paul Murray Kendall, *Richard III* (W W Norton 1956, reprinted 2002): 462.

69. See (n 93) below.

70. Horrox, 'East Riding' (n 66): 87.

71. Howdenshire Archaeological Society, 'Sir John Vavasour' www.howdenshire-arch.org/spaldington-ops/the-vavasours/sir-john-vavasour, accessed 31 July 2025.

72. Roger Virgoe, 'William Tailboys and Lord Cromwell: Crime and Politics in Lancastrian England' *Bulletin of the John Rylands University Library* 55 (1973): 459.

73. Jonathan S Mackman, 'The Lincolnshire Gentry and the Wars of the Roses' (unpublished DPhil thesis, University of York, 1999): 161, n 1; Anne F Sutton, 'The Lands of Richard of Gloucester in the Counties of Lincolnshire and Nottinghamshire, 1471–83' *The Ricardian* 28 (2018): 69.

74. See n 38 above.

75. For example, BL Harl MS 2051, ff. 39ter, 41v, 51, 54v, 85; CUL MS Ee.5.22, f. 245. For more detail, see S E Thorne and J H Baker (eds), *Readings and Moots at the Inns of Court in the Fifteenth Century, vol. 2* (105 Selden Society 1989): 65–324, *passim*.

76. J H Baker, *The Order of Serjeants at Law* (5 Selden Society Supplementary Series, 1984): 42–3.

77. For example: (1471) YB Trin 11 Edw IV, f. 8, pl. 14; (1473) YB Pas 13 Edw IV, f. 9, pl. 5; (1474) YB Trin 14 Edw IV, f. 7v, pl. 11.

78. J H Baker, *Readers and Readings in the Inns of Court and Chancery* (13 Selden Society Supplementary Series 2000): 66–7.

79. Baker (n 78): 3–4.

80. CUL MS Hh.2.5, ff. 51, 72.

81. *Calendar of Close Rolls*, *1476–1485* 56; (1478) YB Trin 18 Edw IV, f. 10, pl. 29; Baker, *Serjeants* (n 76): 164, 263.

82. For example, BL Harl MS 1691, ff. 15–55, 111–112; BL Harg MS 87, ff. 130–132v. See also n 76 above.

83. Warwickshire County Record Office DR429/54; DR429/55 (1499).

84. TNA C 219/17/2, Part 2, 101; John Thomas Driver, *The Parliament of 1472–5 with Particular Reference to the Personnel of the Commons* (unpublished PhD thesis, University of Liverpool 1982): 63. From 1483 he was summoned to Parliament as King's Serjeant and later Justice of Common Pleas: Wedgwood (n 33): 904–5.

85. *CPR*, *1467–77* 636–7; *CPR*, *1494–1509* 666.

86. For example: *CPR*, *1485–1494* 19; *1494–1509* 31 473. Vavasour's final commission was in July 1506. Assize justices were prohibited from riding their own circuit: Chris Given Wilson et al. (eds), *Parliament Rolls of Medieval England 1275–1504*, 16 vols (Boydell and Brewer 2005), vol. 3: 200.

87. Northamptonshire from 1480; Derbyshire, Leicestershire, Nottinghamshire and Warwickshire from 1481; Lincolnshire and Rutland from 1483: *CPR 1476–85*: 557, 563–565, 567–9, 570, 576; *1485–1494*: 484, 490–491, 494–497, 503; *1494–1509*: 634–5, 645–9, 652–3, 655, 663.

88. For example: *CPR*, *1485–1494*: 442 (Midlands), 477 (London and Middlesex); *CPR*, *1494–1509*: 31 (Midlands), 33 (Kent), 145 (Devon).

89. *CPR*, *1476–85*: 351 (15 June 1483). Although Vavasour was associated with Gloucester, the list of available candidates was limited. There were four serjeants in June 1483: Thomas Brygges, Humphrey Starkey, John Sulyard and John Vavasour. Brygges died in June (or possibly even May), and Starkey was appointed Chief Baron by Edward V and as JCP by Richard III. This left only Vavasour or Sulyard, both of whom had been retained by Gloucester. Ives (n 45): 492; Baker, *Men of Court* (n 18), vol. 1: 392 (Brygges), vol. 2: 1455 (Starkey), 1484 (Sulyard). *CPR*, *1476–1485*: 360 (27 June 1483); *CPR*, *1485–1494*: 20 (13 October 1485).

90. TNA E 356/23, m. 43v (appointed JCP); *CPR*, *1494–1509*: 646, 653 (knighted between May and December 1501); J H Baker (ed.), *The Reports of Sir John Spelman*, 2

vols (93–4 Selden Society 1976–7), vol. 2: 371, n 3 (discharged 16 Oct 1506). He sued in Common Pleas in the 1490s: TNA CP 40/922, m. 466; 40/923, m. 138; 40/946, m. 468.

91. In a letter to the City of York in 1486 he describes himself as 'coming home': *YCR*, vol. 1: 176–7.

92. TNA CP 40/862, m. 403 (York Assizes 1475); *YCR*, vol. 1: 29, 32–33, 62, 100, 106; *The Case of the City of York* (1489) YB Trin 4 Hen VII, f 13, pl 11; J H Baker (ed.), *The Reports of John Caryll*, 2 vols (109–10 Selden Society 1999), vol. 1: 20–21.

93. Richard B Dobson (ed.), *York City Chamberlains' Account Rolls, 1396–1500* (192 Surtees Society 1980): 183–6; Lorraine C Atreed, *The York House Books, 1460–1491*, 2 vols (Alan Sutton 1991): *passim*.

94. *YCR*, vol. 2: 13, 27.

95. For example: *CIPM*, *Henry VII*, vol. 1, nos 1085, 1090; vol. 2, nos 169, 123–4, 562.

96. The most prominent example is the lengthy dispute over the Plumpton inheritance following the death of Sir William Plumpton in 1480. For more detail see Joan W Kirby, 'A Fifteenth-Century Family, the Plumptons of Plumpton, and Their Lawyers, 1461–1515' *Northern History* 25 (1989): 106, 114–16.

97. For example. Baker, *Men of Court* (n 18) vol. 1: 654–5 (Guy Fairfax), 656–7 (William Fairfax); vol. 2: 1087–8 (Miles Metcalfe), 1276–7 (Richard Pygot).

98. TNA DL 42/21 ff, 22v, 26, 27; Robert Somerville, *History of the Duchy of Lancaster*, 2 vols (The Chancellor and Council of the Duchy of Lancaster 1953) vol. 1: 470, 473. For fines levied before Vavasour see William Farrer, *Final Concords for Lancashire, Part 3, 1377–1509* (Record Society of Lancashire and Cheshire 1905) 141–63. Vavasour was also a JP for Lancaster from 1485: Lancashire Archives DRK, xl, 544.

99. This was an isolated, controversial incident relating to Vavasour's involvement in the Plumpton inheritance dispute: see n 116 below.

100. TNA DUR 13/1, m. 7.

101. For an account of the period see E W Ives, 'The Reputation of the Common Lawyers in English Society, 1450–1550' *Birmingham University Historical Journal* 7 (1959–60): 130.

102. *Testa. Ebor.*, vol. 4: 89.

103. Ives (n 45): 415.

104. Horrox (n 5): 87.

105. Joan W Kirby (ed.), *The Plumpton Letters and Papers* (8 Camden Fifth Series, 1996): 341.

106. Sutton (n 73): 83, n 66.

107. *A Hundred Mery Tayls* (c. 1525) no. 20. For the surviving manuscripts and publication history see F P Wilson, 'The Early English Jestbooks of the Sixteenth and Early Seventeenth Centuries' *Huntington Library Quarterly* 2 (1939): 121, 125.

108. *Tales and Quick Answers* (c. 1532). For publication history see Wilson (n 107).

109. Vavasour would have been well known to Sir Thomas's father, Sir John More, who was created a serjeant in 1503: Baker, *Men of Court* (n 18), vol. 2: 1117–18.

110. *Tales* (n 108) no. 54.

111. *Tales* (n 108) no. 16.

112. The other is the poet John Skelton: J Scattergood, 'Skelton, John (c. 1460–1529), Poet.' *Oxford Dictionary of National Biography*, 23 September 2004 https://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-25661, accessed 31 July 2025.

113. Ives, 'Reputation' (n 101).

114. That Vavasour was known to the authors is seemingly confirmed by the identification of Turpin, who is named as 'John Tarpyne' in Vavasour's will: *Testa. Ebor.*, vol. 4: 89.

115. See *Mery Tayls* (n 107) nos 16, 30, 31, 48, 61, 81, 92 (Welshmen), 61 (Scots), 99 (northerners); *Tales* (n 108) nos 3, 73 (foreigners), 6 (men of the country), 94 (Cheshireman), 127 (Richard III and the Northern man).

116. Ives, 'Reputation' (n 101): 150. For details of the dispute see Kirby (n 96): 114–16.

117. Vavasour was fined £133, 6s, 8d for taking the bribe: BL Add MS 59899 f. 210v; BL Add MS 21480 f. 188; BL Add MS 59899 f. 156v https://www.tudorchamberbooks.org/, accessed 8 September 2025. I am grateful to Dr Sean Cunningham (TNA) for highlighting this incident to me. It was very unusual for judges to take bribes in the period: Ives, 'Reputation' (n 101): 150.

118. TNA E101/415/3 f. 285v.

119. The basis of Vavasour's modern reputation is Raine's description of Vavasour as a 'cautious, niggardly man [. . .] of a miserly disposition': *Testa. Ebor.*, vol. 4: 90. This is based solely on the *C Mery Tayles* and the initial exclusion of Elizabeth Tailboys from Vavasour's will. More recent descriptions of Vavasour tend to be more casual continuations of this rather than being based in anything more substantive.

# References

## Printed sources

Atreed, Lorraine C, *The York House Books, 1460–1491*, 2 vols (Alan Sutton 1991)

Baildon, W Paley and Baildon, Francis J (ed.), *Baildon and the Baildons; A History of a Yorkshire Manor and Family*, 3 vols (Percy Lund, Humphries & Co 1912)

Baildon, W Paley and Clay, J W, *Inquisitions Post Mortem relating to Yorkshire of the reigns of Henry IV and Henry V* (59 Yorkshire Archaeological Society, Record Series, 1918)

Baker, J H (ed.), *The Reports of Sir John Spelman*, 2 vols (93–94 Selden Society 1976–7)

Baker, J H, *The Order of Serjeants at Law* (5 Selden Society Supplementary Series, 1984)

Baker, J H, 'The English Legal Profession, 1450–1550' in J H Baker (ed.), *The Legal Profession and the Common Law: Historical Essays* (Hambledon Press 1986) 75–98

Baker, J H (ed.), *The Reports of John Caryll*, 2 vols (109–10 Selden Society 1999)

Baker, J H, *Readers and Readings in the Inns of Court and Chancery* (13 Selden Society Supplementary Series 2000)

Baker, J H, *Oxford History of the Laws of England, 1483–1553*, vol. 6 (OUP 2003)

Baker, J H, 'The Inn of the Outer Temple' *Law Quarterly Review* 124 (2008): 384–7.

Baker, Sir John, *The Inns of Chancery, 1340–1640* (19 Selden Society Supplementary Series 2017)

Baker, Sir John, *The Men of Court, 1440–1550* (18 Selden Society Supplementary Series 2018)

Bastow, Sarah L, 'Aspects of the History of the Catholic gentry of Yorkshire from the Pilgrimage of Grace to the First Civil War' (unpublished PhD thesis, University of Huddersfield, 2002)

Bastow, Sarah L, *The Catholic Gentry of Yorkshire, 1536–1642: Resistance and Accommodation* (Edward Mellen Press 2007)

Bennett, J M, 'Wretched girls, wretched boys and the European Marriage Pattern in England (c. 1250–1350)' *Continuity and Change* 34 (2019): 315–47

Blair, Charles Henry Hunter (ed.), *Visitations of the North, Part III A Visitation of the North of England circa 1480–1500* (144 Surtees Society 1930)

Borthwick Institute for Archives, University of York, *Register of Wills proved in the Exchequer and Prerogative Courts of York*, 1389–1514, 8 vols
Bracton, Henry de, *On the Laws and Customs of England*, 4 vols (G E Woodbine and S E Thorne eds, 1968–77)
Brown, William (ed.), *Yorkshire Deeds, vol 3* (63 Yorkshire Archaeological Society Record Series 1922)
Burgess, Glyn S and van Houts, Elisabeth (eds), *The History of the Norman People: Wace's Roman de Rou* (Boydell and Brewer 2004)
Clay, J W (ed.), *Dugdale's Visitation of Yorkshire with Additions*, 5 vols (William Pollard & Co 1889–1901)
Collins, Francis (ed.), *Feet of Fines of the Tudor Period, pt. I 1486–1570* (2 Yorkshire Archaeological Society, Record Series 1887)
Cokayne, G E (ed.), *Complete Baronetage*, 5 vols (William Pollard & Co 1902)
Dobson, Richard B (ed.), *York City Chamberlains' Account Rolls, 1396–1500* (192 Surtees Society 1980)
Driver, John Thomas, 'The Parliament of 1472–5 with particular reference to the personnel of the Commons' (unpublished PhD thesis, University of Liverpool, 1982)
Ellis, A S, 'Biographical Notes on the Yorkshire Tenants Named in Domesday Book' *Yorkshire Archaeological Journal* 5 (1875): 289–330
Ellis, A S, 'Yorkshire Deeds' *Yorkshire Archaeological Journal* 17 (1903): 96–126
Farrer, William and Clay, Charles Travis (eds), *Early Yorkshire Charters*, 13 vols (Yorkshire Archaeological Society 1914–65)
Farrer, William, *Final Concords for Lancashire, Part 3, 1377–1509* (Record Society of Lancashire and Cheshire 1905)
Fortescue, John, *De Laudibus Legum Anglie*, S B Chrimes (ed.) (CUP 1942)
Foster, Joseph (ed.), *The Visitation of Yorkshire Made in the Years 1584/85 by Robert Glover, Somerset Herald; To Which Is Added the Subsequent Visitation Made in 1612 by Richard St George, Norroy King of Arms, with Several Additional Pedigrees* (Joseph Foster 1875)
Foster, Joseph (ed.), *The Peerage, Baronetage and Knightage of the British Empire for 1881* (Chapman & Hall 1881)
Fowler, J T, *Memorials of the Abbey of St Mary of Fountains*, 3 vols, vol. 3 (130 Surtees Society 1918)
Gairdner, James (ed.), *The Paston Letters AD 1422–1509*, 6 vols (Chatto & Windus 1904)
Griffiths, Ralph A, 'Local Rivalries and National Politics: The Percies, the Nevilles and the Duke of Exeter, 1452–55' in Ralph A Griffiths (ed.), *King and Country: England and Wales in the Fifteenth Century* (Hambleton Continuum 1991): 321–64

Hajnal, J, 'European Marriage Patterns in Perspective' in D V Glass and D E C Eversley (eds), *Population in History: Essays in Historical Demography* (Edward Arnold 1965): 101–43
Hall, Hubert (ed.), *The Red Book of the Exchequer*, 3 vols (Eyre and Spottiswoode 1896)
Hawkes, Emma, 'Younger Sons, Illegitimate Sons and the Law: A Study of Three Yorkshire Gentry Families, 1480–1540' *Parergon* 17 (2000): 125–46
Hay, Denys (ed.), *The Anglica Historia of Polydore Vergil* (Camden Third Series, vol. 74, 1950)
Horrox, Rosemary, 'Richard III and the East Riding' in Rosemary Horrox (ed.), *Richard III and the North* (University of Hull 1986)
Horrox, Rosemary, *Richard III: A Study of Service* (CUP 1989)
Horrox, Rosemary and Hammond, P W (eds), *British Library Harleian Manuscript 433*, 4 vols (Richard III Society 1993)
Howard, Joseph Jackson (ed.), *Miscellanea Genealogica et Heraldica*, 2 vols (Mitchell and Hughes 1868–76)
Howdenshire Archaeological Society, 'Sir John Vavasour' www.howdenshire-arch.org/spaldington-ops/the-vavasours/sir-john-vavasour, accessed 31 July 2025
Inquisitions Post-Mortem 'Mapping the Medieval Countryside: Properties, Places & People' http//:inquisitionspostmortem.ac.uk/, accessed 11 July 2025
Ives, E W, 'The Reputation of the Common Lawyers in English Society, 1450–1550' *Birmingham University Historical Journal* 7 (1959–60): 130–61
Ives, E W, *Common Lawyers of Pre-Reformation England* (CUP 1983)
Jamieson, N, 'The Recruitment of Northerners into English Armies, 1400–1450' (unpublished PhD thesis, University of Liverpool 1993)
Kendall, Paul Murray, *Richard III* (W W Norton 1956, reprinted 2002)
Kirby, Joan W, 'A Fifteenth-Century Family, the Plumptons of Plumpton, and their lawyers, 1461–1515' *Northern History* 25 (1989): 106–19
Kirby, Joan W (ed.), *The Plumpton Letters and Papers* (8 Camden Fifth Series 1996)
Longstaffe, W Hylton Dyer (ed.), *Heraldic Visitation of the Northern Counties in 1530 by Thomas Tonge Norroy King of Arms* (41 Harleian Society 1863)
Mackman, Jonathan S, 'The Lincolnshire Gentry and the Wars of the Roses' (unpublished DPhil thesis, University of York, 1999)
Madden, Sir Frederic, 'Verses on the Battle of Towton' *Archaeologia* 2 (1842): 318–47

Maddern, Philippa C, 'Social Mobility' in Rosemary Horrox and W Mark Ormrod (eds), *A Social History of England, 1200–1500* (CUP 2006): 113–33
Norcliffe, Charles Best (ed.), *The Visitation of Yorkshire in the Years 1563 and 1564 Made by William Flower, Esq Norroy King of Arms* (16 Harleian Society, Visitation Series 1881)
Parkhouse, Carole, 'The Career of a Fifteenth Century Lawyer: Miles Metcalfe of Wensleydale' *The Ricardian* 8 (1989): 174–89
Palliser, David, 'Richard III and York' in Rosemary Horrox (ed.), *Richard III and the North* (University of Hull 1986): 51–81
Pollard, A J, 'North, South and Richard III' *The Ricardian* 5 (1981): 384–9
Pollard, A J, *North-Eastern England during the Wars of the Roses: Lay Society, War and Politics, 1450–1500* (Clarendon Press 1990)
Pronay, Nicholas and Cox, John (ed.), *The Crowland Chronicle Continuations: 1459–1486* (Allan Sutton 1986)
Raine, Angelo (ed.), *York Civic Records*, 2 vols (Yorkshire Archaeological Society, Record Series, 1939, 1941)
Raine, James et al. (eds), *Testamenta Eboracensia A Selection of Wills from the Registry at York*, 6 vols (Surtees Society,1836–1902)
Ramsay, N L, *The English Legal Profession c. 1340–c. 1450* (unpublished PhD thesis, University of Cambridge, 1985)
Rex, Richard, 'Thomas Vavasour MD' *Recusant History* 20 (1991): 436–54
Riley, Henry T (ed.), *Ingulph's Chronicle of the Abbey of Croyland with the Continuations by Peter of Blois and Anonymous Writers* (George Bell and Sons 1908)
Scattergood, J, 'Skelton, John (c. 1460–1529), Poet.' *Oxford Dictionary of National Biography*, 23 September 2004 https://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-25661, accessed 31 July 2025
Somerville, Robert, *History of the Duchy of Lancaster*, 2 vols (The Chancellor and Council of the Duchy of Lancaster 1953)
Spelman, Sir Henry, *Glossarium Archaiologicum* (1664)
Sutton, Anne F, 'The Lands of Richard of Gloucester in the Counties of Lincolnshire and Nottinghamshire, 1471–83' *The Ricardian* 28 (2018): 69–115
Thorne, S E and Baker, J H (eds), *Readings and Moots at the Inns of Court in the Fifteenth Century, vol. 2* (105 Selden Society 1989)
Tilley, Joseph, *The Old Halls, Manors and Families of Derbyshire*, 4 vols (Simpkin, Marshall, Hamilton, Kent, & Co 1899)
Virgoe, Roger, 'William Tailboys and Lord Cromwell: Crime and Politics in Lancastrian England' *Bulletin of the John Rylands University Library* 55 (1973): 459–82

Ward, J T, *East Yorkshire Landed Estates in the Nineteenth Century* (23 East Yorkshire Local History Series 1967)
Watson, John M, 'The Descent of the Manor of Badsworth' *Foundations* 8 (2016): 15–32
Wedgwood, Josiah C (ed.), *History of Parliament Biographies of the Members of the Commons House, 1439–1509* (HMSO 1936)
Wilson, Chris Given et al. (eds), *Parliament Rolls of Medieval England 1275–1504*, 16 vols (Boydell and Brewer 2005)
Wilson, F P, 'The Early English Jestbooks of the Sixteenth and Early Seventeenth Centuries' *Huntington Library Quarterly* 2 (1939): 121–58
*A Hundred Mery Tayls* (c. 1525)
*Burke's Peerage*, 3 vols, 107th ed. (Burke's Peerage 2003)
*Calendar of Close Rolls* (HMSO 1892–1963)
*Calendar of Inquisitions Post Mortem and Other Analogous Documents Preserved in the Public Record Office, Henry VII*, 3 vols (HMSO 1898–1955)
*Calendar of Patent Rolls* (HMSO 1891–)
*Tales and Quick Answers* (c. 1532)

## Manuscript sources

Bibliothèque Nationale, Paris MS Fr 25775/925
Bodleian Library MS Ashmole 831
Bodleian Library MS D D Brocas 479
Bodleian Library MS Dodsworth 81
BL Add MS 21480
BL Add MS 59899
BL Harg MS 87
BL Harl MS 433
BL Harl MS 1691
BL Harl MS 2051
CUL MS Ee.5.22
CUL MS Hh.2.5
Doncaster Archives CD/417
Doncaster Archives DD/DC/D/896
Lancashire Archives DDTO K 19/18
Lancashire Archives DRK
TNA C 67/48
TNA C 142/18/25
TNA C 219/17/2
TNA CP 25/1/281/160
TNA CP 40/862
TNA CP 40/881

TNA CP 40/922
TNA CP 40/923
TNA CP 40/946
TNA DL 29/295/4848
TNA DL 29/648/10485
TNA DL 42/21
TNA DUR 13/1
TNA E 40/716
TNA E101/415/3
TNA E 164/2
TNA E 356/23
University of Leeds Library Yorkshire Archaeological Society MS 609
Warwickshire County Record Office DR429/54
Warwickshire County Record Office DR429/55

## Table of cases

(1440) YB Mich 19 Hen VI, f, 4v, pl. 9
(1440) YB Mich 19 Hen VI, f. 19, pl. 40
(1467) YB Trin 7 Edw IV, f. 13v, pl. 5
(1471) YB Trin 11 Edw IV, f. 8, pl. 14
(1473) YB Pas 13 Edw IV, f. 9, pl. 5
(1474) YB Trin 14 Edw IV, f. 7v, pl. 11
(1478) YB Trin 18 Edw IV, f. 10, pl. 29
*The Case of the City of York* (1489) YB Trin 4 Hen VII, f. 13, pl. 11

Chapter 3

# Inside and outside the palace: Henry VIII's queens at law

Anthony Musson and Kirsty Wright

The trials and tribulations of Henry VIII's six queens are infamous. In the popular imagination the queens are usually measured in terms of their contrasting religious inclinations, their child-bearing capabilities and their sudden disappearance from the royal stage, either through estrangement or death. Here, though, we are going to consider them in a slightly different way, in terms of their status as legal insiders and outsiders. Technically 'insiders' as royal spouses, Henry's consorts were often treated as 'outsiders' either because of their foreign ancestry or because they were perceived as usurping the rightful queen. We define their insider status as the queen consort's formal and personal proximity to the king, which granted privileged access to royal authority and a distinctive position within the dynastic and administrative structures of government. However, this status was conditional and could be revoked at the king's discretion, rendering them outsiders as soon as they displeased him or when it no longer suited him to acknowledge their position. The drama of these events has attracted political, religious and gendered analysis, yet the legal frameworks underpinning them have been neglected. Four queens experienced the full force of the law as their metaphorical trials gave way to judicial realities. Anne Boleyn and Katherine Howard suffered the death penalty after dubious treason trials; two others, Katherine of Aragon and Anne of Cleves, endured the stigma of divorce.

This chapter explores the queens' experience of the law and engagement with its processes from a different angle. Arising from the Arts and

Humanities Research Council project *Henry VIII on Tour: Landscape, Communities and Performance*, it focuses not just on what happened inside the royal palaces but also on life outside those spaces, on royal progresses. Progresses were external manifestations of monarchy through journeys made by the royal couple beyond their London-based 'standing houses' to distinct geographical areas. Although normally undertaken annually in the summer, progresses were not exclusively so, as there could be various reasons or occasions for travel – from personal pilgrimages to diplomatic encounters. Moreover, it should not be assumed that the queen consort was always travelling with Henry, nor that the progress was wholly focused on *his* agenda. In examining 'queenship' as a project strand, we have pursued an array of archival sources to recover aspects of the queens' agency and explore the extent of their autonomy. The role of the queen's council and how much autonomy it was afforded to pursue her interests or agenda is also explored, as well how actively its legal officers pursued litigation in her name.

This chapter therefore aims to promote an understanding of the queens' own political and legal voices. We examine initially the role of the first and third Katherines as Henry's appointed regents in 1513 and 1544 respectively and then discuss the role of progress as an opportunity for queens to demonstrate their own 'lordship'. We also evaluate the Tudor queens as intermediaries and intercessors, a role that has become familiar to historians from studies of medieval queens. These roles and interactions with the law all stemmed from the queen's position as consort, which granted her privileged status. Yet the contexts within which each assumed the title differed. Only Katherine of Aragon and Anne Boleyn were crowned queen in Westminster Abbey. Jane Seymour's coronation was discussed but never happened. How this affected the identities of all later queens and perceptions of their legitimacy is a point of debate. Further, many consorts faced disadvantages either as foreigners to the jurisdiction or as unprepared for the formalities of queenship. Hailing from royal or ducal houses, Katherine of Aragon and Anne of Cleves were coached for marriage to a foreign ruler but nevertheless came from different legal systems and were not wholly familiar with English customs. It is not clear what allowances were made for linguistic and cultural difference in relation to legal matters and to what extent they appreciated the constitutional conventions of being an English queen. Conversely, Katherine Howard grew up in an English noble household, yet she was only seventeen when she became queen. In addition to naivety about her rank, she would have to have been swiftly brought up to speed with its conventions, as would Henry's third wife, Jane Seymour – married a mere eleven days after her predecessor's execution. Three queens experienced

an altered legal status during their lifetime; although she never accepted it, reducing Katherine to 'Princess Dowager' was integral to the argument for divorce; on divorce, 'Lady Anne' of Cleves was no longer queen but, unusually, was addressed fictionally as 'the king's sister'; Henry's final wife, Katherine Parr, survived the king but became queen dowager on his death.

By examining the six queens as legal entities, this chapter illuminates wider issues in the study of queenship. It looks beyond the individual lives of the queens to examine the institutional structures and customs that shaped their shared office. This enables study of what fell within the queen's jurisdiction and what she was legally entitled to do or prohibited from doing. The queens have largely been studied biographically, in individual studies or as a set, with focus on their actions and key events rather than the broader structures within which they operated.[1] Legal moments have received attention, such as the trial of Henry VIII and Katherine of Aragon's marriage at Blackfriars in 1529 and the trials of Anne Boleyn and Katherine Howard in 1536 and 1542 respectively.[2] However, these trials, while illuminating, are not representative of the queens' experience of the law as they were highly unusual, and the integrity of proceedings was often suspect. These women were subject to legal proceedings but have rarely been the subjects of legal histories.

## Regency

Henry VIII's decision to appoint two of his wives as regent reflects their position as trusted insiders to royal rule during the political instability at the start and end of his reign. During the king's campaigns in France, Katherine of Aragon was appointed in 1513 for almost four months and Katherine Parr served as regent for two and a half months in 1544. In 1513 Henry's reign was in its infancy and he had no male heir, which necessitated the appointment of a regent who could be trusted to safeguard his dynastic interests. Similarly, in 1544, Henry's health was failing and his court was increasingly divided by religion. Rather than empower a potentially divisive statesman, Henry entrusted Katherine Parr with the regency and guardianship of Prince Edward. As the prince's stepmother, Katherine Parr had a relationship with Edward and no independent claim to the throne, making her a safe choice to protect the prince's interests. In both cases, the queen's familial connection to the king was significant. It made her a trustworthy custodian of royal authority and one whose role could be assumed to be protective rather than self-interested. Although technically normally outsiders to the operation of royal government,

their close relationships to the king made them perfect proxies to take over administrative aspects of his personal rule.

The role of regent reflected the distinctive legal status of queen consorts as insiders, whose authority was derived from their marital and dynastic ties to the king. As both wives and regents, the queens occupied a uniquely intimate position. The insider status of queen consorts, as royal wives and maternal figures, was central to their candidacy for regency. Letters from Katherine of Aragon to Henry during her regency address him interchangeably as 'your grace' and 'my Henry', blending personal affection with political responsibility.[3] In these letters, she reported on her handling of the Scottish invasion using her delegated powers, but signed off 'your humble wife and true servant'. Similarly, Katherine Parr signed off most official letters 'Katherine the Queen Regent' but signed her letters to the king 'your majesty's humble obedient loving wife and servant Kateryn the Queen'.[4] This demonstrates that, even while exercising legal authority, they addressed the king as consorts rather than regents. This deferential language functioned as a performance of legal subordination. By expressing humility and loyalty to the king, the queens navigated gendered expectations that were in tension with their temporary legal powers. Their regencies reveal how the law could accommodate female authority by formalising aspects of the queen's relationship to the king. This direct if attenuated political power, contingent and temporary though it was, nevertheless decisively put the two queens who exercised it 'outside' the class of women of the time. Even though aristocratic women and heads of female religious orders often exercised 'lordship' (see below), this was clearly another dimension: a higher order of authority, not matched until Henry VIII's daughters truly became insiders as the first queens regnant (Mary I and Elizabeth I). This prior experience of quasi-rule as queens regent may have helped pave the way for constitutional acceptance of a dynastically legitimate female ruler in the second half of the sixteenth century.

Queenship alone did not guarantee legal authority; the appointment of a regent was contingent on the queen's relationship with the king. This is evidenced by the events of 1532, when the king went abroad for a month and chose not to name a regent.[5] Instead, a council of state was appointed to govern in his absence, but no individual was empowered to act as regent or head of the council. Katherine of Aragon was still queen at the time, but she was embroiled in divorce proceedings with the king, so she was not considered to repeat her previous role as regent. Indeed, her opposition to the divorce made her a threat, with the potential to undermine the king's authority. The perception of this threat is clear in a letter by Eustace Chapuys, the imperial ambassador, who reported that

rumours circulated that preparations were underway at the Tower to keep the queen out of trouble in the king's absence.[6] This episode reveals that queenship was not a guarantee of regency; only those within the king's inner circle were trusted.

The regencies enhanced the queens' insider status by making them the king's legal representatives during his absence, a shift in status that brought them truly inside the machinery of government, even if contingently so. On 4 July 1513, once Henry had safely passed from Dover to Calais to begin his campaign in France, by virtue of the king's letters patent dated 30 June and under the authority of the Lord Chancellor 'sitting in full court' in the king's Court of Chancery and by the advice of both the king's council and the chief justices of the King's and Common Benches, who were also present in court, Queen Katherine was duly appointed *rectrix et gubernatrix*, ruler and governor of the realm.[7] The queens' status was thus temporarily elevated from consort to ruler by letters patent issued by the king prior to his departure. Both queens were empowered to 'passe and bear teste' in the king's name, a legal formula that authorised them to validate official documents. This authority altered the standard legal phrasing on royal instruments such as letters patent, grants and writs from *teste me ipso*, witnessed by myself, to *teste Katherina Angliae Regina*, witnessed by the queen, whose new style of '*generali Rectrice*' was also appended.[8] This change signified a tangible shift in the locus of royal authority that gave the queen an active role in governance. It also evidences how legal language could both enable and constrain the queen's authority: she could act in the king's name, but her power was an extension of his will rather than an expression of an independent legal identity. While the queen's role as regent was always as a proxy, not as a ruler in her own right, significantly, the regencies gave the queens enhanced 'insiderness' by placing them within the machinery of government.

As regents the queens became legal actors. Surviving records demonstrate that both Katherine of Aragon and Katherine Parr used their authority to directly participate in governance. They signed documents, issued warrants and styled themselves 'Katherine the Queen Regent'.[9] In July 1513, Katherine of Aragon witnessed several grants concerning the distribution of land and offices. She attested to the appointment of Edward Stanbank as bailiff of Holsworthy in Devon, and the award of manors in Buckinghamshire to Henry Pole.[10] Similarly, in July 1544, Katherine Parr signed and issued a proclamation ordering all French nationals to become denizens or leave the realm as 'his highness [. . .] straightly chargeth and commandeth by this his present proclamation'.[11] Although the proclamation was framed in the king's voice, it was issued

under the queen's authority, demonstrating how she operated within the legal framework of regency. The use of royal language affirmed her capacity to act while also reinforcing the limits of her autonomy.

Katherine of Aragon and Katherine Parr exercised political agency. Although the scope and context of their authority differed significantly, they both acted in partnership with their councils to oversee governance and support military campaigns. Katherine of Aragon, appointed in 1513, was granted broad powers including the right to issue commissions of muster, appoint sheriffs and authorise payments, which allowed her to respond decisively to the Scottish invasion during Henry's absence. She coordinated defences, commanded towns to prepare for war and marched north with an army under her own banners.[12] In contrast, Katherine Parr's regency in 1544 was more tightly constrained: her authority was limited by council oversight, requiring co-signatures for financial warrants and constant attendance by councillors.[13] Yet she too played an active role, issuing proclamations and using her literary talents to bolster support for Henry's campaign through devotional texts like her *Prayers or Psalms*, which framed the war as a sacred duty.[14] While Katherine of Aragon wielded military power and Katherine Parr wielded the pen, both queens drew on their personal strengths to fulfil their legal responsibilities, demonstrating how royal women could adapt to and operate within the structures of Tudor governance.

## Lordship

The queens' lordship over their estates reveals how consorts interacted with the law from an administrative perspective and thus as both insiders and outsiders in a slightly different context. Consorts occupied an unusual legal position as wife and landowner, which placed them outside of ordinary legal frameworks. Unlike other married women, queens could access their dower lands during their husbands' lifetimes to use the revenue from these estates to fund their households and patronage networks.[15] The significance of this anomalous legal status, and the use of such income to support the everyday function of queenship, has increasingly attracted attention to the material conditions of queenship. Scholars have examined the queens' income and expenditure to understand how their economic power underpinned their political and cultural influence. Existing studies have focused on the resources of medieval queens. Michelle Seah, Katia Wright, Elena Woodacre and Attila Bárány have all produced important economic and administrative analyses of queenship.[16]

Yet the administrative role of the Tudor consorts remains largely underexplored and to date only Katherine of Aragon's estates have received scholarly attention. Michelle Beer examined how Katherine's landed estates allowed her to reinforce her political networks and found that her affinity was so strong that Henry VIII confiscated her estates in an attempt to undermine them.[17] The estates of the Tudor consorts varied in value from £3,000 to £5,000, which granted the queens control over a significant pool of resources.[18] In Anne Boleyn's case, the estates in Wales, which Henry granted her to support the title of Marchioness of Pembroke, effectively supplemented the dower lands eventually confiscated from Katherine. Her portfolio also included the assurance (by Act of Parliament) of the manor of Collyweston for her lifetime, an important property previously held by Henry FitzRoy, duke of Richmond, and before him, Henry VIII's grandmother, Lady Margaret Beaufort.[19] This made them some of the greatest landed magnates in the country – a role that is often eclipsed by the queen's ceremonial and dynastic duties. The scale and significance of these resources demand further study to fully understand the legal and political roles of Henry VIII's queens.

The queens' autonomy in managing their estates made them active participants in a range of legal and administrative processes and brought them another form of insider status within the law. As landlords they could grant leases, appoint officials and enforce their property rights. Queen Katherine Howard granted a lease of the manor of Much Marcle in Herefordshire to Richard Scudamore in 1541.[20] Records of manors in the queen's possession describe her as the lord of the manor court, such as the 1510 court books of Southfrith Manor in Kent and the court records of Havering-atte-Bower from 1509–31, which describe the 'Courts of Queen Katherine of Aragon'.[21] Even Anne of Cleves and Katherine Howard, despite their extremely short reigns, were recognised as being courtholders.[22] The queens were perceived as both lord and queen by their tenants. In 1529 the townsmen of Sudbury sent a bill of complaint to the queen as her 'bedesmen and tenants' seeking intervention in a dispute with the abbot of Bury.[23] In addition to enjoying the profits from their lands, queens also had responsibility for their administration and tenants. These responsibilities were delegated to the queen's council, an administrative body that oversaw estate management through regional receivers and auditors tasked with surveying properties and collecting debts.[24] The queens granted their councils a significant degree of autonomy and it is not clear how regularly they consulted each other. On 25 September 1545, Katherine Parr commanded Anthony Bourchier to inform all her receivers that they were to make their Michaelmas payments to John Coke, her newly appointed general receiver.[25] These orders

provide a rare window into the queen's oversight of the council's work and suggests that she could intervene to enforce administrative changes and appointments.

A document recording the fees and annuities charged to Anne Boleyn's estates in 1534 reveals the extensive network of officials required to manage her lands across multiple counties. Nobles, knights and gentlemen were appointed keepers or stewards of her parks and manors. Sir Thomas and William Tyrrell were employed as constables at Hadleigh and Sir William Blount served as steward of multiple estates including Havering and Fotheringhay.[26] The extent of the queen's personal involvement in the council's work varied depending on the length of her reign and her interests.[27] All six queens profited from their estates, but administrative machinery could not always keep pace with Henry VIII's quick succession of wives. In 1533, after Anne Boleyn became queen, inquiries were made about the validity of leases within the lands of the queen's jointure and a document was drawn up to manage the complex transfer of properties from the 'dowager princess' Katherine of Aragon to Anne. Problems persisted. In the 1540s, rents were still being collected in the name of the late Queen Katherine (Katherine Howard) and her two predecessors, but they were paid to the current queen, Katherine Parr.[28] Similarly, sums payable to the king after the attainder of Howard were delivered to Wymond Carew, Receiver-General to Parr.[29] Some disputes could outlive their sponsors. Lands in the honour of Clare (Suffolk), originally under the control of Katherine of Aragon, were embroiled in litigation against Winchester College, Oxford for over twenty years.[30] The continuity of the queens' legal participation, despite the rapid turnover of Henry VIII's wives, highlights that their role as landowners was not only fundamental to Tudor queenship but also a continuation of a longer tradition inherited from medieval consorts.

It is difficult to deduce how queens used their estates from administrative records alone. Those bearing the queen's signature suggest her active involvement, but it is difficult to know how deep this engagement was. While we would not necessarily expect this of relatively far-flung estates, correspondence between officials suggests that they at least perceived the need to communicate to her the state of affairs amongst her tenants. John Smyth, for example, who in June 1536 had been 'in the west parts' surveying all Queen Jane's lands in Hampshire, Dorset, Devon, Somerset and Wiltshire, was keen for Cromwell to relay that '[w]e have found all the Queen's farmers and tenants as glad of her Grace as heart can think, and have been well entertained'. He further added: 'On our return to the Court, which will be within 10 or 12 days, I trust you will see we have done her good service, and that the King will be pleased'.[31]

Royal progresses offer a different perspective on the queens' lordship as they allowed queens to travel outside of London and more directly engage with their estates, both with and without the king. In 1519, Katherine of Aragon hosted the king and court at her manor of Havering-atte-Bower in Essex, and she also travelled alone to the shrine of Our Lady at Walsingham in Norfolk via her eastern estates.[32] Although precise details of these visits are often lacking, the queen's periodic physical presence probably reinforced her dual identity as queen and landlord. By distributing offices and leases to her household, the queen could construct her affinity and create regional seams of support.[33] Michelle Beer has shown how Katherine of Aragon established support in the areas she frequented across her substantial estates in Essex, Suffolk and Norfolk.[34] This may explain why Anne Boleyn's first full royal progress as queen in 1535 deviated so dramatically from customary routes. The royal couple avoided the east of England altogether and instead travelled around the West Country, visiting less-frequented places including Gloucester, Tewkesbury and Thornbury.[35] Even after Henry VIII's death, early in Edward VI's reign, Katherine Parr was still issuing signet warrants 'by the queen' giving instructions and providing assistance to her trusted officers and servants from her manor of Hanworth and Sudeley Castle.[36] By exercising their right to distribute material resources to trusted favourites and visiting their estates, Tudor consorts performed the duties of queenship and reinforced their authority. Their journeys allowed queens to exercise their legal and administrative authority in person to reinforce their legal status in the localities.

## Intercession

Intercession as a form of intervention in legal matters (whether a formally, politically staged event or a more informal personal act) demonstrates Henry VIII's queens' ambivalent position as both insiders and outsiders within the legal and constitutional hierarchy. Medieval historians have drawn attention to the intercessory role of the queen and quasi-historical models of public acts by celebrated English queens, such as Philippa of Hainault allegedly tempering Edward III's intentions for the defiant burghers of Calais in 1347 and Anne of Bohemia's queenly intercession with Richard II on several occasions, notably on behalf of the mayor of London in 1384 and its citizens in 1392.[37] These real-life events were captured in a carefully choreographed pageant held in Westminster Hall that same year, with the queen symbolically kneeling in front of the enthroned king.[38] Here the queen was using her close relationship with

the monarch, her husband, to plead for mercy and assist the cause of others, where their actions or status placed them in a life or death predicament at the king's will and outside of the normal parameters of the legal system.

The very same repertoire of queenly intervention was purportedly witnessed in 1517 following London's 'Evil May Day' riots, when the retributive situation seemed tailor-made for Queen Katherine to seek mercy from Henry on the rioters' behalf (akin to Philippa's actions in 1347). In response to the uprising the authorities 'raised gibbets all over the town and caused 60 of the rioters to be hanged'. While others were beheaded and drawn on the hurdle for their treason, there remained 'some 400 prisoners whom the King had destined in like manner for the gallows'. Faced with this state of affairs, the Venetian ambassador reported that 'our most serene and most compassionate Queen, with tears in her eyes and on her bended knees, obtained their pardon from his Majesty, the act of grace being performed with great ceremony'.[39] The overt theatricality of Katherine's actions may cast doubt on the veracity of this account (especially as it is not included by Edward Hall in his chronicle). Yet taken with the corresponding calls for mercy and formalities of pardon enacted subsequently in Westminster Hall (a description common to both narratives),[40] a scenario which equally screams careful choreography, it not only gains traction but also underlines the critical nature of this phenomenon to contemporary perceptions of monarchy as well as doctrines of queenship and kingship.

The 'outsiderness' of the queen consort's intercessory role was emphasised by the tradition drawn on throughout the Middle Ages by writers of plays and pageants that focused on the exemplary conduct of Old Testament heroine, Queen Esther. Esther's story was a convenient trope for the many queens who came to the English throne from 'foreign' dynasties (including Eleanor of Provence, Isabella of Castille, Philippa of Hainault and Margaret of Anjou) as she was a daughter of Israel chosen for her beauty by the Persian King Ahasuerus as his spouse. By the power of love, Esther was able to intercede with Ahasuerus to save her people, whom he had condemned to death (not knowing of her true ethnic background and tricked by his chancellor). The allegorical anonymous *Enterlude of the Godly Queene Hester*, which critiques Cardinal Wolsey's machinations against the monastic orders ('Jewish households') was written in 1529 with Queen Katherine of Aragon in mind as Hester, though envisaging a more mature woman than portrayed in the Biblical version. In light of the challenges faced by Katherine during her Regency, the play sets out 'vertues that be best and fittest for a queene', but also highlights her role as intercessor:[41]

*Albeit, sometyme more for love than for awe,*
*The king is content to bee counselled by the queene,*
*In many sundrye causes, as ofte hath been seene.*

Coronations offered a key opportunity for conveying royal propaganda in iconographic and allegorical terms. As the pageants celebrating the coronations of successive French queens, Mary Tudor (in 1514) and Claude (in 1517), demonstrate, this remained a strong tradition even in the early sixteenth century. Through their marriages, 'foreign' queens were international peacemakers, securing treaties, ending wars between nations and bearing children who, as heirs of both countries, would presumably guarantee peace in the future. This was certainly envisaged in the treaties marking the (albeit short-lived) marriage of Anne of Cleves.[42] Although, unlike her immediate predecessor, Anne Boleyn was not a 'foreign' queen, her coronation in 1533 was different and demonstrated 'outsiderness' in that she was visibly pregnant. Her condition nevertheless directly associated her with the Virgin Mary, traditionally depicted as intercessor and advocate, in being the bearer of a 'holy child'. This overt connection with such a key religious icon was important as it signalled her acceptance within the legal and political framework. Indeed, it has been posited that '[i]n no other civic triumph is the queen's role as *virgo mediatrix* and bearer of heavenly grace so clearly or so explicitly defined'.[43]

The pageants accompanying Anne's procession from the Tower of London through the city also stressed her namesake, St Anne, and her progeny, and how the new queen was going to be a peacemaker and intercessor, even though ironically her marriage to Henry (publicly legitimised only five days after his divorce from Katherine) was itself extremely divisive and the former queen (now styled princess dowager) was very much still alive. Anne's association with the Heavenly Queen and her saintly lineage in the coronation pageantry (only six days after the divorce) was affirmed in the liturgical alignment of her coronation with Whit Sunday (celebrating the descent of the Holy Spirit) and in the legitimising of Anne's position in the ceremonial itself when, following her anointing, 'the archebishop set the croune of saint Edward on her head' before he 'sette on the croune made for her'.[44] This was the first time Edward the Confessor's regalia had been used for a queen consort, which 'contentiously [risked] equating Anne's authority as consort with the authority of a reigning monarch'.[45] Moreover, the fact the occasion had taken place equally underlined Henry's association with the divine and the king's newly asserted ecclesiastical supremacy as being 'second to God' (following the Act in Restraint of Appeals of April 1533) with 'jurisdiction and

authority' over 'causes of matrimony and divorces'.[46] The theocratic link with Mary, the Queen of Heaven's intercessory powers was emphasised as Anne, 'the bearer of divine grace', was conveyed in procession against a musical soundscape where the angelic singers' 'marvellous sweet harmony' was combined with 'suche seueral solempne instrumentes, that it semed to be an heauenly noyse'.[47]

It was not just within the drama of royal pageantry and controlled 'set pieces' that queenly intercession existed and was invoked. Its formalities are highlighted in a written petition from the vice-chancellor and scholars of the University of Cambridge to Queen Anne in 1535. In its language of self-abasement it invokes a very vivid performative picture of submissiveness: 'Wherefore most gracious lady in consideration of the incommodities and divers other which this bearer our Vicechancellor (if it shall like your highness) can show unto your Grace, we your humble orators and scholars kneeling upon our knees, most humbly beseech your Grace [. . .]'. It then urges her to intercede on their behalf: 'to promote their petition and request and speak for us unto the king's highness for pardon of the said tenths and first fruits', which they felt he should do since Henry had 'always been good lord to his poor University'.[48]

This is not a one-off. Perceptions of the queen's influence, based on long-standing traditions, were the currency of other petitions. Dame Anne Skeffington wrote to the Queen's Most Excellent Highness to ask Anne's intercession in favour of a petition the former sent to the king concerning the position in which she and her children found themselves after the recent death of her husband.[49] There is evidence that Joyce, the prioress of Catesby, also petitioned Queen Anne (no doubt trying to save the priory and her sisters) and was duly told that 'the Queen had moved the King for [her]' – though just to make sure, she asked Thomas Cromwell if 'you will second the Queen's efforts'.[50] The queen's addresses in favour of preferment for a valued servant (with endorsement similarly by the duke of Norfolk, Cromwell and the bishop of Rochester, chancellor of the University of Cambridge) helped persuade Henry that he had unwittingly erred in permitting the lease on a property in Kent belonging to St John's College, Cambridge to be given to someone other than Gennys, Serjeant of the Pastry.[51] It was not solely a female trope to appeal to the queen as mediator. John Musard, a monk of Worcester Cathedral Priory, writing to Henry VIII from prison at Worcester, in pleading for release expresses his thoughts on her role: 'I desire your pardon that I may continue to be your true beadsman, and for that gracious lady queen Anne's, the which hath the name to be as mediatrix betwixt your Grace and high justice'.[52] Whether this was by reputation

or literally the power of her name (equated as it was with St Anne) is not clear, but the wording implies that the queen consort's quasi-religious aura was still potent. On the basis of a letter from Musard to Cromwell dated 8 August 1535 in which he complains about the conspiracy against him resulting in his imprisonment,[53] this appeal to the king and queen may also have been a direct result of the royal progress to the West Country undertaken in the summer of that year, which included extended stays at the abbeys of Winchcombe (21 to 26 July) and Gloucester (31 July to 6 August), both places mentioned in Musard's petition.[54]

Henry VIII's consorts after Anne Boleyn were never actually crowned, though arrangements to hold the ceremony for both Jane Seymour and Katherine Howard were mooted.[55] The brevity of their reigns ultimately militated against this, but it did not deter people from seeking their intercession. In November 1536, for example, Queen Jane intervened with Cromwell on behalf of Thomas Dudley, 'concerning certain injuries done to him' and the fact that he was 'in great necessity and destitute of all help'.[56] She was also understood to have written to Lord Lisle, the Captain of Calais, in favour of the constable of Rysbanke.[57]

Intercession was even sought from the queen by Cardinal Wolsey when in dire straits. Trying everything he could to rehabilitate himself in the king's eyes, he entreated Cromwell 'to solicit the King to be gracious to him' and work his charm 'that the lady Anne may mediate for him'. Unfortunately, Wolsey was informed that 'Mr. Page received your letter directed unto my lady Anne and delivered the same. There is yet no answer. She gave kind words, but will not promise to speak to the King for you'.[58] Intercession had its limits. In July 1536 the Imperial ambassador, Chapuys, reported to his master, Charles V, that entreaties made by Queen Jane for clemency on behalf of Princess Mary, Lady Hussey (wife of her chamberlain), the Marquis of Exeter and Sir William FitzWilliam (Treasurer of the Household) went unheeded, 'in spite of the prayers of this Queen, which he rudely repulsed'.[59] It failed, too, almost with dire consequences when (according to an observer) Queen Jane 'at the beginning of the insurrection [i.e. the 1536 Pilgrimage of Grace] threw herself on her knees before the king and begged him to restore the abbeys'. Rather than accept her intervention, Henry's retort apparently was to urge Jane 'not to meddle with his affairs', remarking on her predecessor's fate.[60] This scene, whether based on a true account or not, shows that the queen's unique insider status as consort was not paramount: she did not have an unfettered influence over royal actions or situations with political ramifications. As such, she could be treated as much as an outsider as anyone else when Henry VIII felt that his will or authority was threatened.

## Conclusion

This foray into the legal world associated with Henry VIII's queens has its genesis in the *Henry VIII on Tour* project, a partnership between Historic Royal Palaces and the Universities of York and Newcastle. As such, its exploration of queenship over the course of his reign represents a novel crossover between academia and the heritage sectors, not just on account of its historical subject matter, characterised as it is more often than not by a focus on personalities and narratives, but by our adoption of the approach and analytical methods of legal history. This highlights the role of so-called 'external' legal history (examined from the perspective of its context rather than its 'internal' doctrines) and points towards it as occupying a place both 'inside' and 'outside' universities.[61]

The chapter therefore demonstrates that there is much more to these iconic figures than is normally recognised and, in terms of the present work, underlines their ambiguous status as (at times) both insiders and outsiders. Significantly, it also redresses historians' over-concentration on the person of Henry VIII, important though inevitably he is. Our research in pushing boundaries shows that the intercessory role highlighted by medieval scholars was still considered a duty of queenship in the sixteenth century. This is reflected in pageants and contemporary drama, notably the Hester play, which unashamedly draws on the real-life formal interventions for mercy or pardon made by the queen in theatrical manner or on ceremonial occasions ('Break not the course that queens have had/ In this noble region most of all [. . .]/ By meekness for mercy to temper the fire/ Of rigorous justice, in fume or in ire').[62] This continuity in both the literary and the experiential realms demonstrates the importance of examining Henry VIII's wives within a longer tradition of queenship and of female authority and agency more generally.

Their legal and administrative roles were built on medieval foundations, even as they were reshaped by the political and religious upheavals of Henry VIII's reign. Despite the accepted conventions, the queen's part in justice and administration was being remoulded, particularly through the agency of Katherine of Aragon and Katherine Parr. Significantly, Henry entrusted the kingdom to them as 'ruler' in his absence at times of significant 'foreign' hostility. It was likely that they were accorded the important role of regent because at the time they were close to Henry and he trusted them implicitly as his personal insiders above other male contenders. The gulf in trust was overtly signalled in 1532, when Henry travelled overseas with the Marchioness of Pembroke to meet with Francis I again. In spite of the Lord Chancellor's urging, the king failed to appoint a keeper of the realm, even though Katherine of Aragon was still in evidence. Of course,

this autonomy could be brutally snatched away as several queens found to their detriment – leaving the insiders truly outside!

## Notes

1. Including, but not limited to Theresa Earenfight, *Catherine of Aragon: Infanta of Spain, Queen of England* (Penn State University Press 2021); Retha M Warnicke, *Elizabeth of York and Her Six Daughters-in-Law: Fashioning Tudor Queenship, 1485–1547* (Palgrave Macmillan 2017); Elizabeth Norton, *Jane Seymour: Henry VIII's True Love* (Amberley 2011); Susan James, *Catherine Parr: Henry VIII's Last Love* (The History Press 2008); Eric Ives, *The Life and Death of Anne Boleyn: 'The Most Happy'* (Blackwell Publishing 2005); David Starkey, *Six Wives: The Queens of Henry VIII* (Vintage 2004); Retha M Warnicke, *The Marrying of Anne of Cleves: Royal Protocol in Early Modern England* (CUP 2000).

2. Janette Dillon, 'Monarchs on Trial at the Early Modern Court' in Erika Fischer-Lichte and Benjamin Wihstutz (eds), *Performance and the Politics of Space: Theatre and Topology* (Routledge 2013): 48–62; Maria Teresa M Prendergast, '"Inventions Invented against Me": The Five Catherines of Aragon at the Blackfriars Trial' *Renaissance Quarterly* 77 (2024): 529–72; Margery S Schauer and Frederick Schauer, 'Law as the Engine of State: The Trial of Anne Boleyn' *William & Mary Law Review* 49 (1980): 49–84.

3. BL Cotton MS Vespasian F III f.33; Susan James, *Kateryn Parr: The Making of a Queen* (Ashgate 1999): 168–9.

4. John Brewer, James Gairdner and Robert Brodie (eds), *Letters and Papers, Foreign and Domestic of the Reign of Henry VIII, 1509–1547*, 21 vols (Longmans 1862–1932) (hereafter *LP*) XIX: 1029.

5. BL Cotton MS Titus B I f. 525; BL Cotton MS Vespasian F XIII f. 237.

6. *LP*, V: 1292.

7. TNA C 54/381 ('general governor and rectrice'); David E C Yale (ed.), *Sir Matthew Hale's Prerogatives of the King* (Selden Society 1975): 101, 103.

8. Thomas Rymer, *Foedera, conventiones, litterae et cujuscunque generis acta publica . . . In lucem missa de mandato Reginae* (1704), vol. 13: 372–3; *LP*, I: 2065; *LP*, I: 2136; TNA SP 1/189 f. 184.

9. TNA E 36/215 f.264; Janel Mueller, *Katherine Parr: Complete Works and Correspondence* (University of Chicago Press 2014): 54, 67, 71–3.

10. *LP*, I: 2136/30; *LP*, I: 2136/5.

11. Paul L Hughes and James F Larking (eds), *Tudor Royal Proclamations: Volume 1, The Early Tudors 1485–1553* (Yale University Press 1964): 336–7.

12. *LP*, I: 2143; TNA E 36/215 f. 267.

13. *LP*, I: 2055/47.

14. Micheline White, 'Katherine Parr: Wartime Consort and Author' in Aidan Norrie, Carolyn Harris, Joanna L Laynesmith, Danna R Messer and Elena Woodacre (eds), *Tudor and Stuart Consorts: Power, Influence, and Dynasty* (Palgrave Macmillan 2022): 149–51; Micheline White, 'Katherine Parr, Translation, and the Dissemination of Erasmus's Views on War and Peace' *Renaissance and Reformation* 43 no. 2 (2020): 67–91; Micheline White, 'The Psalms, War and Royal Iconography: Katherine Parr's Psalms or Prayers (1544) and Henry VIII as David' *Renaissance Studies* 29 no. 4 (2015): 554–75.

15. Warnicke, *Elizabeth of York* (n 1) 68–78; Katia Wright, 'A Dower for Life: Understanding the Dowers of England's Medieval Queens' in Aidan Norrie, Carolyn Harris, Joanna L Laynesmith, Danna R Messer and Elena Woodacre (eds), *Later Plantagenet and the Wars of the Roses Consorts: Power, Influence, and Dynasty* (Palgrave Macmillan 2023): 145–50.

16. Elena Woodacre and Ana Maria S A Rodrigues, 'The Economic Power of European Queens: Sources, Resources and Expenditure' *Journal of Medieval History* 50 no. 5 (2024): 573–80; Elena Woodacre, 'From the Everyday to the Extraordinary: Economic Evidence for Queenship in the Chamber Books' *Journal of Medieval History* 50 no. 5 (2024): 598–614; Michelle Seah, 'My Lady, the Lord of the Manor': The Economic Roles of Late Medieval Queens' *Parergon* 37 no. 2 (2020): 9–36; Michelle Seah, 'Gifts and Rewards: Exploring the Expenditure of Late Medieval English Queens' *Journal of Medieval History* 50 no. 5 (2024): 581–97; Michelle Seah and Katia Wright, 'The Medieval English Queen as Landholder Some Reflections on Sources and Methodology' in Cathleen Sarti (ed.), *Women and Economic Power in Premodern Royal Courts* (Amsterdam University Press 2020): 9–34; Attila Bárány, 'Medieval Queens and Queenship: A Retrospective on Income and Power' in Judith Rasson and Marianne Sághy (eds), *Annual of Medieval Studies at CEU*, vol. 19 (Central European University 2013): 149–201.

17. Michelle Beer, 'A Queenly Affinity? Catherine of Aragon's Estates and Henry VIII's Great Matter' *Royal Studies Journal* 6 no. 2 (2019): 5–25.

18. Dakota Hamilton, 'Learned Councils of the Tudor Queens Consort' in Charles Carlton, Robert L Woods, Arthur J Slavin and Mary L Robertson (eds), *State, Sovereigns and Society in Early Modern England: Essays in Honour of A. J. Slavin* (St Martin's Press 1998): 89.

19. TNA E 363/10/19; 27 Henry VIII c 51; TNA E 315/2/12.

20. TNA E 312/12/2.

21. TNA E 315/460/1; TNA SC 2/173/1-4.

22. TNA DL 30/59/735.

23. TNA E 163/11/47/1.

24. TNA E 315/479/10; Anne Crawford, 'The Queen's Council in the Middle Ages' *English Historical Review* 116 no. 469 (2001): 1193–211.

25. *LP*, XX/2: 440.

26. *LP*, VII: 352.

27. Hamilton (n 18): 87–9.

28. BL Cotton MS Vespasian C XIV ff.252–6, 281; TNA E 315/409/8.

29. TNA E 329/479.

30. TNA E 321/41/167.

31. *LP*, X: 1219.

32. TNA E 361/8.

33. Beer (n 17): 5–25.

34. Beer (n 17): 15–25.

35. *LP*, IX: 52; TNA SP 1/95 ff.48–49; *LP*, IX: 525.

36. TNA E 163/21/3 (no. 129); TNA E 315/172 (no. 1 and 2).

37. John C Parsons, 'The Queen's Intercession in Thirteenth-Century England' in Jennifer Carpenter and Sally-Beth MacLean (eds), *The Power of the Weak: Studies on Medieval Women* (University of Illinois Press 1995): 147–77; Louise Tingle, *Chaucer's*

*Queens: Royal Women, Intercession and Patronage in England, 1328–1394* (Palgrave Macmillan 2020): 33–79; Joanna L Laynesmith, *The Last Medieval Queens: English Queenship, 1445–1503* (OUP 2004): 72–130.

38. Gordon Kipling, *Enter the King: Theatre, Liturgy and Ritual in the Medieval Civic Triumph* (OUP 1998): 320–1, 324–5, 327–8.

39. Rawdon Brown (ed.), *Calendar of State Papers Relating to English Affairs in the Archives of Venice, Volume 2, 1509–1519* (Longmans 1867) (henceforth *CSPV*): 879, 887.

40. Edward Hall, *Hall's Chronicle* (first published 1548, J Johnson 1809): 590–1; *CSPV* II 887: 'All the prisoners were paraded handcuffed, in pairs, and in their shirts, with ropes round their necks, as if about to be executed; and they threw themselves on their knees, shouting, "Mercy!" The Cardinal and all the peers (*tutti li Baroni*) likewise knelt before the King, and begged the prisoners' lives'.

41. Greg Walker (ed.), 'The Enterlude of the Godly Queene Hester' in *Medieval Drama: An Anthology* (Wiley 2000): 415 (ll. 277–9); Greg Walker, '"To Speak Before the King, It Is No Child's Play": Godly Queen Hester in 1529' *Theta* 10 (2013): 69–79.

42. BL Cotton MS Vitellius C XI ff.213–220v.

43. Kipling (n 38): 323.

44. Hall (n 40): 803; Alice Hunt, *The Drama of Coronation: Medieval Ceremony in Early Modern England* (CUP 2008): 56–76.

45. Hunt (n 44) 39–53 (quotation at 52).

46. 24 Henry VIII c 12.

47. Albert F Pollard (ed.), *Tudor Tracts 1532–1588* (Westminster Archibald Constable and Co 1903): 16–17 ('The Noble Tryumphaunt Coronacyon of Quene Anne'); Hall (n 40): 801; Kipling (n 38): 330–31.

48. TNA SP 1/94 ff.99–100.

49. *LP*, X: 185.

50. *LP*, X: 383.

51. TNA SP 2/o ff.103–4.

52. TNA SP 1/95 f.49.

53. TNA SP 1/95 f.48.

54. TNA E 101/422/1 ff 25v-26v; TNA SP 1/95 f.49. Musard mentions that prior to his incarceration he was 'before your grace at Gloucester', which implies he was aware of the royal presence, either because he saw the king while in the city or abbey precincts or else appeared at a court hearing held there.

55. *LP*, X: 952; *LP*, XI: 8; *LP*, XVII: 1183.

56. *LP*, XI: 1144, 1250.

57. *LP*, XII/1: 1099.

58. *LP*, IV: 6076.

59. *LP*, XI: 7.

60. *LP*, XI: 860.

61. Anthony Musson and Chantal Stebbings (eds), *Making Legal History: Approaches and Methodologies* (CUP 2012).

62. Walker (ed.), 'Queene Hester' (n 41): 413 (ll. 177–8, 182–3).

# References

## Printed sources

Bárány, Attila, 'Medieval Queens and Queenship: A Retrospective on Income and Power' in Judith Rasson and Marianne Sághy (eds), *Annual of Medieval Studies at CEU*, vol. 19 (Central European University 2013): 149–201

Beer, Michelle, 'A Queenly Affinity? Catherine of Aragon's Estates and Henry VIII's Great Matter' *Royal Studies Journal* 6 no. 2 (2019): 5–25

Brewer, John, Gairdner, James and Brodie, Robert (eds), *Letters and Papers, Foreign and Domestic of the Reign of Henry VIII, 1509–1547*, 21 vols (Longmans 1862–1932)

Brown, Rawdon, (ed.), *Calendar of State Papers Relating to English Affairs in the Archives of Venice, Volume 2, 1509–1519* (Longmans 1867)

Crawford, Anne, 'The Queen's Council in the Middle Ages' *English Historical Review* 116 no. 469 (2001): 1193–211

Dillon, Janette, 'Monarchs on Trial at the Early Modern Court' in Erika Fischer-Lichte and Benjamin Wihstutz (eds), *Performance and the Politics of Space: Theatre and Topology* (Routledge 2013)

Earenfight, Theresa, *Catherine of Aragon: Infanta of Spain, Queen of England* (Penn State University Press 2021)

Hall, Edward, *Hall's Chronicle* (first published 1548, J Johnson 1809)

Hamilton, Dakota, 'Learned Councils of the Tudor Queens Consort' in Charles Carlton, Robert L Woods, Arthur J Slavin and Mary L Robertson (eds), *State, Sovereigns and Society in Early Modern England: Essays in Honour of A. J. Slavin* (St Martin's Press 1998): 87–102

Hughes, Paul L and Larking, James F (eds), *Tudor Royal Proclamations: Volume 1, The Early Tudors 1485–1553* (Yale University Press 1964)

Hunt, Alice, *The Drama of Coronation: Medieval Ceremony in Early Modern England* (CUP 2008)

Ives, Eric, *The Life and Death of Anne Boleyn: 'The Most Happy'* (Blackwell Publishing 2005)

James, Susan, *Kateryn Parr: The Making of a Queen* (Ashgate 1999)

James, Susan, *Catherine Parr: Henry VIII's Last Love* (The History Press 2008)

Kipling, Gordon, *Enter the King: Theatre, Liturgy and Ritual in the Medieval Civic Triumph* (OUP 1998)

Laynesmith, Joanna L, *The Last Medieval Queens: English Queenship, 1445–1503* (OUP 2004)

Mueller, Janel, *Katherine Parr: Complete Works and Correspondence* (University of Chicago Press 2014)

Musson, Anthony and Stebbings, Chantal (eds), *Making Legal History: Approaches and Methodologies* (CUP 2012)
Norton, Elizabeth, *Jane Seymour: Henry VIII's True Love* (Amberley 2011)
Parsons, John C, 'The Queen's Intercession in Thirteenth-Century England' in Jennifer Carpenter and Sally-Beth MacLean (eds), *The Power of the Weak: Studies on Medieval Women* (University of Illinois Press 1995): 147–77
Pollard, Albert F (ed.), *Tudor Tracts 1532–1588* (Westminster Archibald Constable and Co 1903)
Prendergast, Maria Teresa M, '"Inventions Invented against Me": The Five Catherines of Aragon at the Blackfriars Trial' *Renaissance Quarterly* 77 (2024): 529–72
Rymer, Thomas, *Foedera, conventiones, litterae et cujuscunque generis acta publica . . . In lucem missa de mandato Reginae* (1704)
Schauer, Margery S and Schauer, Frederick, 'Law as the Engine of State: The Trial of Anne Boleyn' *William & Mary Law Review* 49 (1980): 49–84
Seah, Michelle, 'My Lady, the Lord of the Manor': The Economic Roles of Late Medieval Queens' *Parergon* 37 no. 2 (2020): 9–36
Seah, Michelle, 'Gifts and Rewards: Exploring the Expenditure of Late Medieval English Queens' *Journal of Medieval History* 50 no. 5 (2024): 581–97
Seah, Michelle and Wright, Katia, 'The Medieval English Queen as Landholder Some Reflections on Sources and Methodology' in Cathleen Sarti (ed.), *Women and Economic Power in Premodern Royal Courts* (Amsterdam University Press 2020): 9–34
Starkey, David, *Six Wives: The Queens of Henry VIII* (Vintage 2004)
Tingle, Louise, *Chaucer's Queens: Royal Women, Intercession and Patronage in England, 1328–1394* (Palgrave Macmillan 2020): 33–79
Walker, Greg (ed.), 'The Enterlude of the Godly Queene Hester' in *Medieval Drama: An Anthology* (Wiley 2000)
Walker, Greg, '"To Speak Before the King, it is no Child's Play": Godly Queen Hester in 1529' *Theta* 10 (2013): 69–79
Warnicke, Retha M, *Elizabeth of York and Her Six Daughters-in-Law: Fashioning Tudor Queenship, 1485–1547* (Palgrave Macmillan 2017)
Warnicke, Retha M, *The Marrying of Anne of Cleves: Royal Protocol in Early Modern England* (CUP 2000)
White, Micheline, 'The Psalms, War and Royal Iconography: Katherine Parr's Psalms or Prayers (1544) and Henry VIII as David' *Renaissance Studies* 29 no. 4 (2015): 554–75

White, Micheline, 'Katherine Parr, Translation, and the Dissemination of Erasmus's Views on War and Peace' *Renaissance and Reformation* 43 no. 2 (2020): 67–91
White, Micheline, 'Katherine Parr: Wartime Consort and Author' in Aidan Norrie, Carolyn Harris, Joanna L Laynesmith, Danna R Messer and Elena Woodacre (eds), *Tudor and Stuart Consorts: Power, Influence, and Dynasty* (Palgrave Macmillan 2022)
Woodacre, Elena, 'From the Everyday to the Extraordinary: Economic Evidence for Queenship in the Chamber Books' *Journal of Medieval History* 50 no. 5 (2024): 598–614
Woodacre, Elena and Rodrigues, Ana Maria S A, 'The Economic Power of European Queens: Sources, Resources and Expenditure' *Journal of Medieval History* 50 no. 5 (2024): 573–80
Wright, Katia. 'A Dower for Life: Understanding the Dowers of England's Medieval Queens' in Aidan Norrie, Carolyn Harris, Joanna L Laynesmith, Danna R Messer and Elena Woodacre (eds), *Later Plantagenet and the Wars of the Roses Consorts: Power, Influence, and Dynasty* (Palgrave Macmillan 2023)
Yale, David E C (ed.), *Sir Matthew Hale's Prerogatives of the King* (Selden Society 1975)

## Manuscript sources

BL Cotton MS Titus B
BL Cotton MS Vespasian C
BL Cotton MS Vespasian F
BL Cotton MS Vitellius C
TNA C 54/381
TNA DL 30/59/735
TNA E 36/215
TNA E 101/422/1
TNA E 163/11/47/1
TNA E 163/21/3
TNA E 312/12/2
TNA E 315/2/12
TNA E 315/172
TNA E 315/409/8
TNA E 315/460/1
TNA E 315/479/10
TNA E 321/41/167
TNA E 329/479
TNA E 361/8
TNA E 363/10/19

TNA SC 2/173/1-4
TNA SP 1/95
TNA SP 1/94
TNA SP 1/189
TNA SP 2/0

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24 Henry VIII c 12
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Chapter 4

# Legalised racial passing and miscegenation in colonial Jamaica

Justine K Collins

> *It was in the intimate area of sexual relationships that the greatest damage was done to the white apartheid policy.*[1]

## Introduction

One of the inevitable fallouts from colonial slavery was the miscegenation that occurred and resulted in mixed-race children. This propelled the colonists' apartheid agenda because it led to the stratification of plantation society by gradations of colour, with proximity to whiteness becoming equated to elevated status. Typically, within colonial slavery, mixed-race or 'mulatto' children were born of sexual exploitation and violence by their white enslavers. This was widespread despite legal codes enacted to curtail it. Therefore, children of mixed heritage within Caribbean slavery plantations were faced with a complex reality of stigma and taboo. However, with the progression of the slavery regime, and in a uniquely Jamaican phenomenon, the extremely affluent planters there wanted to be recognised as fathers to their offspring, and to have the rights and privileges which attached to the children of Englishmen bestowed upon their progeny, regardless of race. Additionally, these same rights and privileges were sought by very rich free persons of colour. In both cases, the method used was application

by private bill. This chapter will explore Jamaican racialised society, detail the particular rights and privileges these private bills sought to address and ultimately illustrate that these bills were used to facilitate and legitimise apartheid through racial passing, upholding Black erasure in colonial Jamaica.[2]

This chapter builds on the pioneering work done by Hurwitz and Hurwitz in the 1960s on private bills. Hurwitz and Hurwitz provided details, not just on how private bills were passed, but also on the reasons they were sought.[3] This chapter adds to this scholarship by situating it within the context of the racialised Jamaican society within which these bills were enacted and the fragmented race relations that the bills exacerbated. Furthermore, it looks at bills relating to manumission and at the wider societal divides which preceded, and at times were catalysed by, these private bills.

## Race within Jamaican colonial society

Colonisation created a race-making enterprise: as Monique D A Kelly notes, while whiteness became associated with power, affluence and freedom, Blackness came to signify being infrahuman, impoverished and property. Kelly observes that the 'racialised systems of social closure that emerged in Jamaica . . . often contrasted with the racial caste system of hypodescent that characterised the United States'.[4] This was largely because the settlements of Jamaica and the United States differed greatly. Jamaica was originally thought of as a colony of absenteeism, with most planters residing in Britain. However, this was not accurate: there existed a considerable number of white settlers. These were predominantly male, the typical ratio being 150 men to 100 women.[5] The scarcity of white settler women was believed to be the reason for the rise and predominance of miscegenation – although miscegenation also occurred within other colonies, regardless of the presence of European women.[6]

By the late eighteenth century, the mixed-race population of Jamaica had doubled whilst the white population stayed unchanged. (The enslaved population, however, greatly outnumbered every other group.) This emergence of mixed-race persons was used to further stratify Jamaican society. A rank of social status and order was created, based on skin colour and family connections at the time of one's birth. The ranking, which ranged from the lowest strata of persons of colour to the uppermost, was as follows:[7]

- Negroe – A person born from the union of two Black parents.
- Sambo/Zambo – A person born from the union of a mulatto parent and a Black parent.
- Mulatto – A person from the union of one white parent and one Black parent.
- Quadroon – A person born from the union of one white parent and one mulatto parent.
- Mustee – A person born from the union of one white parent and one quadroon parent.
- Mustifino – A person born from the union of one white parent and one mustee parent.
- Quintoon – A person born of the union of one white parent and one mustifino parent.
- Octoroon – A person born of the union of one white parent and one quintoon parent.

The terms used to describe these differing groups of mixed-race persons were borrowed from the Iberians. As Leonard Broom argues, Spanish definitions of colour long persisted in Jamaica, and in the eighteenth century, this led to the recognised gradations of colour listed above. Don Anthonio de Ulloa, a Spanish naval officer, scientist and administrator, confirmed a similar, although smaller, list as existing in the Spanish colonies:

> Among the tribes which are derived from intermixture of the whites and negroes, the first are the mulattoes; next to those are the terce-rones, produced by a white and a mullato with some approximation to the former but not so near to obliterate their origin. After these follow the quarterones, proceeding from white and terceron. The last are the quinterones, who owe their origin to the white and quarteron. This is the last gradation, there being no visible difference between them and the whites, either in colour or features; Nay they are often fairer than Spaniards.[8]

De Ulloa placed emphasis on the point that, within the last form of gradation, whiteness prevailed. Indeed, similarly, in Jamaica, the child of a white and a 'mustee' was eventually referred to as 'English, free of taint'.[9] Such sentiments signified that proximity to whiteness and/or white passing was the desire and benchmark for Englishness. Some settlers sought to use these terms to apply logic to the degrees of whiteness. Politician and planter Bryan Edwards suggested that civil privileges be extended to the 'mulatto' strata based on the level of their admixture.[10] Additionally, Edwards noted at the close of the eighteenth century that

> [t]he children of a White and Quintoon consider themselves as free from all taint of the Negro race. Every person is so jealous of the order of their tribe or cast, that if, thru inadvertence, you call them by a degree lower than what they actually are, they are highly offended.[11]

This obsession with skin colour and racial origins catalysed the blurring and confusion of racial lines: a person's rank depended on their degree of whiteness or Blackness. Those who were darker in hue than 'mustifino' were legally defined as 'mulatto'. This group was itself divided into, first, the 'free browns', which included 'mustees', 'quadroons' and 'mulattoes' and, second, free Blacks, such as 'sambos' and 'negroes'.[12]

From 1733, a system of racial passing had existed within Jamaican society.[13] Persons who were lighter in complexion than a 'mustee' were legally defined as white and received the full rights, privileges and immunities attached to a natural-born English person. This legally systemised racialisation began in 1733, when the Jamaican legislature determined that

> no person who is not above the three degrees removed in a lineal descent from the negroe ancestor exclusive, shall be allowed to vote or poll in elections; and no one shall be deemed a mulatto after the third generation, as aforesaid, but that they shall have all the privileges and immunities of His Majesty's white subjects of this island, provided that they are brought up in the Christian religion.[14]

An example of this is that of the children of George O'Mealley Esq, an affluent white planter of St John Parish in Jamaica. His offspring, Anne, Bridget and George, were from a mixed union with a free 'mulatto' woman named Anne Davis. These three siblings were racially passed as white and were subsequently legislated as such in 1794, due to their complexions.[15] This was not an isolated instance; those from other racially defined groups were treated similarly, based on their visible degree of lack of Black affinity. For example, a free 'quadroon' man, John Moncrieff, and his wife and children were all given the same rights, privileges and immunities as natural-born English subjects. Moncrieff's degree of whiteness was enough to secure his and his family's ascent on the racial hierarchy. They were thus racially passed as white *and* therefore English due to their proximity to whiteness.[16]

Lightness was therefore assessed as the avenue for guaranteed higher status. Moreover, 'it became valued for itself, and status became equated with lightness'.[17] This was because caste-like systems, those which ascribed social status, were unfettered enough in the island colonies

to allow considerable social mobility between the various groups – the exception being the darker-skinned Africans. This social creation of the 'mulatto' empowered the planter class to perpetuate their domination of the array of stratified 'races' or 'tribes', which in turn served to entrench the plantation enslaved societies. Some decades prior, planter and historian Edward Long shared similar points of view to Bryan Edwards',[18] noting that 'those beyond the third generation were called English and consider themselves as free from all taint of the negroe race'. He added that 'all mulattoes ought to be regarded more highly than the blacks, above whom, they ought to hold some degree of distinction'.[19]

The systematic acceptance of miscegenation in colonial Jamaica was predominantly allowed due to the persistence of a male-dominated society. Jamaica was the only English-speaking colony where the male sex ratio stayed high, which was a key factor in the island's being the only one to 'give legislative countenance to the social ascent of mulattoes'.[20] This fact reveals the complexity of Caribbean plantation regimes. Despite a plethora of commonalities, certain issues remained distinct in Jamaica due to the specific nature of that colony and the process whereby it was colonised and settled. In contrast, within contemporary Barbados, a person 'whose original extract shall be proved to have been from a Negroe' was prohibited from voting and testifying against white persons.[21] Barbadian society appears not to have placed as much emphasis on delineating racial groups by skin colour. This does not mean that Barbados was void of racial grouping, but rather that the colonial elite there were not as focused on creating an array of groups to illustrate social standing, assimilating some to whiteness and thus facilitating Black erasure. The situation in Jamaica was truly unique to that society.

In addition, Winthrop D Jordan reports that there was a notable distinction in the perception and treatment of mixed-race persons in the colonial Caribbean as a whole, compared to those within the colonial enslaved societies of North America.[22] One significant example was the fact that enslaved mixed-race persons in the Caribbean were typically not given field work but were confined to domestic duties in plantation homes and to work as tradesmen.[23] This was not the case in colonial America. There, any knowledge of Blackness determined one's treatment and duties regardless of the visibility of that Blackness. Thus, the kind of racial passing that existed in Jamaica was not in the least encouraged in American colonial society. This was because mixed-race persons there, whatever their degree of whiteness, were perceived and treated as Black. Where passing did occur, it was with the complete silence of those persons of colour who were engaged in the practice.[24]

## Nature of private bills

Enslaved persons were regarded as property throughout the English-speaking Caribbean. Jamaica was no exception. The Jamaican Comprehensive Slave Code (1664) referred to the enslaved as chattels and defined them in latter editions as estate real.[25] As property, whether chattel or real estate, the enslaved could be mortgaged, hired, sold for debts, bequeathed to heirs, distributed in estate settlements, disposed of in accordance with the inheritance laws for real estate, entailed and subjected to a widow's right of dower. They could be valued in currency or sugar.[26]

Even where Black or mixed-race persons were free or liberated via manumission, they were still shut out of social, political and legal life. Their legal freedom did not give them the ability to have lives materially different from the enslaved. Hurwitz and Hurwitz noted that 'in all judicial proceedings they were relegated to slave courts where their testimony carried no more weight than that of the slaves'.[27] To that end, the slave code prescribed that neither free mixed-race people, Indigenous people, Black people nor enslaved people could give testimony in a trial against a white person.[28] Furthermore, although free Black and mixed-race persons could acquire property in Jamaica, the law provided no more rights than this.[29] Indeed, the law courts held that manumission was 'nothing more than the abandonment or release of property authority', which meant that no civil or political rights were attached to this new state of liberation.[30] Free people of colour could not hold office, whether by election or appointment, and were excluded from the franchise. The Jamaican legislature cemented this by enacting laws which prohibited them from holding public office and from sitting in the Assembly.[31]

Where free persons of colour did acquire and own land, the amount they could possess was limited. The colonial English-speaking Caribbean was a place where the English sense of property and its sanctity were transferred,[32] and property ownership translated to status. The more property one had, the more inflated one's status was. Propertied, free persons of colour, a group small in number, sought to attain freedoms entitled to Englishmen which were denied to them by the common law, the law which upheld the rights and privileges of white property owners. To do so, they relied on an old mechanism used in England, where the elite would petition the legislature to enact private bills on their behalf to procure changes to their legal position.[33]

The private bill process was initiated when a petitioner presented their request to the Jamaican House of Assembly, the lower house of the Jamaican legislature.[34] Following the petition, a member of the House

of Assembly could introduce the bill. The bill would become law if it was passed by both houses of the Jamaican legislature and authorised by the Governor. A private bill provided specific and limited privileges. This meant that petitioners would usually try to get multiple bills passed simultaneously, enabling them to attain as many privileges as they could within a shorter period.[35]

A significant number of free people of colour succeeded in their bids for private bills. However, it was exceptional for an application to receive *all* the rights and privileges afforded to an Englishman. As Hurwitz and Hurwitz noted, the siblings Susan and Robert Halked, the offspring of a 'mulatto' woman and an English man, were granted limited privileges in 1746.[36] Six years later, Robert was successful in obtaining the full rights of a citizen. The Assembly concluded that he was entitled to the 'same rights, liberties, franchises, and immunities that His Majesty's liege people do now enjoy'. They determined that Halked was the sort of gentleman that such rights and privileges should be bestowed upon; after all, he was raised with 'the principles of the Church of England', had 'the full benefits of a liberal education' and was a respected surgeon. The Assembly members found that Halked was a person 'of known merit and abilities' and that it was in the public interest for him to be granted 'all the benefits and advantages of Your Majesty's law and government'.[37] Robert Halked's petition was exceptional in that he received the full rights and privileges of an Englishman. This sort of grant was only given in rare cases where people had extreme wealth and demonstrated this via their assets, education, conformity to the established church and ability to travel.

A private bill usually included a justification in its preamble. Hurwitz and Hurwitz observed that this practice was established in England, where the preamble to a private bill would state why it was expedient to grant a petition.[38] However, in Jamaica, the requirement was due to the Assembly's belief that free people of colour, like their enslaved counterparts, were not generally entitled to any rights or privileges.[39] The bills would typically incorporate a description of the exceptional qualifications of the beneficiary. A total of sixty-two Acts inserted descriptions of the beneficiaries, where the petitioners were free people of colour, as 'having considerable property in land and slaves'.[40] These assets and possessions demonstrated their ability to 'support themselves in a decent manner far above the level of the other free mulattoes and Negroes'. Where the petitioners were white fathers, the descriptions would assert that they had 'built up an estate of a very considerable amount' and had given their offspring an education 'to enable them to earn their bread in a reputable manner'.[41] A typical though insufficient additional requirement

was that the beneficiaries be 'baptised and instructed in the principles of the Christian religion'.[42]

What was particular about such cases was the constant mention of race throughout the private Acts, which bestowed rights, privileges and immunities as if the beneficiaries were natural-born English persons with two white parents.[43] These Acts all noted that the allowances were made to elevate the beneficiaries above the level of ordinary people of colour.[44] They also addressed the issue of the beneficiaries' 'unfortunate' birth. Having 'black blood', regardless of the extent, made them liable to the same 'pains, penalties and punishments' as free 'negroes' and 'mulattoes'.[45] Furthermore, it was demonstrated that ultimately what separated them from the less fortunate of the coloured class was their ability to transcend their racial class due to their education, religious practice and wealth/property.

There were also several mentions of the beneficiaries' offspring or 'spue', noting that the beneficiaries' rise in social standing, and particularly their property and wealth, would transfer to their extant and future children. However, such wealth transfers could only occur if those children were from unions with white fathers or white mothers.[46] In order to obtain the sought-after benefits, one Act specifically stipulated that the offspring and grandchild of an English merchant named John Clifford were 'within two removes of white people'.[47] This statement illustrated not only the level of focus placed on blurring racial lines, but also the emphasis placed upon eradicating at least any visible presence of Black ancestry. Many of the Acts elaborated on the desirability and necessity of acquiring affinity to one's white ancestors and the beneficiaries' ability to do so due to their new social standing.[48] The Acts therefore sought to gatekeep who could ascend the racial hierarchy and also to define where persons of colour fell within the spectrum of 'mixity'.[49] Effectively, they weaponised these privileged people of colour against the remainder of their kin who were not in the same position as themselves. Ultimately, these private Acts, and the racial groupings they expressed, served to further divide people of colour.

This division served two purposes. First, it kept those with affinity to whiteness separate from other free people of colour (those predominantly Black) by classing them as white and thereby securing their loyalty in the face of any uprising. Secondly, those classed as free Blacks were also differentiated from enslaved Blacks due to the loyalty demonstrated by their willingness to report an insurrection rather than joining it, through which action they secured their free status (see the section titled 'Private Acts manumitting the enslaved' below). Scholars contend that the social creation and greater acceptance of free people of colour who were 'the

lighter-skinned offspring of oftentimes violent and forced sexual assaults between white planters and their slaves, whom the planters manumitted or freed upon their death actually worked to strengthen slave societies in the Caribbean'.[50] Such arguments emphasise how embedded the racialised structure of the colonies was. The aim of this differentiated treatment was to maintain the status quo by stratifying and even severing racial lines among persons of colour.

## The Maroon Wars and the colonial militias

As noted, the Jamaican colonial legislature prescribed in 1733 that 'no person who is not above the three degrees removed in a lineal descent from the negro ancestor exclusive, shall be allowed to vote or poll in elections'.[51] In fact, the passage of this sort of disabling Act commenced even prior to 1733. It began in the early eighteenth century, following the emergence of petitions for private bills for free people of colour. Disabling Acts excluded free mixed-race persons from employment in political or public office and from supervisory positions within plantation estates.[52] It was this type of law which paved the way for later restrictive laws on judicial rights and property as a means of restraining the growth of the wealthy group of mixed-race people. One of the more important of these later restrictive Acts was the Legacy Limitation Act 1761, which limited the amount of property that could be devised to persons of colour by white settlors (see the next section).[53] Such Acts were enacted, not simply to qualify the rights and privileges afforded to free people of colour, but also to appease ever-growing white fears and anxieties.[54] These fears were heightened after the occurrence of Tacky's Revolt between 1760 and 1761. The Jamaican Assembly passed the 1761 Act 'to remedy the evils arising from irregular assemblies of slaves'.

At the forefront of the plantocracy's usual worries was the existence of the Maroon communities. From the start of the English colonisation of Jamaica in 1655, there existed the threat of the Maroons, who were initially the abandoned enslaved persons from the Spanish occupation of the island.[55] These Maroons fled to the mountain terrains when the English arrived and, due to their familiarity with the island, were able to attack settlements to attract and procure enslaved runaways at their will. The Maroon settlements proved impenetrable to the white settlers, who feared for their safety if enslaved persons absconded to Maroonage or participated in uprisings.

The Maroon situation was always volatile, and white settlers were extremely anxious about it. However, this became particularly acute in

the 1730s after failed missions against the Maroons by local regiments. The colonial whites were extremely anxious of this growing threat, especially because of fears of a shortage of white gentlemen on the island available to fight and a mistrust of the poorer whites, particularly the Irish. They were deemed not too far removed from the enslaved and regarded as 'bad soldiers' with 'no obligations either of honour or interest for the defence of their master's propertys'.[56] In his letters, Governor Hunter revealed that at the heart of English fears was the belief that the Irish would join with the Spanish or the French in the case of an invasion, since they were 'Papists' and therefore had Catholic commonalities with the two European powers.[57]

This lack of faith in Jamaican white settlers led the legislature to establish a law which forcibly drafted free persons of colour into the militia. The government ratified a statute in 1730 to coerce those drafted persons of colour 'to go upon all emergencies in pursute after rebellious negros, at the command of any magistrate, or military officer'.[58] Given how free people of colour were viewed and the significant restrictions on their route to attaining rights and privileges, it seems paradoxical and even hypocritical for the colonial government to rely on them for its own defence. In fact, the Board of Trade were surprisingly uneasy with this law and recommended its repeal as they felt it to be inequitable to free people of colour. They added that it would be 'very prudent, eminently to reward all extraordinary examples of fidelity and virtue amongst the Negroes of all denominations'.[59] The Board of Trade essentially wanted the planter class to treat free people of colour decently in order to procure their support. Hurwitz and Hurwitz noted that, just a few years later, this sort of thinking was also advanced by Edmund Burke. Burke contended that the security of the white population would be cemented by having the backing of a class sandwiched between the plantocracy and the enslaved.[60]

The Act was subsequently disallowed, and the Jamaican Assembly sought to formulate better methods for recruiting free people of colour.[61] As Hurwitz and Hurwitz explained, one of these vital methods was 'generously' allowing the passage of a greater number of private bills, in contrast to only four bills passed in the years before 1738. Furthermore, in 1738 an Act was passed 'for Rendering Free Negroes, Mulattoes, and Indians More Useful in Forming Some of them Into Companies with Proper Encouragement to Pursue and Destroy Rebellious Negroes'. Previously, free persons of colour were prohibited from holding commissions as soldiers, nor could they serve in the cavalry.[62] The legislature sought to remedy this by allowing those 'worthy' persons of colour to rise above their station, a position which previously they were deemed to be 'condemned by birth' from achieving.[63] This law was made to appease the

free Blacks, who wanted to gain more privileges and to raise their social status – though this was only done in exchange for their 'willingness' to help fight and suppress Maroon uprisings.

In addition to the rise in the number of individual private bills granted to free people of colour, they were also given recognition as a distinct group.[64] As previously mentioned, from the advent of plantation colonial life, free persons of colour, like the enslaved, could only give testimony in slave courts against the enslaved. In 1748, the legislature created 'An Act for Making Free Negroes, Indians and Mulattoes Evidence in all Causes Against One Another in all the Courts of the Island'. This Act gave them the right to testify in regular courts in cases where they alone were involved. This right to access regular courts was, however, not permitted in actions against white persons, or against other free people of colour who had been granted the right of testimony by private bill.[65]

## The Legacy Limitation Act 1761

The First Maroon War ended in 1740. However, despite the contributions of free people of colour to the militia, the government's fears over their growing wealth did not wane.[66] The situation of free Black people was even more limited. Between 1707 and the eventual disabling Acts, almost no free Blacks were allowed privileges not previously enjoyed by them. The first Black petitioner was John Williams, who applied to the Jamaican legislature for the right to give testimony in court and to be tried according to the laws, customs and privileges of Englishmen.[67] Mr Williams' petition was granted.[68] He was of such affluence that his son was sent abroad to England, as an experiment, to gain an English education in mathematics at the University of Cambridge. Upon his return to Jamaica, the son, Francis Williams, set up a school within Spanish Town. Approximately six days after John Williams' petition was granted, another petitioner, Manuel Bartholomew, was also granted the same rights.[69] Nevertheless, although the petitions by both Williams and Bartholomew were successful, they were only given the privileges enjoyed by all white men in judicial proceedings. Both Acts stipulated that, aside from the granted rights, the petitioners 'shall be and remain to all intents and purposes in the state and circumstances of a free Negro as before this act, any law, custom, or usage to the contrary notwithstanding'. This was obviously done to avoid any confusion or ambiguity about the extent of the rights they had been granted, specifying that they were limited just to those judicial privileges.[70]

Later private Acts differed from earlier ones like John Williams'. The legislature had particularly asserted that the beneficiaries' growth in

property/wealth entitled them to judicial rights.[71] However, these rights were seen as detrimental to the position of white property owners. The plantocracy believed that, as free people of colour acquired more property, the limited rights made available to them via private bills would no longer suffice. Being owners of vast properties meant that they would desire and demand full rights. Their ultimate fear was that this closing of the wealth gap would inevitably lead to the uncontrollable blurring and narrowing of status between races, thus destabilising society's order.[72] Edward Long noted that, in 1762, the property holdings of free people of colour were in excess of £300,000.[73]

The enactment of the Legacy Limitation Act 1761 was intended to curb these excesses by constraining the growth in wealth of free persons of colour. The legislature's intent was 'to prevent the inconveniences arising from exorbitant grants and devises made by white persons to Negroes' and to restrain and limit such grants.[74] A committee of the whole House of Assembly concluded that there existed exorbitant gifting and devising of large amounts of both real and personal property by very rich white settlers to their Black and/or 'mulatto' mistresses and/or mixed-race offspring. It was intended that the legislation would prevent and halt the Africanisation and 'bastardisation' of Jamaican colonial society.[75]

The Act explained that exorbitant grants to mixed-race persons 'tend greatly to destroy the distinction requisite and absolutely necessary to be kept in the island between white persons and Negroes, their offspring and issue'. For this reason, the Act stipulated that 'no land, cattle, slaves, money or real estate be granted to any Negro whatsoever or to any mulatto or other persons not born in lawful wedlock' exceeding the value of £2000.[76] This was aimed particularly at the offspring of wealthy landowners who had been conceived out of wedlock. In such instances, the landowners' progeny could not receive wealth or have holdings over £2000.[77] This law was also meant to reduce any blurring or ambiguities between the classes, which were usually determined by property ownership.

The Legacy Limitation Act did receive some scrutiny from Sir Matthew Lamb, legal counsel to the Board of Trade and MP for Peterborough. Lamb questioned the constitutionality of the legislation and felt that it conflicted with fundamental English legal principles. As such, the law should be disallowed by the Crown unless it was for the public good of the colony.[78] There were also those within the Assembly who did not agree with the Act. Assembly members Norwood Witter, Edward Clarke and William Wynter argued not only that the Act was unconstitutional, since it constrained a British citizen's right to bequeath their property

as they desired, but also that it would encourage migration away from Jamaica by affluent mixed-race landowners.[79]

However, the Assembly members believed they were justified in passing the Act. An inquiry into the state of estate bequeathing in Jamaica had revealed that the main beneficiaries were unmarried Black and mixed-race women and illegitimate mixed-race children. Brooke N Newman observed that 'here was the material proof of the pressing need to stay the hand of white devisors, who had already transferred nearly a quarter of a million pounds in real and personal property to illegitimate persons of African and mixed lineage'.[80] The Assembly passed the Act even though one of its former members was a major grantor of landed estates to his mixed-race children, born out of wedlock to a Black woman.[81]

This anxiety of the white landowners continued in the years following the passage of the Legacy Limitation Act.[82] For example, one of the main restrictions placed on petitioners of colour was their inability to have rights in court. Newman argued that the disabling of affluent free Black and mixed-race individuals from protecting their property interests in court was central to the efficacy of the legal measure.[83] Prior to the Act, some recipients of private bills, like John Williams, had received the right to testify in all judicial proceedings with similar effect to a white person.[84] However, post 1761, the benefit of such a right was granted only in a few exceptional cases and solely in criminal proceedings. Such Acts were accompanied by written descriptions stating that the subject was entitled 'to the same rights and privileges as English subjects born of white parents under certain restrictions'.[85]

The majority of post-1761 private Acts, after proclaiming the applicant's entitlements, usually elaborated an array of restrictions. These did not negate the rights procured by the Act but made sure they were limited only to what had been sought, or rather permitted, in that instance. This was the impact of the Legacy Limitation Act. A typical example would be worded as follows:

> nothing in this act contained shall be construed or understood to extend to or confer upon the said Sarah Morris and Charlotte Stirling, in either of them or upon their spue, any power, capacity or ability of giving testimony against any white person or persons in any trials or cases, civil or criminal except in criminal prosecutions for assaults, batteries, breaches of peace or any violence committed against him or her or them or any of their spue in such cases, no one of them shall be admitted as evidence for another or sitting or voting in the Council or Assembly of the island or of voting at any election whatsoever or of

> holding or enjoying any office civil or military or of serving as jurors or as vestrymen or being capacitated to purchase, take or receive any estate, inheritance whatsoever contrary to the true intent and meaning of an act entitled an act to prevent the inconvenience arising from exorbitant grants and devises made by white persons to negroes and their spue.[86]

This is an excerpt from a private bill made on behalf of a quadroon woman named Sarah Morris and her daughter, Charlotte Stirling. The Act was sought by Sarah's companion and Charlotte's father, Robert Stirling, a white man. The essence of the law was to entitle both Morris and her daughter to rights and privileges as if they had been English subjects born of white parents, but with certain exceptions. As with most private bills of that nature and era, the intent of those restrictions was to exclude Black and mixed-race persons from holding judicial or political positions and from serving in any legal capacity tied to any related post which may adversely affect white persons. These restrictions were set up as legal limitations on the rights of free people of colour to own property and be treated as white English subjects of the Crown in every other respect. The exclusions were also extended to any offspring of the applicants, which signified the extent to which the white lawmakers wanted to keep the legal and political spheres free from the presence of persons of colour. Another significant constraint prohibited those persons of colour who were granted rights and privileges from serving on juries.

Thus, these beneficiaries remained outsiders despite their enormous amount of wealth and property, their education, their Christian dedication and/or their proximity to whiteness. The plantocracy remained fearful of the rise in wealthy propertied free people of colour. They were already outnumbered by the enslaved and were anxious about being outnumbered and outmatched in affluence by another non-white group. The introduction of limitation clauses in private bills demonstrates the reasons for and reach of the constraints on the rights and privileges of free people of colour.

The inclusion of these exceptions was inhibiting to propertied free persons of colour. Where rights to testimony in civil actions were absent, this proved a serious disadvantage to propertied free persons of colour in proceedings against white persons.[87] It was with such restrictions that the true intent of the legislature was felt. After the enactment of the Legacy Limitation Act, over seventy grants of rights to give testimony in criminal cases were approved for free persons of colour, but only one exceptional grant allowed testimony in a civil action.[88] That exception was Dugald Clark, the free 'mulatto' son of an elite white planter, Robert Clarke.

Dugald was granted the right to testimony in civil proceedings in December 1771.[89]

## The cessation of the restrictive laws

As Hurwitz and Hurwitz explained, the disabling laws were gradually eased. In fact, by 1795 the legislature again had a more tolerant attitude towards free persons of colour, after receiving their assistance in the Second Maroon War. An Act was created as a reward for their 'essential service rendered to the island in the militia'.[90] The law permitted all free persons of colour to testify under prescribed conditions in criminal proceedings. A free person of colour could give evidence in trials for assault, battery and breach of peace where he or she was the defendant, but not otherwise.[91] The law's stated intent was to provide protection for that individual defendant 'against all violence committed against him'.[92] In the years following 1796, free persons of colour began to be permitted to testify against whites in all cases, including civil disputes.[93] It was not until 1826 that free people of colour were able to hold supervisory roles on plantation estates. By 1830, restrictive laws no longer existed.[94]

In relation to the leaving of property, even prior to 1795, the legislature had exceptionally granted certain privileges through private Acts. White landowners who fathered mixed-race children and desired to leave them an inheritance and/or legacy greater than the permitted £2000 petitioned the legislature for permission to increase the bequests in particular cases. Seven bills were passed pertaining to the legacy issue between the years of 1768 and 1790. The seven white planters who successfully petitioned for the increase each had 'very considerable estates of their own acquiring'.[95] One example was Patrick Duncan who sought, in a 1784 petition, to leave a considerable amount of money to his mixed-race children and was allowed to do so.[96]

However, it should be emphasised that only a total of 128 private Acts were passed during the entire duration of the eighteenth century, although over 500 petitions were made. Moreover, success in obtaining a bill rarely meant that the recipient received all the benefits accorded to a white person. This signifies the disinclination of the colonial legislature to allow rights and privileges to free people of colour.[97]

## Private Acts manumitting the enslaved

One type of private Act that recurred surprisingly often was an Act for the manumission of enslaved persons for services rendered in the revelation

of a conspiracy, planned insurrection, revolt or massacre. An example reads:

> An Act for making free and rewarding two negroe men slaves, the one named York belonging to the Estate of Ballard Beckford and the other named Cuffie belonging to James Charles Sotto Douglas Esquire and for paying their owners their respective values. A horrid conspiracy was formed in the year of one thousand seven hundred and 65 in the Parish of St. Mary . . . by Coromantee and their slaves to destroy the settlement and plantations to which they belonged and to murder their masters, drivers, overseers and other white people . . . A negroe man named York . . . was particularly active and instrumental in saving the life of his mistress at the 1st breaking out of the insurrection. Another negroe man named Cuffie . . . did voluntarily make an ample discovery of the said conspiracy whereby the life of his master and the lives of several of the white inhabitants of the said Parish were saved from massacre . . . May it therefore please his Majesty that it may be enacted by the Lieutenant Governor, Council and Assembly of his Majesty's island that York and Cuffie be immediately after the passing of this Act be manumitted and set free from all manner of slavery whatsoever and that the said Receiver General or the Receiver General for the time being do pay the said Attorney of the Ballard Estate and said Attorney of James Charles Sotto Douglas the sum of 70 pounds each in full satisfaction for the said negroes York and Cuffie.[98]

There were at least nine reported Acts similar to the preceding example. The enslaved obtained their manumission because they reported on the abscondment and/or rebellion of their fellow enslaved. Most of the bills were similar in content. Just three bills were different: one which involved an enslaved Black woman[99] and another which involved seventeen enslaved people of colour who all assisted in the detection and reporting of a planned uprising.[100] The third was the most unique private bill. It involved an enslaved person named Affleck who obtained freedom because his enslaver, Governor Eyre Coote, petitioned by private bill for him to so do. Affleck was not freed due to the benevolence or humanitarianism of his enslaver, however. Coote was travelling back to Britain and desired to bring his enslaved man along. He was cognisant of the political fervour in the motherland instigated by the abolitionist movement, coupled with the fallout from the *Zong* and *Somerset* cases.[101] Governor Coote thus prudently manumitted Affleck and named him his servant instead.[102] This type of manumission is reminiscent of earlier cases which arose in Britain during the early to mid-eighteenth century, in which enslavers freed their enslaved people and gave them positions as apprentices or servants.

This was to circumvent legal issues that could arise on entering Britain, since it was uncertain whether the enslaved were allowed to be treated as such there.[103] It also helped prevent any unwanted exposure within Britain to the abolitionists, which would affect their labour force where liberation was suddenly available to the enslaved.

Apart from the Affleck bill, the other nine recorded bills freed enslaved people because of their loyalty and served to further stratify race relations within the plantation economy. Not only were these enslaved people freed, but they were also compensated monetarily for their assistance during the uprising. An Act which rewarded them for 'saving white lives' was also a signal to others to act likewise in the expectation of similar results. This level of conformity was vital to the colonial elite, especially after Tacky's Revolt, and because of the constant threat of abscondment due to the Maroon presence. Evidently, the plantocracy's core objective was to curb white fears and anxieties over the rebellion and the massacre which had ensued. Moreover, the Governor and Council were obliged to pay the enslavers compensation for the loss of their property and investment in the newly liberated persons.

## Conclusion

Fair/light skin colour resides within a privileged space. Currently, skin colour stratification persists on a global scale, but it is particularly significant and persistent in Jamaica. Although Jamaica's population is primarily of African descent, still there exists a preference for Eurocentric standards and a vilification of Afrocentric values in many facets of life, specifically through promoting fairer/lighter skin as an indicator of beauty and social status.[104] Colonialism, and the slavery empire it created, engrained enslaved societies with racial oppression, skin colour stratification and colourism in very distinct and effective ways. Skin tone remains especially consistent as a defining characteristic with a significant impact on one's positionality. Bleaching, for instance, has become a significant cause of social and health concerns, specifically within Jamaica. Such attitudes are evident from terms such as 'browning' and 'clean skin', which refers to the beauty in females of a lighter hue.

Social status within the Caribbean is not determined primarily by race and nor was racial categorisation the major source of advantage following colonialism. Instead, it was social class that became the main determiner of privilege, and historically, stratification by skin colour, based on skin tone and colonial pigmentocracy, had a significant correlation to social class. The substructure of colonial law was based on white supremacy

and the civilisation of Black 'inferior' 'savages'. Colonial pigmentocracy and/or complexion were chief indicators of position within society, and skin colour became a symbol of social class and condition, wherein enslaved labour 'was designated to blackness and the darker shade of colour moving downwards to squalor'.[105]

The social accommodation of mixed-race offspring in colonial Jamaica was the result of a male-dominated society, in which affluent planters engaged in not just sexual relations but what were regarded by the white male colonists as full-blown 'love relationships' with their Black or mixed-race women. The white settlers' mania over race and race relations led to their elaboration of categories in a social and class structure ranging from threefold (white, mixed-race/coloured and Black) to a multitude of groups. The differing groups were only pertinent when required to satisfy the agendas of the affluent plantocracy. These circumstances and attitudes culminated in the numerous petitions that were filed during the eighteenth century by affluent planters or sponsors on either their own behalf or that of their offspring. The beneficiary's main obligation was to renounce their Black ancestry and, in its stead, affirm their affinity to their white lineage. Doing so resulted in a surge in their wealth.

The petitions for rights and benefits for free persons of colour evoked several competing responses. First, the legislature tasked with assessing and passing these rights was apprehensive of the amount of wealth that was being transferred to a non-white group which increasingly outnumbered them and so sought (unsuccessfully) to restrict the amount of money and/or property this group could attain. Secondly, the legislature tested and rewarded the loyalty of free people of colour when the need for additional soldiers for the Maroon Wars arose, awarding rights and immunities which had earlier been restricted. Moreover, what these private bills illustrated was the need of the white settlers to erase the presence and existence of Blackness – at least the Blackness that was obvious. The exacerbation of race delineation within an already divided society resulted in a more tense and stratified plantation life which demanded that even the enslaved partake in acts of 'loyalty' to obtain, not just their freedom, but the chance of better social standing.

Colonial life in Jamaica was marred by race obsession which led to the creation and acceptance of racial passing. From the outset, the constant fear for white colonists was that they might be outnumbered and lose their autonomy. These private bills, although met with initial reluctance, became one of the main avenues through which white planters could maintain their dominant status through subjugation, division and erasure. Their severing of racial lines and race language continued from the colonial period, and the reverberations are still felt today in Jamaican society.

## Notes

1. Edward Kamau Brathwaite, *The Development of Creole Society in Jamaica: 1770–1820* (first published 1971, OUP 2005): 303. 'Apartheid' is a system of racial segregation based on notion of racial superiority of one group or groups over another.

2. 'Racial passing' is the act of concealing one's racial identity or ethnicity to gain acceptance and/or benefits from another racial or ethnic group, usually the dominant white race. 'Black erasure' refers to the systemic and often intentional process of rendering Black people, their culture, heritage and history invisible or insignificant within broader society: see Allyson Hobbs, *A Historical Account of Racial Passing in America* (first published 2014, Harvard University Press 2016); Gail Lukasik, *White Like Her: My Family's Story of Race and Racial Passing* (Skyhorse Publishing 2017).

3. Samuel J Hurwitz and Edith F Hurwitz, 'A Token of Freedom: Private Bill Legislation for Free Negroes in Eighteenth-Century Jamaica' *William and Mary Quarterly* 24 (1967): 423.

4. Monique D A Kelly, 'Examining Race in Jamaica: How Racial Category and Skin Color Structure Social Inequality' *Race and Social Problems* 12 (2020): 300, 301; F J Davis, *Who Is Black? One Nation's Definition* (Penn State University Press 1991).

5. Arnold A Sio, 'Race, Colour, and Miscegenation: The Free Coloured of Barbados and Jamaica' *Caribbean Studies* 16 (1976): 5, 6; Winthrop D Jordan, 'American Chiaroscuro: The Status and Definition of Mulattoes in the British Colonies' *William and Mary Quarterly* 19 (1962): 183, 197; Christer Petley, 'Legitimacy and Social Boundaries: Free People of Colour and the Social Order in Jamaican Slave Society' *Social History* 30 (2005): 481, 484.

6. Stanley L Engerman and Barry W Higman, 'The Demographic Structure of the Caribbean Slave Societies in the Eighteenth and Nineteenth Centuries' in Franklyn W Knight (ed.), *General History of the Caribbean, Vol 3* (Palgrave Macmillan 2003): 45, 104.

7. Jordan (n 5): 192.

8. Bryan Edwards, *The History, Civil and Commercial, of the British Colonies in the West Indies, Vol II* (John Stockdale 1793): 19.

9. Edwards (n 8); Leonard Broom, 'The Social Differentiation of Jamaica' *American Sociological Review* 19 (1954): 115, 117.

10. Edwards (n 8): 24.

11. Edwards (n 8): 16.

12. Sio (n 5): 8.

13. Sio (n 5): 8.

14. An Act to secure the Freedom of Elections 1733, s 10: see *Acts of Assembly Passed in the Island of Jamaica from the Year 1681 to the Year 1768, Inclusive* (Lowry and Sherlock 1769), vol. I: 179–81; see also Edward Long, *The History of Jamaica or General Survey of the Antient and Modern State of the Island* (T Lowndes 1774), vol. II: 261, 321. This same definition of a mulatto was retained in 1780: see *Acts of Assembly, Passed in the Island of Jamaica; from 1770 to 1783, Inclusive* (J Jones 1786): 174.

15. TNA CO/139/48 (950).

16. TNA CO/139/48 (924).

17. Broom (n 9): 117.

18. See text to notes 10–11.

19. Long (n 14), vol. II: 332–5.

20. Jordan (n 5): 198.

21. An Act to keep inviolate and preserve the Freedom of Elections 1709; see *Acts of Assembly, Passed in the Island of Barbadoes, from 1648 to 1718* (John Baskett 1721): 267.

22. Jordan (n 5): 193.

23. John Luffman, *A Brief Account of the Island of Antigua* (first published 1789, Creative Media Partners 2018): 115; Thomas Tryon, *Friendly Advice to the Gentlemen Planter of the East and West Indies* (first published 1684, CUP 2012): 140–41.

24. See, for example, Daniel J Sharfstein, 'Crossing the Color Line: Racial Migration and the One-Drop Rule, 1600–1860' *Minnesota Law Review* 91 (2007): 592.

25. An Act for the Better Ordering and Governing of Negro Slaves 1664, text available at https://slaveryandfreedomlaws.lib.unb.ca/laws/498, accessed 28 November 2025; TNA CO 139 G.

26. Elsa V Goveia, *The West Indian Slave Laws of the 18th Century* (Caribbean Universities 1970): 20–21.

27. Hurwitz and Hurwitz (n 3): 423.

28. An Act for Making Free Negroes, Indians and Mulattoes Evidence in all Causes against One Another in all the Courts of the Island 1748, text available at https://slaveryandfreedomlaws.lib.unb.ca/laws/314, accessed 28 November 2025. Prior to this Act, the prohibition was customary.

29. Both free Black persons and free mixed-race persons are referred to as free people of colour as a collective throughout the essay.

30. Edwards (n 8): 18; Hurwitz and Hurwitz (n 3): 423.

31. The Jamaica Archives and Records Department, 'Laws of Jamaica', vol. I: 133, 137.

32. Sir William Blackstone, *Commentaries on the Laws of England*, vol. 2 (Clarendon Press 1766): Chapters 1 and 2. Blackstone's position both overstated the 'absoluteness' of private property as allowing for the 'total exclusion of the right of any other individual in the universe' and understated the actual practices of the government of his time in violating private property in the interests of the community.

33. For information on the English practice of private bill making, see Sir Frederick Clifford, *The History of Private Bill Legislation* (first published 1885–87, Cass Publishing 1968); Orlo Cyprian Williams, *The Historical Development of Private Bill Procedure and Standing Orders in the House of Commons* (HMSO 1948–49).

34. Hurwitz and Hurwitz (n 3): 425; see, for example, *Journals of the Assembly of Jamaica: 1664–1826* (Alexander Aikman 1811), vol. 3: 701, 707.

35. Hurwitz and Hurwitz (n 3): 425.

36. Hurwitz and Hurwitz (n 3): 425–426; 'Laws of Jamaica' (n 31), vol. III: 167.

37. Hurwitz and Hurwitz (n 3): 426; 'Laws of Jamaica' (n 31), vol. IV: 92. These full rights included the ability to testify in civil courts and to hold judicial and political nominations and appointments.

38. Hurwitz and Hurwitz (n 3): 426.

39. In England, the rationale was that, since a private bill created an exception to the general law, it was mandatory for the preamble to provide a summarised justification for its passing. Opponents could also testify against specific private bills. Hurwitz and Hurwitz (n 3): 426; Clifford (n 33), vol. II: 865.

40. Hurwitz and Hurwitz (n 3): 426; 'Laws of Jamaica' (n 31), vol. VII: 70.

41. Hurwitz and Hurwitz (n 3): 426; Long (n 14), vol. II: 328–9.

42. Hurwitz and Hurwitz (n 3): 426; 'Laws of Jamaica' (n 31), vol. VII: 191–2.

43. TNA CO/139/48 (924).

44. Those not benefiting from such private Acts bestowing wealth, property and rights on them, that is, the majority of the free population of people of colour.

45. TNA CO/139/31 (312).

46. TNA CO/139/45 (694).

47. TNA CO/139/31 (318).

48. TNA CO/139/45 (694).

49. The state of being mixed which at some point becomes blurred; description borrowed from Jane Matthews Glenn, 'Mixed Jurisdictions in the Commonwealth Caribbean: Mixing, Unmixing, Remixing' *Journal of Comparative Law* 3 no. 1 (2008): 53.

50. Kelly (n 4): 301; Barry W Higman, *Slave Population and Economy in Jamaica, 1807–1834* (CUP 1976); T A Johnson, 'The Enduring Function of Caste: Colonial and Modern Haiti, Jamaica, and Brazil: The Economy of Race, the Social Organization of Caste, and the Formulation of Racial Societies' *Comparative American Studies* 2 (2004) 61; J R Ward, *British West Indian Slavery: The Process of Amelioration 1750–1834* (OUP 1998).

51. An Act to secure the Freedom of Elections 1733, s 10 (n 14).

52. Petley (n 5): 8.

53. Brooke N Newman, *A Dark Inheritance: Blood, Race and Sex in Colonial Jamaica* (Yale University Press 2018): 115–20.

54. This law, like other restrictive laws, addressed differing issues that the colonial authorities wanted to remedy, ultimately seeking to uphold white supremacy in an island where mixed-race persons were gaining wealth and power and the free Black communities of the Maroons were increasing. See Newman (n 53): 115–20.

55. The English successfully conquered the island colony in 1655 from the Spanish, who left a significant number of enslaved persons there when they fled. For the history of the colonisation of Jamaica, first by Spain and later by England/Britain, see, for example, Carla Gardina Pestana, *The English Conquest of Jamaica: Oliver Cromwell's Bid for Empire* (Harvard University Press & Belknap Press 2017).

56. Hurwitz and Hurwitz (n 3): 427; 'Governor Hunter to the Council of Trade and Plantations, Dec 24, 1733' in Cecil Headlam and Arthur Percival Newton (eds), *Calendar of State Papers, Colonial Series, America and West Indies: Volume 40, 1733* (HMSO 1939): 273; 'Governor Hunter to the Duke of Newcastle, Oct 8, 1731' in Cecil Headlam and Arthur Percival Newton (eds), *Calendar of State Papers, Colonial Series, America and West Indies: Volume 38, 1731* (HMSO 1938): 292.

57. Hurwitz and Hurwitz (n 3) 427–8; 'Governor Hunter to the Council of Trade and Plantations, July 4, 1730' in Cecil Headlam (ed.), *Calendar of State Papers, Colonial Series, America and West Indies: Volume 37, 1730* (HMSO 1937): 160–61.

58. 'Laws of Jamaica' (n 31), vol. III: 49.

59. Hurwitz and Hurwitz (n 3): 428; 'America and West Indies: March 1731, 1–15' in Headlam and Newton, *Calendar of State Papers 1731* (n 56): 181.

60. Hurwitz and Hurwitz (n 3): 428; cf. Edmund Burke, *An Account of the European Settlements in America* (R and J Dodsley 1757), vol. II: 126–8.

61. Hurwitz and Hurwitz (n 3) 428; 'Laws of Jamaica' (n 31), vol. III: 49.

62. Hurwitz and Hurwitz (n 3): 428; 'Laws of Jamaica' (n 31), vol. III: 49; H A Wyndham, *Atlantic Slavery and Emancipation* (OUP 1937): 280.

63. Hurwitz and Hurwitz (n 3): 428; 'Laws of Jamaica' (n 31), vol. VII: 32.

64. Hurwitz and Hurwitz (n 3): 429.

65. Hurwitz and Hurwitz (n 3): 429; 'Laws of Jamaica' (n 31), vol. IV: 10.

66. Hurwitz and Hurwitz (n 3): 429.

67. Hurwitz and Hurwitz (n 3): 424–5. John Williams was one of the few free Black persons who was able to petition. Most petitioners were, like Robert Halked, mixed-race, with white fathers (see the earlier section entitled 'Nature of private bills').

68. Hurwitz and Hurwitz (n 3): 424–5; 'Laws of Jamaica' (n 31), vol. I: 101 (Feb 6, 1707).

69. 'Laws of Jamaica' (n 31), vol. I: 101 (Feb 12, 1707).

70. 'Order of Queen in Council, June 26, 1708' in Cecil Headlam (ed.), *Calendar of State Papers, Colonial Series, America and West Indies: Volume 23, 1706–1708* (HMSO 1916): 77 – both acts were approved; Hurwitz and Hurwitz (n 3): 425.

71. Hurwitz and Hurwitz (n 3): 429.

72. Hurwitz and Hurwitz (n 3): 429.

73. Long (n 14), vol. II: 323.

74. Hurwitz and Hurwitz (n 3): 429; 'Laws of Jamaica' (n 31), vol. V: 66.

75. Hurwitz and Hurwitz (n 3): 429–30.

76. 'Laws of Jamaica' (n 31), vol. V: 66.

77. Anne M Powers, 'Blocking Legacies to the Negroes and Mulattoes' https://aparcelofribbons.co.uk/2011/12/blocking-legacies-to-negroes-and-mulattoes/, accessed 28 November 2025; Hurwitz and Hurwitz (n 3): 429–30.

78. Hurwitz and Hurwitz (n 3): 430; TNA CO/137/33, f. 18, 'Lamb to the Commissioner for Trade and Plantations', November 8, 1762.

79. Powers (n 77); see also East Sussex Record Office SAS/RF 20/66.

80. Newman (n 53): 115

81. TNA CO/137/33, ff. 46–49, November 16, 1762.

82. Hurwitz and Hurwitz (n 3): 430.

83. Newman (n 53): 114–15.

84. See text to notes 67–69.

85. Hurwitz and Hurwitz (n 3): 430.

86. TNA CO/139/39 (591).

87. Newman (n 53): 104; Hurwitz and Hurwitz (n 3): 430.

88. Hurwitz and Hurwitz (n 3): 430; 'Laws of Jamaica' (n 31), vol. VI: 108.

89. TNA CO/139/26 (204).

90. 'Laws of Jamaica' (n 31), vol. X: 155.

91. Hurwitz and Hurwitz (n 3): 430.

92. Hurwitz and Hurwitz (n 3): 430; 'Laws of Jamaica' (n 31), vol. X: 155.

93. Sio (n 5): 8.

94. Sio (n 5): 8.

95. Hurwitz and Hurwitz (n 3): 429–30.

96. TNA CO/139/ 39 (589).

97. Hurwitz and Hurwitz (n 3): 424.

98. TNA CO/139/23 (113).

99. TNA CO/139/29 (271).

100. TNA CO/139/21 (25).

101. *Gregson v Gilbert* (1783) 3 Dougl 232, 99 ER 620; *Somerset v Stewart* (1772) Lofft 1, 98 ER 499.

102. TNA CO/139/56.

103. See *Keane v Boycott* and *Coventry v Woodhall* in Andrew Lyall, *Granville Sharp's Cases on Slavery* (Bloomsbury 2019): 61–3.

104. Petra Alaine Robinson, *Skin Bleaching in Jamaica: A Colonial Legacy* (PhD thesis, Texas A&M University, 2011): iii.

105. Robinson (n 104): 24.

# References

## Printed sources

Blackstone, Sir William, *Commentaries on the Laws of England* (Clarendon Press 1766)

Brathwaite, Edward Kamau, *The Development of Creole Society in Jamaica: 1770–1820* (first published 1971, OUP 2005)

Broom, Leonard, 'The Social Differentiation of Jamaica' *American Sociological Review* 19 (1954): 115–25

Burke, Edmund, *An Account of the European Settlements in America* (R and J Dodsley 1757)

Clifford, Sir Frederick, *The History of Private Bill Legislation* (first published 1885–87, Cass Publishing 1968)

Davis, F J, *Who Is Black? One Nation's Definition* (Penn State University Press 1991)

Edwards, Bryan, *The History, Civil and Commercial, of the British Colonies in the West Indies, Vol II* (John Stockdale 1793)

Engerman, Stanley L and Higman, Barry W, 'The Demographic Structure of the Caribbean Slave Societies in the Eighteenth and Nineteenth Centuries' in Franklyn W Knight (ed.), *General History of the Caribbean, Vol 3* (Palgrave Macmillan 2003)

Glenn, Jane Matthews, 'Mixed Jurisdictions in the Commonwealth Caribbean: Mixing, Unmixing, Remixing' *Journal of Comparative Law* 3 no. 1 (2008): 53–76

Goveia, Elsa V., *The West Indian Slave Laws of the 18th Century* (Caribbean Universities 1970)

Headlam, Cecil (ed.), *Calendar of State Papers, Colonial Series, America and West Indies: Volume 23, 1706–1708* (HMSO 1916)

Headlam, Cecil (ed.), *Calendar of State Papers, Colonial Series, America and West Indies: Volume 37, 1730* (HMSO 1937)

Headlam, Cecil and Newton, Arthur Percival (eds), *Calendar of State Papers, Colonial Series, America and West Indies: Volume 38, 1731* (HMSO 1938)

Headlam, Cecil and Newton, Arthur Percival (eds), *Calendar of State Papers, Colonial Series, America and West Indies: Volume 40, 1733* (HMSO 1939)

Higman, Barry W, *Slave Population and Economy in Jamaica, 1807–1834* (CUP 1976)

Hobbs, Allyson, *A Historical Account of Racial Passing in America* (first published 2014, Harvard University Press 2016)

Hurwitz, Samuel J and Hurwitz, Edith F, 'A Token of Freedom: Private Bill Legislation for Free Negroes in Eighteenth-Century Jamaica' *William and Mary Quarterly* 24 (1967): 423–31

Johnson, T A, 'The Enduring Function of Caste: Colonial and Modern Haiti, Jamaica, and Brazil: The Economy of Race, the Social Organization of Caste, and the Formulation of Racial Societies' *Comparative American Studies* 2 (2004): 61–73

Jordan, Winthrop D, 'American Chiaroscuro: The Status and Definition of Mulattoes in the British Colonies' *William and Mary Quarterly* 19 (1962): 183–200

Kelly, Monique D A, 'Examining Race in Jamaica: How Racial Category and Skin Color Structure Social Inequality' *Race and Social Problems* 12 (2020): 300–12

Long, Edward, *The History of Jamaica or General Survey of the Antient and Modern State of the Island* (T Lowndes 1774)

Luffman, John, *A Brief Account of the Island of Antigua* (first published 1789, Creative Media Partners 2018)

Lukasik, Gail, *White Like Her: My Family's Story of Race and Racial Passing* (Skyhorse Publishing 2017)

Lyall, Andrew, *Granville Sharp's Cases on Slavery* (Bloomsbury 2019)

Newman, Brooke N, *A Dark Inheritance: Blood, Race and Sex in Colonial Jamaica* (Yale University Press 2018)

Pestana, Carla Gardina, *The English Conquest of Jamaica: Oliver Cromwell's Bid for Empire* (Harvard University Press & Belknap Press 2017)

Petley, Christer, 'Legitimacy and Social Boundaries: Free People of Colour and the Social Order in Jamaican Slave Society' *Social History* 30 (2005): 481–98

Powers, Anne M, 'Blocking Legacies to the Negroes and Mulattoes' https://aparcelofribbons.co.uk/2011/12/blocking-legacies-to-negroes-and-mulattoes/, accessed 28 November 2025

Robinson, Petra Alaine, *Skin Bleaching in Jamaica: A Colonial Legacy* (PhD thesis, Texas A&M University, 2011)

Sharfstein, Daniel J, 'Crossing the Color Line: Racial Migration and the One-Drop Rule, 1600–1860' *Minnesota Law Review* 91 (2007): 592–656

Sio, Arnold A, 'Race, Colour, and Miscegenation: The Free Coloured of Barbados and Jamaica' *Caribbean Studies* 16 (1976): 5–21

Tryon, Thomas, *Friendly Advice to the Gentlemen Planter of the East and West Indies* (first published 1684, CUP 2012)

Ward, J R, *British West Indian slavery: The process of amelioration 1750–1834* (OUP 1998)

Williams, Orlo Cyprian, *The Historical Development of Private Bill Procedure and Standing Orders in the House of Commons* (HMSO 1948–49)
Wyndham, H A, *Atlantic Slavery and Emancipation* (OUP 1937)
*Acts of Assembly, passed in the island of Barbadoes, from 1648 to 1718* (John Baskett 1721)
*Acts of Assembly passed in the Island of Jamaica from the Year 1681 to the Year 1768, inclusive* (Lowry and Sherlock 1769)
*Acts of Assembly, Passed in the Island of Jamaica; from 1770 to 1783, inclusive* (J Jones 1786)
*Journals of The Assembly of Jamaica: 1664–1826* (Alexander Aikman 1811), vol. 3

## Manuscript sources

East Sussex Record Office SAS/RF 20/66
The Jamaica Archives and Records Department, 'Laws of Jamaica'
TNA CO/137
TNA CO/139/21
TNA CO/139/23
TNA CO/139/26
TNA CO/139/29
TNA CO/139/31
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Chapter 5

# ‘Being interpreted and translated into the English language’: the Chevalier d’Éon, the French outsider, in the English law courts, 1764–76

Daniel F Gosling

The Chevalier d’Éon de Beaumont was a French diplomat, spy and soldier who first lived in England between September 1762 and August 1777. Most notably, in 1777, after living nearly fifty years presenting as a man, d’Éon returned to France from Britain acknowledged as a woman by the French Crown.[1] Rumours of d’Éon’s sex had circulated from as early as 1770, with wagers made – in the form of insurance policies – on whether d’Éon was female.[2] When considering d’Éon in the English law courts, much has been made of the cases resulting from these wagers.[3] However, d’Éon was not personally involved in them. Instead, between 1764 and 1776, the Chevalier d’Éon was directly engaged in three disputes, heard in the courts of King’s Bench and Chancery, all relating to letters and printed works in French. It is therefore d’Éon’s nationality, rather than sex, that most impact these early interactions in the English law courts. This chapter examines these court cases, considering particularly the use of translators and translations as part of the legal process in cases featuring non-English parties.[4] A person’s nationality did not mark them as an outsider, however, and this chapter also highlights how the English legal system facilitated non-English parties to ensure that those resident in the realm were both subject to and protected by its laws.

## Chevalier d'Éon v Comte de Guerchy, 1764–5

The dispute between the Chevalier d'Éon and the Comte de Guerchy played out in the court of King's Bench between 1764 and 1765. At the heart of this dispute was a libel action against d'Éon for writing *Lettres, mémoires et négociations particulières du chevalier d'Éon*, a defamatory work critical of Guerchy, the French ambassador to England.[5] Aspects of d'Éon's outsider status in England are prevalent throughout the dispute: cast out by the French government and outlawed by the British. The case also reveals d'Éon's uncertainty about (English) legal process.

The discord began in the summer of 1763, when d'Éon, riding high in London as plenipotentiary minister, France's official representative in Britain, fell out of favour with the French government for, among other things, extravagant spending at a time when the French government was recovering from a costly war with the British.[6] D'Éon was told, therefore, that as soon as the new permanent ambassador to Britain, the Comte de Guerchy, arrived in London, d'Éon would lose the prestigious title of plenipotentiary minister.[7] D'Éon, no doubt coveting the ambassadorship, resented Guerchy thereafter.[8] By the time Guerchy arrived in England in October 1763, d'Éon's relationship with the French foreign ministry had deteriorated to the point that the Duke de Praslin, French Secretary of State for Foreign Affairs, recalled d'Éon to France.[9] But, d'Éon refused the order. A second order was sent out, warning that continued disobedience would result in loss of standing in the French court.[10] Still d'Éon refused. In November 1763, the Earl of Halifax, British Secretary of State for the Southern Department, asked England's chief law officers whether d'Éon's 'wild and irregular behaviour' would allow the British government to assist in the extradition.[11] The conclusion was that d'Éon had broken no English laws and so could not be forcibly removed from the realm.[12] The British press, too, questioned whether a person could be legally compelled to return to France, even if found guilty of breaking the law:

> By the laws of Great Britain, no man whatsoever, whether foreigner or subject, is to be deprived of his liberty without violating the laws of the lands. These laws, if transgressed, are however only punishable in this kingdom; and we are by no means to send foreigners to other countries for any crimes they may have committed in this.[13]

With the French government unable to extradite d'Éon via legal means, d'Éon feared that they would resort to kidnapping or worse to keep their secrets safe. For d'Éon was a member of the *Secret du Roi*, the private diplomatic channels of the French king Louis XV, and so was privy to sensitive information that could be damaging to the French Crown and government.

One such politically damning letter in d'Éon's possession, personally written by the French king, authorised d'Éon to procure information about Britain's foreign policy.[14] When d'Éon fell ill after a dinner at the French embassy in October 1763, d'Éon therefore believed that Guerchy, on the orders of the French government, had arranged that d'Éon's wine be dosed with opium.[15] Such actions were not unprecedented: in April 1752, Louis-Mathieu Bertin, marquis de Fratteaux, was delivered to French agents by a corrupt bailiff named Blaisdell and transported to France.[16] Later in the 1760s, the attempts to seize d'Éon were compared to Fratteaux's deportation.[17] These comparisons were part of a spirited defence of English liberties and the rule of law, contrasting the 'despotic power' of the French regime.[18]

To combat these alleged attempts to illegally remove d'Éon from the realm, and to further undermine Guerchy, d'Éon published *Lettres, mémoires et négociations particulières du chevalier d'Éon* in March 1764, which contained transcriptions of sensitive diplomatic letters collected by d'Éon while in England. This publication intentionally omitted material concerning Louis XV and the *Secret*, but d'Éon threatened a second, more scandalous, publication if protection from extrajudicial extradition was not guaranteed. But, in publishing *Lettres*, d'Éon – no longer accorded diplomatic immunity – could be tried in the English law courts for libel. Following the publication of *Lettres*, the French government therefore pressed for d'Éon's prosecution.[19] On 9 April 1764, Lord Halifax wrote to the Attorney General Fletcher Norton informing him to proceed against the author (d'Éon), printer and publisher of *Lettres*.[20] Three days later, d'Éon was served a writ of subpoena, warning of impending libel charges.[21] Two months after this, on 20 June 1764, d'Éon received the Attorney General's information detailing the formal libel charges.[22]

The information against d'Éon is particularly lengthy, running to over 5,500 words, because the libellous passages had to be included in French then translated into English.[23] Each count included the following qualifying sentence between the French and English passages: 'which being interpreted and translated into the English language have and at the time of the publishing of the said libel had the same sense, signification, and meaning as these English words following'.[24] There were five counts laid against d'Éon, for alleging that Guerchy:

1. Was not fit to be ambassador
2. Initiated unjust proceedings against d'Éon
3. Was illiterate ('Does he [Guerchy] look upon his ignorances as a secret of state? . . . [D]oes not all the world besides who receives

dispatches, letters, notes, or answers from the ambassador extraordinary perceive it?')
4. Pressured French subjects to leave Britain
5. Forged d'Éon's letters of recall.[25]

On receiving the information, d'Éon, 'took the earliest opportunity to consult what steps were proper to be taken', implying an inexperience with the English legal system. D'Éon's legal counsel advised pleading not guilty, and so d'Éon submitted said plea on the evening of Thursday 21 June.[26] On that same day, d'Éon wrote public letters to Lord Mansfield, Lord Bute, Earl Temple and William Pitt, emphasising d'Éon's lawfulness in Britain: 'as I am at present an inhabitant of Great Britain, I acknowledge myself its subject with pleasure; I respect its laws, which I do my utmost to obey'.[27] D'Éon also raised the matter of illegal extradition, claiming that, 'my enemies have resolved to carry me off by force or stratagem . . . they mean to transport me to Gravesend, where a small armed vessel is held in readiness to sail with me to France'.[28]

On 22 June, the day after d'Éon submitted the plea of not guilty, d'Éon was ordered to appear in court the following Monday. D'Éon, however, failed to appear. On 26 June, d'Éon was summoned again. Still, though, d'Éon did not appear, and so on Saturday 30 June, the court prepared to proceed directly to trial, set for 9 July.[29] Before the trial, though, d'Éon finally appeared to submit a defence, detailed in two affidavits dated 2 and 3 July 1764.[30] Rather than contesting the libel charges, d'Éon argued why 'it would be impossible for the trial to proceed' on 9 July. For d'Éon's defence rested on four witnesses no longer in England, allegedly driven from the realm by Guerchy: Monsieur le Boucher, a secretary of the former ambassador to Britain, the Duke de Nivernais; Monsieur de la Rozière, lieutenant colonel in the French army; Monsieur Nardin, captain of cavalry; and Francis Bernard, d'Éon's domestic servant. D'Éon asked that the trial be postponed until next Michaelmas term (November 1764) to summon these witnesses. This request, too, was made after consultation with d'Éon's legal counsel, who advised that 'such evidence was material to his, this deponent's defence in this information'.[31] Guerchy's secretary, Gerard Michel Bontemps, disputed d'Éon's account. Bontemps confirmed that Boucher, de la Rozière and Bernard all left England by the end of December 1763. However, he was sure that they departed 'upon their own affairs', not at the instigation of Guerchy.[32] Bontemps also doubted that they could be in England by the next law term. The fourth witness, Monsieur Nardin, was not known to Bontemps.

Following these statements, the court deliberated on how to proceed. There were three considerations for putting off the trial. Firstly, were

the persons truly material witnesses? Secondly, had the accused, before now, attempted to summon these witnesses? Thirdly, and finally, was it likely that these witnesses could be summoned before the postponed trial date?[33] In d'Éon's case, all these considerations were rejected. The witnesses could not be material, for they left England *before* the printing of *Lettres*. The charge did not concern the truth of *Lettres*, only that d'Éon had written the work; in cases of seditious libel, merely proving the truth of the work was not a valid defence.[34] The court conceded that this witness testimony could mitigate any punishments in case of a guilty verdict, but that this evidence could be submitted after conviction.[35] Their leaving the realm before the publication of *Lettres* also discounted claims that Guerchy sent these witnesses from the realm. How could they be sent away to prevent giving evidence in a cause which did not exist at the time of their departure? Nor was there any evidence that d'Éon had attempted to summon these men back from France since receiving the information. The final point, whether these witnesses could be summoned back from France, acknowledged that there was a difference between this case, featuring French nationals, and typical libel cases between solely English parties. In d'Éon's case, the court thought it very likely that the material witnesses would not come, for:

> These are foreigners, natives of and resident in France, and in the actual service of that King: which renders this case quite different from the ordinary cases of English witnesses being accidentally gone abroad, or gone for a small time only, and expected to return to their own country, their natural home and residence.[36]

It was noted, too, that the French Crown may not permit these Frenchmen to come to England to defend d'Éon, 'who stood, at this time, in no favourable light at his own court'.[37] The judges were therefore unanimous that the trial should proceed as planned, and on 9 July 1764, d'Éon was tried for writing *Lettres*, a 'false, scandalous, infamous, and malicious libel in the French Language'.[38] No further evidence was produced and the jurors therefore found d'Éon guilty.[39] The verdict, however, was not confirmed until Michaelmas term, allowing time for any witnesses to appear to support d'Éon's cause.[40] D'Éon's affidavits reveal a misapprehension that proving the truth of *Lettres* would absolve d'Éon. After the trial, the *Public Advertiser* published a poem acknowledging (and ridiculing) this misapprehension: 'You say, D'Éon, it's hard you're guilty found; You thought you might speak Truth on English Ground; Crown Lawyers say, tho' strange it seems to you; Your Book's a Libel, tho' the Facts be true'.[41]

Following the guilty verdict, some reported d'Éon had fled England under an assumed name.[42] In response, assurances were published that

d'Éon was not only in England but had agreed to appear next term to receive judgement. These articles allude to d'Éon's outsider status in England. D'Éon, 'this gallant, but persecuted gentleman', deserved assistance from good-natured Englishmen as 'a foreigner, and a stranger to the municipal laws of this kingdom'.[43] D'Éon was also apparently still at risk from illegal extradition: in St James' Park on 26 August 1764, it was reported that seven men laid in wait for d'Éon at Spring Gardens, intending kidnap. Their plot was foiled, however, when d'Éon was forewarned of their intent.[44] Similarly, in November that year, an 'audacious attempt' was allegedly made to seize d'Éon by a group claiming to act under the authority of the British government.[45] This claim may have been true. A letter to Lord Halifax from the Attorney General in November 1764 authorised the breaking into of any house where d'Éon may be hiding, if the residents refused to open the doors when requested.[46] Such a drastic course of action was partly because, since the guilty verdict, d'Éon had ignored all summonses to appear for punishment. On 20 May 1765, ten months after the trial, the sheriffs of Middlesex returned a writ of exigent reporting that they had tried, unsuccessfully, to summon d'Éon four times. On 13 June 1765, after the fifth such summons was ignored, the court outlawed d'Éon.[47]

Between the July 1764 trial and June 1765 outlawry, d'Éon's case took a dramatic turn. D'Éon was always convinced that agents of Guerchy wanted d'Éon dead and, late in 1764, Pierre-Henri Treyssac de Vergy confessed that Guerchy had indeed attempted to poison d'Éon at a dinner in October 1763. When that attempt failed, Vergy was (allegedly) hired by Guerchy to assassinate d'Éon.[48] Vergy printed his confession, which Guerchy hoped would mean that he, like d'Éon, could be prosecuted for libel.[49] However, the Attorney General did not believe that there was enough evidence to prosecute.[50] To add credence to the cause, the man that allegedly slipped opium into d'Éon's wine in October 1763, Stephen Chazell, could not be interrogated as he had fled London.[51] Emboldened by these revelations, d'Éon demanded that the prosecution of Guerchy for attempted murder be allowed to proceed and that the French government drop the libel proceedings against d'Éon.[52] The libel charges were sustained, as evidenced by d'Éon's subsequent outlawry, but in February 1765, at a General Session of the Peace, Guerchy was indeed charged with employing Vergy to murder d'Éon.[53] Such an accusation warranted a hearing in a higher court, and on 4 March the Attorney General ordered a certiorari to escalate the case to King's Bench.[54] The accusations were too serious to be dropped, but an English court prosecuting the French ambassador could have grave political implications. As such, once the case moved to King's Bench the proceedings stalled, and

it never made it to trial.[55] Ultimately, the matter was settled by Guerchy leaving England. Following these court cases, Guerchy took an extended vacation to France before eventually retiring as ambassador. He died in September 1767 in Paris.[56] With Guerchy out of the picture, by 1771, any contention between d'Éon and the French government had, apparently, 'totally subsided'.[57]

D'Éon was never properly punished for the 1764 guilty verdict. Nor did the 1765 outlawry appear to negatively impact d'Éon. Here, too, d'Éon's nationality and former diplomatic status may have influenced the court's lack of desire to pursue this cause. This perceived leniency did not go entirely unnoticed. In 1769, d'Éon was mentioned in the conspiracy theories of Dr Samuel Musgrave, who published two pamphlets theorising that in 1764, d'Éon attempted to impeach the princess dowager, Lord Bute and Lord Holland for their unlawful actions when negotiating the 1763 Treaty of Paris, only to be silenced by these parties.[58] Musgrave believed that the attempts to assassinate and seize d'Éon in the 1760s stemmed from d'Éon's attempts to uncover this wrongdoing. Musgrave's interpretation of events did explain, to some, inconsistencies surrounding d'Éon's 1764 libel trial. Why was d'Éon not punished after being found guilty? Had d'Éon come to some arrangement regarding papers relating to the Treaty of Paris, in exchange for a (secret) pardon?[59] But, the Musgrave affair ended swiftly without d'Éon being drawn into political scandal. On 29 January 1770, proceedings against Musgrave concluded that 'the accusations brought by Dr Musgrave . . . were in the highest degree frivolous'.[60]

The dispute between the Chevalier d'Éon and the Comte de Guerchy demonstrates several ways in which the English legal system facilitated foreigners. The French government found to their frustration that the British would not assist in d'Éon's extradition, as long as d'Éon abided by English laws. But, once d'Éon did publish a libellous work, the English courts did not hesitate to prosecute. The fact that *Lettres* was written in French did not impede the ability of the courts to prosecute d'Éon, with the offending articles translated into English for the case. Throughout, d'Éon demonstrated a misunderstanding of English libel law, focusing on proving the truth of the matter even though this wasn't a valid libel defence. Additionally, d'Éon's frequent non-appearance suggests either an unfamiliarity with English law or a failure to take it seriously, believing that the French government would not let it get that far. D'Éon's case did, however, prompt a debate about whether process could be delayed to summon witnesses from abroad. The case against the Comte de Guerchy required consideration about prosecuting a sitting foreign ambassador in an English court. As a French national, then, d'Éon was an outsider in

the English law courts, but there were many ways in which this outsider status was accommodated throughout the court process.

## James Dixwell v Chevalier d'Éon, 1773–6

The Chevalier d'Éon's next appearance in an English court was a very different affair. Instead of a high-profile criminal case featuring French ambassadors, this was a civil action between d'Éon and the printer James Dixwell, commenced in 1773. Dixwell had formerly printed *Lettres, mémoires et négociations particulières* for d'Éon in 1764.[61] He even provided testimony during the subsequent libel trial, confirming that d'Éon approached him in December 1763 to print *Lettres* and that the work was printed in secret using a private printing press set up at d'Éon's lodgings.[62] Dixwell's testimony in 1764, confirming that d'Éon had written the libellous work that ultimately resulted in the guilty verdict and outlawry, did not sour the relationship, and in January 1770, d'Éon and Dixwell, along with John Joseph de Vignoles, entered into a contract for d'Éon to write, Vignoles to edit and Dixwell to print the multi-volume *Les Loisirs du Chevalier d'Éon de Beaumont . . . pendant son séjour en Angleterre*.[63] However, Dixwell only printed four volumes of the work by February 1771, by which point the partnership had deteriorated. Dixwell, therefore, published no further volumes of *Loisirs*.[64]

The Chancery case, begun in 1773, concerned alleged breaches of the January 1770 contract. This contract was drawn up in both French and English and utilised translators to facilitate the language barrier between d'Éon and Dixwell, neither of whom spoke the other's native language well enough to negotiate a contract in that language. Dixwell's bill of complaint outlined how d'Éon and Vignoles reneged on the January 1770 agreement, failing to provide Dixwell with sufficient materials to produce the work and not providing copy in ample time to publish. Additionally, he criticised the quality of the work that he had seen, claiming that, 'the said work which the Chevalier and Vignoles pretended was of great importance was a mere complication of insipid and uninteresting particulars totally void of all merit and not deserving the attention of the public'. Dixwell claimed that he had sold far more of the first two volumes, published in August, 'when the town was empty' for the summer, than the third and fourth volumes, published when 'the town was very full', which Dixwell said was due to poor quality of the work.[65]

D'Éon countered Dixwell's claims in two answers, submitted on 21 April 1774 and 4 May 1775, admitting to not paying Dixwell the agreed-upon fees, but only because Dixwell had first reneged on the contract

by failing to print volumes on time, as promised in the contract.[66] D'Éon denied failing to produce copy on time. As to the quality of the work and the sales, d'Éon put it down to Dixwell's frequent delaying of publication:

> after so many disappointments and breaches of faith to the public, far fewer of the [third and fourth] volumes were sold . . . All persons inclinable to purchase the said work would most likely defer purchasing such a detached part or fragment of a work not on account of any want of merit, but because the public would not be inclined to purchase small detached parts, unless they had a reasonable certainty that the residue of the said work would be published in a reasonable time.[67]

The depositions, then, needed to address a few things. What was the nature of the contract agreed between the three parties? Was it typical for authors to provide material costs? Who was at fault for the delaying of the volumes? As well as addressing these points, the deponents also highlighted how the parties' nationalities affected the negotiation process. Again, this case demonstrates that, though foreigners that did not speak English could be marked as outsiders or other, this language barrier did not impede their ability to make contracts in England or indeed to involve themselves in court proceedings. In the April 1774 answer, d'Éon acknowledged that it was Vignoles who drew up the final contract, he 'being more conversant in and better understanding the English language'.[68] Two deponents, too, corroborated this account of the contract negotiations. James Dupré of New Bond Street said that he had been present during the contract negotiations and that:

> the said parties conversed together a considerable time and that what was said in the French language by the defendant the Chevalier d'Éon was interpreted or explained to the said complainant James Dixwell, either by this deponent or by the said defendant John Joseph de Vignoles, who also to the best of this deponent's remembrance explained to the said defendant the Chevalier d'Éon what was said in English by the said complainant James Dixwell.[69]

Thomas O'Gorman, d'Éon's brother-in-law, similarly said that he read the articles, 'out of French into English to the said complainant Mr Dixwell', because Dixwell could not understand French well enough to interpret the contract himself.[70]

After the relationship broke down, the deponents also revealed that d'Éon brought them along to complain to Dixwell. Dupré admitted that as d'Éon, 'could not sufficiently explain himself in English', he went with d'Éon several times to visit Dixwell. O'Gorman similarly

travelled with d'Éon to Dixwell's house because d'Éon, 'was not sufficiently conversant in speaking the English language to converse with the complainant in English and the complainant did not understand French well enough to hold conversation in that language'. Another deponent, Peter Fountain of Maiden Lane, also accompanied d'Éon during one of these visits to Dixwell, 'as the said defendant the Chevalier did not speak English perfectly enough to converse with the said complainant in English'.[71] Yet, despite these obvious difficulties d'Éon had in negotiating contracts in the English language, d'Éon's Chancery answer was still in English – not that it had to be. It was decided as early as 1744 that a defendant could swear his answer in French, 'or such other language as he understands', to be translated into English by a notary public.[72] Only the deponents for Dixwell commented on whether it was typical for authors and printers to split the costs of printing. Joseph Smeeton, a printer, who worked as a compositor for Dixwell on *Loisirs*, stated that authors of voluminous works typically paid money in part for paper and printing in advance of the printing. To back up this claim, he cited the example of Mr Griffin of Catherine Street, who had printed part of the History of England in Italian for a Mr Martinelli, for which Martinelli had paid Griffin money in part before the completion of the work.[73]

No final decree for this case is noted in the Chancery decree and order entry books. The last entry mentioning d'Éon in the order books for this Chancery case is dated November 1776, simply ordering Dixwell to pay d'Éon the costs of the day and that Vignoles appear before the court.[74] As for *Loisirs*, it was completed by a different printer in 1774.[75] But, this Chancery case between Dixwell and d'Éon is another in which d'Éon's nationality was pertinent to the dispute. In this matter, translated texts were not submitted as evidence or exhibits, but the contract at the crux of Dixwell's grievance was drawn up in French then translated into English, and the parties both utilised translators that spoke both languages in these negotiations.

## Chevalier d'Éon v Charles de Morande, 1776

A third court case directly involving the Chevalier d'Éon occurred in King's Bench in November 1776. Like the earlier dispute against Guerchy, d'Éon's adversary was a Frenchman, this time Charles Théveneau de Morande, who had arrived in London in 1771.[76] This case therefore continues considerations of French nationals as outsiders in the English law courts. Morande gained notoriety as the publisher of the *Gazetier cuirassé*, a defamatory work targeting the French regime. In 1773, the

French government tasked d'Éon with suppressing Morande's scandalous biography of the King's mistress, Madame du Barry.[77] D'Éon was successful in these negotiations, and in April 1774, Pierre-Augustin Caron de Beaumarchais was sent to London to finalise the deal.[78] Though the previous cases did not touch on d'Éon's uncertain sex (and, indeed, d'Éon continued to present as male throughout those legal proceedings), a key component of this Morande case concerned the question of whether d'Éon was a woman. For Morande was convinced that d'Éon was female, according to Morande, because d'Éon had admitted as such during the 1774 negotiations.[79]

The dispute between d'Éon and Morande goes back to another set of negotiations, between d'Éon and the French government, for d'Éon to return home. On 10 May 1774, Louis XV died, and his successor Louis XVI immediately ordered that the *Secret* be shut down and its agents, including d'Éon, retired. For d'Éon, a return home was contingent on surrendering all private papers relating to the *Secret* and promising not to further dishonour the family of the Comte de Guerchy.[80] In exchange, d'Éon was offered safe passage back to France and a continuation of the annual pension granted by Louis XV. D'Éon refused this offer. Louis XVI thus employed Beaumarchais to negotiate with d'Éon. Beaumarchais, in turn, hired Morande to act as his assistant in these negotiations. D'Éon had three main demands: an annual 12,000 livres pension granted for life; a declaration that Guerchy had attempted to murder d'Éon back in 1763; and recognition from the French government that d'Éon was a woman.[81] D'Éon's demands were, broadly, accepted and on 25 August 1775, Louis XVI authorised d'Éon's certificate of *sauf-conduit* (safe conduct), which referred to d'Éon as female. One of the stipulations of the certificate was that the 'unhappy quarrels which made but too much noise, to the scandal of Europe, should be forever buried in oblivion'.[82] On 4 November 1775, d'Éon accepted these terms and signed the Transaction, a formal recognition of d'Éon's female sex.[83] With the negotiations completed, the expectation was that d'Éon would shortly depart England. However, a week after signing the Transaction, d'Éon fell out with Beaumarchais and Morande, believing them to be behind a new set of policies wagering on d'Éon's sex.[84] At a dinner party on 11 April 1776, Morande revealed to d'Éon that he and Beaumarchais had, as d'Éon suspected, been involved in the policies. Though when Morande discovered that the law could not force the loser of such wagers to pay up, he gave up on such speculation.[85] A furious d'Éon immediately took sworn statements from witnesses to Morande's confession.[86]

During the summer of 1776, d'Éon continually attempted to duel Morande to settle their grievances. Morande, believing d'Éon to be a

woman, refused every time, claiming 'it was impossible for him to meet d'Éon anywhere but in a bed'.[87] To protect himself from further challenges, Morande appealed to Lord Mansfield. On 21 August 1776, d'Éon therefore entered into a recognisance of £200 to keep the peace and agreed to appear in King's Bench on the first day of Michaelmas term to answer charges of breaching the peace (for attempting to duel Morande).[88] However, d'Éon's compatriots still sought out Morande and, on 2 September 1776, Thomas O'Gorman, d'Éon's brother-in-law, who had earlier answered interrogatories in the Chancery case against Dixwell, challenged Morande to a duel. Morande refused, concluding that the only way to avoid future confrontations was to publish his side of the story.[89] This piece was first published in the *Public Ledger* on Tuesday 10 September 1776, and provides Morande's account of d'Éon's actions in England. He begins by discussing the Guerchy dispute, alleging that d'Éon could never prove that Guerchy had indeed tried to poison d'Éon. Morande also details all the other wrongs that d'Éon had allegedly committed, such as publishing diplomatic letters, illegally procuring affidavits, driving up the policies concerning d'Éon's sex and, in general, being duplicitous by purporting to be a man, when in reality 'Miss d'Éon' was a woman.[90] In writing and publishing this piece, Morande enabled d'Éon to submit a countersuit in King's Bench for libel.

When d'Éon appeared in court in Michaelmas term 1776, therefore, it was to produce evidence against Morande for libel, rather than to answer for allegedly breaching the peace. The matter was heard in King's Bench on 27 November 1776. As with the earlier libel case against d'Éon, a key component of these proceedings was the translation of French texts into English, submitted as affidavits in advance of the hearing. However, in this instance, the works being translated were done so on behalf of the defence, rather than the prosecution. The libel itself, Morande's published letter about d'Éon, was in English. Again, though, this demonstrates how the English legal system was equipped to deal with non-English speakers and texts in court cases; a person's nationality did not inhibit their ability to seek justice in the English law courts. Morande's defence, submitted on 18 November 1776, was framed around three letters purportedly written by d'Éon, which proved that d'Éon, firstly, was a woman and, secondly, was equally as guilty of libel and slander as Morande (allegedly) was.[91] On 16 November, these letters had been shown to William Claudius d'Aubarède, a colonel in the French service who now lived in Marylebone, who confirmed that they were in the handwriting of d'Éon.[92] To submit these French letters as evidence, John Goy, a translator, was brought into court on 18 November, whose affidavit included translations of these letters.[93] The letters themselves,

marked 'A', 'B', and 'C', were also brought into court for examination, enclosed with Goy's affidavit.[94]

The first of these letters was a copy of the certificate of *sauf-conduit* that Louis XVI granted to d'Éon in August 1775. The second was a response to a letter from Morande to d'Éon. In Morande's letter, he warned d'Éon to treat civilly with Beaumarchais and not to publish against him in the British press. D'Éon's response, this letter presented to the court, chided Morande for his advice, accusing him of being a man that 'subsists only in London on the dirt of his libels'.[95] The letter is written by d'Éon as a woman, 'Mademoiselle d'Éon'. In the letter, d'Éon reiterates that the only place she is now willing to meet Morande is in a duel. To get around Morande's excuse that he would not duel a woman, Mademoiselle d'Éon said that her 'brother', the Chevalier d'Éon, had 'always taken upon him to vindicate his sister's honour'.[96] This is therefore a remarkable letter showing d'Éon presenting as both a man and a woman, the Chevalier and Mademoiselle d'Éon. Both d'Éon 'siblings' entreated 'Mr de Morande either to keep himself quiet or to go and get himself *bougred* in good French'.[97] The French word *bougred* (buggered) is the one used by the translator John Goy in his English translation of d'Éon's letter. Goy evidently had difficulty in properly expressing the French, '*s'alles faire Foutre en bon francais*', not because he did not know the correct translation, but because he was unwilling to repeat it in a court of law. In his affidavit, after the translation, 'get himself *bougred* in good French', Goy added a qualifier, crossed out in the final translation, that, '*s'alles faire foutre* implied that in French and worse if it could be expressed'.[98] A final letter produced by Morande further demonstrated d'Éon's penchant for sending insulting letters. This letter, sent by d'Éon on 8 August 1776, served as a final missive to Morande, bidding him, 'Adieu for the last time coward, rogue, in the expectation that thou mayest soon give the mob of London thy blessing with thy broad feet at Tyburn'.[99] This letter is written by d'Éon as a man. The only reference to Morande's assertion of d'Éon's female sex is a postscript, in which d'Éon complained that Morande still refused to duel:

> *Jean foutre* don't send me any more paper scribbled with thy corrupted hand, keep to ward thy pistol if thou hadst any heart; Whether I have a prick, or not, what is that to thee, thou art not asked to make an assault against a prick; fight against my pistol, a sabre, or a sword, these must suffice thee if thou hadst any honour.[100]

Goy's translation again suggests an unwillingness to translate the more pejorative passages of d'Éon's letter. Goy chose to keep the derogatory *jean foutre* in the original French, and translated '*queue*' as 'tail' rather

than the more accurate (based on the context of the letter) 'prick'.[101] Morande claimed that d'Éon had been reading copies of the letter in different places and coffeehouses across town, to his great injury.[102]

Though all the affidavits were taken by 18 November 1776, the matter was repeatedly postponed until Wednesday 27 November. Morande was not yet fully on trial for libel. Instead, the parties were meeting to argue whether the libel case against Morande should proceed. Morande's defence spoke first. Their main argument was that the King's Bench did not grant informations to parties that were guilty of the same offence – complainants 'must go into Court with clean hands' – and d'Éon was just as guilty as Morande of writing libelous letters.[103] To prove this, Mr Bearcroft, leading counsel for Morande, quoted the letters written by d'Éon, described in Morande's affidavit. Next, the Clerk of the Crown read out affidavits of Charles de Morande, his wife Elizabeth de Morande and d'Aubarède. During these readings, proceedings were repeatedly interrupted by the 'loud and hearty laughs of the whole Court'.[104] D'Éon's counsel argued that d'Éon had every right to seek redress in the English courts. Morande had tried to utilise the English law against d'Éon. Surely, d'Éon was entitled to the same access to justice? Additionally, d'Éon's letters, though abusive and offensive, were not equivalent to Morande's letter, as they were sent privately, not published in a newspaper. Mr Dunning, one of d'Éon's counsel, created a 'considerable share of laughter' by commenting on how Morande, *to prove his courage*, bound over a person whom he declared to be a woman to keep the peace, then still published the alleged libel.[105] After hearing the arguments of both sides, Lord Mansfield decided that Morande's counsel made the strongest case, concluding the hearing with just five words, 'let the rule be discharged'.[106] This brought the dispute between d'Éon and Morande to an abrupt end in the English courts. Though this case did not proceed further, the letters produced in November 1776, written by d'Éon as a woman, were significant to the ongoing speculation on d'Éon's sex, prompting a string of King's Bench cases in 1777 wagering on the true sex of the Chevalier d'Éon.[107]

## Conclusion

The English court cases featuring the Chevalier d'Éon between 1764 and 1776 demonstrate how court process adapted when dealing with non-English complainants and defendants. A person's nationality may have marked them as an outsider in English society, but in the context of English legal proceedings they were treated as equals with all those who appeared in the courts. In 1764, the information against d'Éon was longer

than most because the libellous work written by d'Éon, *Lettres, mémoires et négociations particulières du chevalier d'Éon*, was published in French; the information therefore included the libellous passages in both the original French and the translated English. Similarly, the Chancery dispute with James Dixwell required translations of French documents into English, this time the contract allegedly breached by d'Éon and John Joseph de Vignoles. Finally, in 1776, it was d'Éon's personal letters, written in French, that required translating, so that Charles de Morande's counsel could prove that d'Éon was equally guilty of libel. Each of these instances reveal the ways in which the English courts accommodated non-English parties, so that anyone resident in Britain could both have access to justice and be subject to English law, not outsiders but equals.

## Notes

1. A key biographical work on d'Éon is Gary Kates, *Monsieur d'Eon is a Woman: A Tale of Political Intrigue and Sexual Masquerade* (BasicBooks 1995). For essays building upon and challenging Kates' work, see Simon Burrows, Jonathan Conlin, Russell Goulbourne and Valerie Mainz (eds), *The Chevalier d'Eon and His Worlds: Gender, Espionage and Politics in the Eighteenth Century* (Bloomsbury 2010).

2. For wagers as insurance policies, see Geoffrey Clark, *Betting on Lives: The Culture of Life Insurance in England, 1695–1775* (Manchester University Press 1999); Michael Lobban, 'The Law of Insurance', in William Cornish et al. (eds), *The Oxford History of the Laws of England: Volume XII: 1820–1914 Private Law* (OUP 2010): 674–727.

3. Cases concerning wagers on d'Éon's sex include the unreported 1772 Chancery cases *De Castro v Bird* [TNA C 12/552/27] and *Jones v Da Costa* [TNA C 12/1328/15]; the 1777 Exchequer equity cases *Jones v Da Costa* [TNA E 112/1626, no. 1704] and *Motteaux v Hayes* [TNA E 112/1649, no. 2390]; and the unreported 1777 King's Bench case *Hayes v Jacques*; as well as the reported King's Bench cases *Da Costa v Jones* (1778) 2 Cowp 729, 98 ER 1331 and *Roebuck v Hamerton* (1778) 2 Cowp 737, 98 ER 1335. The three King's Bench cases are discussed in Warren Swain, '*Da Costa v Jones* (1778)' in Charles Mitchell and Paul Mitchell (eds), *Landmark Cases in the Law of Contract* (Bloomsbury 2016): 119–34.

4. Up to 1777, d'Éon publicly presented as a man, in legal records and newspapers. However, during the 1770s, d'Éon was also writing letters as a woman, making it difficult to ascertain d'Éon's preferred pronouns for the period discussed in this chapter. For this reason, the author has, where possible, removed gendered references to d'Éon, unless quoting directly from a source.

5. TNA KB 28/250, roll 29.

6. Simon Burrows, 'The Chevalier d'Eon, Media Manipulation and the Making of an Eighteenth-Century Celebrity' in Burrows et al. (n 1): 13–24, 14.

7. Kates (n 1): 98.

8. Simon Burrows, 'Despotism without Bounds: The French Secret Police and the Silencing of Dissent in London, 1760–1790' *History* 89, no. 4 (2004): 525–48, 528.

9. TNA SP 78/258/77-78.

10. TNA SP 78/259/37.

11. TNA SP 44/138, f. 140.

12. TNA SP 78/259/18. The French government believed the British were being wilfully obtuse, even encouraging d'Éon, to see their old enemy undermined: Jonathan Conlin, 'Wilkes, the Chevalier D'Eon and "The Dregs of Liberty": An Anglo-French Perspective on Ministerial Despotism, 1762–1771' *English Historical Review* 120, no. 489 (2005): 1251–88, 1252.

13. *London Chronicle*, 14–17 July 1764.

14. M E Boutaric (ed.), *Correspondance secrète inédite de Louis XV, sur la politique étrangère* (2 vols; H Plon 1866) i: 293–4.

15. An English translation of the letter is in Kates (n 1): 109–11. D'Éon, however, admitted that other diners also fell sick after eating at the embassy, so perhaps 'food poisoning or dirty pans were the real culprit': Burrows, 'Media Manipulation' (n 6): 18

16. *London Daily Advertiser*, 20 April 1752; TNA SP 36/118/1/133; Burrows, 'Despotism' (n 8) 530–31.

17. *Public Advertiser*, 7 March 1766.

18. Burrows, 'Despotism' (n 8): 545, quoting *Public Advertiser*, 29 June 1764.

19. TNA SP 78/261/23.

20. TNA SP 37/3/38.

21. TNA KB 1/15/6/3. Affidavit of Robert Mason, 3 July 1764. The writ of subpoena is attached to Mason's affidavit, which affirms that Mason delivered the writ to d'Éon on 12 April, returned on the same day. A second affidavit, submitted by Mason on 4 July 1764, provides details about when the information was delivered to d'Éon. On the 'third or fourth of June', Mason's office received the information from one Mr Webb. Then, one Mr Barlow directed that an office copy be made for the defendant as soon as possible. On 8 June, one Mr Hughes examined the office copy and directed that it be sent to d'Éon's attorney Mr Dagg, who delivered the information to d'Éon. TNA KB 1/15/6/3. Affidavit of Robert Mason, 4 July 1764.

22. TNA KB 1/15/6/3. Affidavit of d'Éon, 3 July 1764. The affidavit is endorsed with a note that it was filed at '1/2 past 6 in the afternoon' on 3 July 1764.

23. TNA KB 10/35/1764East, no. 41, replicated in the plea roll, KB 28/250, roll 29. For comparison, the information against John Wilkes for writing *North Briton XLV*, filed the previous Michaelmas term, runs to around half the size, including fewer allegedly libellous passages and not requiring translation. TNA KB 10/24/1763Mich, no 76. Both the information against Wilkes and the information against d'Éon are referenced in a note on the 'State of the Causes in the Crown Office under the Direction of the Solicitor of the Treasury'. TNA TS 11/923/3237.

24. TNA KB 28/250, roll 29.

25. TNA KB 28/250, roll 29.

26. TNA KB 1/15/6/3. Affidavit of d'Éon, 3 July 1764.

27. D'Éon uses male pronouns in all these letters, published in full in *Public Advertiser*, 14 August 1764. Prior to their publication, these letters had been 'banded about at some of the coffee-houses in town, under the title of *Nouvelles Lettres du Chevalier D'Eon*'.

28. Sylvanus Urban, *Gentleman's Magazine*, vol. XXXIV (D Henry and R Cave 1764): 394.

29. TNA KB 21/39 (Trinity term, 4 Geo III). The 30 June entry describes how juries were assembled in such causes. The sheriff, with the coroner and attorney of the court, consulted the freeholders' book for the county to nominate forty-eight free

and lawful men for the longlist of jurors. They then invited agents for both parties to attend, and each side was permitted to strike out twelve names, so that twenty-four men were returned for the trial.

30. TNA KB 1/15/6/3. Affidavits of d'Éon, 2–3 July 1764.

31. TNA KB 1/15/6/3. Affidavit of d'Éon, 3 July 1764.

32. TNA KB 1/15/6/3. Affidavit of Bontemps, 3 July 1764, taken by Mansfield at 'My House in Bloomsbury Square'. In fact, La Rozière had returned to France to report on d'Éon's erratic behaviour and deliver a letter written by d'Éon to Louis XV, in which d'Éon accused Guerchy of putting opium in d'Éon's wine: Kates (n 1): 108.

33. *Rex v Le Chevalier d'Éon* (1764) 3 Burr 1513, 97 ER 955 (*Rex v d'Éon*); cf *The King v d'Éon* (1764) 1 W Blackstone 510, 96 ER 295.

34. Thomas A Green, 'The Jury, Seditious Libel and the Criminal Law', in R H Helmholz and T A Green (eds), *Juries, Libel, and Justice: The Role of English Juries in Seventeenth- and Eighteenth-Century Trials for Libel and Slander: Papers Read at a Clark Library Seminar 28 February 1981* (Clark Memorial Library 1984): 39–91, 41.

35. *Rex v Le Chevalier d'Éon* (n 33): 1515.

36. *Rex v Le Chevalier d'Éon* (n 33): 1516.

37. *Rex v Le Chevalier d'Éon* (n 33): 1514.

38. TNA KB 28/250, roll 29.

39. TNA KB 28/250, roll 29. The jurors were Richard Nicholas, John Brown, John Calvert, Peter Compart, James Trushard, John Baker, Lionel Lea, John Shakespeare, George Garrett, Thomas Smith, Benjamin Cowley and James Esdaile.

40. TNA KB 29/423; KB 21/39 (Michaelmas term, 5 Geo III). No further witnesses, material or otherwise, appeared.

41. *Public Advertiser*, 13 July 1764.

42. *London Evening Post*, 9–11 August 1764.

43. *Westminster Journal and London Political Miscellany*, 18 August 1764.

44. *Lloyd's Evening Post*, 31 August–3 September 1764.

45. Urban (n 28): 544.

46. TNA SP 37/3/111.

47. TNA KB 28/250, roll 29.

48. TNA SP 78/264/24-25.

49. TNA SP 78/264/18.

50. TNA SP 37/3/103; SP 37/3/117; SP 37/4/13.

51. Though d'Éon claimed this was because of Vergy's testimony, Chazell had fled months earlier to avoid arson charges: Burrows, 'Media Manipulation' (n 6): 18.

52. Kates (n 1): 132.

53. TNA KB 10/35/1765East, no 6. Copies are in TNA KB 33/5/9 and SP 37/4/18.

54. An endorsement on the General Sessions indictment, made 4 March 1765, notes that the Attorney General, at his house, instructed that the certiorari be made immediately to remove the indictment [to King's Bench]. However, Lord Mansfield was unable to sign the certiorari as he was 'going out', so directed that another judge sign it. It was eventually signed the following day by Justice Wilmot: TNA KB 33/5/9.

55. Though Guerchy appealed for a nolle prosequi, no such appeal was authorised by the court: TNA TS 11/923/3237.

56. Kates (n 1): 316

57. TNA SP 37/8/3. Guerchy's family were less inclined to forgive d'Éon, petitioning King Louis XVI in 1775 to keep d'Éon from returning to France: *Morning Chronicle*, 28 November 1775.

58. Alick Cameron, 'Musgrave, Samuel (1732–1780), physician and classical scholar', Oxford Dictionary of National Biography (23 September 2004) https://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-19664, accessed 11 August 2024; *Middlesex Journal*, 2–5 September 1769.

59. *Public Advertiser*, 12 September 1769.

60. *Middlesex Journal*, 9 June 1770.

61. Advertisements for *Lettres* note that the volume was printed by J Dixwell only by the Chevalier d'Éon's appointment. See, for example, *Public Advertiser*, 27 March 1764.

62. TNA KB 1/15/6/3. Affidavit of James Dixwell, 4 July 1764.

63. TNA C 12/920/12 (*Dixwell v d'Éon*).

64. Advertisements for the first two volumes gave notice of forthcoming volumes: *Gazetteer and New Daily Advertiser*, 24 August 1770. Similarly, advertisements for the first four volumes promised a further eight to complete the work: *London Evening Post*, 16 February 1771.

65. TNA C 12/920/12. Bill of complaint of Dixwell.

66. TNA C 12/920/12. Answers of d'Éon.

67. TNA C 12/920/12. Answer of d'Éon, 21 April 1774.

68. TNA C 12/920/12. Answer of d'Éon, 21 April 1774.

69. TNA C 24/1830. Deposition of James Dupré, 1 April 1776.

70. TNA C 24/1830. Deposition of Thomas O'Gorman, 23 April 1776. O'Gorman was an Irish Jacobite who fought in the French armed forces, married to d'Éon's sister Marguerite Françoise-Victoire d'Éon de Beaumont: Richard Hayes, 'A Forgotten Irish Antiquary: Chevalier Thomas O'Gorman 1732–1809' *Studies: An Irish Quarterly Review* 30 no. 120 (1941): 587–96.

71. TNA C 24/1830. Deposition of Peter Fountain, 1 April 1776.

72. Noted in the precedent book of Charles Deaves, 'secretary to six successive Masters of the Rolls' in the eighteenth century. TNA C 27/7, f. 19, citing *Vannick v Chace*, which includes a 'Singular Reposta' of Anthony (Antonio) Gomes Figuiero in Portuguese: TNA C 11/2098/21.

73. TNA C 24/1828. Deposition of Joseph Smeeton, 11 January 1776. For more on Martinelli see, E H Thorne, 'Vincenzo Martinelli in England: 1748–1774' *Italian Studies* 11, no. 1 (1956): 92–107.

74. TNA C 33/447, f. 124. This entry is notable, however, for using the feminine version of d'Éon's name, 'Charles Genevesa Louisa Augusta Andrea Timothea D'Eon De Beaumont', where all earlier entries referred to d'Éon as male.

75. TNA C 12/920/12; C 24/1830; *Public Advertiser*, 2 February 1774.

76. For a biography of Morande, see Simon Burrows, *A King's Ransom: The Life of Charles Théveneau de Morande, Blackmailer, Scandalmonger & Master-Spy* (Continuum 2010).

77. Burrows, *King's Ransom* (n 76): 63; Kates (n 1): 211.

78. Kates (n 1): 213.

79. Sylvanus Urban, *Gentleman's Magazine*, vol. XLVII (1777): 346–7.

80. Kates (n 1): 218. D'Éon's possible return to France reported in *London Evening Post*, 17 September 1774.

81. Kates (n 1): 220–21.

82. Reproduced with English translations in TNA KB 1/20/6/1. Affidavits of Charles de Morande and John Goy, 18 November 1776. D'Éon's personal copy is held in University of Leeds Library, Brotherton Collection [ULBC] MS Chevalier d'Eon/03.

83. Kates (n 1): 229. Though the Transaction was not made public, British reports from the French court in December 1775 remarked that d'Éon was 'now generally believed to be a woman': TNA SP 78/297/97.

84. Burrows, *King's Ransom* (n 76): 82.

85. Donald C Spinelli, 'Beaumarchais and d'Eon: What an Affair', in Burrows et al. (n 1): 64.

86. Burrows, *King's Ransom* (n 76): 85.

87. *Westminster Gazette*, 6–10 August 1776.

88. *Public Advertiser*, 23 August 1776; *London Chronicle*, 22–24 August 1776; *Morning Chronicle*, 24 August 1776. Each of these reports refers to d'Éon as 'Mademoiselle D'Eon, hitherto known by the name of Chevalier d'Eon'.

89. TNA KB 1/20/6/1. Affidavit of Charles de Morande, 18 November 1776.

90. *Public Ledger*, 10 September 1776. A copy of the offending issue is in TNA KB 1/20/6/1, attached to the affidavit of Thomas Brewman, 2 November 1776.

91. For an overview of these three documents, see Daniel Gosling, 'The Libellous Letters of the Chevalier d'Eon' *History Today* 75 no. 1 (January 2025): 16–18.

92. TNA KB 1/20/6/1. Affidavit of d'Aubarède, 16 November 1776.

93. TNA KB 1/20/6/1. Affidavit of John Goy, 18 November 1776.

94. TNA KB 1/20/6/1. Affidavit of John Goy.

95. TNA KB 1/20/6/1. Letter from d'Éon to Morande, 3 August 1776. Translated in the affidavits of Charles de Morande and John Goy, 18 November 1776.

96. TNA KB 1/20/6/1. Letter from d'Éon to Morande, 3 August 1776.

97. TNA KB 1/20/6/1. Affidavit of Charles de Morande, 18 November 1776.

98. TNA KB 1/20/6/1. Affidavit of John Goy. '*S'alles faire foutre*' literally translates as 'go fuck yourself', going some way to explaining Goy's discomfort.

99. TNA KB 1/20/6/1. Letter from d'Éon to Morande, 8 August 1776. Translated in the affidavits of Charles de Morande and John Goy.

100. TNA KB 1/20/6/1. The translation of the French '*queue*' to 'prick' is the author's translation.

101. The English translation of '*jean foutre*' is 'good for nothing', though more pejorative.

102. TNA KB 1/20/6/1. Affidavit of Charles de Morande.

103. *Morning Chronicle*, 28 November 1776.

104. *Morning Chronicle*, 28 November 1776.

105. *Morning Chronicle*, 28 November 1776.

106. *Morning Chronicle*, 28 November 1776.

107. See Swain (n 3).

# References

## Printed sources

Boutaric, M E (ed.), *Correspondance secrète inédite de Louis XV, sur la politique étrangère* (2 vols; H Plon 1866)

Burrows, Simon, 'Despotism without Bounds: the French Secret Police and the Silencing of Dissent in London, 1760–1790' *History* 89, no. 4 (2004): 525–48

Burrows, Simon, *A King's Ransom: the Life of Charles Théveneau de Morande, Blackmailer, Scandalmonger & Master-Spy* (Continuum 2010)

Burrows, Simon, 'The Chevalier d'Eon, Media Manipulation and the Making of an Eighteenth-Century Celebrity' in Burrows, Simon, Conlin, Jonathan, Goulbourne, Russell and Mainz, Valerie (eds), *The Chevalier d'Eon and his Worlds: Gender, Espionage and Politics in the Eighteenth Century* (Bloomsbury 2010): 13–24

Burrows, Simon, Conlin, Jonathan, Goulbourne, Russell and Mainz, Valerie (eds), *The Chevalier d'Eon and his Worlds: Gender, Espionage and Politics in the Eighteenth Century* (Bloomsbury 2010)

Cameron, Alick, 'Musgrave, Samuel (1732–1780), physician and classical scholar', *Oxford Dictionary of National Biography* (23 September 2004) https://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-19664, accessed 11 August 2024

Clark, Geoffrey, *Betting on Lives: The Culture of Life Insurance in England, 1695–1775* (Manchester University Press 1999)

Conlin, Jonathan, 'Wilkes, the Chevalier D'Eon and "The Dregs of Liberty": An Anglo-French Perspective on Ministerial Despotism, 1762–1771' *English Historical Review* 120, no. 489 (2005): 1251–88

Gosling, Daniel, 'The Libellous Letters of the Chevalier d'Eon' *History Today* 75 no. 1 (January 2025): 16–18.

Green, Thomas A, 'The Jury, Seditious Libel and the Criminal Law', in R H Helmholz and T A Green (eds), *Juries, Libel, and Justice: The Role of English Juries in Seventeenth- and Eighteenth-Century Trials for Libel and Slander: Papers Read at a Clark Library Seminar 28 February 1981* (Clark Memorial Library 1984): 39–91

Hayes, Richard, 'A Forgotten Irish Antiquary: Chevalier Thomas O'Gorman 1732–1809' *Studies: An Irish Quarterly Review* 30 no. 120 (1941): 587–96

Kates, Gary, *Monsieur d'Eon is a Woman: A Tale of Political Intrigue and Sexual Masquerade* (BasicBooks 1995)

Lobban, Michael, 'The Law of Insurance', in William Cornish et al. (eds), *The Oxford History of the Laws of England: Volume XII: 1820–1914 Private Law* (OUP 2010): 674–727

Spinelli, Donald C, 'Beaumarchais and d'Eon: What an Affair' in Simon Burrows, Jonathan Conlin, Russell Goulbourne, and Valerie Mainz (eds), *The Chevalier d'Eon and his Worlds: Gender, Espionage and Politics in the Eighteenth Century* (Bloomsbury 2010): 57–72
Swain, Warren, '*Da Costa v Jones* (1778)' in Charles Mitchell and Paul Mitchell (eds), *Landmark Cases in the Law of Contract* (Bloomsbury 2016): 119–34
Thorne, E H 'Vincenzo Martinelli in England: 1748–1774' *Italian Studies* 11 no. 1 (1956): 92–107
Urban, Sylvanus, *Gentleman's Magazine*, vol. XXXIV (D Henry and R Cave 1764)
Urban, Sylvanus, *Gentleman's Magazine*, vol. XLVII (D Henry 1777)
*Public Advertiser*, 2 February 1774
*Gazetteer and New Daily Advertiser*, 24 August 1770
*Gentleman's Magazine*, vol. XXXIV
*Lloyd's Evening Post*, 31 August–3 September 1764
*London Chronicle*, 14–17 July 1764
*London Chronicle*, 22–24 August 1776
*London Daily Advertiser*, 20 April 1752
*London Evening Post*, 9–11 August 1764
*London Evening Post*, 16 February 1771
*London Evening Post*, 17 September 1774
*Middlesex Journal*, 2–5 September 1769
*Middlesex Journal*, 9 June 1770
*Morning Chronicle*, 28 November 1776
*Morning Chronicle*, 24 August 1776
*Morning Chronicle*, 28 November 1776
*Public Advertiser*, 27 March 1764
*Public Advertiser*, 13 July 1764
*Public Advertiser*, 14 August 1764
*Public Advertiser*, 7 March 1766
*Public Advertiser*, 12 September 1769
*Public Advertiser*, 2 February 1774
*Public Advertiser*, 23 August 1776
*Public Ledger*, 10 September 1776
*Westminster Gazette*, 6–10 August 1776
*Westminster Journal and London Political Miscellany*, 18 August 1764

## Manuscript sources

TNA C 11/2098/21
TNA C 12/920/12
TNA C 24/1828

TNA C 24/1830
TNA C 27/7
TNA C 33/447
TNA KB 1/15/6/3
TNA KB 1/20/6/1
TNA KB 10/24/1763Mich
TNA KB 10/35/1764East
TNA KB 10/35/1765East, no. 6
TNA KB 21/39 (Trinity term, 4 Geo III)
TNA KB 28/250
TNA KB 29/423
TNA KB 33/5/9
TNA SP 36/118/1/133
TNA SP 37/3/38
TNA SP 37/3/103
TNA SP 37/3/111
TNA SP 37/3/117
TNA SP 37/4/13
TNA SP 37/8/3
TNA SP 44/138
TNA SP 78/258/77-78
TNA SP 78/259/18
TNA SP 78/259/37
TNA SP 78/261/23
TNA SP 78/264/18
TNA SP 78/264/24-25
TNA SP 78/297/97
TNA TS 11/923/3237
University of Leeds Library, Brotherton Collection [ULBC] MS Chevalier d'Eon/03

## Table of cases

*Da Costa v Jones* (1778) 2 Cowp 729, 98 ER 1331
*De Castro v Bird* [TNA C 12/552/27]
*Jones v Da Costa* [TNA C 12/1328/15]
*Jones v Da Costa* [TNA E 112/1626, no. 1704]
*The King v d'Éon* (1764) 1 W Blackstone 510, 96 ER 295
*Motteaux v Hayes* [TNA E 112/1649, no. 2390]
*Rex v Le Chevalier d'Éon* (1764) 3 Burr 1513, 97 ER 955
*Roebuck v Hamerton* (1778) 2 Cowp 737, 98 ER 1335

Chapter 6

# ‘A Scottish judge’: law reform in the age of Henry Brougham – an outsider’s influence

Patricia McMahon

## Introduction

This chapter takes inspiration from a recent exhibition at the Royal Mews at Buckingham Palace. Amid the display and pageantry of historic royal carriages was a small black buggy, still used to carry mail between Buckingham Palace and St. James’s Palace. The placard explained its practicality – room for one or two passengers, easy access with a single step and the ability to take sharp turns on town roads. The carriage, identified simply as a ‘brougham’, was named for ‘a Scottish judge who designed the first example in the 1830s’.

The description struck me. When Henry Brougham patented the carriage in 1838, he was not simply a ‘Scottish judge’. He was already a well-known former Lord Chancellor, the highest judicial officer in the realm, head of the Court of Chancery, Speaker of the House of Lords and a Great Officer of State who technically outranked the prime minister as an advisor to the sovereign. In that capacity he oversaw equity jurisprudence, appointed judges and judicial administrators and played a central role in legal and judicial reform. Few figures could appear more firmly entrenched in the political and legal establishment. To reduce Brougham to a ‘Scottish judge’ reflects not just a historical simplification but a lingering ambiguity about his relationship to the institutions he belonged to and helped reshape.

This chapter argues that Brougham, long a source of academic fascination,[1] embodied the paradox that can exist when we describe someone as an 'insider' or an 'outsider'. At times, Brougham bore each label. Born in 1778 and educated in Edinburgh during the Scottish Enlightenment, he began his career as an advocate at the Scottish Bar in 1800. In 1803, he moved to London and Lincoln's Inn to start over as an English barrister – and an outsider at the English Bar. Elected to Parliament in 1810, Brougham rose through the legal profession and political ranks to serve as Lord Chancellor between 1830 and 1834, wielding enormous authority in both politics and law. Yet even in high office, he often acted as an outsider, pursuing reforms that unsettled the establishment, whether expanding the franchise or abolishing slavery. Although it was not uncommon for Chancellors to resume the role when their party returned to power, such was not the fate of Henry Brougham, who remained in the House of Lords for another three decades without ever returning to the role. Instead, after leaving the woolsack, Brougham threw his energies into law reform organisations outside Parliament, once more challenging the establishment from the margins.

This chapter uses three examples to explore this paradox: Brougham's early training in Scots law and approach to advocacy, particularly his enthusiasm for representing political outsiders, including Queen Caroline in her divorce proceedings in the House of Lords; his initiatives as Lord Chancellor, some of which reflected an outsider's impatience with existing institutions and traditions; and his later work with extra-parliamentary movements promoting law reform, especially civil justice reform and the fusion of law and equity. Together, the three reveal Brougham as both central to and apart from the legal establishment – in many respects, an outsider to the end despite having served in the highest legal office.

## Zealous advocate: 1808–20

Brougham's decision to move to London in 1803 to begin his legal career anew marked him as an outsider from the start. In both training and approach, Scots law differed from English law. Where English lawyers trained at Inns of Court run by the profession, Scots lawyers studied in university-based faculties of law. In substance, Scotland is a civil law jurisdiction, rooted in Roman law, whereas England is the birthplace of the common law. As a student, Brougham originally learned law by studying Scots legal treatises that were influenced by Roman law, including James Stair's *The Institutions of the Law of Scotland* (1681) and John

Erskine's *An Institute of the Law of Scotland* (1773). It was a legal education that was shaped by the Scottish Enlightenment and the views of moral philosophers like Lord Kames and Adam Smith. Unlike the English common law, which was based on rigid precedent informed and developed by judges through case law, the Scottish approach reflected Roman principles of justice, natural law and equity,[2] ideas Brougham later reflected in his writings and speeches.[3]

Not only was their legal training different, but Scots lawyers occupied a different position in Scottish society than their English counterparts. Scots advocates and judges were part of the intellectual and governing elite. Those with legal training often regarded themselves as leaders within society, 'guardians of a peculiarly Scottish tradition'.[4] English lawyers were viewed as middle-class professionals but not the elite.[5]

Admitted to the Faculty of Advocates in Scotland in June 1800, Brougham immediately began practising on the summer circuit. Despite his powerful oratorical skills, these early years in practice were neither happy, nor especially remunerative.[6] In the autumn of 1802 this sense of professional frustration led him to help found the *Edinburgh Review*, a prominent Whig-leaning quarterly magazine that promoted political and legal reform in opposition to the governing Tories, including the abolition of slavery. Still restless, he decided to move to London the following year where he joined Lincoln's Inn to study English law. He was unenthusiastic about the prospect of studying the common law and approached the move with trepidation. Even early in his career he believed the English approach gave too much power to individual judges, which led to uncertainty and conflict. He thought it was too rigid, too unadaptable and chaotic. These views endured, and he came to support codification based on defined principles.[7]

Despite his initial reluctance to move to England, Brougham's call to the English Bar in 1808 quickly began to pay dividends. In England, his skills as an advocate earned him a reputation and considerable fees – far more than in Scotland. His oratorical prowess was said to have charmed juries, though rivals claimed he did not earn a similar reputation for his ability to grapple with legal complexity.[8] Perhaps the reputation reflected his ongoing status as an outsider, but, fair or not, clients did not seem to mind. Critics claimed that Brougham had moved to London not to practise English law but to secure a seat in the House of Commons. Whether that was his sole motivation is unclear, but he did precisely that in 1810, winning the rotten borough of Camelford, a seat controlled by John Russell, the duke of Bedford and a prominent Whig politician.

## Seditious libel

As was customary, Brougham continued to practise law while serving in Parliament. He seemed to be drawn to representing underdogs, and some of his clients were controversial, including various publishers accused of seditious libel. Seditious libel involved the publication of material that was said to bring the king, the government, the constitution, the courts or public officials into hatred or contempt or incited discontent, hostility or rebellion among the people. Significantly, truth was not a defence. Charging publishers with seditious libel was intended to suppress speech, whether it was criticising the king, his ministers or the government, or even calling for reform. Brougham's clients included John and Leigh Hunt, the radical publishers of *The Examiner*.[9] Brougham defended them against charges of seditious libel in several matters, but in particular after they reprinted a newspaper article criticising the use of flogging in the British Army. In this matter, he won an acquittal from the jury, having justified the Hunts' publication about the practices in the name of free speech. With his victory, Brougham earned a national reputation as a first-rate advocate, willing to take on the establishment. He never lacked for clients again.[10]

## Queen Caroline

Brougham's decision to represent Caroline, the princess of Wales and wife of the future King George IV, underscores his ongoing status as an outsider in relation to the governing Tories. Caroline became among his most prominent and notorious clients. He first met Caroline around the same time he became a member of Parliament and defended the Hunts.[11] Ten years Brougham's senior, the German-born daughter of King George III's eldest sister married her cousin the prince in 1795. Nine months later, she gave birth to an heir, Princess Charlotte. But the marriage was tumultuous from the start, and the couple soon lived separate lives, including separate residences. Rumours of adultery first surfaced in 1801 and continued for years before the appointment of a 'secret' commission, the so-called 'Delicate Investigation', in 1806. Eventually, commissioners concluded the allegations were without foundation.

It was around this time that Brougham began to advise Caroline on a variety of matters. When the Prince of Wales became regent in early 1811, he tried to exclude Caroline from society and prevent her from seeing Charlotte. A campaign of gossip and innuendo began, with each side retaliating against the other; Brougham and Caroline sought to undermine confidence in the prince, who leaked evidence from the earlier investigation. In 1814, Brougham was asked to intervene to help reunite

George and Charlotte after she left her father to stay with her mother. Brougham also helped broker the arrangement that saw Caroline agree to live in Milan, supported by an annual payment of £35,000.[12] Although the public generally sided with Caroline in these various battles, Brougham's efforts to besmirch the future king, whom he despised and attacked in the press and Parliament, were not the work of someone destined to be an insider, legal or otherwise, at least not during the prince's eventual reign.[13]

Despite living abroad, Caroline remained popular with the public and the object of great interest. Over the next several years, newspapers reported titbits of gossip about her very public relationship with Bartolomeo Pergami, a servant in her household, whom she eventually elevated to an adviser. When Princess Charlotte died giving birth to a stillborn child in 1817, the Prince Regent once again became the only heir. Now, he was determined to secure a formal divorce.[14] At that time, divorce was available only if one partner admitted to, or was found guilty of, adultery. Although the Church could grant a separation, only Parliament could grant a full divorce that permitted remarriage.[15] Typically, divorce began with a common law action for criminal conversation. A finding of guilt then became evidence in the Lords, where divorce proceeded by way of private member's bill. The measure was exceedingly rare; between 1700 and 1857, only 314 divorce bills were granted.[16]

But the prince had his own adultery to contend with and could not come to court with clean hands. Instead, he chose to proceed by establishing another commission to gather the necessary evidence. Soon, three commissioners were sent to Milan to investigate. Although Brougham's influence with Caroline had faded with her move to Italy, she remained his client.[17] He worried about what investigators might find and sent his brother to also examine her activities. Alas, there was plenty of evidence to suggest adultery, so Brougham advised Caroline to agree to the divorce. Because Caroline refused to make the admission, the only option was a formal separation absent a public finding of guilt. Provided she received enough money and a title to her liking, Caroline was willing to agree to the separation. Negotiations over the details continued through late 1819.[18]

The possibility of a compromise evaporated when King George III died on 29 January 1820. The prospect of a new title and the throne was simply too great; despite their estrangement, Caroline became queen automatically when her husband became king. King George IV, however, refused to acknowledge his queen and appealed to the Church. Although willing to remove Caroline's name from the liturgy, the Church could do nothing to remove her title. The king thus turned to Parliament.

All this meant the queen faced a proceeding that was open to the public. To save Caroline from embarrassment, Brougham advised her to accept the government's offer of an increased annuity. He thought the deal was fair and said so, but she refused because the arrangement also required her to remain abroad.[19] With negotiations stalled, Caroline returned to England. Now in receipt of the bags of evidence collected by the Milan commission that documented Caroline's infidelity, Parliament appointed fifteen peers to review the evidence in secret and report on the contents to the rest of the Lords. They easily concluded the evidence supported the allegation of adultery, and the government introduced the Pains and Penalties Bill 1820 to dissolve the marriage and strip Caroline of her title.[20]

The legislative process required to enact the bill in the Lords was effectively a public trial of the queen, including live witnesses who gave evidence about her relationship with Pergami. It quickly devolved into a spectacle, with Brougham defending the Queen with a ferocity that has become synonymous with modern notions of zealous advocacy. On his obligation to defend Caroline against the charges, Brougham argued famously that

> an advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons, and, among them, to himself, is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others. Separating the duty of a patriot from that of an advocate, he must go on reckless of consequences, though it should be his unhappy fate to involve his country in confusion.[21]

Although the Lords supported the bill, the Commons did not and would have defeated it had it been submitted to a vote. Instead, to avoid defeat, the government did not submit the bill to the House and resumed negotiations. Now, in addition to the increased annuity, the government no longer required Caroline to remain abroad. Satisfied, she accepted.

Caroline remained popular among the public after the trial and wanted to attend the coronation in July 1821. She was unwelcome and was refused admission to the ceremony. She took ill shortly thereafter and died within weeks. The settlement, however, averted a constitutional crisis while cementing Brougham's reputation as a fierce advocate against the establishment.[22] His legal practice flourished after the trial. There were, however, professional consequences for opposing the king in that he did not take silk until 1827. Appointment to King's Counsel was a royal prerogative at the recommendation of the Lord Chancellor.

Between 1801 and 1827, that person was Lord Eldon, a staunch Tory and fierce opponent of the Whig Brougham. Given Brougham's skill and reputation, the delay in taking silk was political, almost certainly the result of representing the queen.

## Unlikely Lord Chancellor: 1830–34

Within Parliament, Brougham continued to work with the Whigs against the governing Tories. This section examines Brougham's unlikely elevation to the office of Lord Chancellor and some of the reforms he supported that reflect his status as an outsider in approach and views if not position.

Brougham entered government in November 1830. Even among like-minded politicians, he was not necessarily trusted. In June, the duke of Wellington's Tory government had fallen shortly after the death of King George IV. The electorate turned to the reformist Whigs, who formed a government under Charles Grey. Originally, Grey wanted to retain the former Tory Chancellor, Lord Lyndhurst, and name Brougham Attorney General.[23] Brougham, however, wanted to be Master of the Rolls, a position that would have allowed him to hold a permanent judicial position in Chancery while maintaining a seat in the House of Commons.[24] As Master of the Rolls, Brougham would have been the senior judge in Chancery with day-to-day responsibility for equity business.

Grey rejected the idea. For one, John Leach, a vice chancellor since 1818, had served as Master of the Rolls since 1827, and there was no reason for him to step aside. But Grey also worried that Brougham was politically unreliable in the House of Commons and thus a potential threat to the stability of his government.[25] Campbell, a fierce contemporary critic and rival of Brougham, later claimed that Grey's reluctance had more to do with Brougham's lack of legal knowledge. Focusing on the role's judicial function, Campbell said that Grey had 'expressed considerable doubts whether Brougham, whose stock of Common Law was slender, and who knew nothing about Equity whatever, was well qualified to preside in the Court of Chancery'.[26] About Brougham's understanding of Chancery, Campbell alleged that lawyers had quipped, 'If only he knew a little of equity law he would know a little of everything'.[27] Instead, Grey decided to elevate Brougham to the position of Lord Chancellor. Appointing Brougham to that role eliminated a potential rival from the Commons while keeping him occupied, because the Lord Chancellor's responsibilities involved not just judicial functions but also political and administrative ones.[28] In addition to serving as the chief judge in equity and judge of appeal cases in Chancery, he served as the chief Law Lord

in the House of Lords, overseeing appeals in all areas, whether in law or equity. Politically, he served as the speaker of the Lords and a member of cabinet, which meant he also lacked security of tenure. When the ministry changed, so did the Lord Chancellor.[29]

## Accomplishments

Brougham reportedly regretted his elevation almost immediately.[30] However, his legislative accomplishments were significant but flew in the face of the establishment. He helped shepherd serious reform measures through the House of Lords including the Great Reform Act in 1832, which expanded the franchise to include middle-class men and eliminated the sparsely populated 'rotten boroughs',[31] like the one that Brougham represented when he was first elected to Parliament. The following year, he helped pass the Slavery Abolition Act, which ended slavery in the British Empire, compensating estate owners and investors, though not the people who were liberated.[32] It was an achievement that reflected his personal support for abolition that dated back to his early days with the *Edinburgh Review*,[33] but was also enormously expensive to implement. The £20 million in compensation represented 40 per cent of the total government expenditures in Great Britain for 1834. Today, that amount is worth billions.[34]

When it came to law reform, Brougham introduced several significant institutional reforms. Having made his first public call for law reform in a six-hour speech in the Commons in February 1828,[35] now that he was Lord Chancellor, he could do something about it. It was true that Brougham had no experience as an English Chancery lawyer, but he was a successful common-law barrister, who had also trained in Scots law, in which law and equity were administered by a single court.[36] That training meant he understood that legal proceedings could be handled differently and, quite possibly, more efficiently. Where civil justice reforms before this period have been described as 'cautious' and 'experimental',[37] Brougham brought energy to the cause, promoting incremental reforms that were already popular without the radicalism of the Benthamites.[38]

In addition to creating a dedicated Bankruptcy Court (discussed in more detail later in the chapter), he also established a central criminal court and the Judicial Committee of the Privy Council, which became the final court of appeal within the British Empire. These institutions had a lasting impact. He also supported the creation of a county court system and reforms to the administration of Chancery, though his aspirations exceeded his accomplishments in these areas, which are described as merely 'adequate and useful in clearing arrears'.[39] A not insignificant

achievement, but not the wholesale reform he would have preferred and proof that even serving as an 'insider' within the legal establishment was not always enough to achieve reform that required political action in Parliament.

Brougham also promoted procedural reforms, many of which ran into opposition in Parliament. In February 1831, after consulting with his Chancery advisers,[40] Brougham promoted an ambitious list of reforms in a three-hour speech.[41] First, he recommended separating the judicial and political functions of the Chancellor's office. He also wanted to improve the collection of evidence and suggested replacing written affidavits and interrogatories with oral evidence and examining witnesses and transforming the role of the masters by appointing three to take evidence in open court. Additionally, he wanted to replace the bankruptcy commissioners – patronage appointments, many of whom were of dubious quality – with a dedicated court led by a single judge who would hear bankruptcy matters daily with support from nine other judges. He was keen to reduce the cost of proceedings by paying judges and court officers a fixed salary, not a portion of the fees they earned.[42]

Brougham achieved only one of these initiatives: replacing the bankruptcy commissioners with a dedicated court.[43] His plan to abolish the masters' offices fell short.[44] He then tried to create a dedicated masters' court in 1832, but that was still too bold.[45] Instead, he settled for reforming fees and the six clerks. Originally, he wanted to pay masters a fixed salary from the general fund (instead of the fees they generated) and abolish the six clerks' office. But when the bill emerged from review by a select committee, the resulting legislation was watered down significantly. Now, the six clerks' office would be abolished only through attrition, allowing one replacement for every two vacancies.[46] It was a significant change, if not yet transformative.

## Shortcomings

Brougham's tenure as Lord Chancellor earned mixed reviews. Despite his important legislative achievements, many ambitious proposals for civil justice reform faced insurmountable opposition in Parliament. They were either diluted or died on the order table. Yet Brougham's willingness to attempt fundamental Chancery reform left an impact, creating an ethos of reform that set an agenda for future governments.[47]

Despite reaching the pinnacle of the legal profession, Brougham never became a true insider. When he became Chancellor, he left the Commons with a weak base of support and never developed one in the Lords.[48] As Chancellor, he had less patronage to dispense than others.

Although he could appoint supporters to commissions and the bench, few could reciprocate in Parliament where he needed support to enact reform legislation.[49] Even if he could have used patronage appointments strategically, little suggests he would have put it to good use.[50] On occasion, he acted with naked self-interest that suggested hypocrisy. For example, William Henry Scott, who held two Chancery sinecures, died suddenly in July 1832. Brougham filled only one of the resulting vacancies but appointed his own brother to the position. That Scott was the former Lord Chancellor Eldon's son only heightened scrutiny of the appointment, and the resulting outcry further undermined Brougham's ability to enact ambitious legislation.[51] As Lord Melbourne wrote to him in 1835,

> You domineered too much, you interfered too much with other departments; you encroached upon the province of the Prime Minister, you worked, as I believe, with the press in a manner unbecoming the dignity of your station, and you formed political views of your own and pursued them by means which were unfair towards your colleagues'.[52]

That some colleagues viewed him 'as a schemer' is understandable.[53]

## After the Woolsack: 1834–68

By the time Brougham left the Chancellor's office in November 1834, he had alienated many within his party.[54] When the Whigs returned to office under Melbourne in 1835, Brougham did not return to the office or any other position in cabinet. By 1841, he no longer identified with the party and must have realised he would never again be Chancellor. Because his interest in law reform persisted, Brougham had to look beyond Parliament. His efforts in the years that followed embody the paradox of the insider/outsider dynamic. An outsider as a champion of reform, he was also an insider as a parliamentarian who could still help to effect change. After years of experience on the inside, Brougham knew more than most what needed to be done and how. This part examines Brougham's involvement with two organisations dedicated to promoting law reform: the Law Amendment Society and the Social Science Association. In many respects, Brougham used these organisations to recreate parliamentary institutions he thought were needed but lacking.

### The Law Amendment Society

In January 1844, Brougham brought together a group of prominent lawyers and judges to create the National Association for the Promotion

of Social Science. More commonly known as the Law Amendment Society,[55] the bipartisan group was described as a 'fertilising agency'[56] that worked to promote all manner of law reform,[57] including many of the initiatives that Brougham had tried and failed to tackle as Chancellor, especially civil justice reform. Originally, Brougham hoped the society could educate both the profession and the public about the need for law reform. In fact, most of the society's actual work involved preparing research studies about possible solutions and drafting bills for legislators to implement them.[58] It was an approach that reflected Brougham's own sensibilities: 'cautious' not 'radical',[59] recommendations based on research and investigation, a method modelled on 'other departments of arts and science'. He hoped the group could provide a much-needed service to legislators while also acquiring 'considerable and legitimate influence'.[60]

Brougham knew that great ideas alone were not enough; they had to be promoted, and a periodical was the perfect way to do it. Just as he had used the *Edinburgh Review* to promote progressive reforms, he helped create *Law Review* to raise awareness about the need for law reform among his target audience: legislators and the profession.[61] *Law Review* regularly published committee reports, monthly proceedings and details about legislative experiences in other jurisdictions.[62] By explaining their rationale, Brougham hoped the reforms would speak for themselves.[63]

The society promoted itself as a broad, open organisation with a membership that included businessmen, merchants and legislators, not just lawyers and judges. Newspapers ran notices about the annual meetings, which were open to the public and run formally. With permission, the press was welcome to attend. Attendees elected officers, including the president, vice president, treasurer and secretary; determined membership on the council and committees; and approved all resolutions. Anyone could speak at an open meeting, but participation at 'general' meetings was limited to members and their guests. Guest speakers occasionally addressed 'special' meetings.[64] One such prominent guest was the American David Dudley Field, who spoke convincingly about the benefits of the procedural fusion of law and equity when he met with society members in November 1850 to discuss New York State's recent adoption of his code for civil procedure.[65]

Under Brougham's leadership, committees were integral to the society's work. Whether standing or select, they took direction from the general meeting; standing committees dealt with long-term law reform issues in areas like equity, parliamentary law, criminal law, property law and common law, whereas select committees investigated specific

issues as they arose. Each researched and prepared reports with recommendations. For example, at various times the equity committee reviewed the operation of the masters' offices and the handling of trusts, while the property law committee dealt with the law of mortgages, conveyance of property and registration of deeds. Select committees considered a range of issues, from the laws governing partnerships and liabilities of partners in joint stock banks to improving the system of law reporting.[66]

After discussing the research in committee, a member prepared and presented a report with findings and recommendations to the general membership for discussion. Recommendations could be approved, rejected or sent back to the committee for additional consideration. Brougham expected materials to be presented in a 'practical form' that was easy to use, including a list of references for future consultation. Every proposed law reform measure was reviewed this way.[67] It was a time-consuming, labour-intensive process,[68] but Brougham believed this collective effort would yield better results than any one individual could manage.[69]

When the society held its first public meeting in June 1846, the eight simple resolutions adopted, including one supporting Chancery reform, reflected Brougham's experience and priorities from his time as Chancellor.[70] As one commentator remarked, the gathering 'demonstrate[d] that the reform of the law may be promoted as a question untainted by party considerations; and the part taken in it by the legal profession wipes off the stain which was supposed to rest on it of an indifference approaching to hostility to this great cause.'[71]

The society came to provide legislators with institutional support, including Brougham, who relied heavily on its work. As Lobban characterises it, Brougham's relationship with the group was like 'that of a quasi-Lord Chancellor with his quasi-ministry of justice'.[72] In that sense, Brougham created the ministry he never had, and he credited the group with providing the text of many of the bills he introduced after 1844. He claimed the society was directly responsible for at least forty statutes enacted through 1857 and had contributed to fifty more.[73]

## Social Science Association

The society carried on this way for more than a decade, churning through its processes, producing reports and drafting bills. By 1857, however, Brougham wanted to promote reform on a broader scale, and brought together the society, the National Reformatory Union, and

the women behind the Langham Place Circle to form the National Association for the Promotion of Social Science: the Social Science Association.[74] He wanted this new umbrella organisation, based on the British Association for the Advancement of Science,[75] to tackle reform in five areas with dedicated 'departments': jurisprudence and law amendment, education, public health, punishment and reformation, and social economy. Its operations were like the society's but larger in scope and ambition, and the group included reform-minded lawyers, as well as public servants and prominent politicians, including once and future prime ministers Edward Stanley and John Russell.[76] If the society served as a quasi-ministry of justice, Brougham hoped the association would operate more like a quasi-Parliament for more general social reform.[77]

As with the society, Brougham hoped the association could influence legislators to adopt its proposals.[78] One way of doing that was to educate the masses throughout Great Britain. The plan was to take the show on the road, to get out of London; each year, the association would meet in a different British city. Speaking to those gathered at the first meeting in Birmingham in 1857, Brougham described the association's purpose using language that was similar to that he had once used to describe the society's, but now with a greater focus on pushing Parliament to act. Members should 'aid legislation by preparing measures, by explaining them, by recommending them to the community, or, it may be, by stimulating the legislature to adopt them'.[79] At a time when political instability meant reform initiatives were not top of mind in Parliament,[80] Brougham wanted to change that. What he really wanted was to educate voters who could then push politicians to act.[81] Speakers at that first congress (as it came to be called) echoed his sentiments. When they talked about the need for reform, they stressed the need to inform laymen, not just give guidance to legislators. As the Earl of Shaftesbury later explained, '[t]his Association consists of teachers, not of doers.'[82]

Brougham continued to serve as president of both organisations, but the society's influence began to wane, often in the shadow of the association, which got more attention thanks to its annual week-long congress and the publication of proceedings that followed.[83] The movement, however, was fractured. As *Law Magazine* remarked, 'The multiplicity of societies [is] becoming a positive nuisance in London, and the loss of time, labour, and money involved, is beyond calculation. Anything ought to be welcome that brings concentration and unity.'[84] The formal merger of the two organisations in 1864 did precisely that.

Enthusiastic about the merger, Brougham thought it would reinvigorate the reform movement by focusing its energies.[85] When Brougham presided over the society's last annual dinner in June 1864, he reminisced about the group's accomplishments while promoting the ongoing need for law reform, describing it as 'a most important object of national desire', the most significant of '[o]f all social sciences.'[86] He still believed in the society's cautious, incremental approach, twenty years after its founding, adamant that people and politicians both needed time to be persuaded that change was necessary.[87] It was an astute observation.

When Brougham addressed the next congress at its meeting in York,[88] he focused on what he saw as the key impediment to true law reform: the absence of a ministry of justice to lead the charge. From his own experience, he thought the Chancellor's office was too busy with political and judicial work to pay sufficient attention to reform. Real change was impossible without a dedicated minister with a supporting institution. He pointed to the recent demise of legislation that would have expanded equitable jurisdiction to the county courts as but one example. Presuming a certain savviness, he complained that a justice minister would have divided the bill into two parts, leaving to one side 'the objectional portion', and allowing 'the good parts' to pass.[89] It was a moment of reflection: an outsider's sensibility from one who very much understood the inside of the political and legal process. In fact, by June 1865, equitable jurisdiction had been extended to the county courts and the procedural practice in the common law courts had been increasingly consolidated, paving the way for formal fusion under the Judicature Acts in 1873–5. Brougham celebrated these accomplishments as proof of the wisdom of the merger as well as the benefit of time and persistence,[90] having supported procedural fusion for much of his career. It was something he had pursued incrementally for decades, no doubt influenced by his early training in Scots law.

It was around the same time that Brougham began to withdraw from public life. His swan song was the congress of 1866, held in Manchester, where the most significant business was the selection of his successor: the Earl of Shaftesbury, a long-time evangelical politician who was a strong advocate for social and labour reform.[91] With a general recognition that procedural fusion was necessary, reformers at congress talked instead about whether fusion could be accomplished with a code, or if a digest of law was a necessary precursor.[92] When congress met the following year, Lord Derby announced the appointment of the Judicature Commission on the day that congress opened. That commission went on to develop the framework for full formal fusion under the Judicature Acts of 1873–5.[93] It was the first congress that Brougham did not attend.

## Conclusion

Brougham died in May 1868 visiting Cannes, France, where he was buried. It was a fitting final resting place for Brougham, a tribute to the man credited with developing Cannes while simultaneously reflecting his final status as an outsider despite his membership in the House of Lords and having held the highest legal office in England.

Brougham's interest in and success with law reform may have stemmed precisely from his position as an outsider, not despite it. Trained originally in Scots law, his practice at the English Bar was forever influenced by this earlier experience in law, reflected in his later openness to comparative law when considering reform initiatives, including the example set by New York State with respect to procedural fusion. Yet his enthusiasm for broad substantive reform as Chancellor, including the adoption of the Reform Act and abolition of slavery, left little political capital to enact serious civil justice reform. Although his tenure was consequential, Brougham could never muster the political support necessary to return to the office. Even after serving another three decades more in Parliament, Brougham remained an outsider in temperament. To continue his law reform work required him to create a different mechanism beyond Westminster to help influence change from within, especially with respect to civil justice. He did so by creating the Law Amendment Society and Social Science Association. When the courts of law and equity were finally fused under the Judicature Acts 1873–5, it was after years of ongoing, incremental reform, much of it influenced by Brougham and these reform-minded organisations. He had promoted an essential strategy of incrementalism through both organisations even if he did not live to see formal fusion enacted.

Brougham's contributions as an advocate for political outsiders, as a reforming Lord Chancellor and as an extra-parliamentary champion of law reform all illustrate how his outsider status helped, not hindered, his pursuit of change. That he is remembered in a caption for tourists about a practical carriage and not for his legal reforms underscores how his popular image, like his career, straddles our perceptions about holders of high office and the substance of his work outside the mainstream. Lobban writes that one of Brougham's greatest contributions as Chancellor was to ensure that civil justice reform remained on the government agenda for decades to come.[94] I suggest that an equally important contribution was his incrementalist approach to that reform. His legacy, rooted in the ideals of an outsider who understood how to work within the establishment, surrounds us with the panoply of changes that survived his death whether they involve substantive law, legal institutions or civil justice reform.

## Notes

1. There is an extensive literature on Brougham, including a vast holding of personal papers at University College London. Biographies include John Campbell, *Lives of Lord Lyndhurst and Lord Brougham: Lord Chancellors and Keepers of the Great Seal of England* (J Murray 1869); Edward Foss, *A Biographical Dictionary of the Judges of England* (J Murray 1870): 130–31; Frances Hawes, *Henry Brougham* (St Martin's Press 1958); Chester W New, *The Life of Henry Brougham to 1830* (OUP 1961); Ronald K Huch, *Henry Brougham: The Later Years, 1830–1868* (E Mellen Press 1993); Michael Lobban, 'Brougham, Henry Peter, First Baron Brougham and Vaux (1776–1868)' in *Oxford Dictionary of National Biography* (OUP 2004) (hereafter Brougham, ODNB).

2. Henry Home Kames, *Essays on the Principles of Morality and Natural Religion* (R Fleming for A Kincaid and A Donaldson 1751); Adam Smith, *The Theory of Moral Sentiments* (A Millar, A Kincaid and J Bell 1759); Adam Smith, *Lectures on Jurisprudence 1762* (*Glasgow Edition of the Works and Correspondence of Adam Smith*, first published OUP 1976, Clarendon Press 1990).

3. John Alfred Dwyer, "An 'Enlightened" Scot and English Reform: A Study of Henry Brougham' (MA thesis, University of British Columbia 1975) 27–30; Henry Peter Brougham, *Works of Henry Lord Brougham*, vols 1–8 (Adam and Charles Black 1872).

4. Dwyer (n 3) 25; David Daiches, *The Paradox of Scottish Culture: The Eighteenth Century Experience* (OUP 1964): 57; N T Phillipson, 'The Social Structure of the Faculty of Advocates in Scotland, 1661–1840' in Alan Harding (ed), *Law-Making and Law-Makers in British History: Papers presented to the Edinburgh Legal History Conference, 1977* (Royal Historical Society 1980).

5. See David Lemmings, *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century* (OUP 2000); David Sugarman, 'Simple Images and Complex Realities: English Lawyers and Their Relationship to Business and Politics, 1750–1950' *Law and History Review* 11 no. 2 (1993): 257; Harold Perkin, *The Rise of Professional Society: England since 1800* (Routledge 1989).

6. Brougham, ODNB (n 1).

7. See, for example, Brougham's letter to Sir James Graham in August 1840, *Letter from Lord Brougham to Sir James Graham on the Making and the Digesting of the Law* (James Ridgway 1849), also in Brougham, *Works* (n 3) vol 8: 220, 224. As he wrote to his friend James Loch, 'The English Bar is in a very great degree tedious, and, to say the least of it, somewhat uncertain. I look forward with no small horror to five years dull unvaried drudgery, which must be undergone to obtain the privilege of drudging still harder, among a set of disagreeable people of brutal manners and confined talents': R H M Buddle Atkinson and G A Jackson (eds), *Brougham and His Early Friends: Letters to James Loch*, 1789–1809, vol. 2 (T and A Constable 1908): 344.

8. Brougham, ODNB (n 1).

9. Others included John Drakard, who published the original story about the army flogging that got the Hunts into trouble, along with J A Williams, who was tried for a libel on the clergy in 1822: Henry Brougham, *Speeches of Henry Lord Brougham*, vol. 1 (Adam and Charles Black 1838): 51.

10. Brougham was especially proud of his work for the Hunts and published his address to the jury in a volume of his speeches. After representing them, Brougham's law practice never generated less than £8,000 annually. Brougham, *Speeches*, vol 1 (n 9): 15; Brougham, ODNB (n 1).

11. Campbell (n 1): 304–43; Foss (n 1): 130–31; Hawes (n 1): 115–60; Brougham, ODNB (n 1).

12. New (n 1): 79–118.

13. New (n 1): 163–97.

14. New (n 1): 163–97.

15. The House of Lords was responsible for granting full divorces until the Matrimonial Causes Act 1857 (20 & 21 Vic) c 85. J H Baker, *Introduction to English Legal History* (5th edn, OUP 2019): 534–7.

16. UK Parliament, 'Obtaining a Divorce' https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/overview/divorce/, accessed 15 September 2025.

17. Cynics had claimed that Brougham had lost interest in Caroline when Charlotte died because there was no longer the possibility of serving as advisor to the next monarch: New (n 1): 228–47; Arthur Aspinall, *Lord Brougham and the Whig Party* (first published 1927, Nonsuch 2005): 101–13; J E Cookson, *Lord Liverpool's Administration: The Crucial Years, 1815–1832* (Archon Books 1975): 200–228.

18. J Nightingale, *Trial of Queen Caroline* (J Robins & Co Albion Press 1821); Roger Fulford, *The Trial of Queen Caroline* (BT Batsford 1967); New (n 1): 228–62.

19. Some speculate Caroline was influenced to reject the deal by those who wanted her to serve as a figurehead for the Radicals against the king: New (n 1): 238–48.

20. The bill, 'An Act to deprive her Majesty Queen Caroline Amelia Elizabeth, of the Title, Prerogatives, Rights, Privileges and Exemptions, of Queen-Consort of this Realm, and to dissolve the Marriage between his Majesty and the said Caroline Amelia Elizabeth', was presented in the House of Lords on 5 July 1820: Bill of Pains and Penalties, HL Bill (1819–20) 517.

21. Nightingale (n 18), vol 2: 8.

22. See, for example, Thomas W Laqueur, 'The Queen Caroline Affair: Politics as Art in the Reign of George IV' *Journal of Modern History* 54 no. 3 (1982): 417; Georgina Abreu, 'The Queen Caroline Affair in Radical Periodicals' *Open Cultural Studies* 6 (2022): 88.

23. Campbell (n 1): 355.

24. Hawes (n 1): 215–17; J C Sainty, *Judges of England 1272 to 1990* (Selden Society 1993): 143. Campbell writes that the House of Commons was 'the only scene for which, as an orator, [Brougham's] powers were well adapted': Campbell (n 1): 355. The Master of the Rolls remained eligible to sit in Parliament until 1873: see the Supreme Court of Judicature Act 1873 (36 & 37 Vic) c 66, ss 5, 9.

25. Huch (n 1): 41.

26. Campbell (n 1): 358.

27. Hawes (n 1): 220; Campbell (n 1): 358, 364.

28. Hawes (n 1): 215–17; Campbell (n 1): 358.

29. 'The Offices of Lord Chancellor' *Law Magazine* 44 (1850): 247; 'The Great Seal' *Law Review & Quarterly Journal of British and Foreign Jurisprudence* 51 (1850): 387; 'The Offices of the Lord Chancellor' *Law Magazine* 45 (1851): 34.

30. Hawes (n 1): 219; Huch (n 1): 42–3.

31. Representation of the People Act 1832 (2 & 3 Will 4) c 45. Brougham did not frame the legislation but helped move it through the House of Lords: Hawes (n 1): 224–36; Foss (n 1): 131; Campbell (n 1): 371–93.

32. Slavery Abolition Act 1833 (3 & 4 Will) c 73.

33. Brougham had been an abolitionist for years: see Henry Brougham, *Opinions on Negro Slavery* (H J M'Clary 1830); New (n 1): 119–45; Paula Dumas, 'The *Edinburgh*

*Review*, the *Quarterly Review*, and the Contributions of the Periodicals to the Slavery Debates' *Slavery & Abolition* 38 (2017): 559–76.

34. University College London, 'Centre for the Study of the Legacies of British Slavery' https://www.ucl.ac.uk/social-historical-sciences/history/research/research-projects-and-centres/centre-study-legacies-british-slavery-cslbs, accessed 15 September 2025; Nicholas Draper, *The Price of Emancipation: Slave-Ownership, Compensation and British Society at the End of Slavery* (CUP 2010); Catherine Hall et al., *Legacies of British Slave-Ownership: Colonial Slavery and the Formation of Victorian Britain* (CUP 2014); David Olusoga 'The History of British Slave Ownership Has Been Buried: Now Its Scale Can Be Revealed', *The Guardian*, 12 July 2015 https://www.theguardian.com/world/2015/jul/12/british-history-slavery-buried-scale-revealed, accessed 15 September 2025.

35. Previously, Brougham had focused on education reform, helping to found the London Mechanics Institutes (1824), the Society for the Diffusion of Useful Knowledge (1826) and the non-denominational University College London (1828): Henry Brougham, *Present State of the Law: The Speech of Mr. Henry Brougham* (H Colborn 1828); 'Brougham's Speech' *American Jurist and Law Magazine* 1 (1829): 310.

36. Brougham said he tried to offer a litigant's perspective on law reform: see T H Ford, 'Brougham as a Barrister: Courtroom Dilemmas of a Notorious Radical' *Journal of Legal History* 5 no. 3 (1984): 108; Michael Lobban, 'Henry Brougham and Law Reform' *English Historical Review* 115 no. 464 (2000): 1184, 1190.

37. Lobban (n 36): 1187.

38. Lobban (n 36): 1190.

39. On the backlog and Brougham's response, see Huch (n 1): 47–9. Hawes points out that Brougham was willing to sit for more time than his predecessors (n 1): 223. According to Campbell, Brougham claimed to have cleared arrears in Chancery for the first time since Sir Thomas More (n 1): 368–9, 395, 404. Some lawyers complained that Brougham was inattentive during argument, reviewing and responding to correspondence instead of listening to submissions. According to Campbell, Brougham responded that he could do both (n 1): 368–9. On the characterisation of Brougham's contributions as Chancellor as 'adequate', see Hawes (n 1): 220.

40. Leading Chancery counsel C P Cooper and George Spence.

41. Campbell (n 1): 369–70.

42. Campbell (n 1): 369–70; Huch (n 1): 51–3.

43. Court in Bankruptcy Act 1831 (1 & 2 Will 4) c 56.

44. Hawes (n 1): 224; Brougham, ODNB (n 1).

45. Lobban (n 36): 1196; Huch (n 1): 54.

46. Chancery Regulation Act 1833 (3 & 4 Will 4) c 94, s 28.

47. Hawes (n 1): 224; Lobban (n 36): 1199, 1214–15.

48. Hawes (n 1): 217–19; Lobban (n 36). Some argue the appointment was intended to undermine his political support in the Commons: Huch (n 1): 41–2.

49. Lobban (n 36): 1194.

50. Hawes (n 1): 237; Campbell (n 1): 365.

51. Lord Chancellor's Pension Act 1832 (2 & 3 Will 4) c 111; Lobban (n 36): 1196–7.

52. Aspinall (n 17): 327–9.

53. Brougham, ODNB (n 1).

54. Campbell (n 1): 442, 462; Lobban (n 36); Robert Stewart, *Henry Brougham His Public Career 1778–1868* (Bodley Head 1985): 285–302; Patrick Polden, *A History of the County Court, 1846–1971* (CUP 1999): 27.

55. Lobban (n 36): 1207.

56. Stewart (n 54): 349.

57. 'The History of the Law Amendment Society from Its Institution, in 1844, Till the Present Time' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 18 (1853): 304, 306.

58. O R McGregor, *Social History and Law Reform* (Stevens 1981): 18–19; *Transactions of the National Association for the Promotion of Social Science, Belfast Meeting, 1867* (Longmans, Green, Reader and Dyer 1868): 128; 'History of the Law Amendment Society' (n 57): 306; Lobban (n 36): 1205 quoting *The Times*, 4 August 1852.

59. A jab at Bentham.

60. 'History of the Law Amendment Society' (n 57): 308.

61. They also wanted to help elect members to Parliament: 'Proceedings of the Society for Promoting the Amendment of the Law' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 4 (1846): 446, 450–51; 'Proceedings of the Society for the Promotion of the Amendment of Law' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 6 (1847): 404; Lobban (n 36): 1205–6.

62. 'Proceedings 1846' (n 61): 450–51: the founders wanted the Society to communicate with 'proper authorities in other countries on these subjects'. *Law Review* published several articles on the efforts of the Indian Chancery reform commission in support of procedural fusion: 'The Supreme Courts in India' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 9 (1849): 225; 'Separate Jurisdictions of Law and Equity' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 10 (1849): 284; 'Chancery Reform in Calcutta' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 11 (1849): 48. That year, two jurists with experience in India joined the Society: Sir Thomas Erskine Perry, chief justice of the Supreme Court of Bombay and president of the Indian Board of Education, and Sir Arthur William Buller, a judge of the Supreme Court of Calcutta.

63. 'History of the Law Amendment Society' (n 57): 306–7

64. 'Proceedings 1846' (n 61): 446–7; 'Proceedings 1847' (n 61); 'The Public Meeting of the Society for the Amendment of the Law' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 8 (1848): 233, 241; 'Proceedings of the Society for Promoting the Amendment of the Law' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 9 (1849): 444, 445–6; 'History of the Law Amendment Society' (n 57): 306–8, 311–13.

65. 48 NY Laws c 379. See 'History of the New York Code and Its Applicability to This Country' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 13 (1851): 213, 214.

66. 'Proceedings 1849' (n 64): 445–50.

67. 'Proceedings 1846' (n 61): 447.

68. 'Proceedings 1847' (n 61): 405–6.

69. 'Public Meeting of the Society 1848' (n 64): 238.

70. 'Proceedings 1847' (n 61): 413; 'Proceedings of the Society for the Promotion of the Amendment of Law' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 12 (1850): 211, 213–16. 'That the proceedings of the Court of Chancery require great and extensive amendment' carried unanimously: 'Proceedings 1846' (n 61): 457.

71. 'Proceedings 1846' (n 61): 456–7.

72. Campbell called the society 'comparatively obscure' in relation to the Social Science Association: Campbell (n 1): 587–8; Lobban (n 36): 1205–6.

73. Brougham, quoted by Lobban, though Campbell disputed the number: Lobban (n 36): 1205–6; Campbell (n 1): 587–8; McGregor (n 58): 19; John Eardley-Wilmot, *Lord Brougham's Law Reforms Comprising the Acts and Bills Introduced or Carried by Him Through the Legislature Since 1811* (Longman, Brown, Green, Longman and Roberts 1860); 'History of the Law Amendment Society' (n 57): 309.

74. The Reformatory Union was dedicated to caring for young offenders: Sheila Herstein, 'The Langham Place Circle and Feminist Periodicals of the 1860s' *Victorian Periodicals Review* 26 (1993): 24; Lawrence Goldman, 'The Social Science Association, 1857–1886: A Context for Mid-Victorian Liberalism' *English Historical Review* 101 (1986): 95; McGregor (n 58); A H Manchester, 'Law Reform in England and Wales 1840–80' *Acta Juridica* (1977): 189; Brian Rodgers, 'The Social Science Association 1856–1886' *The Manchester School* 20 (1952): 283; Eileen Yeo, 'Social Science and Social Change: A Social History of Some Aspects of Social Science and Social Investigation in Britain, 1830–1890' (DPhil thesis, University of Sussex, 1972); Lawrence Ritt, 'The Victorian Conscience in Action: The National Association for the Promotion of Social Science 1857–1886' (PhD thesis, Columbia University, 1959).

75. P W J Bartrip, 'Hastings, Sir Charles (1794–1866)' in *Oxford Dictionary of National Biography* (OUP 2004).

76. Social economy dealt with issues related to capital, labour and economic activity: 'The National Association for the Promotion of Social Science' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 4 no. 3 (1857–8): 145; 'National Association for the Promotion of Social Science' in *Transactions of the National Association for the Promotion of Social Science 1857* (John W Parker and Son 1858); Lawrence Goldman, *Science, Reform, and Politics in Victorian Britain: The Social Science Association 1857–1886* (CUP 2002:) 54.

77. Discussions covered a range of topics including public health, crime and penal policy, education policy, labour relations, and women's rights: *Transactions 1857* (n 76): 58; J S Pakington, 'Address on Education' in *Transactions 1857* (n 76): 36; Henry Brougham, 'Inaugural Address and Select Papers' in *Transactions 1857* (n 76): 10; Goldman (n 76): 1.

78. Goldman (n 76): 1.

79. Goldman (n 76): 1, 58; Brougham, 'Inaugural Address' (n 77): 23, 58.

80. The society's annual report, which covered the 1858 parliamentary session, described the 'peculiar political circumstances of the past six months', which slowed the passage of law reform measures: 'Annual Report of the Council for the Session 1857–8' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 5 no. 3 (1858): 338, 339–41, 342–3.

81. Other papers covered bankruptcy reform, mercantile law, criminal reforms and legal education. See 'Inaugural Address' (n 77): 115; W Theobald, 'The Further Advancement of Law Reform' in *Transactions 1857* (n 76).

82. Earl of Shaftesbury, 'Opening Address' in *Transactions of the National Association for the Promotion of Social Science 1859* (1860) 1, 12.

83. The association published proceedings from annual congresses in *Transactions of the National Association for the Promotion of Social Science* from 1857 to 1884: 'Events of the Quarter' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 17 no. 3 (1864): 189, 189–193; Lobban (n 36): 1206.

84. 'Postscript' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 16 no. 3 (1863-4): 373, 374–75.

85. Meetings of congress became more disciplined. Gone were the free-ranging discussions on every imaginable topic. Now, days were dedicated to specific issues: *Transactions of the National Association for the Promotion of Social Science, York Meeting 1864* (1865); 'Eighth Annual Meeting of the National Association for the Promotion of Social Science' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 17 no. 3 (1864): 371, 374; 'Events of the Quarter' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 18 no. 3 (1864–5): 186; 'Extract of a Letter from Lord Brougham to the Earl of Radnor' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 18 no. 3 (1864–5): 170, 174.

86. *Transactions 1864* (n 85) xxii–xxvi, xxxii; 'Events of the Quarter' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 17 no 3 (1864): 371, 373.

87. He recalled the discussions that had been necessary to eliminate the testimonial disqualification for interest to make the point. Lord Chancellor Truro – who had served previously as solicitor general, attorney general, and lord chief justice of the common pleas, was sceptical, worrying that parties would perjure themselves. Lord Lyndhurst disagreed and thought litigants would benefit from the change. Truro was won over through discussion: 'Extract of a Letter from Lord Brougham to the Earl of Radnor' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 16 no. 3 (1863–4): 181, 184; 'Events of the Quarter' (n 86): 374.

88. Contemporary initiatives included patents, property, prisons and jurisdiction of the county courts: Henry Brougham, 'Opening Address' in *Transactions of the National Association for the Promotion of Social Science, York Meeting 1864* (1865): 1, 6, 10–12, 13–1; 'Events of the Quarter' (n 84).

89. 'Extract, Brougham to Radnor, 1864–65' (n 85): 171; Brougham, 'Opening Address 1864' (n 88): 12. See, also, 'Extract of a Letter from Lord Brougham to the Earl of Radnor' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 14 no. 3 (1862–3): 62, 64–65.

90. 'Events of the Quarter' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 19 (1865): 365, 375–6; Goldman (n 76) Appendix II and Appendix IV: 383–4.

91. The Jurisprudence Department continued to discuss a range of proposed reforms including changing bankruptcy laws, creating a code (described as the 'best mode of reducing the law of England to a compendious form'), and disposing of property for public or charitable purposes: 'Events of the Quarter' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 22 no. 3 (1866–7): 162, 170; 'Extract, Brougham to Radnor, 1864–65' (n 85): 171; Brougham, 'Opening Address 1864' (n 88): 12; 'Extract, Brougham to Radnor, 1862–63' (n 89): 64–65.

92. To that end, the government of the day favoured a digest over preparation of a code and appointed a commission in November to investigate: Commission, 22 November 1866, SLC 16, Misc Pt 1, UK Parliamentary Archives; 'Events of the Quarter' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 24 no. 3 (1868): 157, 319.

93. 18 September 1867. See *Transactions 1867* (n 58): xxix; Judicature Commission, *First Report to Parliament* (HC 1868–9, C 4145, 1869): 11.

94. See Lobban (n 36): 1185.

# References

## Printed sources

Abreu, Georgina, 'The Queen Caroline Affair in Radical Periodicals' *Open Cultural Studies* 6 (2022): 88–99

Aspinall, Arthur, *Lord Brougham and the Whig Party* (first published 1927, Nonsuch 2005)

Baker, J H, *Introduction to English Legal History* (5th edn, OUP 2019)

Bartrip, P W J, 'Hastings, Sir Charles (1794–1866)' in *Oxford Dictionary of National Biography* (OUP 2004)

Brougham, Henry, *Present State of the Law: the Speech of Mr. Henry Brougham* (H Colborn 1828)

Brougham, Henry, *Opinions on Negro Slavery* (H J M'Clary 1830)

Brougham, Henry, *Speeches of Henry Lord Brougham*, vol. 1 (Adam and Charles Black 1838)

Brougham, Henry, *Letter from Lord Brougham to Sir James Graham on the Making and the Digesting of the Law* (James Ridgway 1849)

Brougham, Henry, 'Opening Address' in *Transactions of the National Association for the Promotion of Social Science, York Meeting 1864* (1865): 1–25

Brougham, Henry Peter, *Works of Henry Lord Brougham*, vols 1–8 (Adam and Charles Black 1872)

Buddle Atkinson, R H M and Jackson, G A (eds), *Brougham and His Early Friends: Letters to James Loch*, 1789–1809, vol. 2 (T and A Constable 1908)

Campbell, John, *Lives of Lord Lyndhurst and Lord Brougham: Lord Chancellors and Keepers of the Great Seal of England* (J Murray 1869)

Cookson, J E, *Lord Liverpool's Administration: The Crucial Years, 1815–1832* (Archon Books 1975)

Daiches, David, *The Paradox of Scottish Culture: The Eighteenth Century Experience* (OUP 1964)

Draper, Nicholas, *The Price of Emancipation: Slave-Ownership, Compensation and British Society at the End of Slavery* (CUP 2010)

Dumas, Paula, '*The Edinburgh Review*, *The Quarterly Review*, and the Contributions of the Periodicals to the Slavery Debates' *Slavery & Abolition* 38 (2017): 559–76

Dwyer, John Alfred, 'An "Enlightened" Scot and English Reform: A Study of Henry Brougham' (MA thesis, University of British Columbia, 1975)

Eardley-Wilmot, John, *Lord Brougham's Law Reforms Comprising the Acts and Bills Introduced or Carried by Him Through the Legislature Since 1811* (Longman, Brown, Green, Longman and Roberts 1860)

Ford, T H, 'Brougham as a Barrister: Courtroom Dilemmas of a Notorious Radical' *Journal of Legal History* 5 no. 3 (1984): 108–29
Foss, Edward, *A Biographical Dictionary of the Judges of England* (J Murray 1870)
Fulford, Roger, *The Trial of Queen Caroline* (BT Batsford 1967)
Goldman, Lawrence, 'The Social Science Association, 1857–1886: A Context for Mid-Victorian Liberalism' *English Historical Review* 101 (1986): 95–134
Goldman, Lawrence, *Science, Reform, and Politics in Victorian Britain: The Social Science Association 1857–1886* (CUP 2002)
Hall Catherine, Draper, Nicholas, McClelland, Keith, Donington, Katie and Lang, Rachel, *Legacies of British Slave-Ownership: Colonial Slavery and the Formation of Victorian Britain* (CUP 2014)
Hawes, Frances, *Henry Brougham* (St Martin's Press 1958)
Herstein, Sheila 'The Langham Place Circle and Feminist Periodicals of the 1860s' *Victorian Periodicals Review* 26 (1993): 24–7
Huch, Ronald K, *Henry Brougham: the later years, 1830–1868* (E Mellen Press 1993)
Judicature Commission, *First Report to Parliament* (HC 1868–1869, C 4145, 1869)
Kames, Henry Home, *Essays on the Principles of Morality and Natural Religion* (R Fleming for A Kincaid and A Donaldson 1751)
Laqueur, Thomas W, 'The Queen Caroline Affair: Politics as Art in the Reign of George IV' *Journal of Modern History* 54 no. 3 (1982): 417–66
Lemmings, David, *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century* (OUP 2000)
Lobban, Michael, 'Henry Brougham and Law Reform' *English Historical Review* 115 no. 464 (2000): 1184–215
Lobban, Michael, 'Brougham, Henry Peter, First Baron Brougham and Vaux (1776–1868)' in *Oxford Dictionary of National Biography* (OUP 2004)
Manchester, A H, 'Law Reform in England and Wales 1840–80' *Acta Juridica* (1977): 189–202
McGregor, O R, *Social History and Law Reform* (Stevens 1981)
New, Chester W, *The Life of Henry Brougham to 1830* (OUP 1961)
Nightingale, J, *Trial of Queen Caroline* (J Robins & Co Albion Press 1821)
Olusoga, David, 'The History of British Slave Ownership Has Been Buried: Now Its Scale Can Be Revealed' *The Guardian*, 12 July 2015 https://www.theguardian.com/world/2015/jul/12/british-history-slavery-buried-scale-revealed, accessed 15 September 2025
Pakington, J S, 'Address on Education' in *Transactions of the National Association for the Promotion of Social Science 1857* (1858)

Perkin, Harold, *The Rise of Professional Society: England since 1800* (Routledge 1989)
Polden, Patrick, *A History of the County Court, 1846–1971* (CUP 1999)
Phillipson, N T, 'The Social Structure of the Faculty of Advocates in Scotland, 1661–1840' in Alan Harding (ed), *Law-Making and Law-Makers in British History: Papers presented to the Edinburgh Legal History Conference, 1977* (Royal Historical Society 1980): 146–56
Ritt, Lawrence, 'The Victorian Conscience in Action: The National Association for the Promotion of Social Science 1857–1886' (PhD thesis, Columbia University, 1959)
Rodgers, Brian, 'The Social Science Association 1856–1886' *The Manchester School* 20 (1952): 283–310
Sainty, J C, *Judges of England 1272 to 1990* (Selden Society 1993)
Earl of Shaftesbury, 'Opening Address' in *Transactions of the National Association for the Promotion of Social Science 1859* (1860) 9–25
Smith, Adam, *The Theory of Moral Sentiments* (A Millar, A Kincaid and J Bell 1759)
Smith, Adam, *Lectures on Jurisprudence 1762* (*Glasgow Edition of the Works and Correspondence of Adam Smith*, first published OUP 1976, Clarendon Press 1990)
Stewart, Robert, *Henry Brougham His Public Career 1778–1868* (Bodley Head 1985)
Sugarman, David, 'Simple Images and Complex Realities: English Lawyers and Their Relationship to Business and Politics, 1750–1950' *Law and History Review* 11 no. 2 (1993): 257–301
Theobald, W, 'The Further Advancement of Law Reform' in *Transactions of the National Association for the Promotion of Social Science 1857* (1858)
University College London, 'Centre for the Study of the Legacies of British Slavery' https://www.ucl.ac.uk/social-historical-sciences/history/research/research-projects-and-centres/centre-study-legacies-british-slavery-cslbs, accessed 15 September 2025
UK Parliament, 'Obtaining a Divorce' https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/overview/divorce/, accessed 15 September 2025
Yeo, Eileen, 'Social Science and Social Change: A Social History of Some Aspects of Social Science and Social Investigation in Britain, 1830–1890' (DPhil thesis, University of Sussex, 1972)
'Annual Report of the Council for the Session 1857–8' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 5, no. 3 (1858): 338–44
'Brougham's Speech' *American Jurist and Law Magazine* 1 (1829): 310–20

'Chancery Reform in Calcutta' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 11 (1849): 48–55
Commission, 22 November 1866, SLC 16, Misc Pt 1, UK Parliamentary Archives
'Eighth Annual Meeting of the National Association for the Promotion of Social Science' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 17, no. 3 (1864): 374–5
'Events of the Quarter' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 17, no. 3 (1864):189–94
'Events of the Quarter' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 18, no. 3 (1864–5): 186–7
'Events of the Quarter' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 19 (1865): 365–77
'Events of the Quarter' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 22, no. 3 (1866–7): 162–75
'Events of the Quarter' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 24, no. 3 (1868): 154–70
'Extract of a Letter from Lord Brougham to the Earl of Radnor' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 14 no. 3 (1862–3): 62–70
'Extract of a Letter from Lord Brougham to the Earl of Radnor' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 16 no. 3 (1863–4): 181–4
'Extract of a Letter from Lord Brougham to the Earl of Radnor' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 18, no. 3 (1864–5): 170–74
'The History of the Law Amendment Society from Its Institution, in 1844, Till the Present Time' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 18 (1853): 304–13
'History of the New York Code and Its Applicability to This Country' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 13 (1851): 213–50
'The Great Seal' *Law Review & Quarterly Journal of British and Foreign Jurisprudence* 13 (1850): 387–95
'The National Association for the Promotion of Social Science' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 4, no. 3 (1857–8): 145–62
'National Association for the Promotion of Social Science' in *Transactions of the National Association for the Promotion of Social Science 1857* (John W Parker and Son 1858)
'The Offices of Lord Chancellor' *Law Magazine* 44 (1850): 247–60
'The Offices of the Lord Chancellor' *Law Magazine* 45 (1851): 34–50

'Postscript' *The Law Magazine and Law Review, or, Quarterly Journal of Jurisprudence* 16, no. 3 (1863–4): 373
'Proceedings of the Society for Promoting the Amendment of the Law' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 4 (1846): 446–58
'Proceedings of the Society for the Promotion of the Amendment of Law' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 6 (1847): 404–16
'Proceedings of the Society for Promoting the Amendment of the Law' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 9 (1849): 444–8
'Proceedings of the Society for the Promotion of the Amendment of Law' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 12 (1850): 211–16
'The Public Meeting of the Society for the Amendment of the Law' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 8 (1848): 233–56
'Separate Jurisdictions of Law and Equity' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 10 (1849): 284–308
'The Supreme Courts in India' *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 9 (1849): 225–43
*Transactions of the National Association for the Promotion of Social Science, York Meeting 1864* (1865)
*Transactions of the National Association for the Promotion of Social Science, Belfast Meeting, 1867* (Longmans, Green, Reader and Dyer 1868)

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## Chapter 7

# Judicial insiders: the Coleridge dynasty

Philip Handler

On 3 December 1820, the barrister and future judge, John Taylor Coleridge, noted the birth of his first son, John Duke: 'The Lord Chancellor for 1865 made his appearance this morning about 6'.[1] Predicting your own judicial dynasty seems as good an indicator of a legal insider as any. The prediction was wrong: John Duke became Chief Justice of the Common Pleas in 1873 and then Lord Chief Justice of England from 1880 until his death in 1894. John Taylor's own long career as a Justice of the Queen's Bench (1835–57) meant that their judicial careers spanned almost the whole Victorian era.[2] As well as being insiders in the law, the Coleridges were deeply enmeshed in religious, political and cultural spheres. At the start of the century, they were a Devon family of modest social and economic wealth, with one famous member, John Taylor's uncle, Samuel Taylor Coleridge. By the high Victorian period, the family and its network included leading figures in the church, politics and the law in England and the British Empire. Benjamin Jowett, master of Balliol College and friend of John Duke, complained that there were 'as many Coleridges as there were Herods, and it was impossible to remember how they were related to each other.'[3]

The 'legal' Coleridges present potentially valuable case studies for understanding Victorian law and legal culture. Our knowledge of the lives and creeds of Victorian judges and lawyers remains patchy, despite the renewed interest in legal biography.[4] The preservation of the Coleridges' papers allows us to trace their lives in some detail.[5] These have been partly explored in Toohey's study of John Taylor Coleridge and, more recently, in Lobban's study of his life at the Bar and my work on his approach to criminal law.[6] John Duke Coleridge has received less attention; the work

published by his nephew ten years after his death remains the principal biographical source.[7] This chapter focuses principally on the 1840s and 1850s, when John Duke was at the Bar and John Taylor was a Justice of the Queen's Bench. The first part examines the relationship between father and son, and how John Duke's insider status affected his professional progress. The second part explores their insider perspectives on the legal profession and law in the mid-Victorian period and the significance of their religious beliefs.

## Family and career

John Taylor's comment on the birth of the Lord Chancellor may have been light-hearted (or at least as light-hearted as he got) but he had strong expectations for his sons. His own stern and uncompromising father, the 'Colonel', countermanded John Taylor's wish to take religious orders and determined his choice of career in the law.[8] John Taylor was less strict but retained a strong patriarchal family ethos. His marriage to Mary Buchannan brought two daughters, Mary and Alethea, but his ambitions focused exclusively on two of his sons, John Duke and Henry, whom he expected to take orders and follow him into the law.[9]

John Duke's education and career evolved within the framework of his family connections. He was an insider at every stage but had a strong and rebellious character from childhood. His father sent him away from home to correct his wayward nature at the age of six, which was young even by contemporary standards.[10] He then followed in his father's footsteps to Eton where his uncle, Edward, was a college master. Edward's brutal approach to discipline did not curb John Duke's rebellious nature: he was almost expelled for an unspecified but very serious offence in May 1833. His father temporarily withdrew him and was put in the 'deepest alarm' about his future because of his 'capabilities of good and evil' and his 'undisciplined' mind.[11] He returned to Eton but his progress remained a source of considerable worry for his father, who viewed education as critical to building character based on the values of self-discipline, self-reliance and piety.[12]

In 1839 John Duke left Eton for Oxford, as his father had done, and continued to live within the compass of the family connections. His time at university had a lasting effect on his relationship with his father and his career. He went up when national religious debate was centred on the Oxford Movement (Tractarianism) and its attempts to renew and defend the established Anglican Church from encroaching liberalism. One of its leaders, John Keble, was John Duke's godfather, having been John Taylor's

closest friend since their time together as undergraduates. It was through Keble that John Duke met another principal of the Tractarian movement: John Henry Newman. As the movement fractured, both John Duke and his brother Henry, like many other men of their generation at Oxford, fell under Newman's sway.[13] John Taylor became profoundly worried that his sons might leave the Anglican communion to follow Newman to the Roman Catholic church. After a protracted period of internal family strife, his fears were realised in relation to Henry who left the Anglican Church for the Roman Catholic one in 1851, thereby wounding his father in what he called 'the tenderest point.'[14] What he described as 'the bitterest disappointment which has ever befallen me' had a critical effect on his relationship and ambition for John Duke.[15] By 1850, he thought of him as 'the only one . . . at all likely to add to the family stock' and he concentrated his considerable powers on furthering his career.[16] He was able to exercise a direct and constant influence because, having sent him from the family home as a young child, in 1846 he invited John Duke and his new wife, Jane Fortescue, to share his London home, where they remained until 1858.[17]

John Duke embarked on his legal career under his father's roof but at a difficult time. Procedural reforms and, particularly, the expansion of local courts posed a significant threat to barristers seeking to maintain a living on circuit and at the Westminster courts. He began by travelling with his father on circuit as his marshal and thereafter every stage was marked by exceptionally close cooperation.[18] When they were apart on circuit, they maintained a frequent correspondence. John Taylor supplied a constant stream of advice and instruction, relating to practical matters of how to advance his business and technical tuition on points of law or procedure.[19] Most importantly, John Duke's career was underpinned financially by his father.[20] In 1846, John Taylor's 'main inducement' for going on the northern circuit was 'to help John in money matters and to advance him in his law.'[21] In 1850, John Taylor considered retirement but 'the main difficulty' was 'John's inability to live without almost entire maintenance from me.'[22]

John Duke frequently expressed a desire for financial independence, but his father's support enabled him to navigate bouts of ill health and, crucially, to turn down opportunities which may have distracted or diverted him from the track to high political and judicial office.[23] When Lord Campbell became Lord Chief Justice of the Queen's Bench in 1850, he offered to make John Duke his marshal and associate. His father dissuaded him from accepting, but John Duke was sorely tempted by the 'fleshpots of Lord C' and the independence and potential base that it offered for a parliamentary career.[24] In 1854, an even more attractive offer

arose when the clerkship of the Assize on the Midland Circuit fell to John Taylor to appoint. He communicated it to John with firm advice not to accept.[25] John Duke replied: 'I think I should be really insane to refuse it, but I will do so, of course, if you desire it.'[26] The following day, he wrote again to his father in emotional and resentful terms: 'Remember if I am ever a judge or if I go to the dogs and come in a few year to the side of Fred [his brother who died in 1843] in either case it will be your doing. Dear Pap, I know you do it for the best but my soul sinks within me when I reflect how you are driving me'.[27] The letter caused John Taylor 'much distress' but he assured his son that he would not wait long for an office 'more suited to you'.[28]

John Duke took advantage of offers, usually received through Lord Campbell's patronage, that were compatible with progress at the Bar.[29] He got his first judicial appointment in 1855 when he became Recorder of Portsmouth and built a reputation as an accomplished orator and advocate (he had a 'singularly beautiful voice') with some successful and high-profile speeches.[30] He remained in the privileged position of being well-informed about his prospects in the higher judicial ranks because John Taylor regularly relayed details of them.[31] John Duke's career advanced but he knew that legal ability alone would not propel him to the highest point in his profession. He told his father that 'in the ordinary way of the profession, I see no reasonable access for me to the Bench. Through politics, if I succeed . . . then it is, I know, possible.'[32]

The family's connections proved as valuable to John Duke's political career as his legal one. John Taylor had entered High Tory circles at University and maintained links to leading figures throughout his life, principally on Church matters.[33] He became a member of a small secret group of lay Tractarians in the 1840s called 'the Engagement' that included the future Prime Minister William Gladstone and future Lord Chancellor Roundell Palmer.[34] John Duke's politics were, in some respects, fundamentally opposed to those of his father. His expressions of support for democracy and his denunciation of aristocracy set him at odds with many of those within his family's social and professional circle.[35] Yet he embarked on his political career within that network and its success depended in significant part on the support and connections of his father.[36] These enabled him to wait until the most opportune time to enter the House of Commons. He declined an offer to stand for Honiton in 1858 as a Conservative and ignored interest from Plymouth and Portsmouth. He told his father in 1859 that he 'really [did not] care for Parliament. . . . Still I should not like to be unable to produce two or three hundred pounds or more if it was wanted'. Taking the hint, John Taylor offered him the money.[37] Still, John Duke waited, and this 'shrewd

abstention' meant that by the time he entered parliament as a Liberal in 1865, he did so as an established leader at the Bar and in his preferred Exeter seat.[38]

Once in parliament, the link to Gladstone proved critical. John Duke attributed much of his progression to it: '[h]e did nothing for me till I entered Parliament but he did everything for me afterwards.'[39] Pride almost sabotaged his career when his dislike of the Attorney General, Robert Collier, prompted him to decline 'in a final and peremptory way' Gladstone's offer to make him Solicitor General in 1868.[40] Gladstone persisted; Roundell Palmer and Page Wood (the Vice Chancellor) urged him to accept, as did his father who admonished him for talking 'too much' about Collier and advised him that neither his honour nor his 'dream of life' would be imperilled by acceptance.[41] The counsel prevailed; John Duke replied that, although he would 'much rather take a series of black doses', it 'would be presumptuous and impracticable of me to set my own judgment against the unanimous opinion of all men from you and R[oundell] Palmer downwards'.[42] He proved an asset to the Liberals in Parliament and was relied upon by Gladstone to pilot key measures through the Commons.[43] He successfully resisted efforts to debar the Government Law Officers from private practice; his own professional reputation continued to grow and reached its zenith when he appeared as lead counsel in the Tichborne trial (1871–2).[44] Gladstone appointed him to be Attorney General in 1871 and then Chief Justice of the Common Pleas in 1873.[45] He described his acceptance of this position and withdrawal from parliament to the Liberal John Bright as a 'matter of moral necessity, and not at all of desire' but he enjoyed the enhanced status.[46] In 1880, when Cockburn and Kelly died, and the three divisions of the High Court combined under one head, he became the first Lord Chief Justice of England.

Coleridge's path to the highest judicial office through the House of Commons was conventional and his reliance on connections and patronage networks typical of the period. His dependence on his father, financially in the early years of his career and for advice and counsel throughout, was very marked. John Taylor thought that his son lacked filial respect, but insofar as his professional career was concerned, John Duke acceded to his wishes or advice on every key issue, sometimes against his own preference. There were numerous points where John Duke's motivation and ambition failed him and John Taylor's support or directions proved decisive.[47] Even deep into retirement John Taylor made sacrifices: declining Gladstone's offer of a peerage in 1869 because it might have inhibited his son's parliamentary career.[48] John Duke could have attained the same success had he taken one of the opportunities in the 1850s or without the support of Gladstone and others within the

family's network but it seems much less likely. Father and son acted in concert and on a realistic view of John Duke's abilities and weaknesses as a lawyer and politician. As the *Solicitor's Journal* put it, 'the stars in their courses seemed to fight for him'.[49]

## Law and religion

Neither Coleridge enjoyed the study of law. When making his way in the profession in the 1820s, John Taylor worked very hard but 'would not buy all the law in Lord Coke's head to be narrowed in my tastes and pleasures by it' and the prospect of 'dying in harness' was shocking to him.[50] John Duke, who worked less hard, complained to his father of the penalties of the profession: 'the destruction of all thought and all cultivation of mind, and the inevitable loss of friendship and sympathy.'[51] Their intellectual interests lay firmly outside the law: in literature and religion. They were not always confident in their legal ability. Both were particularly uncertain about commercial law, for which the Western circuit did not provide a good grounding. John Taylor dreaded the commercial causes lists at Liverpool; John Duke expressed similar misgivings at the Bar and had a poor reputation as a commercial law judge.[52] John Duke's career was sustained by the brilliance of his oratory rather than technical legal ability. Their careers also demonstrate the fragility and uncertainty of life at the Bar in the nineteenth century. Many of the features of professional life that Lobban identifies in his study of John Taylor's career at the Bar, notably its 'glorious uncertainty', remained in the 1850s.[53] The volume of business on circuit was a constant source of discussion, as was John Duke's share of it and standing in relation to other barristers on the circuit.[54] Both supplemented their income from the Bar by writing in the periodicals.[55]

In their correspondence, father and son relayed details of their activities in court and their view of the merits of cases and the lawyers and judges involved. These often unvarnished opinions provide an insider perspective from Bar and Bench on leading figures, as well as insight into professional concerns and jealousies. Their comments focused on ability but, equally importantly, character and conduct. Judges were assessed on their capacity to get through the business in good time. In 1849, John Duke reported on Lord Denman (the chief of John Taylor's court), telling his father that the men on the Western were 'quite astonished' at Denman's weakness in law and that he had only decided 'one single point' throughout the whole circuit. '[I]n a complicated case he takes it up, and in about six sentences flings it at the Jury, and lets it take its

chance entirely. However, he is very courteous and gentlemanly, and taking very few notes and never summing up at all, he gets through his work in a fashion very fast.'[56]

John Duke expressed some characteristically strident judgements of his fellow barristers and frequently complained to his father of his treatment by some judges. There was personal animosity in some instances. He clashed regularly with Baron Martin, complaining to his father that the manner in which he 'degrades the judicial office revolts me' and that 'he was a cross between a horse jockey and a bargee'.[57] He described Crompton in 1853 as 'a public nuisance . . . the most pitiable exhibition of imbecility I ever saw' and, in 1855, as 'bad beyond description . . . a coward to the strong and a tyrant to the weak.'[58] He had 'great trouble with Platoff' [Baron Platt] but stopped himself being impudent despite his 'defeating justice sadly' with his 'winks and nods' to the jury.[59] He did not always restrain himself and, unsurprisingly, his own arrogance and aloof manner sometimes drew criticism from the Bench. He had to apologise when Erle J and Crompton J complained of his conduct to them in 1852.[60] John Taylor admonished his son for making such strong character judgements and speaking 'freely of men in authority' and reassured him that the judges held him in high regard. He could not 'understand the spite you suppose Martin exhibits towards you – for he spoke of you to me in language I almost thought excessive'. He counselled restraint, as a 'first qualification' for success at the bar and in the House was to 'preserve temper without losing independence'.[61]

The Coleridges' critical judgements reflected their own view of proper judicial and lawyerly conduct.[62] They were quick to condemn ungentlemanly behaviour that might undermine the public image of the law and justice. John Duke complained to his father in 1856 that Martin had left one Assize town 'on the box seat of a two horse coach. But he is by nature incapable of comprehending that there could be anything wrong in this'.[63] Crowder also conveyed the wrong public impression on circuit: '[he] has not given satisfaction. He is not a great lawyer nor a real gentleman'.[64] John Taylor advised his son to take care with public pronouncements but was not shy to express his views in private to his son. Lord Campbell, for example, was 'very obliging and entertaining' at dinner but 'men do not seem to like him in court and I fear he punishes crime with extreme severity as to amount and somewhat too much personal violence of manner.'[65] As he contemplated his retirement in 1857, John Taylor reflected that he did not like the 'free and easy good fellow, judges of the present make'.[66] He particularly despaired of his brethren's 'remarkable neglect of all external observances', chief amongst which was the 'most lamentable' failure to set any kind of religious example. This aligned with his ecclesiastical,

paternalistic view of social relations and his view that judges had to conduct themselves in a way that was 'calculated to increase respect' and 'promote religious observance' among the lower orders.[67]

In a period when work and religion were enmeshed, the Coleridges stood out for the strength of their beliefs. They imbued every aspect of the family's professional and social life. John Taylor's understanding of his life and vocation was Christian. He regretted his choice of career throughout his life. When his son Henry left the Anglican Church in 1851, he gave serious consideration to resigning his position on the Bench and taking up the curacy at Alfington left vacant by Henry's defection. In the end, he dismissed it as a dream, notwithstanding Keble's advice to take it.[68] He enjoyed the 'great moral and religious opportunities' that came with his judicial role; comparing the effect of his sentencing speeches to that of a sermon.[69] John Duke warned his father that 'he sermonized too much' in his judicial pronouncements and, as he matured, moved to a more tolerant position in religion.[70] His dissent from certain High Church principles caused tension with his father and within the family's religious networks. Yet he imbibed their Christian understanding of public duty and service and considered the Church as an alternative to the Bar, despite his father's misgivings that he was temperamentally ill-suited to it.[71] He shared his father's concern about the lack of religious feeling in the legal profession and found the 'low and hard morality of lawyers . . . very offensive'.[72] When John Taylor's religious views were attacked in the press and in parliament, John Duke defended him against what he termed 'low church blackguardism'.[73] He remained deeply engaged with Church matters through his life and closely connected to many of its leading figures. This included a continuing relationship with Newman, whom John Duke revered, telling him in 1865 that: 'I owe you more than any man in the world, except, perhaps, my own father'.[74]

The Victorian judiciary's itch to moralise was felt very keenly by the Coleridges, particularly John Taylor.[75] This, combined with their position as religious and legal insiders, caused difficulties. In 1853, two years after Henry's defection to Roman Catholicism, John Taylor Coleridge found himself in the very difficult position of having to sentence Newman for a libel. Newman had accused Giovanni Achilli, a critic of the Roman Catholic Church, of misconduct and sexual impropriety. Newman's trial and conviction attracted controversy; both jury and judge (Lord Campbell) were criticised for bias and prejudice against Roman Catholics.[76] Although Coleridge was not involved in the original trial, it fell to him to pass sentence. He had to repel any suggestion of anti-Catholic bias at the trial at the same time as rejecting any notion that he was personally sympathetic to Newman or Roman Catholicism, in light of his own High Church

views and Henry's conversion. This was no easy task: in his journal he viewed the prospect a 'severe trial' but welcomed the opportunity of 'proclaiming my own undiminished attachment to the Church of England' in Newman's face as well as the public. In the event, he was 'overpowered' by his feelings and could not forbear from lecturing Newman, warning him that his future participation in the controversy between the church of Rome and England should be in a 'different temper and spirit'.[77] In his journal, he regretted putting 'too much of myself in the matter'.[78]

John Duke was visiting Keble a month later and saw a letter from Newman relating to John Taylor's conduct sentencing him of which he disapproved. 'I never saw a letter of his so bad in taste, and seldom one so unfair. It is not quite gentlemanlike, I think. I should not myself have said exactly what you said (I mean as to substance) . . . but I cannot think he was right to sneer and laugh'.[79] The case attracted adverse press criticism and partly prompted a motion in the House of Commons in 1854 seeking to exclude Coleridge from a commission to reform the college statutes at Oxford. The Liberal MP, R D Mangles, argued that he 'was much more than a high churchman' and that his extreme religious views rendered him unsuitable.[80] John Duke wrote to his father offering to intervene and expressing his disappointment at the efforts that had been made to defend him in parliament by Gladstone and Lord John Russell.[81] John Taylor replied in much more measured tones; he had corresponded with Gladstone and thought there was no impropriety.[82]

The Coleridges' involvement as judge and prosecutor in Thomas Pooley's blasphemous libel trial at the Bodmin Assizes in 1857 exposed their religious views to much more public scrutiny.[83] John Taylor's punitive sentence of twenty-one months' imprisonment prompted the secularist George Holyoake to write a pamphlet; when it was noted two years later in John Stuart Mill's 'On Liberty', the case attracted wider interest.[84] Henry Buckle wrote a review of Mill's work that attacked the Coleridges and accused them of being driven by their strong religious prejudices to persecute the man. He focused on John Taylor who, as he admitted privately, Buckle sought to 'smite'.[85] He accused him of being an 'unjust and unrighteous judge' who had 'passed a sentence of extreme severity upon a poor and friendless man in a remote part of the kingdom'.[86] The sentence appeared even more unjust when Pooley was admitted to a lunatic asylum after the trial.

Faced with this public scandal, the Coleridges closed ranks and used their connections to coordinate a response in the periodical press. John Duke wrote a lengthy reply in *Fraser's Magazine* which condemned Buckle for not comprehending 'the common feelings of a gentleman, or the first principles which actuate the high profession to which it is my pride and

honour to belong.'[87] They sent detailed information to James Fitzjames Stephen for a response in the *Saturday Review*.[88] In private, John Duke thought the sentence was severe and that six months would have been more appropriate.[89] Both men knew, when it became clear that Pooley was mentally ill, that further public scrutiny would be counterproductive and decided against a libel prosecution.[90] The public hostility focused on their religious beliefs, particularly John Taylor's, rather than there being impropriety in prosecutor and judge coming from the same family. John Duke reported to his father that George Cornewall Lewis, who had just stepped down as Chancellor of the Exchequer and was about to become Home Secretary, had written 'kindly but drily that Buckle's is a ranting absurd attack but that he thinks the sentence is much too severe'. John Duke suspected that this was 'the general feeling of even kindly disposed men', and this, despite John Taylor's annoyance and anxiety about the case, deterred the Coleridges from any further action.[91]

Newman's and Pooley's cases illustrate the difficulties that John Taylor faced in reconciling the public expression of his religious beliefs with contemporary expectations of the impartial administration of justice. An irony of the Pooley case is that the interpretation of blasphemy proposed by John Duke and adopted by John Taylor was the liberal one, which required some proof of intent or malice. They eschewed the strict liability approach that some writers, including Stephen, advocated.[92] John Taylor's judgements in religious cases did not reflect his High Church views and were generally tolerant.[93] This hardly mitigated the men's actions in the eyes of critics of Pooley's case. John Taylor knew that his reputation as a High Churchman made him susceptible to accusations of bias, and his view that judges should maintain outward displays of religious faith was increasingly outdated.[94] John Duke's criticisms of his father's tendency to express his religious beliefs from the Bench were directed at the degree to which he indulged it. He did not question whether judges and lawyers should act on their religious beliefs. He shared his father's ecclesiastical paternalism and view that judges should defend Christian moral values and promulgate them when possible. He took leading briefs in high-profile ecclesiastical cases, notably in the *Essays and Reviews* case (1863), which was a focal point for Victorian religious controversy. The case centred on a collection of liberal theological essays that were perceived as an attack on the truth of the scriptures. John Duke acted for the Bishop of Salisbury in an action against two of the clergymen who had contributed essays.[95] There was an appeal to the Privy Council but John Taylor, although eligible, did not sit.[96] This omission left John Duke 'very indignant' but also, he told his father, 'personally . . . relieved' because both of them were 'somewhat conspicuous in these things and . . . people

*might* talk'.[97] When he assumed judicial office, John Duke's religious views did not generate the same levels of scrutiny and criticism as his father's and were more attuned to the times. A quarter of a century after Pooley's case, in what became the leading case on blasphemy, John Duke gave a judgement confirming the requirement for proof of intent.[98]

## Conclusion

The Coleridges' strong religious beliefs were intertwined with their professional success. John Taylor was a reserved man, but beneath his calm exterior lay a set of dogmatic and intolerant religious beliefs and considerable strength of ambition. When his own desire to take religious orders was frustrated and his son Henry defected to the Roman Catholic church, that ambition was channelled through his eldest son. John Duke, as a result, had an insider's track to the top of the legal profession. The contrast between John Taylor's unreformed High Tory/High Church position and John Duke's Liberal politics and more tolerant religious views was clear by the 1850s. Yet John Duke's progression in politics and law remained dependent on the connections and networks established by his father. The differences of religious and political belief are less significant than the continuity of outlook from father to son. Both imbued the conservative habits of hearts and mind which pervaded Victorian political and legal culture.[99]

John Duke's tenure as Solicitor and Attorney General did not feature any radical approaches to policy. As Chief Justice, he became one of the more conservative and reactionary members of the Bench. He thought the abolition of the old common law courts 'the greatest blunder of his life' and 'did not evince any strong desire to promote or encourage reforms'.[100] The *Solicitor's Journal* noted that at his 'death it may fairly be said that the greatest court of the greatest commercial empire in the world is denuded of commercial business'.[101] He performed the ceremonial and public aspects of the role of Chief Justice much more effectively. His dislike and distrust of the aristocracy quickly evaporated; in contrast to John Taylor, he accepted a peerage when it was offered to him by Gladstone in 1873.[102] Writing to his father as Chief Justice in 1875, he described being 'in the midst of earthly and heavenly pomp' during the queen's birthday celebrations, accepting that 'examples and outward homage by persons of station does go for something still'.[103]

John Taylor approved the sentiment. He had lived long enough to see his ambitions for his son realised. When John Duke was sworn in as Chief Justice, in his journal he recorded his thanks to God for the 'great

honour and blessing, conferred on him, and me, and my family.'[104] The family had 'culminated', as John Duke put it, but the dynasty continued into the twentieth century, with John Duke's son, Bernard, becoming a high court judge in 1907.[105] In his memoirs, Bernard recalled his grandfather as 'the best beloved of the whole family, the pillar upon which they leaned'; it was certainly John Taylor, more than anyone, who secured the family's established status.[106] Legal insiders then, but their connections and religious, political and cultural activity serve as a reminder that they did not inhabit an insular legal world.

## Notes

1. J T Coleridge [JTC] to J May, 3 December 1820, as cited in T Toohey, *Piety and the Professions*, *Sir John Taylor Coleridge and His Sons* (Garland 1987): 92.

2. John Taylor's brother-in-law, John Patteson, sat with him in the Court of Queen's Bench until 1852. See J A Hamilton and Hugh Mooney, 'Patteson, Sir John (1790–1861), Judge' in *Oxford Dictionary of National Biography* https://www.oxforddnb.com, accessed 4 June 2025.

3. E H Coleridge, *Life and Correspondence of John Duke, Lord Coleridge*, 2 vols (London 1904) vol. I: 2.

4. See P Polden, 'Judging Judges: The Reputations of Nineteenth-Century Judges and Their Sources' in A Musson and C Stebbings (eds), *Making Legal History: Approaches and Methodologies* (CUP 2012): 53–71; M Lobban, 'The Politics of Nineteenth-Century Law' in P Brand and J Getzler (eds), *Judges and Judging in the History of the Common Law and Civil Law: From Antiquity to Modern Times* (CUP 2012): 102–37.

5. The Coleridge papers, comprising 994 volumes, are in the British Library: Add MS 85495–86488. John Taylor Coleridge kept a detailed journal and his extensive correspondence with John Duke contains many details of their lives during the focal period for this chapter.

6. Toohey (n 1); M Lobban, '"The Glorious Uncertainty of the Law": Life at the Bar, 1810–1830' in D Ibbetson, N Jones and N Ramsay (eds), *English Legal History and Its Sources: Essays in Honour of Sir John Baker* (CUP 2019): 373–95; P Handler, 'John Taylor Coleridge and English Criminal Law' in M Lobban and I Williams (eds), *Networks and Connections in Legal History* (CUP 2020): 307–33.

7. Coleridge, *Life* (n 3). Two works by Bernard Coleridge contain detail and extracts from the family papers: B Coleridge, *The Story of a Devonshire House* (Taylor and Unwin 1905); B Coleridge, *This for Remembrance* (Taylor and Unwin 1925).

8. Toohey (n 1): 47–51.

9. His third son, Fred, died of typhoid fever, aged 14, in 1843: Coleridge, *Life* (n 3) I: 111–12.

10. Toohey (n 1): 214–16.

11. JTC to John May, 31 May 1833, Bodleian MS Eng letters, d. f., as cited in Toohey (n 1) 216.

12. John Taylor shared much of the highly influential educational philosophy of his close friend, Thomas Arnold (1795–1842), and published a much-read tract on the subject in 1860: J T Coleridge, *Public School Education* (John Murray 1860).

13. 'I had the honour of breakfasting with Keble the other day, where I met Newman. I don't care whether he is right or wrong in his opinions, I know that personally I never saw so fascinating a man in a quiet way . . . I feel sure I shall be a Newmanite': John Duke Coleridge [JDC] to JTC, 26 May 1839, as cited in Coleridge, *Life* (n 3), vol. I: 66.

14. JTC, *Journal* 21 December 1851, as cited in Toohey (n 1): 244. For a detailed account of this 'crisis of conversion' within the family, see Toohey (n 1): 208–52.

15. JTC, *Journal*, 7 April 1852, as cited in Toohey (n 1): 247.

16. JTC, *Journal*, 30 June 1850, BL Add MS 86050, f. 61.

17. He lived at 26 Park Crescent with his parents (1846–1858) before moving to 6 Southwick Crescent and then 1 Sussex Square in 1868: Coleridge, *Life* (n 3), vol. I: 253.

18. He first travelled with him as a marshal on the Western circuit in the long vacation after his first term at Oxford in 1839: Coleridge, *Life* (n 3), vol. I: 67.

19. John Duke read law in chambers but relied heavily on his father for advice and support. See, for example, JDC to JTC, 8 December 1844, as cited in Coleridge, *Life* (n 3), vol. I: 163.

20. When John Duke was called to the Bar in November 1846, his father reflected that 27 years ago he had been in the same position but with 'nothing like the help to look to that he has. So long as I live, the pressure of sheer poverty cannot be on him.' JTC, *Journal*, 8 November 1846, as cited in Coleridge, *Life* (n 3) vol. I: 171.

21. JTC, *Journal*, 1 February 1846, BL Add MS 86047, f. 86.

22. JTC, *Journal*, 30 June 1850, BL Add MS 86050, f. 61. In 1851, he noted that only 'John's situation' stood between him and resignation: JTC, *Journal*, 27 January 1851, f. 137.

23. Ill health 'was a recurrent feature of his life' with notable incidents in 1842, 1855, 1859, 1863 and 1871. See D Pugsley, 'Coleridge, John Duke, first Baron Coleridge (1820–1894)' in *Oxford Dictionary of National Biography* https://www.oxforddnb.com, accessed 18 June 2025.

24. 'I am altogether against you accepting it': JTC to JDC, 18 March 1850, BL Add MS 85869, ff 35–6.

25. JTC to JDC, 15 July 1855, BL Add MS 85960, ff. 43–4.

26. JDC to JTC, 13 July 1855 in Coleridge, *Life* (n 3), vol. I: 236. The clerkship might have enabled Coleridge to enter Parliament.

27. JDC to JTC, 14 July 1855, BL Add MS 85903, f. 70. He almost accepted but eventually refused.

28. JTC to JDC, 15 July 1855, BL Add MS 85960, ff. 43–4. He was also offered the Chief Justiceship of Calcutta in 1858, but his wife and father were against it: Coleridge, *Life* (n 3), vol. I: 204, 254.

29. Lord Campbell nominated him to a revising barristership in 1851 and as one of the Commissioners for the New Forest in 1854, both of which brought valuable income: see Coleridge, *Life* (n 3), vol. I: 204.

30. 'The Late Lord Coleridge' *Solicitor's Journal* 38 (1894): 560.

31. See, for example, JDC to JTC 16 May 1862; 16 Dec 1862 as cited in Coleridge, *Life* (n 3), vol. II: 116–17 and below, text at n 60.

32. JDC to JTC, 17 December 1863 as cited in Coleridge, *Life* (n 3), vol. II 123.

33. He edited the *Quarterly Review* in 1825. He maintained a very close association with Keble and his patron, William Heathcote, the Baronet and Tory MP for Oxford University: see Toohey (n 1): 162–207.

34. Keble was the group's spiritual adviser which may explain Coleridge's involvement; he was a generation older than most of its members. See H C G Matthew, 'Gladstone, Evangelicalism and "The Engagement"' in J Garnett and H C G Matthew (eds), *Revival and Religion since 1700: Essays for John Walsh* (Bloomsbury 2003): 118–26.

35. For an expression of these sentiments and acknowledgement that this set him apart from many of his friends, see JDC to William Heathcote, 19 August 1860 and 8 September 1864 as cited in Coleridge, *Life* (n 3), vol. I: 259–60, vol. II: 124.

36. John Duke was chosen as secretary to Gladstone's London Committee for the 1847 General Election: Coleridge, *Life* (n 3), vol. I: 183–4.

37. JDC to JTC 2 March, 5 March 1859, BL Add MS 85905, ff. 2–3.

38. 'The Late Lord Coleridge' (n 30). The Exeter seat was secured, in part, through John Taylor's name and connection with the Acland family. See Coleridge, *Life* (n 3), vol. II: 36.

39. JDC to Sir Mountstuart Grant Duff, 16 November 1886, as cited in Coleridge, *Life* (n 3), vol. II: 354.

40. JDC to JTC, 5 December 1868, as cited in Coleridge, *Life* (n 3), vol. II: 160.

41. Coleridge, *Life* (n 3) II: 79–83; JTC to JDC, 5 December 1868, BL Add MS 85879, f. 51.

42. JDC to JTC, 6 December 1868, as cited in Coleridge, *Life* (n 3), vol. II: 161.

43. Notably the University Tests Bills, which he first moved in 1866 and which eventually passed in 1871. See Coleridge, *Life* (n 3), vol. II: 43–55.

44. Arthur Orton's fraudulent claim to the Tichborne estate generated the longest trial in legal history to that point and attracted unprecedented public attention and interest. For a recent account, see R McWilliam, *The Tichborne Claimant: A Victorian Sensation* (Bloomsbury 2007). For Coleridge's role, see Coleridge, *Life* (n 3), vol. II: 89–90, 178–98.

45. This followed the conventional route for government legal officers. Gladstone had offered Coleridge the Mastership of the Rolls a few months earlier, which he refused, partly to avoid exhibiting the 'spectacle of a Judge inferior to his Bar' (JDC to JTC, 4 August 1873 as cited in Coleridge, *Life* (n 3), vol. II: 220.)

46. JDC to John Bright, 5 November 1873, as cited in Coleridge, *Life* (n 3), vol. II: 224.

47. See, for example, JDC to JTC, 24 March 1849, BL Add MS 85901, f 55; JTC to JDC, 19 March 1855, BL Add MS 85960 f 38.

48. In the event of John Taylor's death, John Duke would have had to resign his seat in the Commons and go to the Lords. See Toohey (n 1): 312.

49. 'The Late Lord Coleridge' (n 30).

50. Coleridge, *Devonshire House* (n 7): 278–9.

51. JDC to JTC, 31 December 1860 as cited in Coleridge, *Life* (n 3) I: 264. See also: 'There is nothing to compensate a man of heart and intelligence for the dullness and narrowness which he finds the absorbing pursuit of a profession gradually inducing upon heart and brain', JDC to Ellis Yarnall, 28 July 1863, as cited in Coleridge, *Life* (n 3), vol. II: 22.

52. See, for example, JTC *Journal*, 28 January 1849, BL Add MS 86049, f 51. Soon after becoming Chief Justice of the Common Pleas, John Duke wrote to his father that, while he spoke well, he was 'woefully ignorant of cases, and of some subjects, mercantile chiefly, of the necessary technical knowledge': JDC to JTC 29 November 1873 as cited in Coleridge, *Life* (n 3), vol. II: 228.

53. Lobban (n 6).

54. They exchanged cause lists from their circuits: see, for example, JDC to JTC, 21 July 1853, BL Add MS 85903, f. 25. John Duke reported regularly on his practice and prospects: see, for example, JDC to JTC 18 March 1854, BL Add MS 85903, f. 39.

55. See Toohey (n 1): 113–61, 322–6.

56. JDC to JTC, 24 March 1849, BL Add MS 85901, f 56. Earlier on the circuit he reported that Denman muddles causes 'terribly . . . but with prisoners he is kind . . . and his demeanour and conduct of the court is very good': JDC to JTC, 6 March 1849, BL Add MS 85901, f. 49. John Taylor had a good personal relationship with Denman but held a similar view of his judicial qualities at that time: see JTC *Journal*, 26 November 1848, BL Add MS 86049, f. 29.

57. JDC to JTC, 18 July 1856, BL Add MS 85904, f. 15. Coleridge, *Life* (n 3), vol. I: 238–9. For another clash with Martin and John Taylor advising caution, see JDC to JTC, 26 July 1853, BL Add MS 85903, f 20; JTC to JDC, 28 July 1853, BL Add MS 85870, f. 8.

58. JDC to JTC, Palm Sunday 1853, BL Add MS 85903, f 5; JDC to JTC 22 July 1855, BL Add MS, 85903, f 77. This view conflicts with Crompton's general reputation as a judge: see Polden (n 4): 53.

59. JDC to JTC, 22 March 1848, BL Add MS 85901, f. 29.

60. His father expressed the hope this would make him more cautious: JTC, *Journal*, 24 April 1852, BL Add MS 85051, f. 236.

61. JTC to JDC, 25 March 1854, BL Add MS 85970, f. 16. In reply to John Duke's complaints about Crompton, John Taylor said he could not account for it 'but he is very nervous and very plain in his manner': JTC to JDC 25 July 1855, BL Add MS 85960, f. 46.

62. Not all John Duke's assessments were negative: 'Erle is very nice, I think, but his manner is, to my taste, too kind to men who are snobs, and unscrupulous and ill-conditioned to boot. I don't think he is as instructive as Cresswell, who with all his faults is, *me judice*, the best *Judge* on the Bench': JDC to JTC, 26 March 1850, Coleridge, *Life* (n 3), vol. I: 193. By 1853, he thought Erle stronger than Cresswell: see JDC to JTC, Palm Sunday 1853, BL Add MS 85903, ff. 5–6.

63. JDC to JTC, 18 July 1856, BL Add MS 85904, f. 15.

64. JDC to JTC, 30 March 1856, BL Add MS 85904, f. 7. Crowder mixed 'vanity', 'superiority' and 'very wretched attempts at sarcasm'. In contrast, Channell B was 'a most thorough lawyer and very clear-headed fellow': JDC to JTC, 30 March 1856, BL Add MS 85904, f. 8.

65. JTC to JDC, 6 March 1858, BL Add MS 85960, f. 60. Similarly, Mellor J was a 'charming colleague . . . so young, he skips into the room' but he came down like a 'sledgehammer' in the criminal court: JTC to JDC, 12 March 1858, BL Add MS 85960, f. 61.) John Duke replied from his circuit expressing distaste at the 'great vehemence' with which Willes J counteracted his defence speech to press for a murder conviction: 'a very savage proceeding'. JDC to JTC, 16 March 1858, Coleridge *Life* (n 3), vol. I: 252. The case was that of John Barwick, *The Times*, 17 March 1858.

66. JTC to JDC, 3 April 1857, BL Add MS 85960, f. 56.

67. JTC, *Journal*, 8 February 1857, BL Add MS 86053, f. 267. He singled out Bramwell and Willes for their failure to go to Church on circuit.

68. See JTC, *Journal*, 29 September 1851, BL Add MS 86051, f. 15; Toohey (n 1): 237–40. In 1854 a scheme, in which John Duke was involved, to allow him to retire from the Bench to the position of Exeter College Rector also came to nothing. See JDC to JTC, 18 March 1854, BL Add MS 85903, f. 40.

69. JTC, *Journal*, 4 April 1842, BL Add MS 86044, f. 99.

70. JTC, *Journal*, 9 April 1843, BL Add MS 86045, ff. 87–8.

71. In 1843, when John Duke was considering taking orders, John Taylor noted in his journal: 'I had looked forward to his rising in eminence in the Law, going beyond myself, and, ultimately filling my place here [at Heath's Court].' JTC Journal, 16 October 1842, as cited in Coleridge, *Life* (n 3), vol. I: 104.

72. JDC to JTC, 4 March 1849. BL Add MS 85901, f. 47.

73. JDC to JTC, 15 Feb 1849, BL Add MS 85901, f. 35.

74. JDC to Newman, 5 June 1865 as cited in Coleridge, *Life* (n 3), vol. II: 135. Newman's portrait by Jane (née Fortescue Seymour), Lady Coleridge, John Duke's first wife, became one of the best known (Coleridge, *Life* (n 3), vol. II: 243, 266).

75. On the Victorian judges and morality, see C Fifoot, *Judge and Jurist in the Reign of Victoria* (Stevens 1959): 111–33.

76. For the reports of the trial and subsequent proceedings, see: *R v Newman* (1852) 3 Car & K 252, 175 ER 541; (1853) 1 El & Bl 558, 118 ER 544. For criticisms, see *The Times*, 'Editorial', 26 June 1852.

77. *The Times*, '*R v Newman*' 1 February 1853.

78. JTC, *Journal*, 31 January 1851, BL Add MS 86051, f. 209.

79. JDC to JTC, 2 March 1853, BL Add MS 85903, f. 2.

80. See Coleridge, *Life* (n 3), vol. I: 233–234.

81. JDC to JTC, 27 June 1854, BL Add MS 85903, f. 45.

82. JTC to JDC, 28 June 1854, BL Add MS 85870, ff. 20–23.

83. Thomas Pooley, *The Times*, 3 August 1857. For discussion, see T Toohey, 'Blasphemy in Nineteenth-Century England, the Pooley Case and Its Background' *Victorian Studies* 30 (1987): 315; I Hesketh, 'Weapons of Another Kind: Henry Thomas Buckle and the Case of Thomas Pooley' *Left History* 15 (2010): 87.

84. G Holyoake, *The Case of Thomas Pooley: The Cornish Well-Sinker* (Holyoake 1857); J S Mill, *On Liberty* (Parker 1859): 54–5.

85. Buckle to Shirreff, 13 May 1859, Buckle Collection, MS 66 vol. 10, 202–7, as cited in Hesketh (n 83): 101.

86. H Buckle, 'Mill On Liberty' *Fraser's Magazine* 59 (May 1859): 509, 534.

87. John Duke Coleridge, 'Mr. Buckle and Sir John Coleridge' (June 1859) 59 *Fraser's Magazine* 635–44, 642–3. The legal periodicals also defended the Coleridges: 'Mr. Buckle and Sir John Coleridge' *Law Times* (21 May 1859): 114–15; 'Sir John Taylor Coleridge and Mr. Buckle' *Law Magazine and Law Review* 7 (May–August 1859): 263–84.

88. John Duke sent Stephen his brief and asked his father to send his bench notes: JDC to JTC, 7 May 1859, BL Add MS 85905, f 24. For the article, see 'Mr Buckle and Sir John Coleridge' *Saturday Review* (14 May 1859): 585.

89. JDC to JTC, 2 June 1859, BL Add MS 85905, ff. 27–28.

90. JDC to JTC, 7 May 1859, BL Add MS 85905, ff. 24–26.

91. JDC to JTC, 7 May 1859, BL Add MS 85905, f. 27.

92. See the discussion in Toohey, 'Blasphemy' (n 83): 320–21.

93. For example, 'I apprehend that there is nothing unlawful at common law in reverently doubting or denying doctrines parcel of Christianity, however fundamental': *Shore v Wilson* (1842) 9 Cl & F 355, 8 ER 450, 523.

94. The Pooley case caused him considerable anxiety: see JTC, *Journal*, May 1859, as cited in Toohey, 'Blasphemy' (n 83): 328–9.

95. See S Waddams, *Law, Politics and the Church of England: The Career of Stephen Lushington* (CUP 1992) 319–20; Coleridge, *Life* (n 3), vol. II: 116.

96. *Williams v The Bishop of Salisbury* (1863) 2 Moo PCNS 375, 15 ER 943.

97. He added, 'when you are there I cannot fight freely with such a creature as Cranworth and insult him comfortably as a Christian should': JDC to JTC, 2 June 1863, as cited in Coleridge, *Life* (n 3), vol. II: 120. See Toohey (n 1): 298.

98. *R v Ramsay and Foote* (1883) 15 Cox CC 217.

99. See A Hawkins, *Victorian Political Culture, 'Habits of Hearts and Mind'* (OUP 2015).

100. 'Lord Coleridge' *Law Times* 97 (1894):163.

101. 'The Late Lord Coleridge' (n 30).

102. See Coleridge, *Life* (n 3), vol. II: 225–6.

103. JDC to JTC, 30 May 1875, as cited in Coleridge, *Life* (n 3), vol. II: 250.

104. JTC, *Journal*, 19 November 1873, as cited in Coleridge, *Life* (n 3), vol. II: 232.

105. JDC to JTC 21 Oct 1861, as cited in Coleridge, *Life* (n 3), vol. I: 270. For Bernard Coleridge, see P Landon and H Mooney, 'Coleridge, Bernard John Seymour, second Baron Coleridge (1851–1927)' in *Oxford Dictionary of National Biography* https://www.oxforddnb.com, accessed 4 June 2025. John Taylor took a keen interest in Bernard's education: see JTC to JDC, 11 January 1860, BL Add MS 85871, f. 2.

106. Coleridge, *Remembrance* (n 7): 151.

# References

## Printed sources

Buckle, H, 'Mill On Liberty' *Fraser's Magazine* 59 (May 1859): 509–42
Coleridge, B, *The Story of a Devonshire House* (Taylor and Unwin 1905)
Coleridge, B, *This for Remembrance* (Taylor and Unwin 1925)
Coleridge, E H, *Life and Correspondence of John Duke, Lord Coleridge*, 2 vols (London 1904)
Coleridge, John D, 'Mr. Buckle and Sir John Coleridge' *Fraser's Magazine* 59 (June 1859): 635–44
Coleridge, J T, *Public School Education* (John Murray 1860)
Fifoot, C, *Judge and Jurist in the Reign of Victoria* (Stevens 1959)
Hamilton, J A and Mooney, Hugh, 'Patteson, Sir John (1790–1861), Judge' in *Oxford Dictionary of National Biography* https://www.oxforddnb.com, accessed 4 June 2025
Hawkins, A, *Victorian Political Culture, 'Habits of Hearts and Mind'* (OUP 2015)
Hesketh, I, 'Weapons of Another Kind: Henry Thomas Buckle and the Case of Thomas Pooley' *Left History* 15 (2010): 87–110
Handler, P, 'John Taylor Coleridge and English Criminal Law' in M Lobban and I Williams (eds), *Networks and Connections in Legal History* (CUP 2020) 373–95
Holyoake, G, *The Case of Thomas Pooley: The Cornish Well-Sinker* (Holyoake 1857)
Landon, P and Mooney, H, 'Coleridge, Bernard John Seymour, second Baron Coleridge (1851–1927)' in *Oxford Dictionary of National Biography* https://www.oxforddnb.com, accessed 4 June 2025
Lobban, M, 'The Politics of Nineteenth-Century Law' in P Brand and J Getzler (eds), *Judges and Judging in the History of the Common Law and Civil Law: From Antiquity to Modern Times* (CUP 2012): 102–37
Lobban, M, '"The Glorious Uncertainty of the Law": Life at the Bar, 1810–1830' in D Ibbetson, N Jones and N Ramsay (eds), *English Legal History and Its Sources: Essays in Honour of Sir John Baker* (CUP 2019): 307–33
Matthew, H C G, 'Gladstone, Evangelicalism and "The Engagement"' in J Garnett and H C G Matthew (eds), *Revival and Religion since 1700: Essays for John Walsh* (Bloomsbury 2003)
McWilliam, R, *The Tichborne Claimant: A Victorian Sensation* (Bloomsbury 2007)
Mill, J S, *On Liberty* (Parker 1859)

Polden, P, 'Judging Judges: The Reputations of Nineteenth-Century Judges and Their Sources' in A Musson and C Stebbings (eds), *Making Legal History: Approaches and Methodologies* (CUP 2012): 53–71
Pooley, Thomas, *The Times*, 3 August 1857
Pugsley, D, 'Coleridge, John Duke, first Baron Coleridge (1820–1894)' in *Oxford Dictionary of National Biography* https://www.oxforddnb.com, accessed 18 June 2025
Toohey, T, 'Blasphemy in Nineteenth-Century England, the Pooley Case and Its Background' *Victorian Studies* 30 (1987): 315–33
Toohey, T, *Piety and the Professions*, *Sir John Taylor Coleridge and His Sons* (Garland 1987)
Waddams, S, *Law, Politics and the Church of England: The Career of Stephen Lushington* (CUP 1992)
*The Times*, 26 June 1852
*The Times*, 1 February 1853
*The Times*, 17 March 1858
'Mr Buckle and Sir John Coleridge' *Saturday Review* (14 May 1859): 585
'Mr. Buckle and Sir John Coleridge' *Law Times* (21 May 1859): 114
'Sir John Taylor Coleridge and Mr. Buckle' *Law Magazine and Law Review* 7 (May–August 1859): 263–84
'Lord Coleridge' *Law Times* 97 (1894): 163
'The Late Lord Coleridge' *Solicitor's Journal* 38 (1894): 560

## Manuscript sources

BL Add MS 85051
BL Add MS 85869
BL Add MS 85870
BL Add MS 85871
BL Add MS 85879
BL Add MS 85901
BL Add MS 85903
BL Add MS 85904
BL Add MS 85905
BL Add MS 85960
BL Add MS 85970
BL Add MS 86044
BL Add MS 86045
BL Add MS 86047
BL Add MS 86049
BL Add MS 86050
BL Add MS 86051
BL Add MS 86053

## Table of cases

*R v Newman* (1852) 3 Car & K 252, 175 ER 541; (1853) 1 El & Bl 558, 118 ER 544
*R v Ramsay and Foote* (1883) 15 Cox CC 217
*Shore v Wilson* (1842) 9 Cl & F 355, 8 ER 450
*Williams v The Bishop of Salisbury* (1863) 2 Moo PCNS 375, 15 ER 943

Chapter 8

# Jurors and jury service in interwar Bristol

Kay Crosby

## Introduction

A growing body of literature has recently started to consider what jury service looked like after women gained the right in 1919 to sit on juries other than the jury of matrons. Some of these studies have considered the political campaigning that was required even after 1919 to ensure this was more than a theoretical change in the law.[1] Some have sought to quantify the appearance of women in a variety of courts, from the Central Criminal Court in London,[2] to the provincial assizes[3] and courts of quarter sessions.[4] The literature has also taken on an international element, comparing the appearance of and campaigns around women's appearance on such courts in England to their appearance in a variety of other jurisdictions, including the USA and Australia.[5] Some have situated what we know within a wider context of practical citizenship, asking how we might draw on these studies in order to develop our understanding either of a developing citizenship concept,[6] or of the exclusion of other groups on racial grounds,[7] or owing to having limited sight or hearing.[8]

This chapter seeks to develop this citizenship-focused literature, taking a detailed study of a single English city in order to deepen our understanding of the jury at this time as an element of democratic renewal, at a time when a concept of citizenship was still rapidly developing and local administrators were relatively free to exclude any group of people that they deemed unsuitable to serve. This is, in fundamental terms, a question of how a set of people who had previously been categorically excluded from

the law's processes were reimagined as containing within their number at least some potential insiders. The law said women could now be jurors, but who exactly did that mean?

This chapter takes as its object of study a single English city, Bristol, and asks what jury service looked like here for the entire twenty-year period between 1919 and 1939. This is a crucial moment in the institution's history, covering not only the introduction of women onto the jury but also the adoption of electoral qualification as the basis of jury qualification and the abolition of the jury of matrons and the grand jury. And only a decade later, the special jury would be abolished everywhere outside London. This, then, is a time of great change, which anyone who seeks to understand the modern jury system would do well to study. It is also relatively unusual for jury studies to be written at this level of granularity; although Howlin[9] has shown how powerful juror books can be for a detailed analysis of a particular jury system, and work by Anwar et al.[10] and Ireland[11] amply demonstrates just how much more rigorous a study can be when it takes a step away from the national or global claims of other work in this area and instead asks what exactly was going on in the practices of a single group of administrators. There are no comparable studies for twentieth-century England, which means this chapter is able to add an analytical depth to the international literature, which is as yet unavailable elsewhere.

In this chapter, my ambitions in shifting the terms of discussion about the jury are quite large. But I am going to focus on a very narrow topic, exploring the jury system of a single city in the two decades after the Sex Disqualification (Removal) Act 1919. This Act qualified some women to sit on juries but was silent on the question of which people who were qualified should actually serve. How exactly was this comparatively tiny group of jurors selected, decades before a method of random selection would be introduced?[12]

Clearly some method would be needed in Bristol – and elsewhere – to narrow down the larger group to the smaller and to decide which people – and crucially which kinds of people – would be pulled into the box. This raises questions of citizenship in general and of women's citizenship in particular, and it also reveals how such matters were devolved, not to the women themselves, but to male insiders, acting in private and unaccountable ways. Which outsiders did they think were insider enough to be seated on a jury and entrusted with an emblematic civic power? What might we usefully say about the ways the jury was constructed as an institution in which a city's total body of residents – outsiders to the law's formal processes – were narrowed down to a much smaller set of

people with the requisite formal and social qualifications to be assigned a status of potential future insiders?

## The various types of jury operating in the city

Before we can analyse the practical life of Bristol's jury system, we first need to understand the types of jury that were in use in the city at this time.

Ordinary trial juries were practically restricted at this time to criminal trials and operated across the quarter sessions (for relatively minor crimes) and the assizes (handling more serious cases). A trial juror at either court was required to be aged between twenty-one and sixty, and to own or occupy land worth at least £20, a requirement that put most jurors in the richest five per cent of the population.[13] Each county had its own quarter sessions and assizes, and most medium-sized towns also had their own separate quarter sessions. Bristol was one of only ten boroughs with its own assizes. The Municipal Corporations Act 1882 had required jurors summoned to borough courts to be registered to vote, thereby applying a citizenship requirement in municipal boroughs that did not apply elsewhere;[14] although by the early 1920s this rule had been extended to jurors selected in the counties.[15]

Special juries used jurors from an even higher social class, and by our period, they were being exclusively used in civil trials either at the High Court or at the provincial assizes. A special juror had to occupy land valued at at least £100,[16] and must also be 'an Esquire or Person of higher Degree, or . . . a Banker or Merchant'.[17] As one commentator suggested in the 1960s, 'In the early years of this century, special juries still had some popularity: their use on criminal cases had practically died out, but they were sought in personal injury cases in the belief that people of higher status were likely to think in larger terms when it came to assessing damages.'[18] The special jury was not abolished in cases outside the City of London until 1949,[19] so during our period, it remained a regular part of the jury system of a major city like Bristol.

The grand jury's function was to scrutinise the charges against a defendant ahead of trial, and it was tasked with authorising a charge to proceed to trial. The grand jury operated in both quarter sessions and assizes until its abolition in 1933 and carried out its (nominal) scrutiny function at the beginning of each session. While there were no formal distinctions between the qualifications of ordinary trial jurors and grand jurors, the grand jury's largely ceremonial function meant it was common

for observers to note that it was made up of somewhat grander individuals than could ordinarily be expected on a trial jury. Indeed, one parliamentarian suggested during this period that one major advantage of having women on grand juries would be that it might encourage them to take up a more permanent role in the local justice system by seeking appointment as a Justice of the Peace.[20] The jury, or at least the grand jury, was being explicitly presented here as a means by which the kind of socially significant local woman who could be selected for this largely ceremonial function might thereby be inspired to convert herself into an institutional insider by seeking to join the local bench. I have been unable to identify examples of this actually happening, but the fact this idea was possible is instructive regarding the jury's political role as an engine for creating local institutional insiders, at a time when citizenship was still often understood as a partly local matter.

The Tolzey court was one of the many unique borough courts that sprang up across medieval England. It had come into existence by 1344 at the latest[21] and was not abolished until the 1970s.[22] It began as a way of regulating the city's market and fair,[23] but as early as 1450, it had been granted a wide-ranging jurisdiction over civil disputes in the city.[24] The court was interchangeably referred to either as the Tolzey or the Sheriff's court, and so the juror summoning records alternate between 'SC', 'TC' and 'STC' when indicating that a juror had been summoned to this court. I am grateful to the archivists at the Bristol Archives for confirming that all three notations refer to the same court. One scholar has suggested that, as a civil court, the Tolzey court automatically suspended its juries from the First World War.[25] In fact, while the Juries Act 1918 did create this presumption, the legislation also gave the judge a discretion to order a jury trial.[26] And the city's juror books have jurors summoned to the court in 1919 and 1920, suggesting that it continued to be used as a jury court during this period, in the face of national trends against jury trial in civil disputes.[27]

The coroner was, to a great extent, at liberty to act outside the ordinary rules. Indeed, when the rules were changed in 1922 so as to bar non-UK nationals from jury service, the coroner's jury was specifically exempted from this new provision.[28] One practical consequence for us of this distinct institutional existence is that coroners' jurors are not named in the Bristol juror books. Furthermore, Lyes reports that the records of the city's coroner's court have not survived for the period between 1830 and 1936;[29] and the Bristol Archives have advised me that even for those records that do survive after 1936, no individual jurors are named. For these reasons, coroners' juries must fall beyond the scope of this chapter, even if we can be certain that they did form a part of the city's jury system.

The jury of matrons was another medieval survival, empanelled after a woman was convicted of a capital offence and claimed that she was pregnant. The matrons' job was not to establish guilt but rather to determine whether the prisoner was pregnant and whether her pregnancy had reached a point where movement could be detected. While this jury type was not abolished in England and Wales until 1933, and was still in regular use up to that point, no matrons were required in Bristol during our period,[30] and so the institution again falls beyond this chapter's scope.

Having briefly surveyed the types of jury that existed in Bristol during the period between the two World Wars, we can now turn to the first major development in the jury system at this time: the arrival of women beyond the always exceptional jury of matrons.

## Fighting over women's exclusion and inclusion at Bristol

Because Bristol had its own borough assizes and quarter sessions, it was exempted from the ordinary juror summoning rules as laid out in the 1825 Jurors Act and could instead summon its jurors 'as theretofore',[31] subject only to the later requirement in the Municipal Corporations Act 1870 requiring borough jurors to be registered to vote.

Shortly after the Sex Disqualification (Removal) Act 1919 had extended the juror franchise to some women, beyond the special case of the jury of matrons, Mr Justice Darling found himself presiding over trials at the western assize circuit. This circuit contained two of the so-called assize boroughs which were free to ignore the ordinary property qualifications, Exeter and Bristol. Darling visited Exeter first, where he advised that the city's historical practice of ignoring the property qualifications was actually unlawful. There is no record I have been able to find of officials here objecting to this new information. He then went to Bristol and explained that while a peculiar jurisdiction like the Tolzey court might properly be said to belong to the borough, and so might be subject to peculiar local rules, in the case of the assizes, the court was effectively Crown property, and so the property qualifications must be observed.[32]

The Bristol officials wrote to the Home Office to complain, and the Home Office advised the judge that his pronouncement had misstated the law. It also risked undermining the developing constitutional settlement regarding women's citizenship, as

> to assimilate the practice in Bristol to that enacted for counties would disqualify from jury service a large number of women who under

> the practice hitherto followed would now automatically be qualified and liable to jury service as Burgesses or the wives of Burgesses: since under the Act of 1825 only those women will be liable who have the property qualification in their own right—a comparatively small number.[33]

Darling explained that he couldn't really defend what he had said, as it had all come from the clerk of assize, and so he had better give an explanation instead. The clerk – a Mr Leslie – explained that he wasn't trying to exclude women but rather combat the lawlessness of the Bristolian jury system, noting that

> Probably every judge who has sat at Bristol Assizes has had the experience of the difficulty of securing proper verdicts there in criminal cases. In case after case it happens that these juries will return verdicts of acquittal in the teeth of the evidence and of the summing up. . . . All these exceptional City and Borough jurisdictions, so limited in area, are prone to this abuse; local prejudices, friendships, sympathies and antipathies have full scope and exercise a very prejudicial influence on the administration of justice.[34]

Indeed, this speaks to the broader theme for us of the jury as a machine for building local insiders, with the irritating consequence for the king's judges that they and their legal rules were potentially reduced to the status of interlopers and certainly, at the very least, outsiders to the city's justice system. Leslie further suggested that the proviso in the 1825 Act might actually preclude the summoning of any woman at Bristol: after all, it had not been the custom in 1825 to summon women.

The Home Office thought this was an obviously silly argument and asked for the Law Officers' opinion. Unfortunately for them, the Law Officers agreed with Leslie. The Home Office advised the Bristol overseers of this development, but they continued to object, refusing to comply without first seeing a copy of the Law Officers' opinion. The Lord Chancellor, Lord Birkenhead, sat on the problem for approximately six months, before passing emergency legislation over a weekend, banning the historic discretion of the assize boroughs to ignore the property qualifications, requiring them to produce juror lists according to the ordinary rules and leaving it to his apologetic civil servants to explain to a surprised Home Office that this was now their mess to resolve.

The immediate problem created by this surprise legislation was that wartime paper shortages meant most places were permitted to keep using their old lists of qualified jurors, annotated to reflect changes such as deaths and so on. But the assize boroughs had no such lists to draw on and

faced the same paper shortages as everyone else. The 1920 Emergency Act temporarily allowed them to annotate their electoral registers in order to indicate who was qualified for jury service;[35] but the Act was set to expire after a year.

In April 1921, the future Chief Justice Thomas Inskip, born in Bristol and at that time one of the city's MPs, wrote to Birkenhead to warn him that if something wasn't done immediately, he would gather together all the MPs from all the old assize boroughs and turn this into a political issue for the government. The Lord Chancellor's Office wrote to warn the Home Office that they had better find a solution soon, as the Bristol MP and his allies 'would have much reason on their side and much popular support, for . . . the construction of Section 50 which produced this trouble is novel, and . . . to act upon it involves considerable and . . . quite unjustifiable expense.'[36] The following month, the town clerks of Leicester, Bristol and Nottingham demanded a meeting with the Home Office, the Leicester official going so far as to doubt the legality of what had happened to that point;[37] and when the three men met with the Home Office in June of that month they strongly argued for the permanent adoption of an annotated electoral register as the basis of juror qualification.[38] The initial response was to extend the Emergency Act for another year in 1921, before finally the Juries Act 1922 created a standardised picture.[39] Now jury lists everywhere would be created by annotating the electoral registers, creating in practice a new model of jury service which is still with us today, one which is fundamentally based upon eligibility and registration as a voter. This was a largely accidental way in which women's citizenship necessitated women's jury service, which in turn reshaped the ongoing relationship between jury service and citizenship via the electoral franchise, and ultimately, this happened because the officials at Bristol, unlike their counterparts at Exeter, were up for a fight with their clerk of assize. Indeed, we might suggest that all this happened precisely because, as the judges had warned, this handful of cities with their independent assize courts had been allowed to develop an independent institutional culture that reduced the common law and these cities to a kind of mutual outsider status.

## The first women to serve on a trial jury anywhere in England and Wales

Bristol also has peculiar significance in the history of the jury system of England and Wales because it is the first place where any women were ever seated as trial jurors. The legislation lifting the ban on women jurors

had come into force in December 1919, and in June 1920, the Borough Clerks Association had written to the Lord Chancellor's Office to ask if women should be summoned before official guidance on their selection had been published.[40] The ensuing rules were not published until 12 July, which actually left most places a little time, as local lists of qualified jurors were not ordinarily updated until the autumn. But Bristol was an assize borough, and so it was free to summon whoever it liked without the need for any such lists. And while it would take until the following year for any women to appear at the city's assizes,[41] at the quarter sessions, this administrative freedom was used to have women seated on a jury as early as 28 July 1920.[42] This was something that was remarked upon in the New York Times as a milestone in women's citizenship.[43] While these women were never publicly named, their presence had international significance.

In this first session, seventeen women were summoned to the quarter sessions, six of whom were seated in a pair of larceny trials on the first day. This very first gender-mixed jury convicted on the offence charged in one case and convicted in the other on a lesser charge of receiving.[44] The local press commemorated the event by noting that prosecuting counsel used the 'unfamiliar phrase "Ladies and gentlemen of the jury." As far as he knew it had not been used before in the annals of the jurisdiction of this country. He congratulated women on at last taking their proper place in the jurisdiction of the country, and also congratulated the cause of justice that they had done so'.[45]

Later that day, a differently composed jury of six women and six men convicted two men of larceny;[46] and the next day, a third jury of six women and six men convicted a man and a woman of conspiracy to defraud and separately acquitted the same woman on a charge of simple larceny.[47] Across the session, only three women – Alice Culliford, Elizabeth Hunter and Eliza Kembery – served on more than one jury. This decision was taken despite there being three men who appear to have attended and yet were not seated on any juries. The local press spoke of several of the women being excused after their first day of service, but that '[t]here was no difficulty in replacing the ladies who asked to be excused, three lady jurors-in-waiting volunteering to serve'.[48] Reading both these things together, it does appear that there was, for the time being at least, a clear attempt at securing an equal number of women and men on each jury at the city's quarter sessions, even if forty-three of the sixty people called for service had been men.

So, the women who were called upon were given more work to do, even if there were fewer of them, all while the press across England and Wales geared itself up for arguing that summoning women made more

work for men.[49] And while there were certainly far fewer women than men who were qualified for jury service once the restrictive property qualification rules were extended to the city in 1921, even by 1925, there were still over 1,500 women in the city who were qualified to serve. So, what was so special about these seventeen women?

The juror books themselves only contain these women's names, their occupations, and their addresses; while men at the city's quarter sessions generally had a specific occupation recorded, half of these women were described simply either as 'Mrs' or 'Widow'. Four, meanwhile, were recorded as milliners or hat makers, two were drapers and one was a tobacconist. Despite these scant details in the city's juror books, the 1921 census allows us to glean a little more about thirteen of these women, whom I have been able to identify by cross-referencing their names and their addresses.

I have been unable to locate five of these women – Alice Culliford (milliner), Edith Holden (milliner), Mrs Elizabeth Hunter, Elizabeth Skinner (hat manufacturer) and Mrs Beatrice Stephens – in the 1921 census records at their addresses provided in the previous year's juror summoning records, and none of these women were ever summoned again. So, while they can be named, that is the extent to which their status as being among the first women to have ever been seated as trial jurors can be charted. It is, nonetheless, possible to offer a short biographical sketch of the other thirteen. For the sake of brevity, I will focus on the six who were actually seated on the first of the three mixed juries at this session.

Mrs Annie Skidmore was sixty years old, with no occupation listed in the 1921 census. She lived with her husband, a sixty-year-old chocolate operator at J S Fry & Sons, and her son, a twenty-nine-year-old stock checker at Avon Cold Storage. In the 1881 census, she had been recorded as a twenty-year-old grocer's assistant still living at home with her father, a shoemaker, but she had no occupation listed in any subsequent census. By 1891, she was married to a thirty-year-old shoemaker with a one-year-old son, and by 1901, her husband had started working as a chocolate mixer. She was never summoned again.

Mrs Louisa Barrow Senington was fifty-one years old, engaged, according to the 1921 census, in home duties. She lived with her husband, a fifty-year-old secretary of the Tailors and Garment Workers Union; her daughter, a twenty-five-year-old library assistant; and her son, a seventeen-year-old engineer's apprentice. All this reveals little of how significant the Seningtons were within the city, however. In April 1921, Mrs Senington would become the city's second female magistrate.[50] But by 1939, she was still listed in that year's equivalent of the census as being occupied in 'unpaid domestic duties'. In her capacity as a magistrate, she was regularly

named throughout the 1920s and 1930s as a visitor to various institutions, and otherwise exercised various judicial powers, under the auspices of the Lunacy Act 1890 and the Mental Deficiency Act 1913. She died in 1947, having, unsurprisingly as a justice of the peace, never been summoned again. Her obituary in the local paper noted her age and the fact her husband had been an Alderman. Her achievements, described in the second of two paragraphs, were summarised as follows: 'Mrs Senington was a Justice of the Peace and a former Lady Mayoress of Bristol. She was an enthusiastic worker at Whitfield Tabernacle, Penn Street, and was for many years connected with the Co-operative Women's Guild.'[51]

Emma Jane Colston was a fifty-eight-year-old widow, recorded in 1921 as the head of her household and occupied by her home duties. She lived with her two daughters, a thirty-five-year-old teacher employed by the Bristol Education Committee and a nineteen-year-old shorthand typist at Fears Watches. In the 1891 and 1901 censuses, Colston's occupation had not been specified, although her husband was listed as a funeral director. By the time of the 1911 census, they were both recorded as undertakers. In 1939, she was still living in the same home with her two daughters.

Mrs Annie Mary Hince was thirty-five years old and also described in the census as being engaged in home duties. She lived with her husband, a thirty-six-year-old draper's shopkeeper working out of the couple's home address, her three-year-old son and two female servants: a twenty-one-year-old domestic nurse and a twenty-six-year-old general domestic servant. By 1939, she was recorded as a buyer for what had previously been officially her husband's drapery business. Her now twenty-two-year-old son was still living at home, now working as a bank clerk, alongside his eighteen-year-old brother, also a clerk. The general domestic servant was still with the family, now joined by a second domestic servant aged thirty. Annie Hince was summoned one more time, as a petty quarter sessions juror, in 1923, when she sat on a jury of three women and nine men to acquit a man of larceny in a dwelling house. She died in 1979.

Mrs Rosina Hutton was a fifty-three-year-old woman also engaged, according to the census, in home duties. She lived with her husband, a fifty-nine-year-old painter and plumber, and her sister-in-law, a thirty-nine-year-old teacher employed by the Bristol Education Committee. She was never summoned again.

Mrs Louisa Henrietta Rogers was the fifty-four-year-old daughter of a builder (and a fairly successful one at that: in 1871, he had been employing seven people). She was now engaged in home duties, living with her husband, a fifty-five-year-old dyer and cleaner, and a thirty-six-year-old domestic servant. In the two previous censuses, the couple had lived with

their son and had not had any domestic staff. Perhaps the business was doing better now, or perhaps in the absence of their child they needed more help around the house. She was never summoned again.

All six women lived in a similar area, with addresses in the east of Bristol that placed them at most two miles' walk from one another, and most were of a similar age and background, albeit only two were comfortable enough for domestic servants. Annie Hince stands out both as one of the only women from a home employing domestic staff and for being almost twenty years younger than the next youngest woman on this jury. It is tempting to wonder how much she drew, in her interactions with the older women, on the fact that she lived on the same street as Louisa Rogers (Hince at 429 Stapleton Road and Rogers at 399), with one family involved in dying cloth and the other working in drapery. Is it too much to wonder whether the two women were relieved to enter the jury box with someone they already knew?

The stories of the other women summoned to this first session of 'mixed' juries were similar to those of the six women who were actually seated on this first jury. Several more were engaged in business, generally with other family members. Several clearly lived quite comfortable lives, living with domestic staff or even residing in upmarket addresses such as Queen Square. Three more lived on Stapleton Road, with another two close neighbours – Alice Culliford and Elizabeth Wellings of numbers 282 and 295 respectively – having been seated together on the session's second jury. Meanwhile, two women working out of shops on College Green – the ladies outfitter Annie Parnall, running her shop at number 29 with her sister, and the milliner Edith Holden, running hers at number 44 – also sat together, this time on the session's third jury.

Louisa Senington was the only one of the seventeen who went on to become a magistrate, and indeed, only two of the twelve women who were recorded as having been sworn in as city magistrates at Bristol during the whole interwar period ever appeared in the juror books. Senington was sworn in in the spring of 1921, alongside Emily Harriet Smith,[52] who had fifteen days earlier been part of a jury of seven women and five men who had convicted a woman of larceny in a dwelling house.[53] But Senington and Smith were two of only three women to be sworn in as magistrates in the city during the 1920s, which means there was plenty of time in which the sorts of people who were chosen as jurors and the sorts of people who were sworn in as magistrates might have overlapped, but didn't.

This is, perhaps, as far as the analysis can go in drawing out the global historical significance of these seventeen women. But asking these questions about who they were leads neatly to the next question: how did they

get there? Local officials were only ever really constrained, even after the abolition of the old discretion at the assize boroughs, in a negative sense. They were only ever told who they could not summon – not which qualified jurors they must select. So, what can we learn about jury service during this period if we take a broader, more statistical view of the city's summoning records?

## A broader view of jury service at Bristol

The first thing we must do in exploring how the city's officials selected their jurors is to try to arrive at a rough sense of what the pool of available people they were able to select from actually looked like. In other words, roughly how many people would have been qualified to serve as jurors? We can then use this to start to contextualise the total number of people who actually were summoned during this twenty-year period.

The digitised version of the 1921 census has 379,093 entries for Bristol. The 1939 Register, meanwhile, has 372,925. This suggests that the total size of the population was broadly unchanged. So, I am going to assume that roughly the same number of people were qualified to serve each year, even if the precise people changed owing to some aging into and others aging out of formal eligibility to serve. The only year's electoral register that I have been able to study systematically is 1925, when 8,522 people were designated as either common or special jurors.[54] According to the Juries Act 1825, everyone qualified as a juror should have been aged between twenty-one and sixty. We can use all this to very roughly sketch out an estimate of how many people were qualified in total across the 1920s and 1930s.

If we assume the same number of people were born each year, then the spring 1925 cohort can be divided into forty equal groups of 213 according to when they were born. And for each year except one between 1920 and 1939 we can assume that this number of people would have been added to the total number of qualified people in the city during the years under study, as another roughly 213 sufficiently wealthy residents reached the age of twenty-one. This gives us an overall estimated total of 12,569 people who were qualified to serve during the period.

We can combine this with the fact that the city's juror summoning records for this period name 8,404 unique individuals, meaning that roughly two-thirds of everyone who might have served did in fact do so at some point.

On the face of it, this leaves us with a picture of a broadly representative institution: approximately two-thirds of everyone who could have

been summoned was actually summoned at least once. Furthermore, the gender distribution of the individual named jurors was basically representative of the pool of qualified people. Roughly 18 per cent of the city's pool of qualified jurors were women. Meanwhile, 17 per cent (n=1,425) of the 8,404 unique jurors were women. But many jurors were summoned more than once, and once we consider this factor, we can see that once a man had been selected once, he was far more likely to be called on many times than a woman, who could ordinarily expect to be summoned only once.

After a woman living in Bristol was summoned for the first time, on average she would be called back for jury service in future years 0.3 times, compared to 0.8 times for a man.[55] This can also be seen by tracing the amount of repeat service that individual women and men experienced. Of all the women who were summoned, 80 per cent would never be called on again, compared to only 56 per cent of men. Beyond this immediate culling of far more women than men from the cohort of repeat jurors, many more men than women were summoned at least twice (19 per cent of all women and 27 per cent of all men) or least three times (6 per cent of women and 15 per cent of men), albeit there are still meaningful numbers of women among both groups. Once the numbers start getting larger, however, a greater gendered disparity emerges. Only 1 per cent of women who were summoned at least once were summoned a total of at least four times, and a vanishingly small number of women were summoned five (n=5) or six (n=2) times. For men, meanwhile, 10 per cent of those who were summoned at least once appeared in the juror books across at least four different years, with 7 per cent appearing at least five times, 5 per cent at least six times, 3 per cent at least seven times and 1 per cent of all men who were summoned at least once being called upon at least eight times across this twenty-year period. Beyond this, a much smaller cohort were summoned nine (n=30), ten (n=18), eleven (n=11), twelve (n=4), thirteen (n=1) or fourteen (n=1) times across a span of twenty years.

One strand of the contemporaneous debate about women's jury service countered the idea that women had a peculiar range of experiences that made their judgement more valuable than that of men in assessing particular evidence, by pointing to a perception that women were less experienced in judicial matters than men.[56] What we can start to see through this particular unpicking of the unusually rich juror summoning records of this one particular English city is just how much that lack of judicial experience was actively constructed by those who were selecting the jurors. The vast majority of women who were called on at all (already a slightly smaller number than a random selection would produce) were only ever called on once, and the very most experienced women

were only called upon five times. For men, almost half of everyone who was summoned once would be called upon again, and 7 per cent of all male jurors would be afforded the depth of experience that was granted to the most experienced seven women. Women's lack of judicial experience, to the extent that it existed and to the extent that it mattered, was not arrived at naturally but was a direct result of the decisions made by local officials regarding the people who should or should not be summoned.

Unfortunately for us, if unsurprisingly, no record exists of the heuristics these men relied upon in selecting their jurors. But while they cannot tell us what they were thinking, we can unpick their practices.

One common argument in the contemporaneous literature was that women were inevitably summoned less than men owing to their greater propensity to seek and secure an exemption from jury service. Why, the argument went, summon such people at all?[57] Unfortunately, one weakness of the Bristol records is that, unlike in some other jurisdictions, we have no record of the letters people sent in seeking excusals.[58] This makes it impossible for us to put together a conclusive account of the number of women versus men who, on receiving a summons, sought to get themselves excused. What we do have, however, is a note of each time an excusal was granted. So, while we cannot say anything at all about the number or circumstances in which Bristol's women attempted to get out of jury service, we can nonetheless make some observations about the people who were in fact successful.

Giving evidence to the Mersey Committee's review of the jury system in 1913, local officials at Bristol had explained their practice for selecting jurors as follows:

> There are no jury lists. The sheriff selects the necessary number of jurymen for each assize, choosing for the special juries 'leading business men under sixty,' for the common 'tradesmen in a good way of business under sixty.' The only other qualification is that of being a ratepayer. There is two years' interval between service for each juror.[59]

Clearly this system would have to be amended in light of the arrival of women into the jury box, but we might note that it expressly imported a concern with a juror's social standing which only obliquely appeared within the rules. The relevant statutory provisions, as we have already seen, provided fairly rigid rules concerning income levels and occupations, but at Bristol, an alternative and far more discretionary scheme of social division was in play. Long after the formal property qualifications were extended to the city in the early 1920s, we can see these more flexible concerns about the social status of the juror playing out negatively, in the context of juror excusals, driving local decision making about the

sorts of people who really must serve and the sorts of people who really ought to be permitted to do something else with their time. What this meant in practical terms can be divided into three components, as I have explored elsewhere.[60]

First, social status.[61] There is a column in the summoning records that lists a person's occupation or status, and this space was used in different ways in different contexts. Very few people were listed as a householder, widow and so on at assizes, while hundreds of jurors at quarter sessions had this kind of information listed rather than an occupation. There was also far more repeat service for women and men at assizes than at quarter sessions. Both these factors taken together suggest that far greater care was taken over the people who were being summoned to the higher-status assize court, not only by drawing more heavily on jurors who were already well known to the court but also by more closely scrutinising the nature of their work before they were summoned in the first place. But social status and gender were not correlated in simple ways, as the legally required minimum of fourteen women being summoned to a session was met eighteen times at the assizes and only five times at quarter sessions.

Second, vetting for character. The police explicitly intervened eight times to prevent someone being summoned. This is clearly a low number, but the police must have been routinely checking the lists of summoned jurors in order for them to be able to make this sort of intervention even at this low frequency. Again, higher-status juries seem to have been more closely scrutinised. The police objected two times to would-be special jurors and six times to common assize jurors, but not a single police objection was recorded regarding petty quarter sessions jurors. Two quarter sessions grand jurors were vetted for being 'no good', which was language that echoed the more definitive language of explicit police vetting seen elsewhere in the Bristol juror books.

Finally, a distinction between optional and compulsory service. At this time, competing wartime narratives about duty to the nation, duty to dependents and so on had come to be echoed in parliamentary debates about the relationship between jury service and citizenship, and compared to some other places, Bristol took a more legalistic approach to the sorts of duties that would supersede jury service. Nine women were excused at Bristol owing to caring responsibilities, generally to care for children or sick relatives (not to feed their husbands, as the then popular narrative had it). Bristol was unusually unyielding regarding work-based excusals, generally only excusing people whose job gave them a formal exemption from jury service.

Taking a broader view of the jury system in interwar Bristol allows us to see that the institution was grounded in a notion of citizenship as service,

and that the initial decision to summon someone to this civic responsibility was grounded in concerns with social status. This impacted women in differential ways, as they were simultaneously more likely to appear in significant numbers at the higher-status assizes, while at the same time being less likely than men to be called upon repeatedly and certainly with nothing like the regularity of the most in-demand men.

## Conclusions

We only know what we do about Bristol's jury system because the city's interlocking jurisdictions were so strange. It was strange to have a flourishing borough civil jury court, which continued to regularly summon jurors in the face of national trends against civil juries. It was unusual to have a senior MP threatening to make a lot of public noise if the requirements of his home town's jury system were not met. And it was unlikely that the officials in this one place would not only be used to ignoring the property qualifications but would force the government's hand, demanding legislation that ultimately upended the entire legislative system for summoning juries, which in turn led to a formal relationship between jury service and voting as interwoven facets of citizenship being crystallised.

But the fact that this was such a strange set of circumstances, and that the jurisdictional paperwork was also handled so unusually, uniquely combining assize and quarter sessions summoning records into a single shared set of books, has made it possible for us to carefully piece together the practices of a single local jury system in ways that would otherwise be completely impossible. This collection is about insiders and outsiders. And the Bristolian jury system has made an otherwise impossible analysis not only possible but also rich and textured, precisely because the city's bureaucrats worked in a slightly off-kilter way.

What we can see from drawing together these records, combining them not only with local trial records and the papers of people working in central government but also records such as the 1921 census, is just how much active work was being done locally to translate a legislative position that said 'women can serve' into a practical reality that produced women on the inside of this previously categorically shut-off institutional space. To a certain extent, legal changes extending the property qualifications to the city for the first time meant the list of available women was formally smaller, but it is notable that the women summoned to their first-ever session came from such a small social world that on several occasions they literally sat with near neighbours engaged in a similar line of work. And beyond this small social world that led to this group

of women, who were probably in many respects already social if not yet institutional insiders, being invited into the jury box, we also might note the specific work of constructing insiders that was not carried out across the longer term. While men were often summoned many times, women were not, and so we can see in action the precise processes by which court officials from various parts of the country would go on to complain that women simply lacked the experience required for jury service. As ever with gender's relationship to law, there is a strong element of institutional decision-making invisibly constructing its material conditions. One is not born, but rather becomes an outsider to the law.[62]

## Notes

1. Anne Logan, *Feminism and Criminal Justice: A Historical Perspective* (Routledge 2008) 86–95; Anne Logan, '"Building a New and Better Order"? Women and Jury Service in England and Wales, c.1920–70' *Women's History Review* 22 (2013): 701–16.

2. Shamena Anwar, Patrick Bayer and Randi Hjalmarsson, 'A Jury of *Her* Peers: The Impact of the First Female Jurors on Criminal Convictions' *The Economic Journal* 129 no. 618 (2019): 603–50.

3. Kay Crosby, 'Keeping Women off the Jury in 1920s England and Wales' *Legal Studies* 37 (2017): 695–717; Kay Crosby, 'Restricting the Juror Franchise in 1920s England and Wales' *Law and History Review* 37 (2019): 163–207.

4. Kay Crosby, 'Creating the Citizen Juror in Interwar England and Wales' *Journal of Legal History* 44 (2023): 32–59.

5. Andrew L-T Choo and Jill Hunter, 'Gender Discrimination and Juries: Judging Women Judging Men' *International Journal of Evidence & Proof* 22 (2018): 192–217; Mark Coen, 'Through a Narrow Window: Women's Jury Service in Ireland, 1921–1927' *law&history* 9 (2022): 34–63.

6. Crosby (n 4).

7. Sharleigh Crittenden, 'Race, Justice and Democracy: How the Historical and Contemporary Representativeness of the Criminal Jury Sheds Light on the Citizenship Status of Indigenous Australians' *law&history* 9 (2022): 124–52.

8. Victorian Law Reform Commission, *Inclusive Juries: Access for People Who Are Deaf, Hard of Hearing, Blind or Have Low Vision: Report* (Report, Victorian Law Reform Commission, 46, 2022): 32–7.

9. Niamh Howlin, *Juries in Ireland: Laypersons and Law in the Long Nineteenth Century* (Four Courts Press 2017).

10. Anwar et al. (n 2).

11. Richard W Ireland, 'Putting Oneself on Whose Country? Carmarthenshire Juries in the Mid-Nineteenth Century' in Thomas Glyn Watkin (ed.), *Legal Wales: Its Past, Its Future* (Welsh Legal History Society 2001).

12. Sally Lloyd-Bostock and Cheryl Thomas, 'The Continuing Decline of the English Jury' in Neil Vidmar (ed.), *World Jury Systems* (OUP 2000): 70.

13. Juries Act 1825 c 50, s1; Crosby (2017) (n 3): 706–7.

14. Municipal Corporations Act 1882 c 50, s 186(1).

15. Juries Act 1922 c 11, s 1.

16. Juries Act 1870 c 77, s 6. NB in towns with less than 20,000 inhabitants this sum was lowered to £50.

17. Juries Act 1870 c 77,s 31.

18. W R Cornish, *The Jury* (Penguin 1968): 34.

19. Juries Act 1949 c 27, s 18.

20. John Rawlinson MP, *Parliamentary Debates*, series 5, vol. 188, col. 147, 16 November 1925 (HC).

21. W W Veale, 'The Bristol Tolzey Court' *Journal of the Society of Public Teachers of Law* (1936): 20, 21.

22. John Lyes, *Bristol's Courts of Law* (Bristol Branch of the Historical Association Local Pamphlets 2006): 5.

23. Veale (n 21): 21–2.

24. Veale (n 21): 22.

25. Lyes (n 22): 5.

26. Juries Act 1918 c 23, s 4.

27. Cornish (n 18) :81–4; Conor Hanly, 'The Decline of the Civil Jury in Nineteenth-Century England' *Journal of Legal History* 26 (2005): 253–78.

28. Juries Act 1922 c 11, sch 1.

29. Lyes (n 22): 14.

30. For a list of identifiable uses of the jury of matrons in England and Wales between 1879 and 1933, see Kay Crosby, 'Abolishing Juries of Matrons' *Oxford Journal of Legal Studies* 39 no. 2 (2022): 259–83, 266.

31. Juries Act 1825 c 50, s 50.

32. This section is based on Crosby (2019) (n 3).

33. Letter from Edward Troup (Under-Secretary of State, Home Office) to Mr Justice Darling, 24 May 1920, HO 45/11071/383085/27a.

34. Letter from J St L Leslie (Clerk of Assize, Western Circuit) to Edward Troup (Under-Secretary of State, Home Office), 5 June 1920, HO 45/11071/383085/30, f. 3.

35. Juries (Emergency) Act 1920 c 78, s 2.

36. Letter from Claud Schuster (Permanent Secretary, Lord Chancellor's Office) to Edward Troup (Under-Secretary of State, Home Office), 28 Apr 1921, HO 45/11071/383085/53.

37. Letter from HA Pritchard (Leicester town clerk) to Edward Troup (Under-Secretary of State, Home Office), HO 45/11071/383085/56, f. 2.

38. Minute dated 30 Jun 1921, 3 p.m., HO 45/11071/383085/60.

39. Juries Act 1922 c 11, s 1.

40. Letter from Francis Ogden (Honorary Secretary, Society of City & Borough Clerks of the Peace) to Claud Schuster (Permanent Secretary, Lord Chancellor's Office), 1 June 1920, TNA LCO 2/559.

41. Western Circuit Crown Court Minute Book, January 1920–June 1922, TNA ASSI 21/85, unpaginated record for 23 February 1921

42. City of Bristol Quarter Sessions Record Book, 20 April 1910–2 April 1930, Bristol Archives: JQS/D/1, f. 157.

43. Choo and Hunter (n 5): 194.

44. City of Bristol Quarter Sessions Record Book (n 42): 158.

45. '"Ladies of the Jury!" innovation in Bristol trial', newspaper clipping pasted into City of Bristol Quarter Sessions Record Book (n 42): 158.

46. City of Bristol Quarter Sessions Record Book (n 42): 158.

47. City of Bristol Quarter Sessions Record Book (n 42): 161–2.

48. 'Our Lady Jurors: Their Views on a New Experience', newspaper clipping pasted into City of Bristol Quarter Sessions Record Book (n 42): 160.

49. Crosby (2017) (n 3): 701–2.

50. Register of Oaths Upon Appointment as Magistrate, 1901–1934, Bristol Archives: JMag/Adm/6/2, f. 78.

51. 'Death of Mrs Senington: Former Lady Mayoress of Bristol' *Western Daily Press and Bristol Mirror* (28 Nov 1947): 3.

52. Register of Oaths Upon Appointment as Magistrate (n 50): 80.

53. City of Bristol Quarter Sessions Record Book (n 42): 174.

54. Crosby (2017) (n 3): 706–7.

55. NB this analysis overlooks occasional instances of a juror being summoned multiple times within the same year and treats each year as a distinct unit.

56. Crosby (2017) (n 3): 700–4.

57. Crosby (n 4): 36.

58. Crosby (n 4):37–40.

59. Lord Mersey (chair), 'Jury Law and Practice: Departmental Committee Appointed to Inquire into and Report upon the Law and Practice with Regard to the Constitution, Qualifications, Selection, Summoning, &c of Juries' vol II: Minutes of Evidence and Appendices (Cd 6818, 1913): 182.

60. Crosby (n 4).

61. This paragraph and the following two draw on Crosby (n 4): 43–8.

62. This is intended as a playful allusion to a famous dictum of Simone de Beauvoir's: Simone de Beauvoir, *The Second Sex* (Constance Borde and Sheila Malovany-Chevallier tr.; Vintage Digital 2014): 146.

# References

## Printed sources

Anwar, Shamena, Bayer, Patrick and Hjalmarsson, Randi, 'A Jury of *Her* Peers: The Impact of the First Female Jurors on Criminal Convictions' *The Economic Journal* 129 no. 618 (2019): 603–50

Beauvoir, Simone de, *The Second Sex* (Constance Borde and Sheila Malovany-Chevallier tr.; Vintage Digital 2014)

Choo, Andrew L-T and Hunter, Jill, 'Gender Discrimination and Juries: Judging Women Judging Men' *International Journal of Evidence & Proof* 22 (2018): 192–217

Coen, Mark, 'Through a Narrow Window: Women's Jury Service in Ireland, 1921–1927' *law&history* 9 (2022): 34–63

Cornish, W R, *The Jury* (Penguin 1968)

Crittenden, Sharleigh, 'Race, Justice and Democracy: How the Historical and Contemporary Representativeness of the Criminal Jury Sheds Light on the Citizenship Status of Indigenous Australians' *law&history* 9 (2022): 124–52

Crosby, Kay, 'Keeping Women off the Jury in 1920s England and Wales' *Legal Studies* 37 (2017): 695–717

Crosby, Kay, 'Restricting the Juror Franchise in 1920s England and Wales' *Law and History Review* 37 (2019): 163–207

Crosby, Kay, 'Abolishing Juries of Matrons' *Oxford Journal of Legal Studies* 39 no. 2 (2022): 259–83

Crosby, Kay, 'Creating the Citizen Juror in Interwar England and Wales' *Journal of Legal History* 44 (2023): 32

Hanly, Conor, 'The Decline of the Civil Jury in Nineteenth-Century England' *Journal of Legal History* 26 (2005): 253–78.

Howlin, Niamh, *Juries in Ireland: Laypersons and Law in the Long Nineteenth Century* (Four Courts Press 2017)

Ireland, Richard W, 'Putting Oneself on Whose Country? Carmarthenshire Juries in the Mid-Nineteenth Century' in Thomas Glyn Watkin (ed.), *Legal Wales: Its Past, Its Future* (Welsh Legal History Society 2001)

Lloyd-Bostock, Sally and Thomas, Cheryl, 'The Continuing Decline of the English Jury' in Neil Vidmar (ed.), *World Jury Systems* (OUP 2000)

Logan, Anne, *Feminism and Criminal Justice: A Historical Perspective* (Routledge 2008)

Logan, Anne, '"Building a New and Better Order"? Women and Jury Service in England and Wales, c.1920–70' *Women's History Review* 22 (2013): 701–16

Lyes, John, *Bristol's Courts of Law* (Bristol Branch of the Historical Association Local Pamphlets 2006)
Lord Mersey (chair), 'Jury Law and Practice: departmental Committee Appointed to Inquire into and Report upon the Law and Practice with Regard to the Constitution, Qualifications, Selection, Summoning, &c of Juries' vol II: Minutes of Evidence and Appendices (Cd 6818, 1913)
Rawlinson, John MP, *Parliamentary Debates*, series 5, vol. 188, col. 147, 16 November 1925 (HC)
Veale, W W, 'The Bristol Tolzey Court' *Journal of the Society of Public Teachers of Law* (1936): 20–30
Victorian Law Reform Commission, *Inclusive Juries: Access for People Who Are Deaf, Hard of Hearing, Blind or Have Low Vision: Report* (Report, Victorian Law Reform Commission, 46, 2022)
'Death of Mrs Senington: Former Lady Mayoress of Bristol' *Western Daily Press and Bristol Mirror* (28 Nov 1947): 3

## Manuscript sources

Bristol Archives: JMag/Adm/6/2
Bristol Archives: JQS/D/1
HO 45/11071/383085/27a
HO 45/11071/383085/30
HO 45/11071/383085/53
HO 45/11071/383085/56
HO 45/11071/383085/60
TNA ASSI 21/85
TNA LCO 2/559

## Table of statutes

Juries Act 1825 c 50
Juries Act 1870 c 77
Municipal Corporations Act 1882 c 50
Juries Act 1918 c 23
Sex Disqualification (Removal) Act 1919 c 71
Juries (Emergency) Act 1920 c 78
Juries Act 1922 c 11
Juries Act 1949 c 27

Chapter 9

# Closing reflections: beyond insiders and outsiders

Joanna McCunn and Gwen Seabourne

In this collection, we have argued that taking a diverse and inclusive approach to legal history will deepen our understanding of law's past; create new connections with other fields of scholarship; and equip legal historians to contribute to public discourse. Our chapters examine the legal encounters of a wide range of individuals and communities, from Levantine groups in a medieval Crusader state to the first women jurors in twentieth-century Bristol. Our contributors demonstrate that people of the past encountered law in many and varied ways and that the remit of legal history is correspondingly wide and engaging. As we take account of an increasing range of stories, voices and perspectives, we raise questions and develop methods that can enrich all legal history scholarship.

Russell Sandberg recently argued that history is 'an essential tool for all those studying and understanding law. We are all legal historians now'.[1] Yet there are obvious practical difficulties in engaging with some of the older sources of legal history. For F W Maitland, a key obstacle was that English legal historians are 'overburdened by [their] materials'.[2] It is certainly inarguable that some of the raw materials of legal history could hardly be less accessible, or even appealing: Sir John Baker describes them as 'quite repulsive'.[3] Digitisation projects, such as the enormous achievement of the Anglo-American Legal Tradition website, have increased opportunities to consult documents without dealing with the grimy originals,[4] but

significant knowledge of law, languages and palaeography is still needed in order to decipher them.

Of course, efforts can and should be made to increase the opportunities for scholars to gain these skills – but this is not the only way for insights from primary research on historical documents to influence legal history, and research on primary documents should not be regarded as the only 'real' legal history. As this collection demonstrates, legal historical work encompasses a wide range of sources, methods and subjects and can also speak to scholarship across disciplines. Legal historians who work on traditional, documentary materials should be alive to opportunities to communicate their work and its significance to the wider academic world, as well as open to insights from other fields of scholarship.

Legal historians must also grapple with the fact that their work can be used to direct the course of modern law. The relationship between law and history, and the encounters of legal history with legal practice, differ from one jurisdiction to another, even within the related jurisdictions of the common law. Today, however, we see historical sources of law being cited, and historical doctrines and ideas appealed to, in contexts ranging from abortion rights in the USA to restrictive covenants affecting land in England.[5] While there are important differences between the use of historic law for the purposes of legal precedent and the historical study of law,[6] there is a need for legal historians to play their part in the proper interpretation of older legal materials.[7]

Finally, legal historians have an important role to play in public legal education. In a healthy democracy, citizens should be able to understand and engage with the law – but law with such deep historical roots, and such inaccessibility of sources, as the English common law creates problems for public understanding. When people feel like 'outsiders' to their law, misinformation and conspiracy theories can easily flourish.[8] Yet there is encouraging public appetite for information about legal history that is rigorous and accurate, as well as accessible and interesting. Carefully curated and presented exhibitions of original legal documents can be both fascinating and powerful, and the reach of such exhibitions can be extended online, as with the work done by leading scholars as part of the Magna Carta project.[9] The blending of the personal and legal can also be very engaging, as demonstrated by the recent 'Love Letters' exhibition at the UK National Archives,[10] while, moving beyond the legal historian's natural inclination towards documents, there are opportunities to contextualise physical remains, from the former sites of gallows to stately homes built using the proceeds of enslavement.[11]

Echoing Maitland's lament that 'the history of English law is not written', Baker has observed that 'the history of English law has not been finished' – meaning that primary legal sources have not all been edited and made available to researchers.[12] But as Baker also noted, 'history is what we choose to make of the past'[13] or, as Hilary Mantel put it, history is 'the method we have evolved of organising our ignorance of the past'.[14] Histories are never, and should never be regarded as, finished. Legal historians should always remain open to new insights, new methods and new sources, as we seek to present the history of law in all its colour and complexity. We believe that examining legal history through the lens of 'insiders' and 'outsiders' will help us to do just that, and our hope is that this collection serves as a basis for ongoing conversations in that vein. That legal history remains unfinished is not a failure but an opportunity – and an invitation.

## Notes

1. Russell Sandberg, *Subversive Legal History: A Manifesto for the Future of Legal Education* (Routledge 2021): 224.

2. F W Maitland, *Why the History of English Law Is Not Written: An Inaugural Lecture Delivered in the Arts School at Cambridge on 13th October 1888* (CUP 1888): 6.

3. J H Baker, 'Why the History of English Law Has Not Been Finished' *Cambridge Law Journal* 59 (2000): 62, 72.

4. Robert C Palmer, Elspeth Rosbrook and Susanne Brand, 'Anglo-American Legal Tradition' http://aalt.law.uh.edu/, accessed 11 March 2026.

5. *Dobbs v Jackson Women's Health Organization*, 597 US 215 (2022); *Bath Rugby v Greenwood and others* [2021] EWCA Civ 1927, [37].

6. Mark Leeming, '"Lawyers" Uses of History, from *Entick v Carrington* to *Smethurst v Commissioner of Police*' *Australian Bar Review* 49 (2020): 199; Maitland (n 2) 13–15.

7. See, for example, Sara M Butler, 'Context Matters: Understanding Why Medieval Legislators Chose to Regulate Women's Pregnant Bodies' *Law and History Review* 43 (2025): 1–23; Thomas J McSweeney and Allison Orr Larsen, 'Medieval Treatises and the Judicial Search for a Useable Past' *Stanford Law Review* 79 (2027) (forthcoming); Gwen Seabourne, *Legal Medievalism* (Cambridge University Press, forthcoming).

8. See, for example, Tarik Kochi, 'Law and Conspiracy Theory: Sovereign Citizens, Freemen on the Land, and Pseudolaw' *Journal of Law and Society* 52 (2025): 34–56.

9. The Magna Carta Project https://magnacartaresearch.org/, accessed 11 March 2026.

10. *Love Letters* (12 January–12 April 2026), TNA, Kew.

11. Evan Jones, 'Locating Bewell's Cross', Bristol Record Society, 15 March 2024 https://bristolrecordsociety.org/stories-from-the-archives/locating-bewells-cross/, accessed 11 March 2026; Sally-Anne Huxtable, Corinne Fowler, Christo Kefalas and Emma Slocombe (eds), *Interim Report on the Connections between Colonialism and*

*Properties Now in the Care of the National Trust, Including Links with Historic Slavery* (The National Trust 2020).

12. Baker (n 3).

13. Baker (n 3): 64.

14. Hilary Mantel, 'The Day Is for the Living', BBC Reith Lecture 2017 https://downloads.bbc.co.uk/radio4/reith2017/reith_2017_hilary_mantel_lecture1.pdf, accessed 11 March 2026.

# References

## Printed sources

Baker, J H, 'Why the History of English Law Has Not Been Finished' *Cambridge Law Journal* 59 (2000): 62–84

Butler, Sara M, 'Context Matters: Understanding Why Medieval Legislators Chose to Regulate Women's Pregnant Bodies' *Law and History Review* 43 (2025): 1–23

Huxtable, Sally-Anne, Fowler, Corinne, Kefalas, Christo and Slocombe, Emma (eds), *Interim Report on the Connections between Colonialism and Properties now in the Care of the National Trust, Including Links with Historic Slavery* (The National Trust 2020)

Jones, Evan, 'Locating Bewell's Cross', Bristol Record Society, 15 March 2024, https://bristolrecordsociety.org/stories-from-the-archives/locating-bewells-cross/, accessed 11 March 2026

Kochi, Tarik, 'Law and Conspiracy Theory: Sovereign Citizens, Freemen on the Land, and Pseudolaw' *Journal of Law and Society* 52 (2025): 34–56

Leeming, Mark, '"Lawyers" Uses of History, from *Entick v Carrington* to *Smethurst v Commissioner of Police*' *Australian Bar Review* 49 (2020): 199–226

Maitland, F W, *Why the History of English Law Is Not Written: An Inaugural Lecture Delivered in the Arts School at Cambridge on 13th October 1888* (CUP 1888)

Mantel, Hilary, 'The Day Is for the Living', BBC Reith Lecture 2017 https://downloads.bbc.co.uk/radio4/reith2017/reith_2017_hilary_mantel_lecture1.pdf, accessed 11 March 2026

McSweeney, Thomas J and Larsen, Allison Orr, 'Medieval Treatises and the Judicial Search for a Useable Past' *Stanford Law Review* 79 (2027) (forthcoming)

Palmer, Robert C, Rosbrook, Elspeth and Brand, Susanne, 'Anglo-American Legal Tradition' http://aalt.law.uh.edu/, accessed 11 March 2026

Sandberg, Russell, *Subversive Legal History: A Manifesto for the Future of Legal Education* (Routledge 2021)

Seabourne, Gwen, *Legal Medievalism* (Cambridge University Press, forthcoming)

The Magna Carta Project, https://magnacartaresearch.org/, accessed 11 March 2026

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