3

The Trial

As a prisoner, whiling away the hours and days until the next meeting of the court, you had plenty of reasons for both despair and hope. Life in prison was miserable if you were unable to pay for special treatment and although you probably knew why you had been arrested, you often did not know whether you would be tried on a capital charge and face death or a lesser charge. On the plus side, you could reflect on the many opportunities the several stages of the judicial process offered to escape the noose. The charge could be framed as a non-capital offence, the grand jury could throw out the indictment, the prosecutor could fail to appear (which would mean the trial could not proceed), the trial jury could acquit you (as it did in two-fifths of all cases) or you could be found only part guilty (as occurred in another fifth of the cases), thus ensuring a lesser punishment. Even leaving aside the possibility that the judges might exercise mercy in the sentencing process and the very real chance of obtaining a pardon from the king, the likelihood of actually being hanged was relatively low.

Before the sessions commenced, the clerk of the court drew up the indictment, relying on information provided by the victim and written depositions taken by the justice of the peace who conducted the preliminary hearing. Decisions taken at this stage of the legal process were important, since the definition of the offence determined the possible punishment. The grand jury, a body of respectable elite and upper middle-class men including gentlemen, merchants, professionals and wealthy shopkeepers, then met to examine the indictment and decide whether there was sufficient evidence to proceed to trial. If so, it was approved as a 'true bill'; rejected indictments were labelled 'ignoramus' (or 'not found') and the case was immediately dropped.

It was only at this point that you were formally arraigned and asked to plead to the charge. The vast majority pleaded not guilty. Indeed, the court encouraged this plea because if you confessed to a crime there was little flexibility in the punishment meted out, whereas if a trial took place, mitigating evidence could be introduced that might lead to a lesser sentence or a pardon.

The small number of defendants who refused to enter a plea were, unless they were found mute 'by visitation of God', subject to the ordeal of *peine forte et dure*, in which they were forced to lie down and have weights placed on them until they either relented or died.

Although the basic format remains the same, eighteenth-century Old Bailey trials share few characteristics with their modern counterparts. The differences are epitomised by their length: eighteenth-century trials were very short, averaging around half an hour per case. On a typical day in the early eighteenth century the court heard between 15 and 20 cases. Some took even less time: in 1833 it was calculated that the average trial took only eight and a half minutes. It is likely that the rapidity with which trials were held severely disadvantaged defendants, who had little time to accustom themselves to the courtroom environment before they were forced to plead their case.

The majority of a trial was spent hearing prosecution witness testimony, with the judges frequently intervening to ask questions or make comments. As the defendant, you were then asked to speak. In many cases, particularly where the evidence was clear, defendants chose to say little or nothing. Juries could draw their own conclusions from such behaviour. There was no presumption of innocence and no right to remain silent. Defendants hoping to be acquitted needed to disprove the evidence presented against them and to positively establish their innocence. The presumption was that if you were innocent, you should be able to prove it. Defendants could cross-examine prosecution witnesses and call their own witnesses but, unlike prosecutors, they could not compel witnesses to attend and, since trials were not scheduled, they did not know when witnesses needed to appear in court. Witnesses who could testify to the defendant's good character were especially helpful, since many verdicts were decided by the appearance of trustworthiness presented by each side. And even if you were found guilty, evidence of a good character might lead to a lesser punishment.

The introduction of lawyers fundamentally altered the character of trials. Very few lawyers participated in Old Bailey trials before the 1730s, and for many decades thereafter they were the exception rather than the rule. In the 1690s the government began to hire lawyers to prosecute the most serious offences, including cases of seditious words and libel, treason, coining, and violent offences such as murder, rape, and robbery. Once the role of lawyers for the prosecution was established, they were increasingly hired by victims pursuing private prosecutions to ensure cases were handled properly. As a defendant in misdemeanour and treason cases (from 1696) you could also have a lawyer represent you, but they were excluded in felony cases (except for the purpose of raising narrow points of law) until the mid-1730s. In relation to felonies, lawyers were thought to be unnecessary and possibly even harmful: you should not need help to tell the truth. Moreover, judges were explicitly charged with looking out for defendants' interests, and to admit defence lawyers would be to admit that they were failing in this duty. By the

1730s, however, the growing number of lawyers appearing for the prosecution led the courts to allow counsel for the defence as a way of establishing a more level playing field. Even so, defence lawyers were not allowed to address the jury until 1836 and they were, in any case, rarely used until the late eighteenth century. Even in 1800 only one-quarter to one-third of defendants in property cases had counsel.

Defence lawyers became actively involved in the cross-examination of prosecution witnesses and they frequently suggested that the prosecutor or his witnesses had ulterior motives. They pointed to the rewards witnesses might expect after a successful conviction, as was the case with thieftakers, and they repeatedly accused accomplices who turned king's evidence of perjuring themselves to save their own lives. It was the close questioning of prosecution witnesses in this way that led to the court becoming increasingly sceptical of evidence provided by accomplices, where this was not corroborated by another witness. Defence lawyers also contributed to judicial distrust of hearsay evidence and pre-trial confessions. Their participation also meant that defendants sometimes no longer testified at all (this eventually led to defendants acquiring the right to remain silent). Consequently, prosecution cases gradually became subject to higher standards of proof, tipping the balance of power in the courtroom, which had been heavily weighted against defendants at the beginning of the century, towards them as the century progressed. This shift, however, only occurred for defendants who were able to afford the cost of counsel (no state assistance was available except in cases of murder). In most cases, where the defendant was too poor to hire a lawyer, the prosecution retained the upper hand. The presence of lawyers (on both sides) also led to a reduction in the role of the judge. In the absence of lawyers, judges played a major role in conducting trials. They examined witnesses and the accused and often clearly stated their own views on the merits of the case. Although after 1670 judges were no longer allowed to punish juries who failed to produce the verdict they wanted, judges continued to put pressure on juries, by asking them, for example, why they had reached a particular verdict or by requesting them to reconsider their decision.

Trial juries were composed exclusively of men, and of men only marginally less respectable than those included in the grand jury. Often having considerable prior experience of jury service, they rarely took long to make their decisions. Until 1737 they typically heard several trials in a row before they retired to consider the verdicts. With the rebuilding of the courtroom in that year space was provided for the first time for the jury to sit together and from then on verdicts were pronounced after each trial, frequently after simply huddling together in the courtroom. The speed with which verdicts were arrived at suggests that the views of the foreman and the most experienced jurors tended to predominate. But jurors may have also been influenced by the spectators almost at their elbows, watching their deliberations. The jury could declare the defendant innocent or guilty or could deliver a partial verdict. In the last case, defendants were found guilty of part of the charges

against them or of a lesser offence, such as theft but not with violence, manslaughter rather than murder or the theft of goods to the value of only 39s. Because the nature of the charge determined the possible punishments, the choice between guilty or part guilty was vital; partial verdicts often saved the convict's life. Such decisions were made taking into account the defendant's age, sex and character as well as the actual evidence. Indeed, this last was often explicitly ignored, as juries often committed 'pious perjury', for example by valuing goods manifestly worth more than 40s (such as coins to a higher value) at only 39s. This ensured that the convict could not be sentenced to death (theft of goods worth 40s or more from a house was a capital offence).

In reading the trial accounts published in the *Proceedings*, it is frequently difficult to understand why a particular verdict was reached. Many people were declared innocent when the trial evidence appears to suggest a guilty verdict, while many others, against whom the evidence was considerably weaker, were nonetheless found guilty. In part, this impression of inconsistency reflects the importance the eighteenth-century court put on aspects of judgment that could not be recorded in words on the published page. The appearance and demeanour of the defendant and prosecutor; the unstated local knowledge of jurymen; and the subtle role of contemporary prejudices about the nature of crime all contributed to the final verdict.

Trials placed defendants at a huge disadvantage. Typically without the benefit of legal assistance, they had to organise their defence on their own while in prison. Unaware of the specific evidence that would be presented against them until they stood at the bar, they had to respond spontaneously to statements made in court. This was thought to be the best way of ascertaining the truth, but it put the accused under immense pressure. At the same time, prosecutors also suffered under this system. They too often lacked legal counsel and judges were sometimes partial to the defendant. But at least prosecutors had the advantage of being able to plan the case in advance, while at liberty. Although at the end of the century the increasing use of defence counsel restored some of the balance, most defendants were unable to afford legal assistance. Their hopes rested on the mercy of the judge and the sympathy of the jury.

He was a Frightful Corpse

Coroner's inquests were summoned in response to almost every unusual death. Held in the front room of an alehouse as near the scene as possible, most inquests resulted in a verdict of accidental death or suicide or one of several versions of death by misadventure. In the minority of cases where an individual was held responsible for the killing, a verdict of manslaughter or murder was returned and the case was referred to the Old Bailey for trial. By the eighteenth century medical doctors were taking a growing role in determining the cause of death, but the most important element of a coroner's inquest was its ability to construct a consistent story. Where

the evidence was confused and contradictory, where, as in this case, the micro-politics of poverty led to blame and distrust, there was little option but to take the case forward to the grand jury and, finally, to trial.

Catherine Constable and her husband ran a low lodging house – home to the itinerant, the ill and the desperate. Located in St Sepulchre's just south of Smithfield Market, it witnessed the rough-scrabble poverty of Londoners on the edge of destitution. Perhaps half a dozen lodgers and sub-tenants were living there in the autumn of 1739, and Richard Challenger, Dick to his friends, was among the poorest of them. He paid just a few pence a night, perhaps 1s 6d per week and lodged in the cellar. He spent very little time there, however. Like many poor men and women, he lived primarily in public, eating and drinking from street stalls and in gin shops. The streets also provided him with employment: according to an acquaintance, 'He used to sell greens about the streets o'mornings, and fish o'nights.' His health was bad. His skin was 'all over scabs and sores' and there were blotches all over his body, the exterior signs of venereal disease. But it was not so bad as to cause his friends concern. Venereal disease was almost endemic among the poor, and while it resulted in scabs and scars, in the gradual erosion of the bone and cartilage that gave shape to your nose and forehead, it could take decades to kill you.

On the morning of Saturday 10 November 1739 Challenger was out at work when he met James Powel, who later testified that:

> Between ten and eleven in the morning, I was at Casey's in the Old Bailey, and Challenger came in to sell greens. He was then as hearty as any one in this court; and if I had had a hundred pounds to have laid out in the insurance of any man's life, I would have insured Dick's.

That same day, just after noon, however, Mary Belville had a drink with Challenger:

> At the Lion and Ball, at the corner of Fleet Lane. He told me he was not exceeding well – not so well as he should be. I am so cold, says he, that I am like a post. I told him we would have a pint of beer and it should be warmed. After which I asked the woman of the house if she wanted any greens, if she did, Dick would bring her some? She said, he might if he pleased, and he went out and brought her his greens, and she bought four Savoy cabbages and six cauliflowers.

No one knows where Challenger spent the rest of the afternoon and evening, but he arrived home in his cups sometime after ten o'clock to find one of his fellow lodgers, Elizabeth Bradshaw, waiting for him. Down on his luck, Challenger had borrowed six pence from her to buy greens to sell, and owed a further few pence to a local shop. Elizabeth Tranter witnessed the scene:

> On Saturday night, November the 10th, Dick came home between ten and eleven and Bradshaw said to him, So Dick, where's the ten-pence

> halfpenny you owe me? Dick said, Mrs Bradshaw, I can't give it you tonight, but if you'll stay till morning, when I have sold my greens, by God you shall have it. She told him she'd stay no longer, and if he did not pay her that night, he should not come in; he should come in there no more, till he brought the money. There are four steps at the door, and he was upon the top of the steps when he told her he could not pay her that night. I saw Bradshaw give him a push down all the four steps. He stood with his face toward hers. She pushed him down backwards and he fell down all the steps.

What happened next is a confused jumble of claim and counter-claim. Tranter recalled that Challenger:

> Was shut out for half an hour, in which time I heard him call out, Mr Constable! Mr Constable! [the landlord of the house]. Is a poor man to be murdered because he has got no money? He spoke this very faintly, and I hearing him, let him in in the dark, so I can't tell what condition he was then in, but he complained of his head, and went down to his cellar. I did not see him again till seven o'clock the next morning. He was then sitting upright in the bed, with his clothes on and he had bled a vast deal. His shirt and pillow were very bloody and his hair was matted with the blood that came from his head. He hallooed out, Thieves! Thieves were come to rob him! That was the occasion of my going down. I asked him how he did? He said he was very ill, very cold. There was no surgeon or apothecary called to help him, but somebody got him a hot pot, which he could not drink, he was so weak. There was a woman washing in the cellar and she saw all this as well as I. The accident happened on Saturday night, and on Sunday night, about six, he died.
>
> I was present when the body was washed. A woman who lived at Constable's washed him, but she is not here. I saw his head was bloody, and the blood came from the back part of his head, but the hair was not cut off so near as that I could see any wound. There was no coroner called, and but one searcher; and when she came, Mr Constable called me up stairs, and bid me take no notice of the cut in his head. The deceased was drunk when he fell down, but not so much as to be insensible of what he said, or did; and I don't believe Bradshaw pushed him down wilfully; she did not do it with any great force.

Elizabeth Bradshaw presented herself as even less responsible for Constable's death. Challenger:

> Came home between eleven and twelve on Saturday night. I asked him for my money and swore he should not come in till he paid me; and I argued some time with him for it. Then I put my hand to his shoulder and he turned down the steps and tumbled. After this I let him in myself and he went into the kitchen and sat two hours by the fire without making any complaint, and paid me five farthings of my money.

Margaret Atkins also lodged at the Constable's. She:

> Came home on Saturday night, between ten and eleven and found Challenger sitting in the chimney corner. He called for hot drink. Tranter

> warmed it for him, and he seemed brisk. I sat up in his company till between one and two. At one, I told him t'was time to go to bed, but he desired to stay longer. At last he took a candle and went down to bed. I followed him down to see he did no mischief with his candle. He stood sea-sawing upon the stairs and told me, he was so drunk that he could not get into his bed. I desired him to take care of his candle, for, says I, if we should all be burned in our beds, what shall we do. So I came up, and desired Tranter to look after him. In the morning, Elizabeth Tranter went down and gave him a dram of aniseed. He complained of no wound, nor did I see any blood.

The day after the incident Mary Belville arrived on the scene: 'On Sunday I sent to Challenger's cellar for a head of celery and heard that Dick was fuddled, and was not up'. She was followed by Challenger's friend and business partner, Joseph Taylor:

> We were partners and sold fish and greens together. He was the first that let me into the business. On Sunday morning I went to his cellar and served Belville a halfpennyworth of greens. I called, Dick! Dick! But nobody answering, I pushed open the cellar door and went down, and found him lying stark naked on the ground, with his knees up to his mouth. I lifted him up and put him in bed, and called Mr Constable. He came down with another friend and gave him part of a pint of hot liquor with gin or brandy or something, put into it. I saw no blood on him. There was a scar upon his head, just upon his crown. You may call it a scratch and I believe the pebble stones behind him might do that, for I found him lying upon them. When the hot pint came down, he looked very hard at me, but could only say, Joe! very cold! very cold, Joe! I stayed with him till four o'clock, then I left him.

Taylor was then followed by the landlady, Catherine Constable:

> I went down into the cellar on Sunday morning and saw Challenger leaning on his elbow. I asked him, what ailed him? Mrs Constable, says he, I am so cold, I am like a post, feel me! I took hold of him and found him very cold and chilled down all one side of him, upon which I bid Tranter give him a glass of aniseed, and I supported his head while he drank it. God bless you, Mrs Constable, said he, I am cold as a post. He made no complaints, and as for blood – I saw none.

Dick Challenger died on Sunday evening, and the cares of life and health were replaced by the rituals of death. Elizabeth Tranter 'warmed two pots of water and brought them down'. Tranter did not touch the body herself, and later said to a neighbour, Hester Barber: 'I am surprised how they can touch him, he's all over scabs and sores'. Nevertheless, Catherine Constable and Mary Melville washed the body and laid it out ready for burial. By Monday morning Dick Challenger was in the ground.

To some, however, the rapidity of the burial seemed suspicious. No coroner's inquest had been called and no enquiries made. Of course, an inquest was expensive, and the Constables were likely to find themselves

lumbered with the bill, but even so, burying a body, however humble, within just a few hours of death when neither the weather nor disease made it imperative, just looked suspicious. The local justice of the peace, Sir William Billers, got wind of the death and instructed his clerk to make enquiries. He 'sent a letter to the coroner, who ordered the body to be taken up, and a proper inquiry to be made'. A formal inquest was called and John Row, a surgeon:

> Was sent for to inspect the body the night the jury sat on it, which was the Thursday after the accident. Mr Snow scalped him and I examined the head and brain. There was no contusion through the flesh, only through the skin, or in the way of rubbing, as by a brick.

Despite inconclusive and contradictory evidence from this and other witnesses, the coroner's jury had to choose a verdict. Although the evidence was largely based on rumour and suspicion Elizabeth Bradshaw was charged with the killing.

Just under a month later, on 5 December, she stood trial for her life at the Old Bailey. Witness after witness was called and the last poverty-soaked days of Dick Challenger's life were rehearsed. In the end the jury decided that, drunk and riddled with disease, Challenger was just one more victim of the streets, and that while a wrong may have been committed, it was so commonplace a wrong that no punishment could be extracted from its perpetrators.[1]

Refusing to Plead

Defendants who refused to enter a plea effectively rejected the authority of the court. This subversive behaviour could not be tolerated, and judges responded by first threatening and then ordering the terrible practice of placing crushing weights on the accused until either they relented or death intervened. While it seems incredible that anyone would willingly undergo such a procedure, refusal to plead provided almost the last opportunity for criminals to demonstrate their bravery and defiance of established authority.

In a letter home, Cesar de Saussure, a Swiss traveller who visited London in 1725–29, described a bizarre judicial practice:

> There is a sort of question called the 'press', which is made use of when an accused person refuses to plead or contest the authority of the tribunal over him. In these cases he is stretched on the ground, his feet and hands are tied to stakes, and on his stomach is placed a plank with weights, more weights being added every four hours. The accused remains without food in this position until he consents to plead his cause and to recognise the validity of the tribunal. Cases have been known of criminals preferring to die in this fashion after two or three days of atrocious suffering, rather than by the hands of the executioner, and this in order not to leave a mark of infamy on their families, and to save their possessions from going to the crown according to the law.[2]

This procedure was *peine forte et dure*, a corruption of the medieval practice of 'hard and severe punishment' imposed on defendants who refused trial by jury after trial by ordeal was abolished in 1215.[3] There are a handful of cases of defendants refusing to plead at the Old Bailey in the 1670s and 1680s, but by 1700 most people assumed that the practice had been abandoned. In 1721, however, while London was in the grip of an epidemic of highway robbery, it was revived. In that year there were three cases recorded at the Old Bailey, and a further case in neighbouring Surrey. Together, they generated substantial publicity, which is probably how de Saussure became aware of the practice.

William Spiggot (or Spigget) had been a highwayman for over seven years and led a gang of at least eight men.[4] He claimed to have committed numerous robberies, chiefly on the roads leading from London out to Hounslow Heath, Kingston and Ware. In January 1721 the gang was cornered by some of Jonathan Wild's men in a Westminster tavern, The Blue Boar, and several were arrested. One, Joseph Lindsey, a clergyman sunk from religion to gambling and highway robbery, turned king's evidence in return for a pardon and testified against the others. On 13 January Spiggot, Thomas Cross and William Heater were brought to the Old Bailey to be tried. As the *Proceedings* report:

> William Spigget alias Spiggot, and Thomas Phillips alias Cross, having had several bills of indictment for robbing on the highway found against them by the grand jury, were brought to the bar to be arraigned and take their trials, but they stood mute and refused to plead till they should have the money, horses, accoutrements, and other things which were taken from them when they were apprehended returned to them.

But as the court reminded them, their goods had been seized and given to those who apprehended them as a reward under the terms of an act of parliament 'for encouraging the apprehending of highwaymen' passed in 1692. The relevant part of the statute was read out:

> And it is hereby further enacted that all and every person or persons who shall so take, apprehend, prosecute, or commit such robber or robbers, as a further reward shall have and enjoy to his and their proper use and behoof the horse, furniture and arms, money, or other goods of the said robber or robbers that shall be taken with him or them.

In increasingly sensational language, the *Proceedings* provided a full report of what followed:

> But they still refusing to plead, the court acquainted them with the ill consequences of their refusal, and what a heavy judgment they would draw down upon themselves if they persisted in their obstinacy; and the more effectually to convince them of their folly and error, ordered the judgment to be read to them, which if they continued mute must be pronounced against them, and put in execution, which judgment was to the effect following:

That the prisoner shall be sent to the prison from whence he came, and put into a mean house, stopped from light, and there shall be laid upon the bare ground without any litter, straw or other covering, and without any garment about him, saving something to cover his privy members and that he shall lie upon his back, and his head shall be covered, and his feet bare, and that one of his arms shall be drawn with a cord to one side of the house, and the other arm to the other side, and that his legs shall be used in the same manner, and that upon his body shall be laid so much iron and stone as he can bear, and more, and that the first day after he shall have three morsels of barley bread, without any drink, and the second day he shall drink so much as he can three times of the water which is next the prison door, saving running water, without any bread: and this shall be his diet until he dies. And he against whom this judgment shall be given, forfeits to the king his goods.

All this having no effect upon them, the executioner was called and ordered to tie their thumbs, as usual in such cases; but all being in vain, and they still peremptorily refusing, and declaring that they would not plead notwithstanding all the admonition that could be given them; the court proceeded to pass sentence against them to be pressed to death, as the law directs. Whereupon they were carried back to Newgate in order to undergo that judgment the law had inflicted on them; but when they came to the press, Thomas Phillips alias Cross desired to be carried again to the bar, saying he would plead.

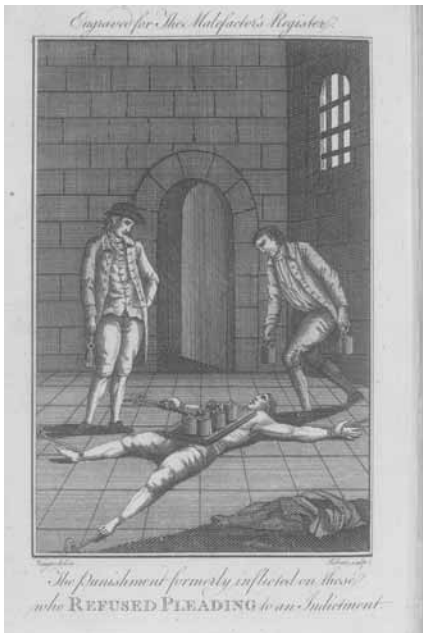

Figure 3.02 'William Spiggot being Pressed in Newgate'. Credit: British Library Board. All Rights Reserved. Shelfmark 1485. p.8

When Thomas Cross, a 33-year-old former seaman who could neither read nor write, was brought back to the bar after he agreed to plead, Spiggot, a 29-year-old father of three, was brought with him in the hope that he, too, would change his mind. He did not, and instead 'remained inflexible, and insulted the court'. Therefore he was brought back to the press room in Newgate and forced to lie naked spread-eagled on the ground, while iron weighing a total of 350 pounds was placed on his chest. Before he was put into the press, Thomas Purney, the Ordinary of Newgate, tried to 'dissuade him from being the author and occasion of his own death; and from cutting himself off from that space and time which the law allowed him, to repent in, for his

vicious course of life'. He replied, 'if he came to take care of his soul, he would regard him, but if he came about his body, he desired to be excused, he could not hear one word', and submitted to the press. In his *Ordinary's Account*, Purney reported what followed:

> I there prayed by him, and at times asked him, why he would destroy his soul as well as body, by such an obstinate kind of self murder. All his answer was, pray for me, pray for me! In the midst of his groans, he sometimes lay silent, as if insensible of pain; then would fetch his breath very quick and fast. Two or three times, he complained that they had laid a cruel weight on his face, though nothing was upon his face, but just a thin cloth; that was however removed and laid more light and hollow, but he still complained of the prodigious weight they had laid upon his face; which might be occasioned by the blood being flushed and forced up into his face; and pressing as violently against the veins and small tendrils there, as if the pressure upon them had been externally on his face.

After half an hour of this 'torture', as Purney called it, an extra 50 pounds was added, which finally caused Spiggot to recant and tell those present, including a justice of the peace and Purney, that he would plead:

> Accordingly, the weights were at once taken off, the cords that stretched out his hands were cut, and he was lifted up, and held by two men, while some brandy was put into his mouth to revive him. He was very faint and almost speechless, for two days.[5]

Few were actually pressed to death; most defendants gave up before even seeing the press, after the first step of the procedure was completed when their thumbs were tied tightly together with whipcord in open court. Spiggot remained defiant far longer than most.

Spiggot was brought back to the Old Bailey, where he and Cross pleaded not guilty to indictments for the robberies of John Watkins and John Turner. William Heater, who had not refused to plead, was also indicted as an accessory to this second robbery, for harbouring Spiggot and Cross and receiving the stolen goods. The evidence against the two principals was strong. Watkins positively identified Cross and Spiggot as two of the thieves who had robbed him on Hounslow Heath and Turner's stolen goods had been found in Spiggot's lodgings. The testimony against Heater, however, was only circumstantial: several witnesses testified that they had seen him leading the horses which were used in the robberies. Perhaps unsurprisingly given the strength of the evidence against them and their previous behaviour, Spiggot and Cross offered no defence, other than to exonerate Heater:

> The prisoners Spiggot and Cross both declared that Heater was innocent of the matter, and only acted as a porter in fetching and carrying their horses.

The jury had little trouble reaching a verdict, and the punishment was inevitable, given the severity of the crime:

> The evidence not being sufficient against Heater, the jury acquitted him, and found Spiggot and Phillips alias Cross guilty of these indictments, who had also several other indictments found against them. Death.

Both were executed at Tyburn on 8 February 1721 and the crowd, perhaps impressed with Spiggot's heroism in having experienced the ordeal of the press, carried off his body so it could not be dissected by the surgeons.

Why had Cross and Spiggot even contemplated facing such a horrific procedure? According to Purney:

> The reasons, as far I could learn from Spiggot, of his enduring the press, were, that he might preserve his effects, for the use of his family; that it might not be urged to his children, that their father was hanged; and that Lindsey should not triumph over him, by saying he had sent him to Tyburn.[6]

The first point is unconvincing, since those dying under the press forfeited their goods to the crown. It does not appear that the material well-being of Spiggot's family was his primary concern. Rather, as the second and third points suggest, he sought to maintain his reputation as a man of courage and resolution, as the leader of a gang, not a victim.

In telling their life stories to the Ordinary as they awaited their executions, both Cross and Spiggot bragged about their crimes, with Spiggot saying, 'It was in vain to mention his numerous robberies on the highway, being perhaps about a hundred'. Cross:

> Seemed to glory in the robberies he had committed, and said that Spiggot and he once robbed at ten o'clock at night one hundred passengers, whom they took out of several wagons that followed in a train; and that they set the passengers in a row along the road, and robbed and counted them.[7]

The Ordinary, Thomas Purney, went out of his way to try and refute these men's idea of courage, giving a sermon to all 10 prisoners awaiting execution on 'the nature of Christian courage'. No doubt particularly with Cross and Spiggot in mind, he included a passage discussing two kinds of 'false courage':

> 1st. That it was a false courage, for malefactors sentenced to die, to appear wholly careless and unconcerned at the great change of nature; which rather shows obdurateness and insensibility than a manly and becoming resolution.
> 2dly, That it was a false courage for malefactors assured that they shall die, to lay violent hands upon themselves, to prevent the effects of the law; as there is something cowardly and base in cutting off our lives, for fear of pain and shame.

Purney further commented that:

> We had instances of men of uncommon impiety who so much more valued the good opinion of men, than the praise of God and angels; and had endeavoured to preserve the honour of their families, even at the expense of throwing themselves into hell.[8]

Purney was right: by defying the court in refusing to plead, Cross and Spiggot sought to cement their reputations as men of courage and resolution, reputations which had been established during their substantial careers as highwaymen. In doing so, they were clearly playing to the gallery. Popular opinion valued criminals who challenged the authorities, such as those who died 'game' (steadfastly and defiantly) at Tyburn.[9]

After this case, however, very few defendants at the Old Bailey refused to enter a plea, perhaps because the growing use of transportation meant that the accused had greater hopes of avoiding the death penalty. Although the procedure of *peine forte et dure* remained on the books until 1772, it was increasingly viewed by enlightened opinion as irrational and barbaric. After it was finally abolished, refusal to plead was deemed to be the equivalent of pleading guilty. In 1827, by which time many defendants were saying very little and leaving their defence entirely to their counsel, this presumption of guilt was reversed and refusal to plead was deemed the same as pleading innocent. This legacy of the medieval trial by ordeal had finally been erased.[10]

The Irish Prosecutor

In the absence of lawyers most trials began with testimony from the victim, who usually provided the most damning evidence against the defendant. Although the court normally treated such testimony with respect, the prosecutor occasionally became the butt of the proceedings. This happened most frequently when the supposed victim of a theft was visiting a prostitute at the time. There was a strong belief that the libidinous men, usually drunk, who found themselves in this position deserved everything they got. In this case, the published Proceedings *reinforced this humiliation of the prosecutor by reproducing the peculiarities of his accent and voice in print.*

At 11 pm on 25 February 1725 an Irishman, James Fitzgerald, was walking under Newgate near the courthouse at the Old Bailey when he met Susan Grimes, a prostitute from St Giles in the Fields. When he described this encounter in his testimony at the Old Bailey, his heavy Irish accent was reported phonetically in the *Proceedings*, as the publisher played to traditional anti-Irish prejudices and sought to exploit the entertainment value of the case. Fitzgerald's 's's were transformed into 'sh's, making him appear both ridiculous and possibly still drunk:

> James Fitzgerald deposed to this effect. On the 25th of February last, about 11 at night, O' my shoul, I wash got pretty drunk, and wash going very shoberly along the Old Bailey, and there I met the preeshoner upon the bar, as she wash going before me. I wash after asking her which way she wash walking, and she made a laugh upon my faush, and took me to Newtoner's Lane.

Here the negotiations commenced:

> Arrah joy (shaid I) you should always have somebody with you, when you go sho far alone. She told me she would be after taking me with her, if I would give her any thing. Arrah, my dear shoul (said I) you shall never fear but I will give you shome thing, if I have got nothing myself.

They walked together a considerable distance to her lodgings (across Holborn Bridge, down Holborn Hill and along High Holborn and Broad St Giles to Oxford Street), before finally arriving at her lodgings on Charles Street. Fitzgerald denied, however, that he intended to have sex with Grimes:

> Sho we went together; but not having any deshign to be consherned with her, I paid her landlady a shilling for a bed. For it ish my way to make love upon a woman in the street, and go home with her, whenshoever I intend to lie alone.

Portraying himself as the passive actor in this case, he said Grimes became aggressive once they got to the bedroom. As his testimony proceeded, however, it sounded ever more ridiculous to his English audience:

> But ash to the preceshoner, she wash after making me shit upon the bed with her, and sho tumble together; but I wash after shitting in the chair, and then she was coming to shit in my lap; but I would not let her, and sho she shit beside me; and then I wash hoping that she would be eashy; but for all that she would not let me shit at quiet, for she wash after being concerned with my breeches, and got away my watch whether I would or no; and I pulled, and she pulled; and sho for fear she should get it from me, I let go my hold.

Having, by his account, lost his watch, he told the court:

> I went for a constable, and he carried her to the watch house, where he took the watch upon her. He found it in a plaushe that my modesty won't suffer me to name; for ash I am a living Chreestian, she had put it into her ****.

The constable confirmed that he had found the watch on Grimes, but with uncharacteristic modesty, the *Proceedings* did not reveal precisely where the watch had been concealed.

In her defence, Grimes no doubt spoke in a heavy cockney accent, but the *Proceedings* reported it with conventional English spellings, rendering her testimony much more believable than that of her prosecutor – at least for the reading public. According to her, Fitzgerald was the one seeking sex, and she was the one who called for assistance:

> I met the prosecutor under Newgate; he took hold of me, and asked where I was going? I told him to my lodging in Charles Street and bid him go about his business; but he would follow me home. My landlady opened the door, and then I desired him to leave me; but he catched hold of her hand, and said he would come in and drink for he was as well acquainted there as I was. So he called for two or three quatterns of brandy, and having no money to pay for it, he pawned his watch to her

> for 5 shillings. He was so impudent that we were both forced to fall upon our knees to keep his hands from under our petticoats. Then he would have gone up to bed with me; which I refusing, he threatened to swear my life away; for he said he was an Irishman, and could swear farther than ten Englishmen. Whereupon I called in a watchman, and so we were both taken into custody.

Faced with this contradictory evidence and two witnesses (an apparently drunken Irishman and a prostitute) who were no doubt both considered of dubious character, the jury may have found it difficult to decide which to believe. In the end, possibly instructed by the judge, they acquitted Grimes on a technicality. She had been indicted on the wrong charge. As the *Proceedings* report:

> It appearing upon the prosecutor's oath that she took the watch from him violently, and with his knowledge; and she being indicted for stealing it privately, and without his knowledge, the jury acquitted her.

But this was not the end of the story. A few months later the publisher of the *Proceedings* was summoned to appear before the Court of Aldermen, and 'to bring with him at the same time the person who takes the minutes at the sessions house and transcribes the same for the press'. When they appeared they were censured for 'the lewd and indecent manner of printing the last sessions paper' and ordered to acknowledge their offence and ask the pardon of the court. They agreed, and their apology was published by order of the court in the weekly newspaper, the *Post Boy*. For the future, the court also ordered:

> That Mr Town Clerk do for the future give notice to such persons as shall from time to time be authorised to print and publish the proceedings of the sessions that they take care to publish the same in such a manner as may give no cause of offence.[11]

Henceforth, readers of the *Proceedings* would encounter a more sober tone. But given the large number of trials which featured prostitutes picking their clients' pockets, readers could continue to rely on the *Proceedings* for lewd entertainment; and no doubt continued to enjoy reading about prosecutors struggling to present themselves as wholly innocent victims in circumstances where their own behaviour might well be questioned.[12]

Sarah Malcolm's Defence

Until the mid-1730s, defendants were never represented by lawyers at the Old Bailey; they were expected to make their own defence. Nor were they warned in advance of the evidence that was to be presented against them. It was believed that confronting the accused directly with the evidence and demanding an unmediated response was the best means of ascertaining the truth. In the words of one legal authority, it took 'no manner of skill to make a plain and honest defence'. Often caught red handed, many defendants had little or nothing to say. Others, despite their innocence, found it difficult to make a convincing case in the few short minutes available to them.

But in this extraordinary trial, the defendant mounted a resolute and surprisingly powerful case, even though she was a poor young woman accused of a heinous offence, and she was pleading for her life in front of an all-male court and jury.

On 6 February 1733 the London newspapers reported a terrible crime:

> On Sunday morning, a most horrid murder was committed in the Temple, upon three women, by persons unknown. The case was one Mrs Duncomb, a widow, upwards of 70 years of age, who lived up four pair of stairs, and there also lived with her another elderly person as a companion, and she kept a maid about seventeen years of age. Some persons got in as supposed at the top of the house, and so into the chambers, and murdered the three persons in their beds. They lay in three different rooms, and it is supposed they murdered the maid first, her throat being cut from ear to ear; but by her cap being off, and her hair much entangled, it is supposed she struggled. The companion seemed to have been strangled, though there are two or three wounds in her throat supposed to have been done by a nail; and the old gentlewoman it's thought was smothered, and killed last of all, she lying across the bed with a gown on, though the others were in bed. A trunk in the room was broke open and rifled.[13]

The following day Sarah Malcolm was arrested and charged with the crime. Examined by Sir Richard Brocas, Alderman of London and future Lord Mayor, she made a limited confession under oath:

> On Sunday morning last about two of the clock she was concerned with Thomas and James Alexander, brothers, and Mary Tracey who murdered Elizabeth Harrison, Lydia Duncomb and another person whose name she does not know, in the Temple in this City, which was done in the manner following. That she had several conferences with the above named persons concerning the robbing of Mrs Duncomb and that about ten of the clock on Saturday night last James Alexander got into Mrs Duncomb's chambers and concealed himself under a bed till about two o'clock when he opened the chamber door and let the said Mary Tracey and Thomas Alexander into the said chambers, and whilst she stood on the stairs as a watch they committed the above said murder, and at the same time stole from out of the chambers about £300 in money and a silver pint tankard and diverse other goods with a silver spoon to a great value, which money and goods was by the above persons brought down to her, and then distributed in equal portions amongst them between four and five of the clock on Sunday morning last past.[14]

Malcolm signed the confession and was committed to Newgate to await trial. The allegations she levelled against her accomplices were initially dismissed by the authorities. At the coroner's inquest on 8 February the jury:

> Brought in their verdict of wilful murder, and committed Sarah Malcolm only, it not then appearing that any other person was concerned. As to her confession, they gave no regard to it, none knowing any such persons she pretended to be her accomplices.

Nonetheless, the next day Mary Tracey and Thomas and James Alexander were arrested and brought before Richard Brocas for examination. As the *London Magazine* reported:

> Nothing appeared before him to found a suspicion upon of their being guilty; nonetheless Malcolm insisting on it, they were committed to Newgate. But it being thought that she accused them only in order to save her own life, they were allowed one shilling per day each, by the Society of the Temple, during their confinement.[15]

The newspapers adopted a similar position, characterising Malcolm as a cunning murderess and dismissing her claim that she had not carried out the murders as a crude attempt to turn king's evidence in order to avoid prosecution.[16]

At her trial on 21 February for the murders of Ann Price, Elizabeth Harrison and Lydia Duncomb, as well as the burglary of Duncomb's room, Malcolm was in an almost impossible position. Not only had she already confessed to a limited role in the crime, but public opinion had essentially convicted her of the rest. Furthermore, while the prosecution was conducted by a lawyer, she had to defend herself unaided.

The trial lasted five hours, many times longer than most. It began with a summary of the case presented by prosecution counsel:

> Mrs Lydia Duncomb was a widow lady, about 80 years of age. She had one maid, Elizabeth Harrison, who had lived with her many years, and was grown old in her service, for she was about 60, and very infirm withal. But though she was now past her labour, the good lady retained her still, and hired others to do her work. Sarah Malcolm had formerly been employed on such occasions as a charwoman, and by that means had an opportunity of becoming acquainted with Mrs Duncomb's circumstances. But about three months ago Mrs Duncomb hired Ann Price (the unhappy creature, for the murder of whom the prisoner stands indicted) to be a constant servant. She was a young maid not above 17. Mrs Duncomb had a middling fortune left her by her husband, and thus she lived with her two maids contented and in peace, till this night, this fatal night, the 4th of February! When (if my instructions are right) Sarah Malcolm entered the chambers of this little family and cruelly deprived them both of their lives and their money.

The prosecutor went on to explain how this 'barbarous fact' came to light the following day when a friend of Mrs Duncomb went visiting. When no one answered the door, she began to fear something was wrong, and with the help of a second friend and a laundress who worked in the apartment next door, eventually got in through a window.

> They entered. But the surprise, the horror they were in, is not to be expressed, when the first object they fixed their eyes on was the poor unhappy young maid murdered! Inhumanely murdered! and lying weltering in her own blood, her hands clenched, her hair loose, and her throat cut from ear to ear! A terrible spectacle. But this was not all, the

> tragical scene did not close here. The honest old servant lay strangled on her bed, and a little farther, her good old lady robbed of her life in the same manner.

The eloquent prosecutor then described the circumstances which led to the arrest of Sarah Malcolm:

> About twelve the same night Mr Kerrel coming home, found the prisoner (who was his laundress) in his chambers. He little expected to see her there at such an hour. He had heard of these murders and knew that she had formerly charred for Mrs Duncomb. He asked her if any body was taken up for the murders. She said, no. He told her, it was suspected the fact must have been done by somebody that was acquainted with the deceased. And as he had heard that she had formerly done business there, she should continue no longer in his service, and therefore bid her look up his things and go. Upon examining he missed some of his clothes, and she confessed she had pawned them. This made him still more uneasy, and he resolved she should stay no longer; upon which she went down stairs. His suspicion caused him to search further, and in the close stool he found some linen, and a silver tankard, with the handle bloody. Looking under his bed, he found a shift and an apron all bloody. These discoveries gave him an extraordinary concern. He called the watch, and sent them after her. Such was the providence of God that she had not power to go beyond the Inner Temple gate. There she was found sitting between two watchmen and she was brought back to him. He showed her the tankard and the linen bloody as they were, and asked her if they were hers. She said yes, and that the tankard was left her by her mother. The officers of the Temple carried her to the constable, by whom she was taken before Alderman Brocas.

The principal witnesses for the prosecution were John Kerrel, his neighbour in the Temple, two watchmen, and the women who discovered the bodies. Acting much as a defence lawyer might do today, Malcolm cross-examined each of them carefully, focusing principally on the evidence of the bloody linen:

> Malcolm. Was the linen you found in the close stool bloody?
>
> Kerrel. I am not sure whether it was that, or the linen I found under my bed that was bloody, for I was very much surprised, and I brought one parcel down, and Mr Gehagan brought another, and we threw them down in the watchman's box, and so they were mixed together.
>
> Court. Shew the tankard to the jury, and unseal the linen, and let them see that too, and the other things.
>
> Kerrel. This is the green silk purse that was found upon her in the watch house. She said she found it in the street; but some body taking notice that it was clean, she then said, she had washed it since. This is the gown that some of the linen was

wrapped in, and this is the bloody apron that was found under my bed, and which, she said, was not bloody, but the marks of a disorder.

Malcolm. Was the linen wet or dry?

Kerrel. I can't say which, but it was bloody.

Malcolm. Was the gown bloody, or the shift bloody in the sleeves, or the bosom, or any where but in the lower part?

Kerrel. I cannot say.

Court. Is the shift here?

Kerrel. Yes.

Court. Produce it then, and let some body look on it.

Oliphant. (Looking on it). I think here's a little blood on the upper part of the bosom.

Malcolm. Upon your oath is it blood or a stain?

Oliphant. I cannot be positive; but it seems like the rest.

The next to testify was John Gehagen, whose chambers were across the landing from Kerrel's and who was present when the bloody linen and tankard were found. Malcolm questioned Gehagen on the same topics:

Malcolm. Was the blood on the tankard dry?

Gehagan. It appeared then to be fresh.

Malcolm. Was the blood on the shift and apron wet or dry?

Gehagan. I don't know certainly.

Malcolm. Who took the shift up?

Gehagan. I had it in my hand; the blood on it was like that on the tankard, which I thought was wet.

Malcolm. It has been folded up ever since, till now, and if it was wet then, it must be damp still if no air has come to it.

Malcolm then introduced another line of questioning, about whether there was any blood on the dress she had been wearing at the time.

Malcolm. What gown had I on?

Gehagan. I don't know.

Malcolm. I would ask Mr Kerrel the same question.

Kerrel. You came up in that blue riding hood you have on now, but I did not mind what gown.

Malcolm. Had I any blood on my clothes, or was I clean dressed?

Court. Why it was Monday morning when you was taken, you had 24 hours' time to shift your clothes.

The court, recognising the effectiveness of Malcolm's questioning, felt compelled to intervene on the prosecution's behalf. But Malcolm continued to argue, now directly with the judge:

Malcolm. It's hard that people can swear positively to so many things, and yet could not perceive what clothes I had on.

Court. They tell you their thoughts were taken up with other things.

Malcolm. The watchman searched me, but did they find any blood about me?

Court. You have been told already, that you had 24 hours' time to change your clothes, and that they did not mind what clothes you had on.

When a watchman, John Mastreter, testified, Malcolm managed to detect a small inconsistency in the evidence:

Malcolm. Was the blood on the tankard wet or dry?

Mastreter. I can't tell; but I believe it was dry, because it did not bloody me when I took hold of it.

Malcolm. Mr Gehagan swore it was wet.

John Gehagan. She rubbed it, and I thought it was.

When Frances Rhymer, one of the friends of Mrs Duncomb who discovered the bodies that Sunday afternoon, took the stand, Malcolm introduced another possible line of defence, suggesting perhaps that Price had murdered the others and then committed suicide:

Malcolm. Was the door locked or bolted before Mrs Oliphant opened it?

Frances Rhymer. I don't know.

Malcolm. Did you see any way that a person could possibly get out and leave the door bolted?

Court. Somebody did get in and out too, that's plain to a demonstration.

In fact, a subsequent witness testified that it was possible for someone standing outside the door to bolt it from the inside.

Finally the surgeon who examined the corpses, Thomas Bigg, took the stand. Among other things, he testified that Malcolm's apron strings had been bloody at both ends. This allowed Malcolm to return to her principal line of questioning.

Malcolm. Might they have been murdered with those strings and no blood appear in the middle?

Bigg. They might have been strangled without making the strings bloody at all. But the strings being bloody only at the ends, which when the apron was tied on, would hang before, the blood might come upon them in the same manner as upon the rest of the apron, or it might be by folding the apron up before it was dry.

Malcolm. If I had this apron and did the murder in it, how is it possible that my shift should be bloody both behind and before?

No response was recorded.

Then the court turned to Malcolm for her defence. With growing confidence she proceeded to address the court for half an hour. She started with her explanation for the bloody linen, explaining that it was a product of menstruation, a subject not normally discussed in mixed company and certainly not in a courtroom. This accounts for her keenness to establish that some of the blood had been dry:

> Modesty might compel a woman to conceal her own secrets if necessity did not oblige her to the contrary; and 'tis necessity that obliges me to say that what has been taken for the blood of the murdered person is nothing but the free gift of nature.
>
> This was all that appeared on my shift, and it was the same on my apron, for I wore the apron under me next to my shift. My master going out of town desired me to lye in his chamber, and that was the occasion of my foul linen being found there. The woman that washed the sheets I then lay in can testify that the same was upon them, and Mr Johnson who searched me in Newgate has sworn that he found my linen in the like condition. That this was the case is plain, for how is it possible that it could be the blood of the murdered person?
>
> If it is supposed that I killed her with my clothes on, my apron indeed might be bloody, but how should the blood come upon my shift? If I did it in my shift, how should my apron be bloody, or the back part of my shift? And whether I did it dressed or undressed, why was not the neck and sleeves of my shift bloody as well as the lower parts?
>
> I freely own that my crimes deserve death. I own that I was accessory to the robbery, but I was innocent of the murder, and I'll give an account of the whole affair.

She then provided a narrative of the crime which corresponded with the account she had given in her initial confession. She described how she had

plotted the robbery, first with Tracey and then with the Alexander brothers. On the Saturday evening she met up with her accomplices, and the door to Mrs Duncomb's room being found open, she ordered James Alexander to go in and hide under the bed. At two o'clock in the morning:

> James Alexander came out and said, now is the time. Then Mary Tracey and Thomas Alexander went in, but I stayed upon the stairs to watch. I had told them where Mrs Duncomb's box stood. They came out between 4 and 5, and one of them called to me softly, and said hip! How shall I shut the door? Says I, 'tis a spring-lock; pull it to, and it will be fast; and so one of them did. They would have shared the money and goods upon the stairs, but I told them we had better go down; so we went under the arch by Fig Tree Court, where there was a lamp. I asked them how much they had got. They said they had found 50 guineas, and some silver in the maid's purse; above 100 pounds in the chest of drawers, besides the silver tankard, and the money in the box, and several other things, so that in all they had got to the value of about 300 pounds in money and goods. They told me they had been forced to gag the people. They gave me the tankard with what was in it, and some linen, for my share, and they had a silver spoon and a ring, and the rest of the money among themselves.

She then described her arrest, and admitted she had lied about the tankard:

> I own that I said the tankard was mine, and that it was left me by my mother. Several witnesses have sworn what account I gave of the tankard being bloody; I had hurt my finger, and that was the occasion of it. I am sure of death, and therefore have no occasion to speak any thing but the truth.

She also admitted that while in Newgate she had conspired with Will Gibbs to establish an alibi. But when she was examined by Mr Alstone, the turnkey, about the substantial amount of money that was found hidden in her hair, she decided she had to confess:

> I denied all till I found he had heard of the money, and then I knew my life was gone, and therefore, I confessed all that I knew. I gave him the same account of the robbery as I have given now. I described Tracey and the two Alexanders.

She then concluded:

> All that I have now declared is fact, and I have no occasion to murder three innocent persons by a false accusation, for I know I am a condemned woman. I know I must suffer an ignominious death which my crimes deserve, and I shall suffer willingly. I thank God that he has granted me time to repent, when I might have been snatched off in the midst of my crimes and without having an opportunity of preparing myself for another world.

It was an impressive performance by a woman who had been universally convicted and traduced in the papers and who faced a courtroom full of

unsympathetic men. Malcolm stuck with her story throughout and refused to admit, for even a moment, any participation in the murders themselves. It is surprising, however, that she called no witnesses in her support, not even character witnesses. Perhaps as a poor laundress, there were few respectable acquaintances on whom she could call. In the end, the trial came down to the word of one woman (who had admitted to various lies in attempting to cover up the theft) against that of a phalanx of prosecution witnesses. Perhaps it is significant that the jury took as long as 15 minutes to reach their verdict of guilty. By special order she was to be hanged near the scene of the crime in Fleet Street, to terrify 'other wickedly disposed people',[17] and demonstrate to the world that the crime had been solved. Although Tracey and the Alexanders remained in prison until the next sessions, they were never tried for the crime.

Nonetheless, Malcolm continued publicly to maintain her innocence of the murders. The night before her execution she delivered a paper to Reverend Piddington, lecturer in the parish of St Bartholomew the Great, 'with a desire that it might be published', which it was. Her story was the same: she had been involved in planning the robbery, but had not gone in the room and knew nothing about the murders until they were discovered the next day.[18]

It is difficult to know whether Malcolm managed to convince anyone. Certainly the predominant view remained entirely negative, not helped by the fact that she was Irish and Catholic. The report of the trial in the *London Magazine* was particularly hostile:

> She behaved in a very extraordinary manner on her trial, often times requesting the court for the witnesses to speak louder, and she spoke upwards of half an hour in her own defence, but in a trifling manner.[19]

Neither was the Ordinary of Newgate convinced. Adopting a far more hostile tone than he normally did towards his charges (probably owing to her Catholicism, and because she refused to confess), he described her as a:

> Most obdurate, impenitent sinner, who gave no reasonable satisfaction, with respect to her own particular case. She was certainly of a most bold, daring, boisterous, and wilful spirit, void of all virtue and the grace of God; which disposition led her from one sin to another, till at last she was so far deserted by God, by forsaking him and his ways, that she fell into those abominable and vile crimes, for which she deservedly suffered.

In his account of her final hours, he described her sincerity 'as at least pretended' and added:

> If there be anything contradictory, or what may seem disingenuous in this account, it is owing to the unhappy temper of this unfortunate wretch, who often varied in her declarations concerning this barbarous murder.[20]

Reinforced by William Hogarth's rather severe portrait of her (painted while she was in Newgate awaiting execution), this was the impression of Sarah Malcolm that endured: as an evil, barbaric and stubborn woman.

Hogarth himself was reputed to have observed to a companion 'I see by this woman's features that she is capable of any wickedness'.[21] She was hanged on 7 March. A few weeks later an effigy of Malcolm was burned alongside those of the unpopular Robert Walpole and Queen Caroline, during celebrations of the withdrawal of the Excise Bill.[22] And in 1751 Henry Fielding included her in a list of the most treacherous women in history, alongside Lady Macbeth and Catherine Hayes.[23]

The Ordinary's comments notwithstanding, Malcolm's defence had been consistent in its basic tenets from the moment she admitted the theft in Newgate to her execution. It may even have been true. The only evidence directly linking her to the murders was the bloody linen, for which she had an explanation. Since she was likely to be executed anyway for her participation in the burglary, especially as the crime was linked to a triple murder, her determination to stick with her story before, during and after her trial is remarkable. The opportunities she took advantage of in her trial to present her side of the story are evidence of the substantial role defendants could (and indeed were expected to) play in eighteenth-century trials, even if the odds remained stacked against them.[24]

A Man of my Age, Character and Way of Life

Trials at the Old Bailey were only in part about establishing the facts of the case. Almost as important was the character of the victim, defendant and witnesses. Frequently those who testified were badgered about their immorality and demeanour and stories of their criminality and low circumstances were paraded before a sceptical jury. All evidence was judged in light of the character of those who gave it. Defendants especially were expected (if they were able) to call friends and neighbours to vouch for their good behaviour and quiet ways. Even if it could not change the verdict, this testimony could influence the court's choice of punishment.

On the evening before the Italian scholar Joseph Baretti stood trial for murder, his friend and fellow lexicographer Dr Johnson sat quietly with James Boswell discussing the correct way to respond to the execution of a friend:

Boswell: But suppose now, sir, that one of your intimate friends were apprehended for an offence for which he might be hanged.

Johnson: I should do what I could to bail him, and give him any other assistance; but if he were once fairly hanged, I should not suffer.

Boswell: Would you eat your dinner that day, sir?

Johnson: Yes, sir; and eat it as if he were eating with me. Why, there's Baretti, who is to be tried for his life tomorrow, friends have risen up for him on every side; yet if he should be hanged, none of them will eat a slice of plumb pudding the less.

The events that led to the trial of Joseph Baretti took place in the Haymarket some two weeks earlier, between 9 and 10 o'clock on a Friday night, 6 October 1769. The Haymarket, still an active market for hay and straw, was by the 1760s more important as the site of the Haymarket Theatre and a long string of coffeehouses, inns and shops catering for a prosperous clientele. It was also a notorious resort of prostitutes and footpads.

On this particular evening Elizabeth Ward sat herself down in a doorway, next to a short woman in a brown dress about 20 or 30 feet from the corner of Panton Street at the north end of Haymarket. It was already quite dark and the shadows at the edge of the thoroughfare were full to bursting with the ragtag population of London's underclass. Ward was a well-known prostitute, who had been out on the streets the night before. A couple of years later she would find herself in the dock, found guilty and transported to North America for seven years, after a 'three in a bed' romp went disastrously wrong.[25] On this particular evening there was a waxing crescent moon low in the sky, which provided little light. Joseph Baretti, who was near blind with myopia after decades of close scholarship, probably could not see Ward or her companion as they sat on the step. He later claimed to have noticed only one woman, although everyone else claimed there were two.

What happened next was the nightmare feared by many people walking in the wrong place at the wrong time – a nightmare made more intense by Baretti's foreign accent combined with the xenophobia of many Londoners. In Ward's evidence at the Old Bailey she described how 'the other girl asked him to give her a glass of wine and put her hand towards him'. Baretti claimed that she had actually grabbed his genitals. Eighteenth-century men's breeches had wide slits on either side which made access to the crotch relatively easy and prostitutes frequently slipped a hand inside the breeches of a prospective client by way of encouragement.

In this instance, however, the gesture appears to have been executed in an overly enthusiastic manner and directed at the wrong person:

> She clapped her hands with such violence about my private parts, that it gave me great pain. This I instantly resented, by giving her a blow on the hand with a few angry words. The woman got up directly, raised her voice, and finding by my pronunciation I was a foreigner, she called me several bad names in a most consumelious strain; among which, French bugger, damned Frenchman, and a woman-hater, were the most audible.

The nature of the blow Baretti struck became a substantial point of issue at the later trial. Elizabeth Ward claimed that 'He went a little further on, and then turned back and struck me a great blow on the side of my face', after which she 'screamed out' for help. Others heard Ward cry out that 'he deserved a knock over his head with her patten'.

The altercation immediately attracted an ugly and dangerous crowd, several members of which later lay under suspicion of being Elizabeth Ward's confederates. Three men in particular came up and demanded how Baretti 'could strike a woman'. These were Evan Morgan, a ballad singer, John Clark,

who Elizabeth Ward claimed had 'kissed' her 'the night before in the Haymarket' and who she recognised by virtue of his pronounced squint and, finally, Thomas Patman. These three young men were on their way from the pub:

> We drank three pints of beer together at a house that turns up on the left hand. We asked Morgan to give us a song; he said he would if we would go along with him to a house in Golden Square. We were going along the Haymarket all three together, and just at the corner of Panton Street there was a gentleman struck a woman. I saw him strike her on the head. She reeled and was near ready to fall.

What happened next is lost in confusion. In Thomas Patman's recollection:

> The other two men were behind me, and they immediately pushed me against the gentleman. I received a blow from him directly on my left side. The blood ran down into my shoe. I cried out that I was stabbed.
>
> The gentleman made off half way up Panton Street. Morgan ran after him, to take him, and just by the Hole in the Wall Morgan received a wound. I saw the gentleman strike at him as he was running up Panton Street. He struck him on the side of his body.

Joseph Baretti remembered the events slightly differently:

> I had not quite turned the corner before a man made me turn back by giving me a blow with his fist, and asking me how I dare strike a woman. Another pushed him against me, and pushed me off the pavement. Then three or four more joined them. I wonder I did not fall from the high step which is there. The pathway is much raised from the coachway. A great number of people surrounded me presently, many beating me, and all damning me on every side, in a most frightful manner. I was a Frenchman in their opinion, which made me apprehensive I must expect no favour nor protection, but all outrage and blows. There is generally a great puddle in the corner of Panton Street, even when the weather is fine; but that day it had rained incessantly, which made it very slippery. My assailants wanted to throw me into the puddle, where I might be trampled on; so I cried out murder. There was a space in the circle, from whence I ran into Panton Street and endeavoured to get into the footway. I was in the greatest horror lest I should run against some stones, as I have such bad eyes. I could not run so fast as my pursuers, so that they were upon me, continually beating and pushing me, some of them attempting to catch me by the hair-tail. If this had happened, I had been certainly a lost man.

Baretti was carrying a small knife and in his fear he used it. Evan Morgan and Thomas Patman were taken to Middlesex Hospital later that evening, accompanied by John Clark, where the two wounded men were attended by John Wyatt, the house surgeon. Morgan had been stabbed three times, once in the abdomen and twice through the lung. He died the next day.

Following the stabbing, and fearful for his life, Baretti stumbled on in search of protection:

> I cannot absolutely fix the time and place where I first struck. I remember, somewhere in Panton Street, I gave a quick blow to one who beat off my hat with his fist. When I was in Oxendon Street, fifteen or sixteen yards from the Haymarket, I stopped and faced about. My confusion was great and seeing a shop open, I ran into it for protection, quite spent with fatigue.

The shop was run by a grocer and was opposite the home of John Lambert, a constable, who had just then sat down to dinner. Lambert took up the story:

> I am a tallow chandler, and was then a constable. I was sat down to supper, when I heard the cry of murderer, or stop murderer, which alarmed me a good deal. I got to my door, and observed Baretti and two or three men pursuing him. He ran into a grocer's shop just opposite to me. I said, Sir, I beg you will surrender. One or two of my neighbours came in; Baretti said, 'Are you friends?' I said 'Yes, we were, and would protect him'. By that time a mob was gathered about the door, being between nine and ten. I did propose carrying him to the roundhouse, but Sir John Fielding's name being mentioned, Mr Barretti said he was very willing to go before him. He said he was a gentleman, and secretary to the Royal Academy in Pall Mall. I took him to Sir John, and he was committed.

Morgan had been immediately dispatched to hospital, but Patman, Clark and Lambert accompanied Baretti to the magistrate's office where the blind justice Sir John Fielding committed Baretti to Tothill Fields Bridewell to await the outcome of Morgan's struggle for life.

Had Baretti been a poor man, he would have been marched through the streets to the prison, but instead a coach was called, and the constable, along with two of Baretti's friends (who had been summoned from the Royal Academy), accompanied him through the now midnight black streets of Westminster to the prison off Horse Ferry Road. A few years later, the reformer John Howard claimed that this particular house of correction had 'no straw, no infirmary', but this hardly mattered to Baretti.[26] He paid for a private room and food and drink to be brought and was examined by his two companions, both of whom had medical experience, which allowed them later to describe in detail the bruises Baretti had suffered in the earlier altercation.

Following Morgan's death, a coroner's inquest was called and Baretti was charged with manslaughter. At the Old Bailey, however, the grand jury indicted him for murder. Facing a trial on this capital offence, Baretti immediately had two strikes against him. The first was his undoubted foreignness. It was one thing for an English gentleman to hit an English prostitute, but quite another for an Italian of whatever class to hit an Englishwoman, regardless of her profession. The second issue was the use of a knife.

Upper-class men had stopped regularly carrying a sword in the first half of the eighteenth century. By the 1770s most would have jauntily swung a stout walking stick, both as a means of protection and as a part of the perfor-

mance of gentility. Such a stick could be swung with abandon, with little fear of attracting legal redress, wherever the blows fell. A knife was a different matter. It had none of the gentlemanly associations of a sword or the harmless uses that justified a stick. It was an offensive weapon of a sort that only a working man would normally carry.

Baretti's defence hung on two simple points; first, the normality of an educated foreigner carrying a small knife; and, second, his ability to create the impression that despite his foreignness, he was still a gentleman. At the trial, the first thing he did was to use flattery to defuse the ticking bomb of xenophobic prejudice that existed in the hearts of eighteenth-century Englishmen. As an Italian national, he had the right to be tried by a jury composed of half Englishman and half Italians, but he waived this right and, in a speech full of the sort of ringing pompous phrases geared to soothe an Englishman's ego, he turned to the Middlesex jury and explained:

> Equally confident of my own innocence and English discernment to trace out truth, I did resolve to waive the privilege granted to foreigners by the laws of this kingdom. Nor was my motive a compliment to this nation. My motive was my life and honour – that it should not be thought I received undeserved favour from a jury part from my own country. I chose to be tried by a jury of this country, for if my honour is not saved, I cannot much wish for the preservation of my life. I will wait for the determination of this awful court with that confidence, I hope, which innocence has a right to obtain. So God bless you all.

The knife required further explanation. It had a leather cover and silver case, which concealed a razor sharp steel blade within. It was described by Thomas Patman as a 'penknife' and was produced in court as evidence. But other witnesses, and Baretti himself, were keen that the jury understood precisely why a man such as himself would carry a knife like this. In Baretti's words:

> My knife was neither a weapon of offence nor defence. I wear it to carve fruit and sweetmeats and not to kill my fellow creature. It is a general custom in France not to put knives upon the table, so that even ladies wear them in their pockets for general use. I have continued to wear it after my return to England because I have found it occasionally convenient. Little did I think such an event would ever have happened. Let this trial turn out as favourable as my innocence may deserve, still my regret will endure as long as life shall last.

If Baretti's own affected words were not enough to explain the knife, others, including David Garrick, the well-travelled actor, were drafted in to reinforce the point. Having done all he could to establish the goodwill and admiration he felt for English justice and his sorrow at the death of Evan Morgan, it was left to Baretti to establish his character in order to support his plea of self-defence. Since the facts of this case were not clear, this was a trial where a good character had the potential to swing the case in his favour.

After all the evidence from prostitutes and their pimps, surgeons and constables had been rehearsed, the glitterati were called. First up was Topham Beauclerk, a wealthy book collector and intimate of Dr Johnson, but more importantly, a great grandson of Charles II and Nell Gwyn. As an aristocrat of unimpeachable social standing, whom Dr Johnson regarded as *the* expert on 'polite literature', Beauclerk was just the sort of witness to set the right tone. His evidence did not disappoint. He said of Baretti:

> I have known him ten years. I was acquainted with him before I went abroad. Some time after that I went to Italy, and he gave me letters of recommendation to some of the first people there, and to men of learning. I went to Italy the time the Duke of York did. Unless Mr Baretti had been a man of consequence, he could never have recommended me to such people as he did. He is a gentleman of letters, and a studious man.

Next came Baretti's old friend, the painter Sir Joshua Reynolds. He helped to place Baretti in a more conventional English context:

> He is a man of great humanity, and very active in endeavouring to help his friends. I have known many instances of it. He is a gentleman of a good temper. I never knew him quarrelsome in my life; he is of a sober disposition. This affair was on a club night of the Royal Academicians. We expected him there, and were enquiring about him, before we heard of this accident. Mr Baretti is secretary for foreign correspondents.

Next to take the stand was Dr Johnson, who testified to Baretti's studious and sober nature. According to Boswell, Johnson 'gave his evidence in a slow, deliberate, and distinct manner which was uncommonly impressive'.[27] Johnson answered questions about Baretti's eyesight, his tendency to anger and his relations with the women of the street. Johnson was followed by Edmund Burke the philosopher, David Garrick the actor and Oliver Goldsmith the playwright. Almost giving up and admitting that Baretti had effectively played the system, the *Proceedings* record:

> There were divers other gentlemen in court to speak for his character, but the court thought it needless to call them.

At the end of a long trial that seemed at the outset to be balanced on a knife's edge, Joseph Baretti was 'acquitted of the murder, of the manslaughter – self defence'.

A few days before the trial, James Boswell had been to Tyburn to see the execution of six men. What struck Boswell about the scene was 'that none seemed to be under any concern', an observation to which Johnson replied, 'Most of them, sir, have never thought at all'. Joseph Baretti's carefully deployed words, and carefully chosen friends, saved Dr Johnson the necessity of testing his jaundiced views of human nature with the experience of seeing this particular friend hang at Tyburn.[28]

Marrying by Whatever Name They Pleased

The introduction of lawyers changed the whole character of courtroom business. Confrontations between witnesses and the accused were supplemented, and often supplanted, by speeches and vigorous cross-examinations performed by lawyers. In this trial the victim and one of the two defendants never even spoke. Perhaps this is not surprising given the fact that central to the case was the nature of the evidence required to convict someone of conspiracy, a question of law, not fact. But the carefully marshalled arguments of both defence and prosecution counsel speak powerfully both to the changing nature of the criminal trial and the professionalisation of legal practice.

In October 1746 George Taylor and Mary Robinson, a widow, were tried for conspiring to impersonate Richard Holland, a gentleman. They were accused of marrying under a false name in order that the two could gain control of Holland's estate after his death. With the institution of marriage and the heredity of property at stake, this was a potentially serious crime. Despite the fact that as a misdemeanour the case would not normally have involved legal counsel, five lawyers participated in the trial, three for the prosecution and two for the defence. As was common in the published *Proceedings* in this period, the lawyers were not named.

The trial began with opening arguments from the counsel for the prosecution. In a long-winded statement one of the lawyers summarised the case. He explained that on 18 July, Mary Robinson, who lived in Richard Holland's house, arranged for some of his clothes to be placed in a box, which she then smuggled to a pub in Little Britain, just outside the City walls. She then sent George Taylor to Doctor's Commons to obtain a marriage licence (by purchasing a licence, they were able to marry immediately and avoid the publicity associated with posting banns). Taylor was refused the licence, however, because he was not one of the parties to the marriage (he was not yet claiming to be Holland). As a result, Mary Robinson had to go in person to obtain the licence. With George Taylor dressed up in Holland's clothes and with Mary Robinson in a white satin gown, they then went to the parish church of St Andrew Holborn where they were married under the names of Richard Holland and Mary Robinson. After dinner at the King's Head tavern, they arranged to return Richard Holland's clothes to his house in Hornsey. But they failed to return his wig and had also managed to disturb the papers in the pocket of his coat. As a result, when Holland next came to wear the coat, he became immediately suspicious and obtained a warrant for the arrest of Robinson and Taylor. When they were brought before Sir Thomas De Veil and examined, they confessed everything.

Prosecuting counsel were particularly keen to prove the defendants' intentions as a way of arguing that the purpose of the marriage had been to defraud Richard Holland – a much more serious charge than impersonation. Counsel noted that he was unlikely to be able to prove this directly, but set about

constructing a case from inference. He pointed out that when the defendants were examined by De Veil and asked whether the marriage had been consummated, Taylor:

> Spoke plainly, that he had not lain with her. I mention this to show that there was no real marriage intended by these two persons, but a fraudulent marriage to another person. Tis not to be supposed that persons that had so much art and wickedness to conduct a scheme of this kind, should have so much honesty to declare their wicked intentions, therefore the fact must be gathered from circumstances.

Counsel went on to speculate on the likely ill effects of this spurious marriage:

> Let us consider what would be the natural consequence of this marriage. Suppose it could have been brought to take effect, between Mr Holland and the defendant, Robinson. If it took effect in his lifetime, it would have been the greatest injury imaginable, not only in point of fortune, in marrying a gentleman of fortune to a servant, a person worth nothing, and probably less than nothing, and binding him to a woman, whereas the very manner of his being bound to her, he must detest and abhor. If it was to take effect after his death, then it would be a great loss to the heirs of Mr Holland, who would lose so much of their own just rights. 'Tis not only a misdemeanour, but of such a heinous nature, that no punishment that the law can inflict for a misdemeanour is severe enough.

This was not so much evidence of a crime, but a construction on the evidence designed to convince the jury of the heinous nature of that crime.

The judge, conscious perhaps that prosecution counsel had already spent a substantial amount of time on their opening statements, urged that the evidence should be presented more quickly:

> Court. I am not for going a round-about way when a shorter is sufficient; you might go through all the other evidence for the entertainment of the audience, but if you prove the fact tis sufficient.

The first witness for the prosecution was James Wright, the man who married the two in St Andrew Holborn. This gave counsel for the defence their first chance to intervene. Wright was almost immediately challenged on the question of whether he could positively identify Taylor as the groom:

> Counsel. Mr Wright, since you speak to the identity of the man, do you know that you ever saw him before? I suppose you marry a great many persons. Don't you remember how you came to be so particular as to take upon you to say that these are the clothes that the man wore at that time?
>
> Wright. The man was in so great confusion that the sweat ran down his face. He seemed in the greatest agony and confusion whatever.
>
> Q. Sir, had you a suspicion that the man was doing any thing wrong?

Wright. No, sir; but I saw the man in such a confusion that I took particular notice of him. The man had a whitish coat, and the wig as Mr Holland has now.

Counsel. So the only reason you judge them to be the same clothes, is because he had a white coat and wig?

Wright. I saw them upon Mr Holland's back four or five days after.

Counsel then suggested Wright's testimony had changed since the preliminary hearing:

Counsel. Sir, was you before Sir Thomas De Veil? Did you not declare before the justice that you did not remember the man nor woman? Did you at that time say that you knew the man at all?

Wright. I gave a description of the man as well as I could?

With the defence lawyer having completely undermined this witness's confidence in his own testimony, it is appropriate that his last response was reported in the form of a question.

A similar experience awaited Philip Moore, a young clerk in Doctor's Commons who had witnessed the issuing of the marriage licence. Referring to him patronisingly as 'my lad', defence counsel forcefully cross-examined his identification of Robinson as the bride.

Counsel. I suppose you don't remember all the persons that come to your house for licences. If her face was covered with this bonnet, my lad, how came you to be so particular as to her face?

Moor. It's a thing that seldom happens, for a woman to apply for a licence.

Counsel. So then, when a woman applies for a licence, you more particularly remark her. Had you met this woman afterwards in the street should you have known her?

Moor. Yes; because I believe I have seen her before, a considerable time before she lived in that neighbourhood.

Counsel. Just now, if I understood you, you said you had not seen her before. If you had been accidentally in her company, should you have remarked that she was the same woman, if you had had no particular cause to have taken notice of her?

Moor. I don't know whether I should or no.

The questioning then turned to whether he could remember her when he was asked about the case 9 or 10 days after the licence was issued.

Counsel. Did you then presently recollect the circumstances of that woman?

Moor. When they told me of the licence, I recollected then.

Counsel. When you was first applied to, did you, or did you not recollect the person of the woman?

Moor. The question that was put to me was, whether I did not remember there was such a licence, but I could not, at that instant, recollect that she was the woman, till they told me the circumstances more particular.

Q. Now, before you recollected that she was the person of the woman, did any body remind you of any particular circumstance to put it into your memory? The first time you saw her, did you recollect her?

Moor. Yes.

Counsel. This Mrs Robinson is a pretty tall woman; therefore, though she had a bonnet upon her head, you might see her face much easier than another person, as you are such a short man.

Moor. Yes.

Counsel. Then you were very curious, my lad, and peeped very earnestly at it; then it pleased you very much.

This last statement was almost certainly delivered with lashings of irony.

When it came time to present the case for the defence, both counsel delivered long speeches. The first pointed out that it was not a crime to marry under an assumed name and claimed that the prosecution had not proven the charge of conspiracy, which required criminal intent. Although superficially polite to the 'gentlemen' counsel for the prosecution, he in fact tore their case to shreds:

> Please your lordship, and gentlemen of the jury, I am counsel in this cause for Mrs Robinson; against whom there is an indictment for conspiracy, etc. And the gentlemen are extremely sensible, I find, on the other side, if they had laid this fact without coupling it with a conspiracy, that it would not have been at all criminal. Our common law doesn't hinder any people from marrying together by any name they please. Therefore, this conspiracy only must appear to you to be some injury to some person or another, and particularly this gentleman, who says he is so injured. I never heard that particular persons may not marry by whatsoever name they please. By what law is any man injured by it? If they could make out that there has been a combination on purpose to affect the estate of a third person, or on purpose to claim that estate in their lifetime; then it would have amounted to a combination together; it would have amounted to a conspiracy, to injure a third person. But, is

> there any thing like it? Was there any discourse upon it? What they might have in their heads, God knows! I never knew any human judicature could reach the thoughts or intentions, till facts were made plain and clear.

A second line of attack was to highlight the difficulty, already exposed in cross-examination, witnesses had in identifying Robinson as the bride in the marriage, because she had been wearing a large bonnet which made it difficult to see her face:

> My lord there is a great stress laid upon this habit, this dress of the lady's; she was dressed in satin, says the gentleman, a pure white innocent satin; a very proper dress for a bride. He would conclude from thence, that she was the person actually married at this time. There is no positive evidence she was married, 'tis only grounded on supposition. She was dressed in a black bonnet. That is not conclusive evidence; a hundred ladies may wear white satin and have black bonnets, and the same day one of these ladies might be married; and yet a young gentleman, says he, looked at her very narrowly and could see her face. It was a wonderful thing; I think it a great difficulty to distinguish one woman from another when muffled up; therefore it was no wonder if this young spark might be deceived, as his curiosity was only led by the size of this bonnet.

Finally, counsel returned to the question of criminal intent, querying the significance of prosecution evidence that Robinson had secreted a suit of Holland's clothes out of the house to allow Taylor to wear it at the wedding:

> Why therefore this mighty matter, that a suit of clothes should go out of the house? How does this manifest an intention to do him any wrong? If I have another man's suit of clothes and am married in them, must it be inferred from thence that I intended to get his estate? They might also have said I intended to rob him, or cut his throat. This is saying a thing that I might never have had in my head; this intention ought to have been manifested by some overt open acts done. Is marrying in itself, by another name, an unlawful thing?

The other counsel for the defence repeated some of the same points, and then took upon himself to instruct the jury in a point of law, much as a judge might sum up a case:

> A conspiracy, in its nature, must be to do an injury to a third, in regard to his person or estate. Gentlemen, as to the fact, where a person is to be convicted as a criminal; where a person is subjected to a fine or imprisonment, there ought to be the clearest proof in the world. As to the marriage, I don't apprehend any one person has been capable to prove the fact, as to the identity of the woman; that is the fact that you are to try. If there is no evidence of it, in all cases of criminal prosecutions, we are to incline to the favourable side, which is mercy.

For the only time in the trial Mary Robinson then briefly addressed the court:

> My lord, I humbly beg this favour, though they prove my dress, that you would ask Mr Holland whether it was not my everyday dress; and I don't know, at this time, whether I had it on or not. Mr Holland invited me as a companion to himself; and I have it under his hand that I was not his servant.

It was not a particularly effective intervention, since she appeared to admit her presence at the marriage and called attention to a possible motive for the crime. Her counsel probably wished that she had remained quiet. Her fellow defendant, Taylor, did not testify at all.

As is sometimes the case when reading the *Proceedings*, the text of a trial seems to lead to the opposite conclusion to that reached by the jury. Despite the very strong defence made by counsel, both Mary Robinson and George Taylor were found guilty. Richard Holland, the victim, who had not testified in the trial, then 'recommended Taylor to the favour of the court, as believing him to be drawn in by the woman'. The court was in sympathy with this request:

> The judgment of the court upon Mary Robinson was as follows, that you be imprisoned for the space of two years in the gaol of Newgate; and after the expiration of that time to give security of 500 pounds and pay a fine of five marks.
>
> As to you, George Taylor, the sentence that the court thinks proper to pronounce upon you is that you be imprisoned for six months in the Poultry Compter; that you give security yourself in the sum of 40 pounds and two securities in 40 pounds each, and pay a fine of five marks. [A mark was 13s and 4d.]

The heavy punishments meted out demonstrate the significance the court accorded to the crime and help explain why both sides had chosen to be represented by lawyers at the trial.[29]

Mr Garrow for the Defence

The crime wave that followed the end of the American War in 1783 led to a dramatic increase in the number of cases coming to the Old Bailey. And just as the rhetoric of individual rights and liberties helped fuel that war, it also found a place in the repertory of arguments deployed by courtroom lawyers. The 1780s saw an ever growing number of defence lawyers seeking to protect the rights of prisoners against the power of the state. The most prominent of these was William Garrow, the son of a clergyman, who was called to the bar at the precocious age of 23. Having attended Old Bailey trials while studying law, he immediately commenced a short but illustrious career as the eighteenth century's most famous criminal lawyer. Between 1783 and 1793 he appeared as counsel no fewer than a thousand times, acting for the defence in the vast majority of cases.[30] *Through aggressive and often sarcastic cross-examinations, and by consistently undermining the motives of prosecutors, Garrow famously managed to reduce witnesses to stut-*

tering wrecks, allegedly discouraging many victims from initiating prosecutions in the first place. Well over half of his clients were acquitted, which led prosecutors to start hiring Garrow as their counsel simply in order to prevent him acting for the other side.[31]

When three young men, William Eversall, William Roberts and Joseph Barney, stood trial on the capital charge of highway robbery on 7 May 1788 they must have feared the worst. They had been arrested four weeks earlier by watchmen on Golden Lane, just north of the City walls, and accused of robbing John Troughton of his hat. On searching Eversall, apparently irrefutable evidence against them was found: the hat was hidden in his clothes, tucked between his coat and his waistcoat. The prisoners' only grounds for optimism was that they had secured the services of William Garrow.

The prosecutor, John Troughton, did not have counsel and testified first. Initially, the judge appears to have led the questioning, prompting him to tell the story of the theft:

> I live in Cherry Tree Alley, Golden Lane, and on the 9th of April, a quarter before eleven o'clock at night, I was returning home. I was within fifty yards of home. I met the three prisoners in a narrow alley, in company with two or three others. Being a narrow place I made way for them to pass me. Seeing a number of them I got close to the wall; and they collected themselves into a body about two or three yards before me, and said something, but I could not distinctly hear what they said. They came towards me, and one of them, I believe Barney, had something in his hand, which he threw into my eyes.
>
> Court. What was it he threw in your eyes?
>
> Answer. Snuff or tobacco dust. They said afterwards at the watch house it was tobacco dust. I asked them what they meant by that; and they said they would let me know, or let me see; and I said I would have one of them to the watch house, and I took hold of one of them, but which I cannot positively say, but I believe it was Barney. That is the man I seized first; I held him some time, and struggled to hold him till we got out of the alley into Golden Lane, which might be eight or ten yards. There was a lamp at the end of the alley where I could discover them. I was rather come to my sight and I know the faces of Barney and Roberts.
>
> Court. Had you known them before?
>
> A. No; we struggled till we got into Golden Lane, then they all surrounded me, and I received some blows about my face and head. I defended myself as well as I could; one of the blows drove me against the public house. I staggered against the wall, I did not fall down; and in that position one of them

> took off my hat and wig. I picked up my wig, I suppose it fell out of my hat, and my hat was gone almost instantly. I called out watch, and stop thief, seeing they took different ways; but I could see one of them, which was Joseph Barney. He had something of an apron tied round him. I pursued him by that particular mark through what they call Basket Alley, and through a dark passage, he was never out of my sight. I took him in White Cross Street; he turned about, and said he was not the man. I took hold of him, and after some little struggle I brought him back with me. By the alarm of the watchman's rattle, a gentleman had stopped Roberts, and a watchman had taken Eversall.

By this point, Garrow seems to have taken over, and the questioning became more aggressive:

Mr Garrow. You pursued Barney by the mark of something he had tied round him?

A. Yes.

Q. Did you know him before?

A. No.

Q. How came you to tell me he threw tobacco dust in your eyes?

A. I cannot be positive who threw it; I thought it was him because he was the first man.

Q. How do you know that the other men are the persons that were with Barney?

A. I could only be positive to Roberts striking me; he attacked me in the face, he came under the light of the lamp.

Q. Which is Roberts?

A. The tall man in the middle; I cannot swear to Eversall.

Garrow proceeded now to exploit Troughton's uncertain identification of the culprits. By comparing Troughton's testimony in court to his original deposition given at the justice's preliminary examination, Garrow attempted to expose contradictions in his story:

Mr Garrow. Did not you say before the justice that Eversall was the only one you could swear to?

A. No.

Q. Who was you examined before?

A. Justice Blackborow.

Q. Was it taken in writing?

A. I believe it was.

Q. Did you sign it?

A. No.

Q. This was a dark alley; the first thing before you observed the men, was something was thrown in your eyes?

A. Yes.

Q. How, having tobacco dust thrown in your eyes, can you swear to persons you had never seen before?

A. I laid hold of Barney; and struggled with him, and said he should go to the watch house.

Q. How is it that you with tobacco dust in your eyes, in a dark alley, knew these people?

A. When I came to the bottom of the alley after the struggle, they all came round me. There was a lamp over my head; Barney and Roberts attacked me in front.

Garrow then questioned Troughton's motives in prosecuting the crime as a robbery (theft with violence), rather than a mere theft. Suggesting that 'thieftakers' had persuaded him to pursue this charge, Garrow implied that Troughton was acting solely in the hopes of receiving the £40 reward payable for the conviction of highway robbers:

Mr. Garrow. You have cleared your eyes of the tobacco dust; and the thief-takers have thrown some gold dust in your eyes?

A. There is no thief-takers in the business.

Q. You know there is a reward of three times forty pounds, if the prisoners are convicted?

A. To be sure, I know that, but I don't come here on that account.

Although Troughton denied the allegation, the ulterior motive had been skilfully planted in the minds of the jury. Garrow then returned to the alleged contradictions between his evidence in court and his original deposition. The question of whether his hat had fallen off or been *taken off* was vital, because the latter involved the violence necessary in order to secure a conviction for robbery:

Mr Garrow. Did not you say before the justice that you did not know whether your hat fell off in the struggle, or was taken off?

A. I don't know that I did.

Q. Upon your oath, did not you tell the justice, that you did not know whether it fell off, or was taken off?

A. I cannot tell, I don't know that I did, I might say so.

Q. Don't you believe you said so?

A. I believe I might, I cannot immediately recollect.

Q. Who told you, if you should swear so here, these men could not be convicted so as to get the reward?

A. Nobody.

Q. Where do you live?

A. No. 4 Atfield Street, St. Luke's; I have lived there many years.

Q. You was sober?

A. Perfectly sober; I am seldom otherwise.

At this point, Garrow appears to have secured the judge's interest:

Court. You don't particularly recollect whether you told the justice you did not know whether your hat fell off, or was taken off; you believed you might say so?

A. Yes.

Garrow continued his relentless, staccato cross-examination, in a voice dripping with ever increasing sarcasm. By the end of the exchange, Troughton was tripping over his own sentences, entirely uncertain what he knew and when he knew it.

Garrow. I ask you then if you did say so before the justice; was what you said before the justice true?

A. I don't recollect that I did say so.

Q. When you was examined before the justice; did you know whether your hat fell off, or was taken off?

A. Yes.

Q. What did you know?

A. That my hat was taken from me, and I am clear now it was taken off, and did not fall off.

Q. Was you clear of that when you was before the justice?

A. I don't know that I was so clear, I was a good deal confused and bruised.

Q. When was you before the justice, the same night, or the next morning?

A. The next morning.

Q. Do you mean to say that you remember better now, what happened that night, than you did the next morning?

A. I can recollect the circumstance very clear, and did then; if I made an error, it was not a wilful one.

Q. You are sure it was taken off, and did not fall off?

A. Yes, I verily believe it.

Q. Are you sure of it?

A. I am sure of it.

Q. What makes you remember it better now than you did the day after?

A. I was in a very bad state at the time; I had several wounds in my head, and was cut and bruised.

The activities of defence lawyers were severely limited in felony trials. They were not permitted to address the jury or to comment on the facts of a case (they could only speak to questions of law). But through aggressive cross-examinations such as this, Garrow was able to evade these restrictions and raise significant doubts about the evidence presented against his clients.

When the watchmen and beadles who had apprehended the prisoners testified, Garrow did not even bother to cross-examine them. Neither did he allow the defendants to testify. Having essentially presented his case during the cross-examination of the prosecutor, the only testimony for the defence came from four character witnesses 'who gave Eversall and Roberts a good character. Barney did not call any witnesses to his character'. He did not need to. All three were acquitted, despite the apparently damning character of the evidence against them, which at the least seemed to prove that Eversall had committed a theft, with or without violence. Despite this lucky escape, each of the defendants returned to the Old Bailey in short order. Only four months later, Joseph Barney was convicted of grand larceny and sentenced to transportation. The following year, William Eversall was tried and acquitted of highway robbery, while five years after the original trial William Roberts, now aged 20, was convicted of grand larceny and sentenced 'to go for a soldier'.[32]

Garrow's aggressive approach and commanding presence in the courtroom

changed for ever the nature of the trials held at the Old Bailey. They became increasingly adversarial, where the skills of one's lawyer became as important as the facts of the case. Commentators, then and now, were not necessarily pleased with this change. One critic, in an open letter which sought to expose 'the licentiousness of the bar', described Garrow as 'a subtle, sagacious, bold, acute, and imperious advocate', whose merciless cross-examinations, regardless of the character and status of witnesses, were 'without a rival'.[33] But by querying unreliable evidence such as hearsay and that provided by accomplices, Garrow's penetrating critiques of prosecution evidence did much to extend the rights of the accused and to reform legal procedures, making trials fairer in the process. In an Old Bailey murder trial in 1791, he was even instrumental in articulating the belief, now enshrined in Anglo-American law, that 'every man is presumed to be innocent till proved guilty'.[34]

The Hanging Judge

In trials such as Joseph Baretti's, where the evidence was ambiguous, respectable character witnesses could make all the difference between a verdict of guilty and not guilty. But this strategy did not always work; there were times when pulling rank could be perceived as an attempt to bully the court, and some judges would not stand for it. Through their instructions to the jury, judges still exercised considerable power over trial outcomes. But what they could not control was the subsequent process of awarding royal pardons.

Richard Savage's life was so extraordinary that his friend, Samuel Johnson, was moved to write his biography, which has since become a classic of the genre. Savage's life was remarkable not only because he was a distinguished poet and playwright, as well as a notorious drunkard and libertine, but also because he was an extremely unlucky man. His mother was the Countess Macclesfield and his father the Earl Rivers, but their relationship was adulterous and he was born a bastard. Shortly after his birth his mother disowned him and placed him in the none too tender care of a poor woman who was instructed to bring him up as a pauper and hide the true identity of his parents. He eventually discovered and proved his parentage, but his birth mother continued to refuse to have anything to do with him and when, on his death bed, the Earl Rivers sought to include Savage in his will, he was dissuaded by the lie that Savage himself was already dead. Nonetheless, having received a grammar school education, Richard managed to support himself by writing poetry and plays and through the support and patronage of several aristocratic acquaintances. But his fortunes once again turned for the worse on the night of 20 November 1727.

Coming up to town on an errand, Savage ran into two gentlemen acquaintances, James Gregory and William Merchant. Together, they went to a nearby coffeehouse, and stayed drinking till past midnight, 'It being in no

time of Mr Savage's life any part of his character to be the first of the company that desired to separate'. Unable to find beds for the night, they 'agreed to ramble about the streets, and divert themselves with such amusements as should offer themselves till morning'.[35] Happening to see a light in Robinson's coffeehouse, near Charing Cross, they decided to go in. Unknown to Savage and despite its respectable-sounding name, Robinson's was a house of ill repute.

On this cold November evening they demanded a room with a fire and were told one would soon become available, as a previous party of guests was just paying the bill in preparation for departure. What happened next was succinctly described by Samuel Johnson in his biography:

> Merchant, not satisfied with this answer, rushed into the room, and was followed by his companions. He then petulantly placed himself between the company and the fire, and soon after kicked down the table. This produced a quarrel, swords were drawn on both sides, and one Mr James Sinclair was killed.[36]

It was a classic early eighteenth-century swordfight between drunken gentlemen and in the chaos Savage stabbed and mortally wounded Sinclair. In a state of shock, he escaped to a nearby courtyard where he and his two companions were apprehended. Following Sinclair's death the next day all three friends were committed to Newgate. Here, Johnson reported, they were 'treated with some distinction, exempted from the ignominy of chains, and confined, not among the common criminals, but in the press yard'.[37]

Although Savage and his friends would now almost certainly have to face trial, they could reassure themselves that they were unlikely to be charged or convicted of anything more serious than manslaughter, for clearly no malice or premeditation was involved. What they did not count on was the malice of Sinclair's friends and that of the employees of Robinson's coffeehouse. The coroner's inquest had to meet twice (each meeting characterised by intense debate) before a charge of manslaughter could finally be agreed. But when the three men stood trial in a packed courtroom at the Old Bailey two weeks later on 6 December they were formally charged with murder. This was a relatively common practice and was almost certainly not unduly worrying to Savage and his friends. Most cases of this sort resulted in a verdict of manslaughter regardless of the initial charge.

Eight witnesses testified for the prosecution. At the request of the defendants, they were examined separately, resulting in several contradictions in the evidence heard by the court. Mr Nuttal, a companion of James Sinclair, took the stand first:

> On Monday the 20th of November, I, in company with Sinclair, Mr Limery and his brother, went to Robinson's Coffee House near Charing Cross, about 11 at night, where we stayed till one or two in the morning. We drank there two bowls of punch, which came to six shillings, and were just concluding to go when the prisoners came into the room. The

> first who came in was Mr Merchant, who, setting his back to the fire, kicked down our table without any provocation, upon which, I said, What do you mean? Mr Gregory answered, What do you mean? Upon which Mr Savage drew his sword. We retreated to the further end of the room. I did not see Sinclair draw his sword, but Mr Gregory drew, and I begged of Mr Savage and Mr Gregory to put up their swords, which they refused, and Mr Gregory turning to Sinclair, said, Villain deliver your sword, and soon after took his sword from him. Mr Gregory's sword was broke in the scuffle, but with Sinclair's sword in his hand, and part of his own, he came and demanded mine. I refused, he made a thrust at me, I defended it; he endeavoured to get my sword, but he fell, or I threw him, and took away the sword from him. Three soldiers came into the room and secured him. I did not see Mr Savage push at Sinclair, though I heard him say, I am a dead man, soon after which the candles were put out. After this I went up to Sinclair. I saw him in a chair, with something hanging out of his belly, which I did believe to be his caul, or fat. The maid servant of the house came in, and kneeled on her knees to staunch the wound.

Nuttal had not seen Savage stab Sinclair, but he did suggest that Sinclair had already surrendered his sword and was defenceless when attacked.

The testimony of Mr Limery, another of James Sinclair's friends, was both more and less damning than Nuttal's. On the one hand, he had seen Savage inflict the wound, and then struggle to escape:

> I saw swords drawn, and Mr Savage made a thrust at the deceased, who stooped and cried oh! at which Mr Savage stood for some time astonished, and turned pale, then endeavoured to get away. I held him, and the lights were then put out. We struggled together, and the maid came to my assistance, and pulling off his hat and wig, clung about him, and striving to force himself from her he struck at her, and cut her over the head with his sword and got away.

On the other hand, he reported that Sinclair still had his sword at the time he was stabbed:

> When Mr Savage gave the wound the deceased had his sword drawn, but pointed downwards to the ground on the left side. As to Mr Merchant, I did not see he had a sword.

The employees at Robinson's then testified. Most important was the testimony of Jane Leader, who was present at the time of the fight:

> I was in the room and saw Mr Savage draw first, then Mr Gregory went up to Sinclair and Mr Savage stabbed him, and turning back he looked pale. Then Sinclair said, I am dead, I am dead, and would have gone out of the room, but I opened his coat and made the servant maid suck his wound, but no blood came. I, upon his death bed, asked him to tell how he was wounded. He said, the least in black gave the wound [which was Mr Savage, for Mr Merchant was in coloured clothes, and had no sword], that the tallest [which was Mr Gregory] passed or struck his sword, whilst Mr Savage stabbed him. I did not see Sinclair's sword at all, nor did he open his lips, or speak one word to the prisoners.

The words of a dying man were thought to possess a distinctive truth. The Reverend Mr Taylor, who was summoned to pray for Sinclair, told the court that Mr Nuttal had asked him 'to ask the deceased a few questions', but he refused. Nonetheless, Nuttal, keen to record the words of a dying man:

> Persuaded Mr Taylor to stay whilst he himself should ask him a question, and turning to Sinclair, Mr Nuttal said, Do you know from which of the gentlemen you received the wound? To which Sinclair answered, From the shortest in black [which was Mr Savage], the tallest commanded my sword, and the other stabbed me.

Finally, two watchmen testified that Sinclair had told them that 'he was stabbed barbarously before his sword was drawn' and that he was 'stabbed cowardly'; and the surgeon told the court that Sinclair could not have been 'in a posture of defence' when he was stabbed, 'unless he was left handed'.

The evidence clearly identified Savage as the man responsible for Sinclair's death, but it was much less certain whether this was an accident, had occurred in a fair fight, or was a result of a one-sided assault. The defence argued that the killing was accidental. In order to establish this point, they tried to cast doubt on the character of the prosecution witnesses, to invalidate aspects of their evidence and to establish the trustworthiness and social standing of the defendants. First, James Gregory commented on the prosecution testimony:

> He endeavoured to bring the evidences for the king under the imputations of loose livers, and people that had no regard to justice or morality. He likewise insinuated to the court, that the house in which the disorder was committed bore a very infamous character.

This testimony was supported by that of Mary Stanley, who stated that 'she had seen Mr Nuttal and Mrs Leader, the owner of the coffeehouse, in bed together', and by that of John Pearce, who deposed that Leader 'was a woman of very ill reputation, and the coffee house had a bad character'. Even Sinclair's character was attacked:

> Daniel Boyle deposed, that the deceased had the character of an idle person, and had no place of residence. John Eaton said, he knew Sinclair for two months, and said, he had but an indifferent character, but yet he confessed he knew nothing of his character from other people.

Savage started his defence by attacking the evidence for the prosecution:

> He made some observations on the depositions of Mr Nuttal, Mr Limery, and Mrs Leader, in which he presumed there were some incoherencies; and then proceeded to invalidate their evidence, and to prove, that he, and the gentlemen of his company, were not of inhumane or barbarous dispositions.

In testimony not reported in the *Proceedings*, he went on to claim that he had acted in self-defence. As reported by Johnson, he did not deny the fact:

> But endeavoured partly to extenuate it by urging the suddenness of the whole action, and the impossibility of any ill design or premeditated malice, and partly to justify it by the necessity of self-defence, and the hazard of his own life if he had lost that opportunity of giving the thrust. He observed that neither reason nor law obliged a man to wait for the blow which was threatened, and which, if he should suffer it, he might never be able to return; that it was always allowable to prevent an assault, and to preserve life by taking away that of the adversary by whom it was endangered.[38]

Savage concluded his testimony by seeking to explain away his attempt to escape with the presumptuous claim that prison was intolerable for a person of his status. He said:

> He should not have endeavoured to escape, but to avoid the inclemencies of a gaol, and the expences which must necessarily follow, which were too extravagant to be supported by a person in his circumstances.

Finally, the defendants attempted to establish their good character:

> There appeared on behalf of the prisoners, several gentlemen and persons of honour, who gave each of them the character of being peaceable and quiet in their temper, and not given to quarrel; and the prisoners hoped, that their good character, and the suddenness of this unfortunate accident would entitle them to favour.

Johnson concluded his account of the case for the defence with these words of praise.

> This defence, which took up more than an hour, was heard by the multitude that thronged the court with the most attentive and respectful silence. Those who thought he ought not to be acquitted owned that applause could not be refused him; and those who before pitied his misfortunes, now reverenced his abilities.[39]

The judge, Sir Francis Page, known as the 'hanging judge' following his zealous sentencing of deer stealers convicted on the notorious Black Act in 1723, was not so impressed. He appears to have been exasperated by the defendants' attempts to avoid conviction on the basis of their high social standing and good character. Unusually for an Old Bailey case in the 1720s, he delivered a lengthy summing up, letting the jury know precisely what verdict he expected them to deliver. Although judges were no longer allowed to coerce juries, they certainly retained the power to make their views known forcibly. As Page's speech was only partly recorded in the *Proceedings*, some of our knowledge of it comes from the unfavourable account in Johnson's biography. According to Johnson, Page started with these acid comments:

> Gentlemen of the jury, you are to consider that Mr Savage is a very great man, a much greater man than you or I, gentlemen of the jury; that he wears very fine clothes, much finer clothes than you or I, gentlemen of the jury; that he has abundance of money in his pocket, much more money than you or I, gentlemen of the jury; but, gentlemen of the jury,

> is it not a very hard case, gentlemen of the jury, that Mr Savage should therefore kill you or me, gentlemen of the jury?[40]

Page then summed up the evidence against Savage. As the *Proceedings* reported (in more measured tones):

> The court summed up the evidence, and took notice where there were any inconsistencies that might make for the prisoners, and directed the jury, that as the deceased and his company were in possession of that part of the room where the fire was, that the prisoners were the aggressors, by kicking down the table and drawing their swords immediately upon it. That if they did believe that Sinclair retreated, was pursued, attacked and killed in the manner as is sworn, and declared by him on his death bed, without the least provocation on his part, that it was murder as well in him that gave the wound, as in the others who aided and abetted in this violence. That the jury had heard what had been objected to some of the evidence, and what had been replied on their behalf, and as they did credit them, they were to give a verdict accordingly.

Finally, returning to the character evidence, he told the jury that it could not invalidate the facts of the case:

> As to the character of the prisoner, that should influence a jury where the proof is doubtful, but not to defeat plain and positive evidence; the jury are to proceed according to the evidence and the rules of law.

Judge Page then explained how even in a sudden quarrel one could be guilty of committing murder:

> As for the suddenness of this accident, where there is a sudden quarrel, and a provocation from one that is killed, or where on a sudden persons mutually attack each other and fight, and one is killed in the heat of blood, that is manslaughter; but where one is the aggressor, pursues his insult with his sword, and kills the person attacked without any provocation on his part, though on a sudden, the law implies malice, and this is murder.

The *Proceedings* report that the prisoners were given a chance to respond to Page's instructions:

> The court indulged the prisoners, to remind them if any thing that they thought material on their behalf, had been unobserved in summing up so long an evidence, and took notice accordingly to the jury of what they mentioned.

But according to Johnson's report, when Savage objected to some of the judge's comments about his attempts to escape, he was quickly slapped down:

> Mr Savage, hearing his defence thus misrepresented, and the men who were to decide his fate incited against him by invidious comparisons, resolutely asserted that his cause was not candidly explained, and began to recapitulate what he had before said with regard to his condition, and the necessity of endeavouring to escape the expences of imprisonment; but the

> judge, having ordered him to be silent, and repeated his orders without effect, commanded that he should be taken from the bar by force.[41]

Finally, after a trial lasting eight hours, the jury gave their verdict:

> That Richard Savage and James Gregory were guilty of murder, and that William Merchant was guilty of manslaughter.

Merchant, who had started the affair when he burst into the room, intruding himself in front of the fire and kicking over the table, had not been carrying a sword and so could not be found guilty of murder, but Gregory, although only an accomplice, could be. In cases involving murder, accessories to the crime were deemed equally culpable, and liable to the same punishments, as the principal.

Savage and Gregory were taken back to Newgate Prison, where as felons convicted of a capital offence they were closely confined and loaded with irons weighing 50 pounds. Four days later they returned to court to receive their inevitable death sentence. As was customary, the prisoners were first given the opportunity to address the court. Experienced writer that he was, Savage delivered the following finely worded oration:

> It is now, my Lord, too late to offer any thing by way of defence or vindication, nor can we expect from your Lordships, in this court, but the sentence which the law requires you, as judges, to pronounce against men of our calamitous condition. But we are also persuaded that as mere men, and out of this seat of rigorous justice, you are susceptive of the tender passions, and too humane, not to commiserate the unhappy situation of those whom the law sometimes exacts from you to pronounce upon. No doubt you distinguish between offences which arise out of premeditation and a disposition habituated to vice or immorality and transgressions which are the unhappy and unforeseen effects of a casual absence of reason, and sudden impulse of passion. We therefore hope you will contribute all you can to an extension of that mercy, which the gentlemen of the jury have been pleased to show Mr Merchant, who (allowing facts as sworn against us by the evidence) has led us into this our calamity.[42]

Page, the 'hanging judge' was not moved, and the two were duly sentenced to hang.

There followed the usual attempts by their friends to solicit a pardon from the crown. Incredibly, these did not include Savage's mother, who maintained her lifelong hostility to her illegitimate son. Citing an earlier incident in which Savage had managed to find and enter his mother's house in order to seek a reconciliation, his mother spread the story that he had attempted to murder her in her own home. This led the queen to state that:

> However unjustifiable might be the manner of his trial, or whatever extenuation the action for which he was condemned might admit, she could not think that man a proper object of the king's mercy, who had been capable of entering his mother's house in the night, with an intent to murder her.

Fortunately, Savage also had friends in high places. Only a week after the trial concluded, Charles Beckingham, a fellow poet and playwright, wrote a short six penny pamphlet, *The Life of Mr. Richard Savage*. This included 'A Letter to a Noble Lord on behalf of Mr Savage and Mr Gregory', a plea to this unidentified Lord (who turned out to be Lord Tyrconnel) to intercede for them. Not only was Savage described as 'a man of virtue and of honour, sufficient recommendation for your lordship to intercede for him', but some new evidence was presented about the witnesses who had testified against him:

> Blot out the unhappy moment which was the source of his present calamity, and Savage will appear unsullied in virtue and honour; nor will that appear so black, if murder in any case may be extenuated, when we consider the evidences who cast him; three women, my Lord, who have since contradicted what before they had sworn, the other evidence, a man, by report of no amiable character; but who are said to have most grossly misrepresented the fact, and to have industriously spread that misrepresentation. The reputations of Mr Savage and Mr Gregory have been always clear; nor are they in any action of their lives to be lamented by their friends but on this melancholy occasion. The first I have known and conversed with for several years, and can more fully speak of him. I have discovered in him a mind incapable of evil; I have beheld him sigh for the distressed, when more distressed himself.

The plea concluded:

> Since it is plain, the public may be a loser by the death of these gentlemen, and none but the grave can be a gainer, there is great reason to hope for a pardon, or an extensive reprieve.[43]

Lord Tyrconnel obliged and petitioned the king and queen, but according to Johnson, Savage's life was saved primarily by the intervention of the Countess of Hertford:

> Who engaged in his support with all the tenderness that is excited by pity, and all the zeal which is kindled by generosity; and, demanding an audience of the queen, laid before her the whole series of his mother's cruelty, exposed the improbability of an accusation by which he was charged with an intent to commit a murder that could produce no advantage, and soon convinced her how little his former conduct could deserve to be mentioned as a reason for extraordinary severity. The interposition of this lady was so successful that he was soon after admitted to bail, and on the 9th of March 1728, pleaded the king's pardon.[44]

Gregory was also pardoned. Judge Page controlled his own court and, within limits, could effectively ensure that the sentence he wanted was passed, but even he could not overrule the collective influence of the English aristocracy.[45]

Conclusion

Readers were consistently drawn to the *Proceedings* because the trial reports they contained were full of drama and surprise. Defendant testimonies gave readers a rare opportunity to hear the genuine voices of criminals pleading for their lives. In the *Proceedings* they found the majesty of the court challenged by the defiance of highwaymen and murderers and read of elite men and women put on trial just like common criminals. But the drama of the Old Bailey courtroom was gradually eroded over the century as professional lawyers began to shape the trial to suit their own interests. Trials became increasingly stage managed. Prosecution lawyers read lengthy prepared speeches in opening and closing statements, and the pleadings of prisoners at the bar were ghost written by their counsel. Lawyers argued detailed points of law with the judge while the accused and accusers sat in silence. The most dramatic moment in any trial, the moment the defendant pleaded his case with his life on the line, was often erased altogether when his lawyer did not even permit him to speak. But some aspects of the drama remained. No one could completely dictate the decisions taken by the jury, which frequently remained independent minded and occasionally perverse, producing verdicts at odds with the evidence presented. Neither could the witnesses advanced on each side be counted on to toe the line. Character witnesses were sometimes all too honest in their assessments, such as the one who said of the defendant he was supposed to support, 'as for his character, I beg to be excused from saying anything about it'.[46] And the overwhelming significance of what was at stake was unchanged: an unlucky few would be convicted and hanged, while the majority of the accused escaped with lesser punishments or even walked free.

Tales from the Hanging Co has been added to your Basket. Add to Basket. Buy Now.Â Time Out In its heyday the court was a soap opera of intrigue, sensation and murky goings on where authors such as Dickens and Defoe would go for inspiration. Thieves and murderers were often caught by members of the public and prosecutions brought by victims. Hitchcock and Shoemaker chart an increasingly sophisticated society taking crime and punishment away from the anarchy of the London mob to put it into a court where a judge and jury meted out justice. The authors paint a vivid picture of a flourishing city where market capitalism and Enlightenment thinking battled to impose order on the Tales from the Hanging Court. London and New York: Bloomsbury Academic. p. 270. ^ C, Dickens (1992). Oliver Twist. Ware: Wordsworth Editions Limited. pp. 54â€“63. ^ Defoe, Daniel," The history and remarkable life of the truly honourable Colonel Jacque commonly called Colonel Jack", p. 85. ^ D, Defoe (1904). Tales from the Hanging Co has been added to your Cart. Add to Cart. Buy Now.Â "Hitchcock and Shoemaker feel no need to jazz up this rich period detail to bring it to life, and maintain a scholarly distance from the material...in doing so, they leave room for an even more interesting account of a society's dawning realization, over the course of a revolutionary century, that crime and punishment needed to be taken out of the hands. The article reviews the book "Tales from the Hanging Court" by Tim Hitchcock and Robert Shoemaker. Original language. English (US). Pages (from-to). 791-793. Number of pages. 3.Â Fingerprint Dive into the research topics of 'Tales from the Hanging Court'. Together they form a unique fingerprint. Hitchcock Arts & Humanities. View full fingerprint. Cite this. APA. Standard. 42 Tales from the Hanging Court. swords and were frequently fatal. But as the century wore on, the pistol replaced the sword, making duelling both more formal and, ironically, safer, owing to the clear rules which limited their use.Â Those responsible for causing deaths in fights and duels were always tried for murder, but sympathetic juries normally gave a verdict of manslaughter, under the pretence that the killing was not premeditated. Whereas most male violence happened in public and involved other men, female violence typically occurred in or around the home, and claimed its victims from members of the household, both male and female. Women did not carry weapons, but there were plenty of possible instruments ready at hand, not least kitchen knives and pots and pans.