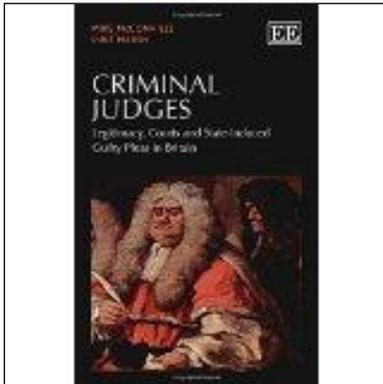


**CRIMINAL JUDGES**  
**Legitimacy, Courts and State-induced Guilty Pleas in Britain**

*Mike McConville and Luke Marsh*

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*Book Review by Sally Ramage*

## *Criminal Judges* –painting on book cover



*The Bench* by William Hogarth (1758)

### **Introduction**

It is very exciting to see this book published simply because in Britain there is a dearth of writing about judges. Firstly, this book is very attractive to look at and in a tactile way. It is a comfortable size for a good read anywhere and its front cover boasts a copy of the painting by the British artist William Hogarth- '*The Bench*' (1758). It is an enormous pleasure for me to tell you about this painting and why it is relevant to this legal work by McConville and Marsh.

The renowned artist William Hogarth (1697-1764) was a prolific English artist- a painter, printmaker, pictorial satirist, social critic, and editorial cartoonist. He was born in London to British parents- a schoolmaster and a female writer. At the time, competition among artists was robust because since the 16<sup>th</sup> Century there was a tradition of painters from the

Low Countries working and forming communities abroad as they used to do in Rome, for example. This was partly due to economics and partly religious. In the *Epistle dedicatorie* to his manual *Graphice* (London, 1612), Thomas Howard, Earl of Arundel wrote:

*'Onely (sic) I am sorry that our courtiers and great personages must seeke ferre and neere (sic) for some Dutchman or Italian to draw their pictures and invent their devises (sic), our Englishmen being held for Vainients.<sup>1</sup>'*

## **Britain's Criminal Justice System throughout the ages**

In order to get a full perspective of criminal judges in the present day, one needs to look at the justice system, not only in the 16<sup>th</sup> Century but also in centuries before that time and so we shall take a whistle-stop tour of the past situation in order to show how much progress has been made through education, religion and culture:

### **390-460 CE- Ireland's Jurisprudence changed from oral to written law**

It is said that Saint Patrick changed Ireland's laws in the period 390 CE to 460 CE from oral judge-made law (Brehan or breitheamhan) to detailed written laws and legal opinions (Senchus Mor and related volumes). Unlike Charlemagne's laws which illustrated how the strata of society was treated differently, Ireland's written law was the opposite of this and in Ireland, people of a higher rank who transgressed were often punished more severely than those of lower rank. One who was owed a debt would collect by sitting on the stoop of the debtor and fasting, knowing that if he starved to death the debtor would be charged with murder.

### **750 CE-Lex Frisionum influenced King Charlemagne**

In 750 CE the *Lex Frisionum*, French and German laws compiled in the time of Charlemagne may have influenced the king in drafting the *Capitulary for Saxony* (775-779 CE). The *Lex Frisionum* was highly religious though secular, and based on superstition and tradition but with no rationality.

The following are examples from the *Lex Frisionum*:

#### **Lex 1, Title 1**

If a nobleman accidentally kills a fellow nobleman, he must pay a fine of 80 solidi.

If a nobleman accidentally kills a freeman, he must pay a fine of 53 solidi.

If a nobleman accidentally kills a serf, he must pay a fine of 27 solidi.

#### **Lex 1, Title IV**

If a man kills a slave person, he must pay a fine subject to his own discretion.

If a man kills a 'hawk dog' or a beagle, he must pay a fine of 4 solidi.

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<sup>1</sup> The word 'Vainients' meant 'worthless persons'. See Peach, H (1612) *Graphice* (London). See also, Talley, M.K. (1981) *Portrait painting in England: Studies in the technical literature before 1700*, London: Paul Mellon Centre for Studies in British Art, pp 46-7.

If a man cuts off the moustache of another man, he must pay a fine of 4 solidi.

If a man kills a dog trained to kill a wolf, he must pay a fine of 3 solidi.

If a man kills a watchdog, he must pay a fine of 1 solidus.

If a man kills a domestic dog or a pet dog, he must pay a fine of 1 tremisse.

**Lex 1, Title V**

A person who kills an arsonist pays no fine.

A mother who starves or strangles her newborn baby pays no fine.

**Lex 2, Title XIV**

If a man was killed during a riot and the killer became lost among the crowd, a reward seeker could accuse seven men of manslaughter.

**775 CE- Britain forcibly converted to Christianity**

King Charlemagne forced the Saxons in central and Western Europe to Christianity. The son of Pippin the Short, King Charlemagne (who himself was over six foot tall) was one of the most devout of rulers.

**785 CE- Lex Saxonum**

The *Lex Saxonum* is a series of laws issued by Charlemagne in 785 CE as part of his plan to subdue the Saxon nation. The law is thus a compromise between the traditional customs and statutes of the pagan Saxons and the established laws of the Frankish Empire. Charlemagne passed the *Capitulary for Saxony* (785 CE), a Penal Code, relating to issues of religion. Some of the articles set out were as follows:

**Article 4**

In this code was included Christian Lent period (in Article 4 of the *Capitulary for Saxony*).

**Article 6**

Any person, who burned an innocent woman at the stake because his association with the devil misled him to believe that the woman was a ‘man-eating witch’, was executed.

**Article 7**

Anybody who performed cremation of a corpse instead of its burial was to be executed, according to Article 7 of the *Capitulary for Saxony*.

**Article 8**

Similarly, the punishment of execution was the punishment to be meted out for anyone who ‘scorned a baptism’ according to Article 8 of Charlemagne’s penal code.

**Article 9**

Consorting with the devil and sacrificing an innocent woman to demons by burning her at the stake and sharing and eating her flesh, was punished by execution.

## House of Lords

During this period, Britain's House of Lords proposed, considered, noted, accepted, rejected, and expedited laws in a monopolistic and undemocratic fashion. Some of the work of the House of Lords can be illustrated in the laws they then passed:

Year of House of Lords' statute	Title of statute
1483	Slaughter of Beasts Act
1530	Concerning outlandish people calling themselves Egyptians Act
1532	Against the Killing of Beasts called Weanlings Act
1540	Horsebread Act
1540	Stealing hawks' eggs Act
1541	Worsted Yarn Act
1543	True Making of Pins Act
1547	Worsted Yarn Act
1548	Abstinence from Flesh Act
1548	Gads of Steel Act
1551	Against unlawful and deceitful stuffing and making of featherbeds Act
1604	Restraining all Persons from Marriage until their former wives and former husbands are dead Act
1606	Reform Multitudes and Misdemeanors of Attorneys and Solicitors- at -law and Avoid Sundry Unnecessary Lawsuits and Law Changes Act
1606	True Making of Woollen Cloth Act
1606	Unlawful Hunting and Stealing of Deer and Ponies Act
1606	Reformation of the Common Sin of Swearing Act
1606	Better Discovering and Repressing of Popish Recusants Act
1606	Put Down the Multitudes of Unnecessary Brokers and Avoid Occasion of Infinite Idleness and Stealths Act
1606	Prohibiting All Such from Brewing Beer and Ale Act
1606	Better Explaining of a former act Act
1606	Restrain the Transportation of Coloured Cloths Undrest Act
1606	Restrain Loathsome Sin of Drunkenness Act
1606	Against Scandalous and Unworthy Ministers Act
1606	Abate and Restrain the New Erection of Wears, Stanks, Kiddles and Other Obstructions Act
1606	Restrain Abuses of Players Act
1623	Heron's Fish-curing Patent Void Act
1623	Horsebread Act
1650	Suppressing the Detestable Sin of Incest, Adultery and Fornication Act
1661	Preventing the mischief and dangers that may arise by certain persons called Quakers Act
1677	Burying in Woollen Act

### **Bawdry Courts of the sixteenth and seventeenth Centuries**

British Churches supervised the British criminal justice system in the sixteenth and seventeenth centuries and this justice system was parallel to the Government system, with quasi-religious Tribunals called 'Bawdy Courts'. Bawdy Courts were responsible for punishing 'whoredom'; adulterous criminal conversations and assorted frivolity and 'horseplay.'

#### **Some Bawdry court cases at this time period**

- (i) In one case, a man named Lawrence Heath was punished for showing up 'drunk' in church, according to local historical records.
- (ii) In another case in 1608, thirty-five persons were charged for watching a football game when they should have been attending church services.
- (iii) In another case, a woman locally known as 'Elizabeth "Few Clothes" Smyth' was charged with committing adultery with two men, one of whom was allegedly a 'wizard.'
- (iv) A man named Walter Garlick was charged because he had boasted to others that he could 'have fourteen women' at his pleasure.
- (v) A clergyman named Thomas Holden was charged with 'drinking, brawling and whoring'.
- (vi) A woman known as Mrs Agnes Ridge was charged with 'throwing rocks at her mother-in-law'.
- (vii) A local blacksmith Thomas Richardson, together with his 'hooligan' associates were charged with picking the lock of the church belfry and ringing the church bells every evening for three whole weeks, often until very late at night. This nuisance had attracted some young 'maidens' who joined in this fun until one female unfortunately became caught up in the belfry ropes and fell headfirst all the way down, ending in her becoming comatose.
- (viii) A woman named Anne Jillman was charged with giving birth to an illegitimate child but pleaded for forgiveness, which was granted after she knelt at the front of the church, wearing a white sheet, holding a white rod in her hand, and listening to a sermon denouncing her act of fornication.

### **Judges and criminal courts in modern Britain**

Britain has moved on since the years of 'trial by ordeal': ordeal from bread and cheese from 924 to 939 CE; water ordeal; fire ordeal; etc. Twelve years ago Britain's criminal law, by way of the Criminal Justice Act 2003, began to slowly change from a common law criminal justice system to a partly codified criminal justice system.

The Christian church no longer dictates the law. Rather, it is the Queen who appoints judges. For example, on 22 May 2015, it was announced that the Queen has approved the

appointment of Alistair William Orchard MacDonald, QC, to be a Justice of the High Court with effect from 2 June 2015.

The criminal justice system today is highly regulated by criminal procedure rules, updated as necessary. Judges in the High Court and also in the Appeal Court must follow the Sentencing Guidelines. There is a structured appeals system and a judicial review system.

## **Britain's Modern Criminal Justice System**

The Criminal Justice System is made up of the many agencies who deal with crime, prosecute crime, sentence convicted criminals, hear appeal cases, deal with possible miscarriages of Justice, uphold the Rule of Law and comply with the citizen's human rights, among other functions such as police stations upkeep, professional training, licenses, prisons, and the law relating to all these agencies.

### **Rule of Law**

Police forces in Britain are most probably the best police forces in the whole world despite their very rare use of guns, unlike the United States police officers, many of whom die every single day due to the whole country's use of guns for legal and illegal reasons.<sup>2</sup> Comparative policing has only recently become a significant feature of police studies as compared to other social science disciplines.<sup>3</sup> Meaningful academic and insightful research into the modern police service has been conducted in Britain in recent decades and many believe that a more formal introduction of social sciences and methods needs to be conducted into the British police organisation.<sup>4</sup> *'Credible research is the life-blood of good policy-making, regardless of which organisation it relates to, as the data enables successful implementation of policy.'*<sup>5</sup> Police reform continues in Northern Ireland with the progression of devolved politics and policing. Since 2013, Scotland has formed a single police force for Scotland. In 2012, England and Wales 'major constitutional change' took place when Police and Crime Commissioners were introduced.

### **Analysis of the work of judges**

There are dozens of studies relating to judges in many parts of the United States. However, in Britain, it appears that judges are most feared and legal scholars have systematically avoided this area of research, for the legal profession, of all professions, is deeply entrenched in the 'old boy's tie' system of governance and comes only second in the list of the most opaque industry, after stock-broking and fund managers in the investment sector.

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<sup>2</sup> Mawby, R.I. (Ed.) (1999) *Policing across the world: Issues for the Twenty-first Century*, Abingdon, UK: Routledge.

<sup>3</sup> *Ibid* <sup>2</sup>.

<sup>4</sup> Daniel Donnelly, 'The Police Officer as social scientist – some reflections', *The Police Journal*, Vathek Publishing, Volume 86, Number 1, 2013, pp 53-65.

<sup>5</sup> *Ibid* <sup>2</sup> at pg. 55. See also Lustgarten, L. (1986) *The governance of police*, London: Sweet & Maxwell.

Lord Bingham, said to be 'the most eminent of our judges, ' held office successively as Master of the Rolls, Lord Chief Justice of England and Wales and Senior Law Lord of the United Kingdom. He became a life peer, as Baron Bingham of Cornhill in the County of Powys, on becoming Lord Chief Justice in 1996. In 2005 he was appointed a Knight of the Garter, the first professional judge to be so honoured. He retired in 2008, and in the same year was elected by the *Institut de France* as the first winner of the Prize for Law awarded by the Alexander S. Onassis Public Benefit Foundation.

### **Remoteness of judges**

There is often a perception that judges are remote from the communities they serve and that they have little idea of 'real life'. It is difficult to dispel this myth because invariably only those decisions deemed to be controversial will be seen in public, which perhaps then leads to the perception that judges are out of touch. Members of the judiciary are involved in a wide range of work beyond hearing cases in court including work on: Local Justice Boards; Court Boards; Parole Boards; Mental Health Review Tribunals; and Work at mock trial competitions.

Magistrates form the core of the judiciary, hearing some 97% of all criminal cases.

They are volunteers, requiring no legal qualifications, and come from a wide range of backgrounds and cultures.

Judicial office-holders at all levels are active in ensuring the justice system runs smoothly in their local areas.

### **Local Criminal Justice Board**

Each Local Criminal Justice Board has a circuit judge who sits in the area, as a Liaison Judge. The circuit judge is not a member of the board because that would be incompatible with the independent position of the judiciary. However the judge receives all the minutes of the meetings and is encouraged to attend certain of the meetings when particular issues relating to the judiciary or the judicial system are raised. The key objectives of the Local Criminal Justice Boards include reassuring the public and boosting confidence – especially that of victims and witnesses – in the criminal justice system, by reducing the fear of crime and the adverse effects of being a victim of crime. In many areas the Local Criminal Justice Board has been responsible for having open days when the public is invited into local courts and watch or take part in mock trials and other court hearings. Judges play an active part in such open days both in mock hearings and in meeting the public and answering questions about the law, court procedures and the life of a judge. These days seem to be very popular with the public who attend in considerable numbers.

### **Court Boards**

Section 4 Courts Act 2003 established Courts Boards. Each local justice area has such a court board with the express duty to scrutinise, review, and make recommendations about the way in which the Lord Chancellor is discharging his general duty in relation to the courts in its area, and to consider the draft and final business plans relating to those courts. Each court board has a minimum of *seven members* to include:

- (i) one judge
- (ii) two magistrates
- (iii) two people with knowledge or experience of the local courts and
- (iv) two people who are representative of the local community.

The court boards meet at least *six times a year* and one of the meetings is open to the public. Many judges find the involvement of local people who are not lawyers refreshing and challenging. Many boards are keen to inform and educate the public in the work of the courts and aim to ensure that those using the courts should feel confident in the local justice system.

### **Judicial Conduct Investigations Office**

The Judicial Conduct Investigations Office (JCIO) (formerly the Office for Judicial Complaints) supports the Lord Chancellor and the Lord Chief Justice in their joint responsibility for judicial discipline. It seeks to ensure that all judicial disciplinary issues are dealt with consistently, fairly, and efficiently. The JCIO operates in accordance with the Judicial Discipline (Prescribed Procedures) Regulations 2014 and the supporting rules. It can only deal with complaints about a judicial office-holder's personal conduct – it cannot deal with complaints about judicial decisions or about case management.

Welcome to the Judicial Conduct and Investigations Office (JCIO). The JCIO took over the responsibilities of the Office for Judicial Complaints (OJC) on the 1st October 2013.

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