The Judicial system

The present English legal system owes much to the nation's history and it has evolved as time has passed. Although the Romans brought the laws with them when they established the Roman province of Britannia, this system essentially collapsed at the end of Roman rule.

With the arrival of the Anglo-Saxons and the establishment of the Anglo-Saxon kingdoms in the early medieval period, a new set of laws came into being, with many of their principles becoming enshrined in modern law. The new group of Saxon kings naturally expected their subjects to behave in an orderly way, which was called '*keeping the peace*'. A crime was something that broke the peace with more serious crimes being said to be against the '*King's Peace*'. As time passed all crimes were judged to be against the 'King's Peace'.

In this period, it was the job of every citizen to see that the law was not broken and if it was, then it was the duty of all men in the community (between the ages 12 to 60) to catch the person who broke the law. This commitment was known as the 'frankpledge'. At this time, the smallest administrative unit was the 'tything', which was a group of about 10 families (the average number of families that lived in a small hamlet) and the head man of this group was called the 'tythingman'. It was his duty to maintain the frankpledge and to keep the King's Peace amongst those who lived in his tything.

If anyone in the tything saw a crime being committed they had to raise the '*hue and cry*' – by making as much noise as possible to alert everyone else. Upon hearing this, everyone had to stop what they were doing and pursue the criminal. If the offender escaped, then the whole tything was punished, usually being fined. When the offender was caught they would be taken before a court (or 'moot' as it was known) and judged by the elders of the village/hamlet. If the offence was deemed to be serious, the offender would be taken by the tythingman and presented to the 'hundred court' (a hundred was a subdivision of a shire for legal, administrative and military purposes and is roughly akin to a District Council today). Alternatively, they could be taken to the Shire court. The head of the hundred court was a '*reeve*', while the head of the Shire and Shire court was the '*Shire-reeve'* or 'Sheriff'. The latter was responsible to the King for keeping the peace in the Shire.

After the Norman Conquest, the Norman Kings retained many of the Anglo-Saxon laws, primarily because they worked well and the population were used to them. The major change was that most of the Anglo-Saxon Sheriffs were replaced by Normans. As time passed a further change was the adoption of the feudal system, with the 'manor' generally replacing the old tything as the smallest administrative unit. The manor was an estate granted from a superior lord or even the King himself to an individual (usually as a reward). This person became 'lord of the manor' and it was his responsibility to organise the life of the estate for his own profit but also to protect the rights of the workers living there in return for some of their labour.

One of the most important aspects of the Manorial system was its courts. There were two courts, the 'court baron' and 'court leet'. The court baron met every two or

three weeks and dealt with such matters as the transfer of land, the organisation of the common fields and meadows, the abatement of nuisances' (such as defective hedges, blocking of paths, straying beasts, etc) as well as anything concerning the occupations of the inhabitants, which in most manors were agricultural. This court was run by the lord's Steward, who kept a watchful eye over the lord's rights, including rentals, heriots and boon work.

The 'Court Leet' looked after the manor's common or criminal law and usually met twice a year. Officially criminal law was still the realm of the hundred courts but the Lord of the manor could apply to the Crown to have the rights of the hundred court applied to them for use in their own manors. The manorial officer responsible for help the lord of the manor keep the King's Peace was the 'constable'. This was an unpaid elected position and the duties included reporting any bad behaviour to the manorial court, raising the 'hue & dry', arresting criminals, detaining criminals, bringing them before the court and also administering punishments. Punishments handed out by manorial courts for petty offences were usually ones of shame and humiliation, such as ducking stools and stocks. They also devised special punishments to suit specific crimes; one such example was recorded in 1608 when John Taylor was indicted for *'wearinge weomen's apparell'*; his sentence was *'his clothes to be cut and breeches to be mode of them & to be whipped thorowe the citie tomorrowe'*.[1]

During the medieval period, the other courts that had an effect on the population were the Church courts. These courts tried moral crimes and matters of religious nature – such as blaspheming, failure to attend church on Sunday, slander, sexual impropriety, bastardy, heresy, adultery, working or rowdy drinking on Sundays and unseemly behaviour in church and they are often so full of 'wicked' stories that they earned the nickname 'bawdy courts'! The church courts claimed the right to try anyone who was a member of the church and punishments were usually based on the guilty having to perform public penance. A typical act of penance might be having to kneel at the front of the church on Sunday and listen to a sermon denouncing the sin or crime and then reading a statement apologising and asking for forgiveness. Although the church courts did not have any say regarding civil crime, one aspect was that a criminal could enter a church and claim 'sanctuary'. In some cases it was a race between the criminal or suspect and the constable as to who could get to the church first, for a constable could prevent a suspect from reaching sanctuary.

Sanctuary was recognised by the Crown and regulated by English law up until the end of the 1600s. If a criminal chose to seek sanctuary they were placed under the jurisdiction of the head of the church or abbey where they had fled. They also had to surrender all weapons and make a full confession. They then had 40 days to make a choice: either surrender to the secular authorities and stand trial for their alleged crimes or, confess their guilt and be sent into exile ('abjure the realm') by the quickest route and never return without the King's permission. If they did return they would face summary execution and excommunication by the church.

If a suspect chose to abjure the realm, they had to do so in a public ceremony at the gate of the church grounds. They also had to surrender possessions and property to the Crown. The local Coroner would then decide the port where the fugitive should leave England. The fugitive would then set out barefooted and bareheaded, carrying a wooden cross-staff as a symbol of church protection.

The next major development for the criminal justice system was the creation and signing of Magna Carta in 1215, but although it is often seen as the foundation of English liberties – establishing the right to trial by jury and *habeas corpus* (the premise that imprisonment without charge and due process of law was unlawful) – in reality it was quite limited and dealt primarily with baronial rights. In 1361, Edward III introduced a new statute that established the Justices of the Peace (JPs) and gave them the power to try minor offenders. The JPs could issue warrants for arrests, take sureties for good behaviour and detain those who would or could not pay. They could also summon criminal suspects to their court where they would hear the case and determine innocence or guilt (these were termed 'bench trials, hence the phrase being '*brought before the bench*').

These courts became known as the Petty Sessions and they generally dealt with minor crimes (i.e. such as petty theft, prostitution, public intoxication, simple assault, disorderly conduct, trespass and vandalism). Punishments for these crimes tended to be financial with fines being imposed by the court or physical, with punishments such as the stocks or pillory, branding, flogging or amputation. With the decline of the manorial courts, the petty sessions became more important and busy and it became increasingly common for them to be held regularly in each district with 2 judges sitting.

If the offence was deemed more serious then the justices of the peace would refer the accused by the process of indictment to the Quarter Sessions, where a trial by jury would take place before JPs. The Quarter Sessions met 4 times a year (at Epiphany, Easter, Trinity and Michaelmas) and as well as their criminal court duties, they came to undertake a wide range of administrative duties such as licensing and regulation, upkeep of roads and bridges and to oversee the operation of the poor laws. The Quarter Sessions were usually held at Gloucester, although were occasionally held elsewhere (Cirencester and Tetbury were among the places). Gloucester and Tewkesbury had their own quarter sessions which were separate to the main county sessions.

The quarter sessions however did not have jurisdiction to hear the most serious crimes so these crimes were sent for trial at the Assizes. The Courts of Assize, or Assizes, were the most important courts in England and Wales and were held periodically by judges appointed by the Crown. There were 6 assize circuits, with Gloucestershire being on the Oxford Assize circuit. The assizes visited twice a year and were usually held in Gloucester. The court mainly dealt with capital crimes which carried the death sentence. These included homicide, infanticide, rape, robbery (of goods worth over 1s – about £10-£20 today), burglary, larceny, forgery, arson and highway robbery. As time passed more and more crimes were punishable

by death. In the late 1600s there were 50 capital offences but by the 1800s this had increased to 223!

Convicted criminals were executed in public spaces near to the court and executions became major attractions. At Gloucester, executions prior to 1792 had taken place at the nearby village of Over and the condemned were conveyed to the gallows across Westgate Bridge and Over causeway in carts, sitting on their own coffins. After this date hangings were carried out using a new gallows erected on the roof of the prison gatehouse. The first hangings here took place on 14 April 1792 when Londoner, Charles Rachford and Irish born John Hughes were executed for a series of highway robberies around Westbury-upon-Trym. The last public execution was in 1864 after which hangings were undertaken out of public view and in a private chamber. The last ever execution at Gloucester was in 1939.

Given the number of crimes punishable by death it will come as no surprise to know that of the 123 people hanged at Gloucester Gaol between 1786 and 1836, the majority were not convicted of murder. A typical case was that of Dinah Riddiford (aged 69), who was executed for stealing bacon, butter and other articles in 1816. The harshness of the law left some judges reluctant to convict people for minor offences that carried the death penalty. Even if the suspects were convicted, they were often reprieved or pardoned and instead, given sentences of transportation or occasionally imprisonment. In the Assizes of August 1816 - when the above-mentioned Dinah Riddiford was condemned - a total of 17 death sentences were passed, but only 1 other execution was carried out and all the others had their death sentences commuted to transportation overseas (this included Dinah's son and co-defendant, Luke).

Throughout all these various courts and times, one interesting fact is that the accused generally had to argue their own case, a state of affairs that remained into the early 20th century.

[1] http://www.history-on-the-web.com/index.php?option=com_content&view=article&id=8:brief-history-of-the-legal-system&catid=7:crime&Itemid=8