RALEIGH LECTURE ON HISTORY

# SOME REFLECTIONS OF A MEDIEVAL CRIMINOLOGIST

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KING Edward I's reign has been pronounced an age of lawlessness. The first Statute of Westminster laments the widespread breaches of the peace.[1] It prescribes remedies, yet ten years later the Statute of Winchester declares that felonies increase from day to day.[2] Over the king's first nineteen years it is necessary to appoint nearly forty groups of special commissioners to seek out, arrest, and sometimes try ill-doers.[3] *Ad hoc* panels of justices multiply to try specific appeals of felony. Hardly known before, they number fifteen in 1277–8 and forty six years later. There are close on 220 in all in those nineteen years.[4] Orders to the public to support sheriffs in their efforts to arrest issue concurrently and often. Things get no better later on. The system of gaol delivery is forced to don in 1292 a more professional uniform.[5] In 1294 conspiracy and maintenance are found endemic in northern England.[6] Maintenance has to be statutorily forbidden in 1300.[7] With conspiracy, it is legally defined soon after.[8] In 1300 felonies are said to have increased 'immeasurably' and the provisions of the Winchester statute are consequently reinforced.[9] In 1304 it is

[1] C.1.: *Stat. of Realm*, i. 26.

[2] Ibid. 96.

[3] Digested mainly from *Cal. Pat. R.* To those commissions must be added (i) the peace commission of 1281–2 (*Parl. Writs*. i. 284 no. 9) and (ii) an unenrolled vagabond commission of 18 Nov. 1276, the records of which survive in a gaol delivery roll (J.I. 3/85) (see p. 103).

[4] Digested from *Cal. Pat. R.* The number of commissions fluctuates. There is a severe falling-off between 1285–6 and 1289–90, perhaps due to Stat. of Westminster II, c. 29, which in intention limits such commissions.

[5] R. B. Pugh, *Imprisonment in Medieval Eng.* 279–80.

[6] *Select Cases in King's Bench*, iv (Selden Soc. lxxiv), p. liv.

[7] *Stat. of Realm*, i. 139 (*Articuli super cartas*).

[8] Ibid. 145.

[9] Ibid. 140.

necessary to set up the first trailbaston commissions to deal with roving criminal gangs. It seems clear enough that such special measures would never have been taken,[1] the gloomy phrases never incorporated in the statutes, if there had not been a strong contemporary presumption that disorder was ubiquitous and the ordinary channels of justice insufficient to contain it. Superficially the reign looks like a criminologist's paradise.

It is, however, hard to test the presumptions by reference to the actual records of adjudication. Those records—and also the gaps in them—are dauntingly abundant; the records moreover are judicial and the extent of crime can never be measured by judicial means alone; crime then extended beyond felony to certain types of trespass, and, though the two may now seem sociologically identical, they were then legally discrete. Firm conclusions, therefore, are hardly attainable. Experiments, however, can be made at certain points by sampling.

For various reasons the rolls of gaol delivery courts furnish the best sampling material and among the courts Newgate is by far the best to choose.[2] By 1272 the delivery of that gaol had become regular,[3] its records are nearly complete for the whole reign, it served both urban London and rural Middlesex, and it was freely used for men brought in from other counties.[4] It was, too, as Fleta confirms,[5] perpetually accessible to those prisoners whom men who had turned king's evidence—the king's approvers—had delated. It provides, therefore, as no other delivery court could do, a wide geographical coverage. Moreover the number of arraignments is absolutely large. In preparation for today the rolls for twenty-eight years have been completely read.[6] Excluding the delivery by trailbaston justices that occurred at the close of the reign and by vagabond commissioners who sat at the beginning, something like 2,500 judgements were delivered. This number, about eighty-eight a year, seems a sufficient basis for conclusions.

[1] For the commissions issued in a single county see *Victoria County Hist., Wilts.* v. 41.

[2] See note on gaol delivery rolls on pp. 103, 104.

[3] Pugh, op. cit. 290.

[4] Prisoners from the adjacent counties of Essex, Surrey, Kent, and Hertfordshire, in that order, are particularly numerous. Over twenty-eight test years only seven counties are unrepresented.

[5] *Fleta*, ii (Selden Soc. lxxii), 93.

[6] The 24th, 25th, 26th, 28th, 29th, and 31st years have been omitted. The roll for the last is almost completely illegible.

Though there is much annual variation, there is the strongest probability that deliveries were always frequent. The minimum yearly average is about sixteen. Such frequency gave scope for speedy justice. Indeed the committal of an alleged offence and the arraignment of the offender might not be separated by more than two or three days or even a single day.[1] Conversely the interval might be as much as two years[2] or more—a testimony to the determination of the justices to settle cases.

Of that determination there is other evidence. In only 14 per cent of the cases has it proved impossible to detect a conclusion and that percentage includes not only cases that petered out but those where the sources are illegible or where the culprit died untried. Probably the proportion was lower. This starkly contrasts with litigation in the contemporary King's Bench, where (as has been said) many a case 'simply disappears from the rolls after repeated attempts . . . to get a jury into court'.[3]

Prisoners reached Newgate chiefly in three ways: by appeal or prosecution by private individuals; by indictment or laying a formal charge in a lower court for adjudication in a higher; and by simple arrest upon suspicion. Of these the last seems much the commonest. Men are 'taken', 'hither sent', or charged at 'the king's suit'.[4] Usually we know no more, but ten times the arrests are made expressly by sheriffs at the instance of the Crown or of the Newgate justices themselves.[5] There are also twenty-five arrests, with no apparent orders from the Crown, by officials ranging downwards from the Treasurer[6] to the king's serjeants-at-arms.[7] Appeals are numerous—some made by the innocent, more by approvers. The innocent appellor was a vigorous prosecutor, about fifteen charges being laid yearly at his initiative. Indictments are hard to number. The word seems

[1] e.g. robbery on 16 June 1290 at the Hospitallers' church, London, tried on 17 June: J.I. 3/87 rot. 1d.; larceny in house of bp. of St. David's on 3 Feb. 1290, tried on 6 Feb.: ibid. rot. 7d.

[2] e.g. larceny in Cannon St., London, on 9 Aug. 1285, tried on 7 July 1287: J.I. 3/36/1 rot. 26d.

[3] *Select Cases in King's Bench*, ii (Selden Soc. lvii), p. cii.

[4] Esp. frequent in 1272–6.

[5] For instructions to arrest issued by the justices (1285) see J.I. 3/35B rot. 11 (case of Walt. le Bleter).

[6] Case of John of Winchelsea (1291): J.I. 3/36/2 rot. 11.

[7] Case of Robt. de Wodeham (1290): J.I. 3/36/1 rot. 7.

often imprecise and to mean no more than 'accusation'.[1] Unambiguous 'indictments' barely exceed sixty.[2] They should have been more frequent[3] and a reaffirming statute of 1285 tried to make them so.[4] The statute, however, makes no noticeable difference to the records.

A close analysis has been made of the actual charges laid at Newgate, just a thousand in all, during the decade from 1281. It is hard to prepare, since suspects were so often charged with more than one offence and it is seldom clear for which offence the guilty were condemned. The gravest charges were forgery and coin-clipping or their abetment. Together they account for 2 per cent of the total, with a condemnation rate of 33 per cent. Homicide comes next, and accounts for 22 per cent of the charges. Where no other charge is added, the percentage of condemnations amounts to twenty-one. Strangely no one is accused of infanticide. No less strange is it that there are only two cases of rape[5] and only six of arson, the second never laid alone but always with some form of theft. False imprisonment is wholly absent. Accusations of prison breach are, however, rather numerous, for within the decade two sensational riots[6] took place

[1] e.g. in 1277 Rose la Walshe was indicted by an approver: J.I. 3/35B rot. 54.

[2] Twenty-six (mostly for homicide) are before coroners, 4 before sheriffs and coroners, 11 before sheriffs (sometimes at tourns), 5 in hundreds, 6 at views of frankpledge, 6 before keepers and constables of the peace, 4 before the king's justices themselves, and a scattering before other courts.

[3] There was a lapse in, e.g., 1283, when the sheriff of Essex and Herts. was amerced for taking Will. and Ric. de Halewell although none prosecuted them: J.I. 3/35B rot. 34d.

[4] Stat. Westminster II, c. 13.

[5] One of these is more like a case of carnal knowledge, i.e. Amice, dau. of John le Poer, who 'roamed away in her play' (1282): J.I. 3/35B rot. 38. Rape was a felony and temp. Hen. III was so treated in eyre, e.g. *Crown Pleas of Wilts. Eyre, 1249* (Wilts. Rec. Soc. xvii), 79–80. By that time, however, the severest penalties were decreasingly inflicted: F. Pollock and F. M. Maitland, *Hist. of Engl. Law* (1911 edn.), ii. 490–1. Westminster I, c. 13, imposed two years' imprisonment on those guilty of 'ravishment' and abduction. This was not a possible punishment for a felon but the statute does not in terms remove rape from the felonies. Westminster II, c. 34, expressly makes 'ravishment' capital. Much later, in indictments by J.P.s, the imputation was treated lightly, i.e. as a trespass: *Kent Keepers of the Peace*, ed. Bertha H. Putnam (Kent Arch. Soc., Recs. Brch. xiii), p. xxvi; *Recs. of Some Lincs. Sess. of Peace, 1360–75*, ed. Rosamund Sillem (Lincs. Rec. Soc. xxx), p. xli.

[6] For the first (1285) see *Chrons. Edw. I and II* (Rolls Ser., lxxvi), i. 93, amplified by J.I. 3/35B rot. 11 (1st, 2nd, and 4th entries); for the 2nd (1288) see J.I. 3/36/1 rot. 17d. (first three entries).

in Newgate and on thirteen other occasions attempts were made to break that gaol or others. There are fourteen cases of wounding and assault, three laid with theft. If laid alone, they were doubtfully felonious.[1] There are one or two cases of fraud which certainly was not a felony.[2] Eighteen persons were charged, sometimes with other offences, with flaying beasts,[3] an offence not known to legal commentators but distinguished in these trials from other stealing. The condemnation rate is as high as 44 per cent.

Theft in various forms is, not unexpectedly, the commonest charge of all.[4] It is imputed under the names of robbery or larceny or more loosely. It is sometimes coupled with burglary or breaking-in—terms which seem to be synonymous and represent 11 per cent of the total, with a condemnation percentage of twenty-seven.[5] The traditional view that robbery is an open crime and larceny a furtive one is not contradicted by the Newgate trials, but the demarcation of the two is often blurred. Purse-cutting, however, is distinguished from other forms of theft. If robbery, larceny, unspecified theft, and purse-cutting are lumped together—and sociologically, even if legally, they cannot be separated—we have, excluding all cases in which a suspect was also charged with the more serious crime of homicide, forgery, or prison breach, a total of almost exactly 500 persons charged, or half the total of charges. Unknown outcomes apart, the condemnation rate is 31 per cent.

Of the objects alleged to have been stolen clothing, especially overcoats, forms the largest category. Cash comes next and was usually taken in small quantities, although there are thirteen charges, five of which were proved, which involve £5 or more. One of these, not proved, was of the immense sum of £140.[6]

[1] At all events a woman charged with robbing and disembowelling another woman was acquitted in 1280 because she was found not to have robbed: J.I. 3/35B rot. 40 (case of Agnes of Worcester). Cf. Pollock and Maitland, op. cit. ii. 489.

[2] Borrowing on the security of silver dishes and covertly replacing them with pewter ones: J.I. 3/35B rot. 32 (1st two entries).

[3] e.g. case of Will. Ward (1288): J.I. 3/36/1 rot. 16.

[4] Much evidence could be brought to show that in the Middle Ages men instinctively equated felony with theft. The Worcester and Waverley annalists, for example, when recording the promulgation of the Statute of Winchester, say it was directed against robbers and thieves, although in fact it was not so limited: *Ann. Mon.* (Rolls Ser. xxxvi), ii. 403, iv. 492.

[5] Excluding unknown outcomes and convictions on another charge.

[6] Case of 1282: J.I. 3/35B rot. 39d. (1st entry).

A man was convicted of robbing Hamon Hauteyn, one of the trial judges, of £107 in instalments.[1]

After cash comes livestock (excluding horses), hardware (sometimes of precious metal) for household use, and horses. These are followed by bedding, and, close behind it, other household linen, and grain, very seldom taken in large quantities. Thefts of livestock and grain are not often proved. Jewellery was taken as frequently as grain. There are eighteen charges of stealing it, over half of which succeeded. Often only rings and clasps were taken, in association with clothing, but there are some graver cases. Once a man was convicted of stealing forty gold rings perhaps upon the road.[2] A sensational theft of the same kind was proved against a man who took gold, silver, and precious stones of high value from his master's London shop.[3] There are only eighteen charges of stealing foodstuffs other than grain, and under half were proved. There are twelve charges of stealing church goods with six condemnations. Hardly any armour or weapons were taken.

The general impression is that, with a few staggering exceptions, the goods actually proved to have been stolen were of comparatively small value and were taken for immediate use by ordinary citizens out of houses, often because of poverty or instant temptation. The same could be said of the sums of money stolen, which, purse-cutting apart, were usually not stolen alone, but fell in with objects of utility.

A constant concomitant of all the major felonies was complicity. Apart from complicity in forgery and instances where such accusations are added to a substantive charge, 6 per cent of the total were accused simply of receiving thieves, their pelf, or both. Of those charges that came to judgement only some 8 per cent resulted in condemnations. Six people were accused of receiving outlaws. Counselling suspects is also frequently alleged, especially in appeals by approvers, but, like receiving, is usually associated with graver charges. These imputations fared just about as ill, with a condemnation rate of 13 per cent. Two or three persons accused of abetting homicide were condemned. In assessing this category of felony it must be noted that the first Statute of Westminster forbade the conviction of an accessory until the principal had been convicted on the sub-

[1] Conviction of 1286: J.I. 3/36/1 rot. 35 (1st entry).

[2] Case of Gervase Botere (1290): J.I. 3/36/1 rot. 9d. The convicted man was not the 1st appellee but a subsequent vouchee.

[3] Case of 1287: J.I. 3/36/1 rot. 26 (1st entry).

stantive charge.[1] Since most of the charges of complicity are made by approvers, and since, as will be shown, approvers were not outstandingly successful in their appeals, it is not surprising that accessories were seldom punished.

We took ten years. Ten years is not the reign, but, apart from forgery[2] and prison-breach, the picture would be much the same, felony by felony, over a much longer period. At all events, when all offences are lumped together, the condemnation rate is identical, whether ten years are examined or twenty-eight. It is 30 per cent—no more. True the percentage fluctuates, falling to nine in the tenth year and rising to sixty in the thirty-third. Thirty, however, is the mean. Today, when the percentage of convictions to indictable offences tried is ninety-two,[3] this must indeed seem low. How would it have seemed in the thirteenth century? The answer, if available, is related to contemporary modes of trial and to the system of approvement through which so many charges were laid.

All thirteenth-century criminal judgements must be assessed in the light of the crude and inflexible punishments then prevailing—a painful death for lay felons, coupled in the case of petty traitors with a form of torture. There is not enough evidence to hypothecate those motives of compassion which traditionally led eighteenth-century juries to acquit the guilty of trifling crimes because the law was very harsh. Leniency, however, could sway the bench if no one else. Those imprisoned or fined for appeals which failed or were withdrawn might, especially in Edward's later years, be released for their poverty. 'For the soul of the late queen Eleanor'[4] or similar words might indeed be added. Cynics may discount such phrases and assert that the fines were desperate. Howbeit, the justices did not let the prisoners rot and their compassion may have infected jurors.

The clergy, of course, did not suffer death. It is well known that in this period men pleading clergy and accepted as clerks had to stand trial in a lay court, and, if convicted, be surrendered

[1] C. 14.

[2] There were some forty-four charges in 1276–81 and only twenty-three in 1281–95. A reform of the coinage took place in 1278–9 which extended to the prosecution of coin clippers (C. Oman, *Coinage of Eng.* 158–9). It is perhaps the case that the new money reduced the scope for successful forgery and debasement.

[3] *Social Trends*, No. 3 (H.M.S.O. 1972), Table 134 (figures for 1967–71 for U.K. excluding Scot.).

[4] e.g. case of Denis de Swynesfeud (1294): J.I. 3/37/1 rot. 5d.

to the bishop's proctor with that stigma attached. They then underwent 'purgation' in courts christian.[1] There were undeniable advantages in the plea. 'Purgation' seems to have been tolerably easy; even if it failed, the worst punishment that bishops' courts could inflict was lifelong imprisonment, and, since bishops' prisons could easily be broken,[2] many must have cherished the hope of returning to freedom. This being so, it is surprising to find, as is the case, that some, apparently qualified, did not claim.[3] No less surprising is it that claims were not commoner. The annual average of claimants, though fluctuating, is in fact a little under eight. One would have thought it would not have been hard for laymen to masquerade as clerks. To qualify for their privilege clerks must be literate, tonsured, not dressed as laymen, and not technically *bigami*.[4] Literacy, if strictly interpreted, could not be speedily acquired, and 'bigamy', if notorious, could not be denied. Clerical dress, however, could be stolen or borrowed, and crowns could be, and occasionally were, shaved in prison.[5] Claims were indeed sometimes questioned[6] on one or other of the stated grounds, but the court probably trusted most to a man's demeanour when assessing the validity of his plea. Personal recognition can have played but little part since convicts were nearly always surrendered to the bishop of London's proctor and not to an official from the diocese from which they came. That tests were not conspicuously stricter may be ascribed to clemency; that bogus claims were few to the naïvety of suspects.

The man arraigned upon appeal might, as is well known,

[1] Leona C. Gabel, *Benefit of Clergy in Eng. in Later Middle Ages* (Smith Coll. Studies in Hist. xiv, Northampton, Mass., 1929), 31–2. It does not seem easy to accept the author's view (ibid. pp. 32, 48) that when a clerk pleaded *salvo privilegio clericali*, a practice confined to Newgate, the procedure was different from that here described. The distinction between her Class A and C pleas seems one of the terminology of the records.

[2] Pugh, op. cit. 238.

[3] There are at least seven instances—five 'clerks' and a 'chaplain'. The last, cited by Gabel, op. cit., pp. 44–5, resulted in the clerk's surrender to the bishop, although his orders were questionable.

[4] i.e. twice married or married to a widow: Gabel, op. cit. 88. For the interpretation of clerical status see ibid., cap. iii.

[5] Ibid. 64. (case of a gaoler who was said to have shaved a prisoner's crown). Cf. case of a barber, Robt. de Gretyngham (1276), who was said to have shaved a fugitive's crown: J.I. 3/35B rot. 55d.

[6] e.g. case of Thomas le Blake (?1278), declared illiterate: J.I. 3/35B rot. 53d. A jury was empanelled in 1299 to determine whether Ric. de Asseburn was 'bigamous': J.I. 3/37/4 rot. 3d. He was: J.I. 3/38/3 rot. 1.

confess, offer battle, 'vouch' or call upon a third party to 'warrant' his assertions, stand mute, or put himself upon a jury. Penalties being what they were, it seems a marvel that any were willing to do the first. Yet nearly four suspects, apart from approvers, did confess each year. It seems clear that in thirty-five cases of thieves or forgers taken in the act[1] and in cases of prison-breach, presumptive evidence was overwhelming and defence impossible. Three other cases, where men injured their lords,[2] may be similarly explained. Six or seven, who were convicted on a coroner's record, had presumably failed to comply with the conditions of abjuration. There are ten other cases where the culprits having stolen from churches[3] or from a judge[4] might be thought to have hopeless cases. But for half the instances of confession there is no apparent explanation. Strong guilt complexes amounting to insanity may occasionally be inferred, as in the case of the man who pleaded guilty to chopping off a woman's head.[5]

The average frequency of judicial combats was something over one a year. They were almost always struck between approvers and their appellees, though twice vouchees in a private appeal offered battle.[6] No duel at this time seems to have resulted fatally. Excluding one quashed for nonage[7] and five of unknown outcome, the odds were roughly equal, twenty-three appellees extorting recreancy from their opponents or withdrawing, and eighteen approvers acting similarly. The vanquished appellees were nearly always expressly condemned, the approvers less often as they might have to appear or fight against another suspect. In ten cases, where the approver surrendered, the appellee was not released but tried by a jury.[8] According to Bractonian doctrine he should have rather

[1] e.g. case of Eve le Haukere (1281), a forger: J.I. 3/35B rot. 40d.

[2] e.g. case of John of Ireland (1291), in the mainpast of a former sheriff of Lond.: J.I. 3/36/1 rot. 3d.

[3] e.g. case of Nich. de Perendone (1293) who burgled in St. Paul's cath.: J.I. 3/36/2 rot. 5.

[4] e.g. cases of three men (1288) who murdered the reeve of John of Cobham: J.I. 3/36/1 rot. 16 (Hen. de Luda) and rot. 17d. (Ric. de Frekebergh and another).

[5] J.I. 3/36/1 rot. 3 (1st entry).

[6] Appeals by Thos. Atteburgate and Adam le Keu (1279): J.I. 3/35B rot. 49d. The men offering battle were in fact vouchees of a vouchee of a vouchee.

[7] Case of 1290: J.I. 3/36/1 rot. 9.

[8] e.g. appeal of Ralph of Rutland (1292): J.I. 3/36/2 rot. 11d.

been bound over, or, if he could not find pledges, have abjured.[1] There is an actual instance where an appellee was thus forced into the second alternative[2] and defendants may have thought it wiser to try to get themselves acquitted. Four instances, where convictions followed, show that they were sometimes mistaken. Since battle did not necessarily preclude a jury trial, one wonders why defendants ever chose it. Vengeance for treachery is a possible motive and so is exhibitionism.

The Crown hated 'battle'. This is clear enough, since in all the thirty-eight special commissions of gaol delivery granted to individuals[3] it is stipulated that the defendant must plead not guilty if he is to secure the benefit, whatever it was, of the grant.[4] It has been argued that in early times this attitude was not shared by suspects[5] and the author of the *Mirror of Justices* protests against the exercise of pressure to prevent judicial combats.[6] The Newgate deliveries, however, do not support that supposition.

Battle was in any case not open to the young, to the old, to those indicted, or to those arrested on suspicion. In such cases, if the suspect did not confess or stand mute (and few did the latter), a jury was at once empanelled. Much of what has been written about the early criminal trial jury has been based either upon the records of the eyre or on Bracton's commentary upon them. The eyre was an institution of such a character as to secure the presence at its sessions of the various juries of presentment who had already reported felonies in writing. If, therefore, some suspect needed to be tried in eyre, a jury of the venue was at hand to do so. Accordingly the presentment jury might be subsequently converted into a trial jury, and, when it was, might confirm or might repudiate its first

[1] Bracton, *On the Laws and Customs of Eng.*, ed. S. E. Thorne (Cambridge, Mass., 1968), ii. 432–3.

[2] Case of Laurence son of John the champion (1276): J.I. 3/35 rot. 56 (2 entries).

[3] e.g. a case of 1286: J.I. 3/35B rot. 4 (1st entry). No such commissions have been found at Newgate before 1285–6.

[4] These commissions seem to be the parent of the writ *de bono et malo*, the best account of which at present is in Gabel, op. cit. 130–3. Since that work was published the text of the writ, as known in the fourteenth century, has been printed; *Early Registers of Writs* (Selden Soc. lxxxvii), 194. The object of the writ seems to have been to secure a quick trial by naming the trial judges.

[5] C. L. Wells, 'Early Opposition to the Petty Jury in Criminal Cases', *Law Qrly. Rev.* xxx (1914).

[6] *Mirror of Justices* (Selden Soc. vii), 157.

report. In gaol delivery the situation was quite different. Even if there had been an indictment, the indictment jury had long since done its work and disappeared. True, of course, that when a sheriff received a summons to empanel, he might include among the jurors men who had previously indicted. That such might happen is attested by a well-known letter from Edward of Carnarvon, begging a trial judge to see that on a specified occasion it did not.[1]

It will be realized that trial juries were expected to know the facts. Consequently they should include representatives of those areas (or venues), however defined, in which the alleged offence had been committed. Generally this was secured, and when charges were laid in two or more venues all the venues were summoned. Besides this, surrounding venues might be added—a reflection perhaps of the 'four neighbouring towns' normally assembled after presentments in eyre. This was, in some years at least, particularly true of the London wards. Thus full coverage of the site venue was assured. In addition, however, there are many instances where the suspect's home venue, or what looks like it, was added to the site venue. Besides the site and home venues a jury might also come from the venue where the felon was arrested, which could be far from the scene of the crime.[2] Likewise if a suspected thief pleaded that goods had not been stolen at 'A' but bought at 'B', a jury might come additionally from 'B'.[3] Or if a beast belonged to 'A', was driven through 'B', and stolen at 'C', jurors would come from 'A' and 'B' and 'C'.[4] Finally, in order to prove an alibi, juries might additionally come from a place capable of substantiating that claim.[5] These look like devices to secure good testimony, since, unless the defendant vouched to warranty, he could call no individual witnesses. There are, however, especially in the later part of the reign, cases where a suspect charged with offences in different counties is acquitted by a jury of one county only.[6]

[1] T. F. T. Plucknett, *Concise Hist. of the Common Law* (1956 edn.), 127; cf. *Kent Keepers of Peace*, ed. Putnam, p. xxxv.

[2] Roger de Bywyk (1290) charged with felonies in Surrey, taken in Bread St. ward, Lond.: J.I. 3/36/1 rot. 8d.

[3] Will. Dernedon (1287), charged with flaying in Msx., pleads fair purchase of the flayed beasts in Berks.: J.I. 3/36/1 rot. 24.

[4] Case of 1284: J.I. 3/35B rot. 21d (1st entry).

[5] Walter Pappe, charged in 1285 with homicide at Tottenham, Msx., pleads that at the time alleged he was at Hoddesden, Herts.: J.I. 3/35B rot. 11.

[6] e.g. Ric. le Convers, charged in 1294 with felonies in Lincs. and Suff., is acquitted by a jury of Lincs.: J.I. 3/87 rot. 25.

The choice of venue rested not with suspects but with judges.[1] Two men did try to replace the site venue by what they called their 'own' country. Their petition was treated as a refusal to plead and they capitulated later.[2] Another tried the same trick but later offered battle.[3] Once a group of appellees paid heavily to have what looks like their home town added[4] and once a man who was charged with robbery between two Surrey townships was tried by a jury of his place of origin, which was in Middlesex.[5] This is an almost unmatched case of the utter exclusion of the site venue. A home venue would seem to have been valuable to a defendant in proportion to the blamelessness of his past life, and the advantages of its presence or absence to have been evenly balanced.

By choosing venues judges could perhaps influence a trial more completely than in any other way. Whether they did so to the benefit of the Crown or the defendant seems hardly capable of demonstration.

While a jury from the site venue seems to have been virtually indispensable, it is disconcerting to observe that that venue did not always strictly coincide with the scene of the crime. Judging from foremen's names the same jury might try charges laid in different parts of the same hundred. Thus, the same Middlesex panel tried charges laid in 'Portpool', Aldwych, Charing, St. Giles's, and Kensington.[6] They can hardly have known Ossulstone hundred from end to end, presuming (as we must) that even in 1294–5 it was already partly urbanized. It is even more apparently irregular to find the same jury trying charges laid in different hundreds, as happened in 1286 with offences detected in different parts of Buckinghamshire.[7] Plainly the doctrine prevailing by at least the early nineteenth century[8] that

[1] Bracton, ed. Thorne, ii. 390; *Fleta*, ii (Selden Soc.), 85.

[2] e.g. Thos. of Watford, charged in 1284 with a robbery at Kentish Town, asked to be put upon Cornhill ward, Lond.: J.I. 3/35B rot. 26d.; cf. ibid. m. 9.

[3] Case of 1279: J.I. 3/35B rot. 49.

[4] Walter Wyt and others, charged in 1274 with a felony at Wroxton, Oxf., put themselves upon Wroxton and gave £10 that Banbury, Oxf., be added. One of the pledges for payment was a Banbury man: J.I. 3/35A rot. 5d. [or 6d.].

[5] Case of Adam le Wafrur (1279): J.I. 3/35B rot. 48d.

[6] The foreman was in each case John de Wetyngg. 'Portpool' is the area near Gray's Inn.

[7] Slapton (Cottesloe hundred): J.I. 3/36/1 rot. 6d. (case of Ric. Banastre); Newport Pagnel (Newport hundred): J.I. 3/35B rot. 29d. (case of Ric. Arderne and Thos. Codbodi).

[8] *Coke upon Littleton*, 125 n.191, edn. of 1823.

criminal juries need not be picked from a narrower area than the county is no innovation of that time. Conversely it will not do to exaggerate the ignorance of juries. On over sixty occasions, notably in homicide actions, juries, acquitting a suspect,[1] inculpated other persons or made other comments suggestive of good local knowledge.[2]

In over fifty cases juries on summons were to include the gentry, styled knights by contemporary usage. This seems to have been thought especially suitable when charges were grave, either because they involved homicide or forgery or because the victims were prominent. Such cases, however, were not invariably so tried. The injunction was at least sometimes obeyed, for knights can be identified among the leading jurors.[3] Knights are known to have been employed as petty jurors in eyre,[4] because they had presented and were able to transform themselves. It is, at least at first sight, a surprise to find them coming from outside London specially to try felons.

That in fact jurors could easily be corrupted is something which, at least in the next century, became a commonplace. Langland said that falsehood sat upon a juryman's back.[5] Doubtless Newgate jurors were corruptible in our time also, and there is one case which suggests they were.[6] Efforts were made, however, to keep them pure. Thus when a man, said to be of the *familia* of the Sheriff of Kent, was charged with theft, the responsibility for summoning the jury was transferred from the sheriff to a coroner.[7] Somewhat earlier several jurymen were challenged for their friendship or affinity with the accused, whereupon the accused counter-challenged. The old jury was dismissed and a new one summoned, this time of knights.[8] That such efforts were not wholly futile may be deduced from the fact that neither gain nor fear deterred juries from acquitting

[1] e.g. case of Simon son of Ric. FitzGeoffrey (1287): J.I. 3/36/1 rot. 21.

[2] e.g. case of Adam of Taplow (1285), where the jury explains the motive for the homicide of which he is convicted: J.I. 3/35B rot. 14.

[3] e.g. Hugh Ridel, kt., of Northants.: J.I. 3/36/1 rot. 6d. (case of Peter de Greseley and others, 1286).

[4] J. B. Thayer, *Prelim. Treatise on Evidence* (Boston, Mass. 1898), 81.

[5] W. Langland, *The Vision of William concerning Piers Plowman, Text A*, ed. W. W. Skeat (Early Eng. Text Soc. xxviii), 24.

[6] Allegation of 1284 that a bailiff was bribed to detain jurors at an inn so that they should not appear in court: J.I. 3/35B rot. 8 (4th entry).

[7] Case of Robt. le Criour, of Canterbury (1291): J.I. 3/36/1 rot. 1.

[8] Case of John le Wodeward (1285): J.I. 3/35B rot. 13.

men charged with stealing Edmund Crouchback's stirrups,[1] burgling the houses of Bogo de Clare,[2] or plundering an ex-mayor of London[3] and even a trial judge.[4] The speed with which defendants were often tried and the apparent poverty of most of them would also have made it very hard for them to bribe.

At almost every Newgate session at this time jurors were present who had been summoned to try appeals by approvers. In some years the approvers' accusations are not very numerous, in others their delations seem to result from 'drives' or 'round-ups'.[5] Three such 'drives' can be distinguished: in and around the fifth and fourteenth years and from the eighteenth to the twentieth years. They may well have resulted from special commissions to arrest or in the case of the second of them to the minatory preamble to the Statute of Winchester promulgated then. Taking the fourteenth year as an example we find that between October 1286 and March 1288 eighteen men came and turned approver, and most of them lodged several appeals. Not all the appeals were heard, no doubt because the sheriffs failed to catch the appellees. In compensation the same approvers had appealed others in other circumstances.

Over the whole 28-year period we find appeals brought by 231 different approvers, or about 8 a year. In addition there were a few other approvers, making unknown accusations, who withdrew before arraignment and were promptly executed. There are 111 of these appeals of uncertain outcome, and about 45 that were not prosecuted. Three hundred and sixty resulted in acquittals, 17 in confessions, and 110 in convictions or recreancy. Approximately, therefore, 26 per cent of those adjudged were found guilty.[6]

The approver, though not unstudied,[7] remains a partial mystery. Although he might save his life by defeating all his

[1] Case of Ric. de Hikeling (1286): J.I. 3/36/1 rot. 25.

[2] J.I. 3/35B rot. 35d. (1st entry).

[3] Hen. le Waleys in 1290: J.I. 3/36/1 rot. 8d. (case of Nic. le Carier).

[4] Hamon Hauteyn (1287): J.I. 3/36/1 rot. 22d. As has been shown (p. 8), other thefts from Hauteyn's house were proved.

[5] The lengthiest rolls cover 1286–8 (J.I. 3/36/1 rott. 18–20) and 1291–3 (J.I. 2/254). Approvers' appeals are also scattered among other entries on the roll for 1280–1: J.I. 3/35B rott. 40d., 41, 44d.

[6] O. Pike's assertion (*Hist. of Crime in Eng.* i. 287) that approvers' allegations were normally rejected must be counted an extreme exaggeration.

[7] See F. C. Hamil, 'The King's Approver', *Speculum*, xi. 238. The author perhaps did not quite sufficiently appreciate the extent to which practice varied over the long period that he covered.

adversaries, there are few recorded cases and none at Newgate in this time, where he is known to have succeeded. In general he was either hanged for losing or despairingly withdrew. Even if he had succeeded, abjuration or lifelong imprisonment were his only consolations.[1] Of course, if remanded to confront other defendants, as he often was, he might have staged an escape. There is, however, only one instance at this time where he is known to have done so,[2] although later on such escapes can easily be pointed out.[3] Chances of survival were remote, even though no more than 37 per cent can be shown to have been hanged. That so many approvers should have volunteered suggests a high degree of destitution among this class of criminal[4] or an attitude of almost psychopathic optimism.

It has been suggested that indictments were comparatively unusual.[5] In their absence there was nothing in the nature of a pre-trial inquiry. Had this been otherwise, it could not have happened that thirteen suspected murders turned out not to be murders at all, but deaths due to natural causes[6] or misfortune.[7] It is true that there were some safeguards against irregular arraignments. Indictment juries, if perjured, could be attainted; coroners could be interrogated in the King's Bench[8] and even fined[9] for the improper conduct of inquests; false appellors could be sent to prison.[10] Nevertheless hearsay and ill-grounded surmise played a leading part in bringing suspects into court.

At the trial hearsay was, indeed, taboo and judges must make sure that jurors did not rely upon it.[11] Jurors must know the truth, and were sworn to tell it to the best of their knowledge. If, however, they did not know it or possessed imperfect

[1] *Fleta*, ii (Selden Soc.), 94.

[2] Case of William the tailor (1276): J.I. 3/35B rot. 55. The approver was Will. of Marlborough.

[3] Hamil, op. cit. 254.

[4] Approvers were, of course, supported while in prison.

[5] See p. 86.

[6] e.g. vomiting food and drink, together with his heart's blood, after gluttonous excess (1287): J.I. 3/36/1 rot. 23d. (1st entry).

[7] e.g. bite of a mad dog (1302): J.I. 3/38/3 rot. 6 (2nd entry).

[8] Case of Valentine le Skinner and Simon de Welles (1290): J.I. 3/36/1 rot. 7d.

[9] Case of Ralph Terri (1285): J.I. 3/35B rot. 2d.

[10] This was possible long before it became statutory, e.g. appeal of Maud v. Robt. of Berkhampstead and others (1282): J.I. 3/35B rot. 39. Imprisonment was made statutory by Stat. Westminster II, c. 12.

[11] Bracton, ed. Thorne, ii. 404; *Fleta*, ii (Selden Soc.), 87.

knowledge they could not then support the prosecution, for they must not reach their verdicts on the basis of mere 'thoughts'.[1] It seems likely, then, that many an unproved crime was actually committed but was not verifiable by a standard so exact. This view seems to be confirmed by the comparative infrequency of convictions for receiving—an allegation easily manufactured and not easily substantiated.

Conversely it may be hazarded that, contrary to all that Bracton and Fleta might dictate, jurors were much impressed by their knowledge of a prisoner's reputation. When acquitting, they often said no more than that a suspect's character was good.[2] He who had the reputation of *fidelitas* must have had a flying start towards liberation. By like reasoning jurors may have instinctively mistrusted the assertions of approvers, who, by personal admission, were of 'ill fame'. Add that the sort of crimes that approvers pointed out were often staged in wildernesses where there were no bystanders, and committed against persons not belonging to those areas and by persons whose reputation was not easily assessed, and we have a reason for the slightly lower conviction rate for approvers' appellees than that for suspects generally.

While very many crimes were certainly perpetrated by amateurs, there is no reason to presume from that alone the absence of a criminal underworld. Many approvers' stories have an authentic ring, even though jurors did not like to swallow them. For example in the king's second year approvers A and B charged five men with a robbery and homicide in Essex, and approvers A and C charged four men with a robbery in Cambridgeshire. At the same time approver B also appealed approver A of the crime that B had had imputed to him.[3] That different approvers could thus testify to the same crimes committed by identical or similar groups of appellees seems fairly convincing evidence that the crimes were committed even if the stories told by the approvers were not credible in

[1] For a good summary of the evidence see Thayer, op. cit. 100–1 n. 2. 'Thoughts' is a rendering of 'quiders'. It was said *c.* 1313–14 that a judge must charge the jury not to find a common thief guilty unless his guilt was certain: *Yr. Bks. Edw. II, Eyre of Kent*, i (Selden Soc. xxiv), 141. The strict principles of the Postglossators are commented upon by W. Ullmann, 'Medieval Principles of Justice', *Law Qrly. Rev.* lxii (1946), 77.

[2] e.g. case of 1273: J.I. 3/35A rot. 2 (1st entry); case of 1293: J.I. 3/36/2 rot. 5d.

[3] 'A' is Will. Scrap or Sharp, of Stetchworth; 'B' is Ralph of Barnwell; 'C' is Luke Dolfyn, of Radnor: J.I. 3/35A rot. 1.

every detail. Moreover approvers constantly reported concerted criminal activity, particularly upon the roads. Highwaymen seem already te be operating in a big way in places later to become notorious—Shooters Hill, Blackheath, Stamford Hill, the roads leading out of London through Tottenham and Muswell Hill, and Ashdown, wild to this day, above the Vale of White Horse. They might summon one another by horn-blasts,[1] employ female spies,[2] or assume criminal nicknames. Could ladies called Pink Gillian[3] and Proud Kit[4] be anything but professional thieves' associates? And what must we think of a man called Tom Evil Tom? [5]

Besides such people a class of minor thief lurked continuously in London streets, if not elsewhere. When the first London trailbaston commission sat in 1305, the charge of being a common thief was repeatedly laid, and the phrase grows commoner.[6] Though less usual earlier, it is not unknown.[7] It included the purse-cutters, who specialized in petty thefts. On first conviction they might have their sentences reduced to trespass and be pilloried.[8] The consequential splitting of their ears was taken as a guilt-sign if they were ever rearraigned.

The size of the underworld could be better gauged if we had some evidence of recidivism. In its modern sense this could not be detected, since every conviction resulted in death for laymen and lifelong imprisonment for clerks. Nor would it be easy to keep track of obscure people with undistinguished names, as most felons had, even if they did not resort to aliases. Nevertheless there are some instances of recurrences, which amount almost to recidivism. A woman, acquitted in 1285 of trying to break out of Newgate,[9] was three years later convicted of complicity in a forgery,[10] and a man acquitted of receiving in

[1] Case of 1283: J.I. 3/35B rot. 17.

[2] Appeal by Will. the carpenter of John Bailol and others (*c.* 1292): J.I. 2/254 rot. 1.

[3] An appellee: appeal of John Wlmar (1288): J.I. 3/36/1 rot. 18d.

[4] An appellee: appeal of John Wyger (1292): J.I. 2/254 rot. 2.

[5] He occurs in a memorandum and his true name was Thos. Eystanes (1294): J.I. 3/37/1 rot. 1d.

[6] *Essex Sess. of Peace*, ed. Eliz. C. Furber (Essex Arch. Soc.), 39; *Recs. of Some Sess. of Peace in Lincs. 1381–96*, ed. Eliz. G. Kimball (Lincs. Rec. Soc. lii), p. xlii.

[7] e.g. *publicus latro*: case of Ric. le Chapman (?1279): J.I. 3/35B rot. 50d.; *notorius latro*: case of Walt. de Bodenham (1291): J.I. 3/36/2 rot. 11.

[8] e.g. Geva Champyon ordered to abjure (1276): J.I. 3/35B rot. 55d.

[9] J.I. 3/35B rot. 11 (1st entry).

[10] J.I. 3/36/1 rot. 11 (2nd entry).

1283[1] was convicted ten months later of stealing silver plate.[2] More fortunate at first was the Oxford clerk, Nicholas Pluckrose, who, acquitted in 1290 once of larceny[3] and once of homicide,[4] was cleared eighteen months later of a London burglary.[5] A few months after that, however, he was evidently cornered, for he came forward as an approver and denounced those who had joined him in robbery and arson at Boston fair four years before and in robberies as far from Boston as the Cotswolds. He secured no convictions but was hanged himself.[6]

It must be strongly intimated that courts of gaol delivery are hedged around by class barriers. If we may judge from Newgate at this time they were concerned only with the lower social strata. Among those tried only one or two of the accused forgers look like men of education. Of those who pleaded benefit of clergy none appears to have graduated, and with two doubtful exceptions,[7] none was beneficed. Almost the only man of gentle birth was a Kentish knight, whom in the end his appellor did not proceed to prosecute and failing that was not even prosecuted by the Crown.[8] The fact that suspects seldom pleaded 'exceptions' bespeaks a lack of sophistication among them. These impressions may be complemented by the only economic index that we have, namely, the assessments of the property, excluding stolen goods, of condemned felons, including approvers. Only eighty or so had chattels of any kind. Only twenty-three, if that, held land, ten of them or so with chattels. Of the land-holders only eight, one of them a small Kentish farmer,[9] were certainly possessed of houses. The percentage, therefore, of technically destitute felons was eighty-seven.

This limitation emphasizes that no assessment must rest on what gaol delivery alone reveals. Many appeals of felony were not heard at gaol delivery at all but in the King's and Common Benches. Many actions for trespass were constructively felonious and were investigated similarly. Many oyer and terminer com-

[1] Simon le Balde: J.I. 3/35B rot. 17.
[2] J.I. 3/35B rot. 26.
[3] J.I. 3/36/1 rot. 7d. Pluckrose might be an obscene name.
[4] J.I. 3/36/1 rot. 10.
[5] J.I. 3/36/1 rot. 4 (appeal of Joan of Leominster).
[6] J.I. 3/36/2 rot. 15d.
[7] J.I. 3/35B rot. 43 (Thos. vicar of Great Totham and 2 others).
[8] John de Valoynes, kt. (1291): J.I. 3/36/1 rot. 4. In 1274 Peter Picot, kt., was appealed by an approver for complicity in a robbery. The case was not settled: J.I. 3/35A rot. 1d.
[9] Appeal of Peter of Windsor (1287): J.I. 3/36/1 rot. 24d.

missions were set up to try large gangs who invaded a man's lands, burnt his houses, beat his servants, drove off his cattle, and annexed his goods.[1] It is no doubt in the record of such trials, where available, that the professional criminal would manifest himself most conspicuously. Stealing cash and jewels, of which in any case there was no great contemporary stock, was far less rewarding than forcible disseisin and the mass appropriation of cattle. Those who could stage such raids could also doubtless evade imprisonment.

This story of Newgate must not close without its tailpiece. In 1305 and 1306 the gaol was delivered not by customary means but by King's Bench justices acting under a commission of trailbaston.[2] The trials have not yet been closely analysed but some fairly firm preliminary impressions are available. The judges tried many conventional felonies. They also heard many cases of maintenance, conspiracy, procuring false inquests, barratry, and champerty; also many charges of beating, wounding, menacing, vagrancy, frequenting taverns, or simply being a common malefactor or being of ill fame. Many of these accusations are generalized and do not incorporate the detail appropriate to a well-drawn charge of felony. In fact the offences, though crimes to a criminologist, were not felonies to a lawyer. They were aggravated trespasses and as such attracted penalties less extreme than death. Thus there is much imprisonment, often released by fines; fining alone; much fining and binding over. Indeed from time to time defendants are prepared to fine without a trial to avoid the risks of facing a jury. The effect was that though fewer died more were punished. Capital condemnations to death reach only 20 per cent, but the percentage of condemnations as a whole reaches forty-six.[3] The system of binding-over, little used at Newgate before, should have resulted in committing a large section of the population to the

[1] e.g. *Cal. Pat.* 1281–92, 99 (com. of 1283 to determine offences alleged against Prior of Ely and twenty-four others).

[2] J.I. 3/39/1. Only rott. 1–21 concern Newgate, the rest Westminster. The Newgate sessions were on 16 and 30 June 1305 and 27 July 1306 and presumably in each case stretched over many days. At present the best account of trailbaston is in Helen M. Cam, *Studies in the Hundred Rolls* (Oxf. Studs. in Social and Legal Hist. vi), 72. Cf. also *Eng. Govt. at Work, 1327–36* (Cambridge, Mass.), ed. J. F. Willard, W. A. Morris, W. H. Dunham, iii. 196–7.

[3] Judging from Newgate, therefore, the chronicler who said that *pauci innoxii sunt inventi* was exaggerating much: *Flores Hist.* (Rolls Ser., xcv), iii. 122.

maintenance of order, since, if culprits broke the peace, their bails would suffer.

Trailbaston was notoriously unpopular, partly perhaps because, in a society where cash is short, fining is more painful than we nowadays perceive. Popular antipathy, however, does not condemn trailbaston justice, which, in the light of what had gone before, seems to have had some useful consequences.

The longevity of those consequences, however, whether useful or not, was inconsiderable. The records of commissions of the peace in the fourteenth and fifteenth centuries, now published so abundantly, show how rarely suspect felons, whether tried in the King's Bench, at gaol delivery, or by the justices themselves, were convicted.[1] Indeed a commentator on the Shropshire peace rolls of Henry IV's reign is forced to conclude that, unless most indictments were false, crime was simply not being punished in that county.[2] An analysis of the gaol deliveries in the eastern counties during the earlier fifteenth century has shown ill-doers 'acquitted with almost automatic regularity'.[3] To such formal evidence must be added the testimony of John Bromyard and other preachers who in the late fourteenth century pronounced England a byword among European nations for her lack of justice.[4] The fewness of convictions in those later times has been attributed to the prevalence of pardons and the difficulty of bringing into court either the suspect or the jury.[5] At Newgate under Edward I pardons, unless for justifiable homicide, were few indeed, and most trials were ended quickly. Probably, however, we must now add as a cause for fourteenth-century acquittals the postures of the juries. If their precursors in the preceding century would not convict more often than three times in ten, how much less likely would their successors do so when there were additional impediments.

[1] *Procs. before J.Ps. in 14th and 15th Cents.*, ed. Bertha H. Putnam, p. cxxviii. The general conclusion is confirmed by the evidence from Essex where convictions for felony upon indictments by J.P.s were 'as usual' few (*Essex Sess. of Peace*, 57); from Kent (*Kent Keepers*, p. xxxv); from Lincs. (*Recs. of Some Sess. of Peace, 1360–75*, p. l); and from Yorks. (*Yorks. Sess. of Peace, 1361–4*, ed. Putnam (Yorks. Arch. Soc., Rec. Ser. c), pp. xlvi–xlvii).

[2] *Shropshire Peace Roll*, ed. Eliz. G. Kimball, 42.

[3] Marguerite Gollancz, 'The System of Gaol Delivery as illustrated in the . . . Rolls of the Fifteenth Century' (London, M.A. thesis, 1936), p. 238. The felony conviction rate for Hen. IV's reign was about 12 per cent.

[4] G. R. Owst, *Literature and Pulpit in Medieval Eng.* 339–40.

[5] e.g. *Essex Sess. of Peace*, 60; *Sess. of Peace in Lincs.* 1360–75, pp. l, liii, and ibid. 1381–96, i, p. lvii.

The story as revealed at Newgate is full of contradictions. The system of delivery is punctilious, the judges men of weight. Many juries are summoned from such areas and compounded of such elements as will ensure that trials will be seriously conducted. Private prosecutions are encouraged. Very many suspects are arrested.[1] On the other hand suspects often behave irrationally and their conduct is paralleled by the survival of irrational proofs. Crown and Parliament try to improve policing but their efforts are counterbalanced by measures to restrict judicial abuses. Above all, juries are timid at convicting. And not only at Newgate; the state trials of 1289, staged so impressively, have a tepid outcome.[2] The reign ends with no better means of settling guilt than the petty jury as it had evolved in the preceding one. 'Truth' is demanded, but is left to be revealed by men who all too often could not possibly possess it.

## NOTES ON SOURCES

The gaol delivery rolls, upon which much of this lecture is based, are kept in the Public Record Office where they form a class called 'Gaol Delivery Rolls' (J.I. 3) within the group called 'Justices Itinerant [etc.]'. Gaols were sometimes delivered not by specially commissioned gaol delivery justices, but by justices in eyre whose rolls are included in the class called 'Eyre Rolls, Assize Rolls, etc.' (J.I. 1). The rolls and parts of rolls in J.I. 3 and J.I. 1, so far as they concern gaol delivery, are listed in a typed List of Medieval Gaol Delivery Rolls' kept in the Round Room.

[1] It cannot have been easy to secure the appearance in court of so many approvers' appellees. Perhaps the device, adopted in Notts. in 1306, of giving a man land in return *inter alia* for arresting such persons was common if not often recorded: *Cal. Pat.* 1301–7, 487; *Plac. de Quo Warr.* (Rec. Com.), 617, where, however, *proditoribus* should read *probatoribus*. The patrolling of London by sheriffs' officers is conspicuous at Newgate trials temp. Edw. I. For example in 1277 four sheriffs' officers searched a goldsmith's house (J.I. 3/35B rot. 54) and in 1299 a mayor's servant, being warned of the presence of thieves in a house, entered it (J.I. 3/37/4 rot. 2d.).

[2] *State Trials of Edw. I* (Camd. Soc. 3rd ser. ix), p. xxxiii.

The Newgate rolls run from 1273 to 1342 when they cease abruptly, probably owing to some disaster. The entries are written on oblong strips of parchment filed exchequerwise. Sometimes a roll for a single year will form a separate entity, or 'floor unit' in P.R.O. terminology (e.g. J.I. 3/38/2). Sometimes the rolls for a number of years are filed together, e.g. J.I. 3/35B which covers 5–14 Edw. I. In the latter circumstances it was the common, though not the invariable practice to arrange the annual rolls in ascending order, those for earlier years being at the bottom. This practice can make it hard to know where one year ends and the next begins, since the respective rotulets are not always dated. This in turn can lead to some misdating of sessions. If, however, only averages are being struck, the difficulty is of no consequence. This filing method is peculiar to Newgate.

Each justice kept his own roll and for a number of sessions there is more than one version of the proceedings. These versions are not invariably identical. Some Newgate deliveries are to be found on composite rolls mixed in with the deliveries of other gaols, either in London or elsewhere (e.g. J.I. 3/87 covers Newgate, the Tower, Westminster, and Oxford).