

R. Wallis, Muntref, Buenos Aires, Nov 7<sup>th</sup> 2019

## **MORE THAN HORRIBLE HISTORIES: ENGAGING THE PUBLIC WITH CRIMINAL JUSTICE PAST AND PRESENT**

### **ABSTRACT**

In 2018 Dorset Shire Hall, an eighteenth-century courthouse, opened as a museum dedicated to the development of the criminal law, and as a centre for public engagement with notions of justice and injustice, past and present. As an academic historian, I was privileged to be invited to work as part of the interpretation team, an experience that stimulated the reflections at the root of this paper: how and why do we engage the public with histories of criminal justice?

My research has focused on crime and the courts as a means to understand social relations in the past. The courts were, and continue to be, important regulatory mechanisms. Extending beyond the administration of the law as sites of social, and indeed political contest, they shape and reinforce acceptable and unacceptable behaviours and activities. They are a source of continued public interest and import both as heritage sites and active centres of government. Too often crime and punishment are represented to the public in ways that emphasise the sensational and salacious, or which offer didactic narratives of the law as oppressive or progressive. But these approaches prevent us from critically engaging with the relationship between past and present practices.

This paper explores some of the problems inherent in representing criminal justice to the public, and considers the utility of incorporating historiographical approaches in its interpretation. Can we create an accurate, entertaining, ethical and accessible visitor experience that actively engages the public in the role of law past and present?

### **INTRODUCTION**

I'm a social historian of crime and criminal justice in the eighteenth and nineteenth centuries. In 2016, I was invited to work as part of the interpretation team to transform Dorset Shire Hall into a new museum.

A rare surviving example of a late 18<sup>th</sup> century courthouse, complete with holding cells beneath, Shire Hall opened in 1797, trying all capital and non-capital crimes in the county until it closed in 1955. Hundreds, if not thousands, of people appeared there over a period that saw possibly the most significant changes in British society and its legal system.

The new museum opened in 2018, with the stated aims:

*'To engage, inform and entertain a wide range of audiences with the history of law and order, and **past and present** efforts to achieve justice for ordinary people.'*<sup>1</sup>

This was my dream project; an opportunity to share a decade of research with the public. But the experience of working on the project led me to consider more critically how and why we engage the public with histories of criminal justice?

- Can we create accurate, entertaining, ethical and accessible visitor experiences that actively engage the public in the role of law past and present?
- One that fulfils our aims to educate and inspire, whilst still being commercially viable and a good day out?
- Can a historian help?

My paper today will try to consider these questions, drawing on Shire Hall as a case study. Considering the time constraints, it will focus on how we interpreted histories of criminal justice, but I'm very happy to take questions on the project more broadly in discussion later.

## ROUGH JUSTICE

My involvement began when I was invited to run a historical briefing workshop with the original interpretation team. It was clear from that point that there was a tension between the proposed design and the history of the space. Too often, my answers to the design team's questions sat at odds with, or problematised, what they had decided to depict.

Their plan was focused around the notion of 'rough justice', emphasising the oppressive potential of the criminal justice system. Their interpretative strategy for the courtroom, was concentrated on an all singing-all-dancing audio-visual experience where visitors would sit in the former public gallery and witness the spectacle.

In discussion with the managing director of Shire Hall, we agreed that both the proposed mode of delivery and its narrative emphasis were problematic in terms of the museum achieving its aims as a centre of education and debate.

Emphasising the violent and oppressive nature of crime and punishment is not an unpopular theme. Attractions like the Dungeons franchise see hundreds of thousands of visitors a year.<sup>2</sup> As Barton and Brown have highlighted, even sites that have a more explicitly educational remit, use gory and sensational stories to draw the public in.<sup>3</sup> There is little doubt that there is an appetite for these sorts of 'horrible histories.'

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<sup>1</sup> Shire Hall Interpretation Strategy, August 2016

<sup>2</sup> Select Committee on Environment, Transport and Regional Affairs (2000)

<https://publications.parliament.uk/pa/cm200001/cmselect/cmenvtra/18/18ap05.htm>

<sup>3</sup> Barton and Brown, 'Show me the prison! The development of prison tourism in the UK' *Crime Media Culture* 11:3 (2015) 247-8.

But there are problems with these representations, particularly when considering how they present the operation of criminal justice. Indeed, as many scholars of prison museology have stated, those involved in interpreting these sorts of sites for the public have a significant responsibility, as well as an opportunity, to shape public perceptions of crime, justice and punishment in the present.<sup>4</sup>

In the comparatively new literature on crime and prison museums in the UK, there is an apparent tendency to focus on 'the exceptional over the mundane', privileging extraordinary crimes and violent punishments.<sup>5</sup> Whilst this is seen as a means of engaging visitors, and perhaps offering a safer, more accessible, way to deal with traumatic events, it has serious ethical implications.<sup>6</sup>

These representations can marginalise the victims of crime and valorise its perpetrators. The Jack the Ripper museum opened in Whitechapel in 2015, purporting to be 'dedicated to the history of the East End of London', offering 'a serious examination of the crimes of Jack the Ripper within the social context of the period.'<sup>7</sup>

However, the majority of the five exhibition spaces are concerned with the identity of the killer and the violence of his crimes; his 'sitting room' is even besmirched with blood spatters and bloody handprints. In the space dedicated to the lives of the women he killed, the interpretation inadvertently engages in victim blaming, asking 'Could the murdered women have avoided their terrible fate?'<sup>8</sup>

Explicitly entertaining interpretations can likewise trivialise the lived experience of people in the past. At the National Justice Museum in Nottingham, in a comedic video, 'Fried Phoebe' (otherwise Phoebe Harris, convicted for coining - a type of fraud- in 1786) bemoans her execution by being burnt at the stake, reminding the audience that if had she been convicted a few years later, she would have been transported to Australia instead, where she would have had the opportunity to work on her tan...<sup>9</sup>

As Wilson and others have highlighted, these sorts of depictions of past lives are degrading.<sup>10</sup> But they also distance the audience from the historical actors represented, preventing real engagement with the 'personal, emotional and psychological aspects' of their experiences.<sup>11</sup>

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<sup>4</sup> Ibid, 252; see also Wilson, *Prison: Cultural Memory and Dark Tourism* (2008), Smith 'Explorations in Banality: Prison Tourism at the Old Melbourne Gaol' in Wilson et al (eds.) *The Palgrave Handbook of Prison Tourism* (2017), Johnson and Pickin, 'Suffering on Display: An argument for historical nuance in British Prison Museums', *Crime, History and Societies* 23:1 (2019).

<sup>5</sup> Barton and Brown, 248.

<sup>6</sup> Johnson and Pickin, 6.

<sup>7</sup> <https://www.jacktherippermuseum.com> accessed Oct. 2019.

<sup>8</sup> Site visit, March 2017.

<sup>9</sup> Site visit, June 2018.

<sup>10</sup> Wilson, 1, Johnson and Pickin, 13, 23.

<sup>11</sup> Barton and Brown, 246.

This sort of distance is also created in interpretation that emphasises the oppressive nature of criminal justice in the past. Progressive narratives, focusing on the reform of the system, are likewise considered characteristic of British museums.<sup>12</sup>

It would have been easy for us to present the changes in the criminal justice system over the period of Shire Hall's lifetime (from the end of the 18<sup>th</sup> century to the mid-20<sup>th</sup> century) as a progression from a barbaric, brutal system, predicated on physical punishment, to a more rational and humane one – a 'better' one as it resembles our system now.

But this is inaccurate and unhelpful: it doesn't help us understand why our antecedents relied on physical punishments (for example), nor does it leave room to critically reflect on the way the law works now.

## SITES OF SOCIAL CONTEST

In my own research, I approach the operation of criminal justice in the past as a historian from below. I am actively concerned with recovering the lived experience of ordinary people. The records of the courts offer one of the few ways of doing this. The accounts of crimes, trials and prisoners, sometimes unwittingly reveal a wealth of information about the lives of those who don't often leave an historical account of their own. We can also see how their lives were shaped by the criminal justice system, indeed how society was shaped by it, and in turn, how people shaped the operation of the law.

I (like other social historians in this field) understand the courts – places like Shire Hall – as sites of government and social contest.<sup>13</sup> Whilst they were certainly fraught with inequalities, these were places where all sectors of society interacted and sought justice: from the gentleman acting as judges on the bench, the middle classes and tradesmen of the jury, to the men, women and children of all classes who appeared as witnesses, prosecutors and defendants, and who came to witness proceedings in the public gallery.

When redeveloping the interpretation strategy for Shire Hall, we wanted to use this historiographical position - to capture the sense of social contest inherent in the courts, as well as how things changed over time - as a more effective way of engaging our audiences. The theme of 'justice in the balance' sums up our attempt to equip visitors with accounts of our criminal justice system in the past, to help them critically reflect on what happened and consider the role of law in the present.<sup>14</sup>

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<sup>12</sup> Johnson and Pickin, 7-8.

<sup>13</sup> For example, P. King, 'Edward Thompson's contribution to eighteenth-century studies. The patrician-plebeian model re-examined', *Social History* 2 (1996); King, 'The summary courts and social relations in Eighteenth century England', *Past and Present*, 183 (2004).

<sup>14</sup> Shire Hall Interpretation Strategy, August 2016

*So how did we try to create an accurate, entertaining, ethical and accessible visitor experience that actively engages the public in the role of law past and present at Shire Hall?*

## ANSWERS IN THE ARCHIVE

Many of the answers lay in the archives - we have an extraordinary resource in the records of the court kept at Dorset History Centre. Deciding which stories to tell was framed by our interpretive aims and by listening to our stakeholders and focus groups.

We knew we'd have to include our 'celebrity' cases. Shire Hall is most well-known for the trial of the Tolpuddle Martyrs in 1834: six agricultural labourers who were transported – essentially exiled – to penal colonies in Australia at the behest of government for forming a trades union. The popular campaign for their release is remembered as a pivotal moment in the history of the British Labour movement.<sup>15</sup>

Shire Hall also has a connection with the novelist Thomas Hardy. He witnessed the execution of Elizabeth Martha Brown in 1856, tried and convicted at Shire Hall for murdering her husband. Hardy was reputedly so affected by her story that it inspired his novel *Tess of the D'Urbervilles*.<sup>16</sup>

We also wanted to include cases that enabled us to discuss how the criminal justice system changed over Shire Hall's lifetime. But we wanted to ensure that we told the stories of ordinary people as well; that were representative of the society that Shire Hall served – not merely the most notable. We also needed our case studies to speak to current concerns and not limit our narrative to a story of progress.

We have made our use of the archive clear to our visitors: sources are actively cited in our narratives, and made available to view on our multi-media guide and in hardcopy in the courtroom – they've even been incorporated into the design! (Everything on the graphic wall [depicted] has been used in the research). This transparency is key to engaging our audiences.

In a recent piece, Johnson and Pickin, have warned against the perils of sacrificing historical accuracy for a broader exhibition narrative.<sup>17</sup> Our visitors can see that the information we're presenting is accurate and authentic; and considering our aim to critically engage audiences with the operation of the courts, we have committed to presenting the fullest and most accurate account of a case as possible.

The accounts haven't been sanitised. They retain a degree of discomfort, but we wanted this: to help people feel and understand the significance of these past experiences. But we are also committed to respecting the lives of those whose stories we tell. By using the

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<sup>15</sup> *The Book of the Martyrs of Tolpuddle* (TUC, 1934)

<sup>16</sup> *Sherborne Mercury*, 29 July and 12 August 1856; *Letters of Thomas Hardy*, sig. 1926; F. Dugdale Hardy, *The Early Life of Thomas Hardy, 1840-1891*. (London: 1928) 37.

<sup>17</sup> Johnson and Pickin, 18-19.

archive, it's clear we haven't sensationalised these accounts, or the violence contained in some of them. We present the cases as they were presented and perceived at the time, using language from the original archival material. And we've tried not just to present the experience of the defendant in a sympathetic manner, but consider the prosecutors, witnesses, judges and jurors, and how the case was received in the public domain.

As well as the archive, all our cases are put into context, and include expert commentary from historians and contemporary commentators. Context is vital to avoid presenting the courts of the past as arbitrary or brutal. It helps us consider why people prosecuted crime as well as perpetrated it, and what the different rationales were for the judgements made and punishments given. We want to make these past events meaningful.

## CASE STUDY: ELIJAH UPJOHN

I thought it would be useful to share an example. This is one of our less well-known cases, perhaps even mundane at first glance: it concerns the theft of a pair of trousers in 1834. But it is representative: theft, and theft of clothing was the most frequently prosecuted offence in the region in the early 19<sup>th</sup> century.<sup>18</sup>

It also offers the opportunity to show how ordinary people accessed the courts seeking redress. The case was brought by a publican and his wife from Shaftesbury, a town 30 miles from Shire Hall. Attending court for them was no mean feat: they had to travel to the court, pay for accommodation, take time away from their business and hope that they won their case and could then claim back prosecution expenses.<sup>19</sup>

The defendant – Elijah Upjohn - was also of modest means. He was recorded as a labourer, signalling he was engaged in some sort of unskilled and probably seasonal work. He was also only 11 years old.<sup>20</sup>

The case is not only representative of the pattern of crime, but also gives insight into the experience and treatment of young people by the law, before a separate youth justice system was developed, but as debates around the issue of juvenile delinquency were coming to the fore.<sup>21</sup>

Working with volunteers, we traced Elijah through the prison records, along with members of his family. From these pieces of the puzzle, we know that Elijah's father was prosecuted for theft, that he failed to support his family and ultimately left them when he was transported; Elijah would've been about three.<sup>22</sup>

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<sup>18</sup> Parliamentary Papers [PP] Returns of commitments of to trial etc 1817.

<sup>19</sup> Dorset History Centre [DHC]: Q/S/M/1/16 Order Book 1827-1836; Quarter Sessions Rolls, depositions of Fanny Foot, Thomas Shirley, and Stephen Denbigh 7 April 1834.

<sup>20</sup> DHC: NG/PR 1/D/2/2 prison register 1827-1838.

<sup>21</sup> M. May, 'Innocence and Experience: the evolution of the concept of juvenile delinquency in the mid-nineteenth century' (1973) and S. Magarey, 'The invention of juvenile delinquency in early nineteenth-century England' (1978), both reproduced in J. Muncie et al, *Youth Justice: critical readings* (London: Sage, 2002).

<sup>22</sup> DHC: NG/PR 1/D/2/1 prison register 1812-1827

Elijah was found guilty of stealing the trousers in 1834, but escaped the maximum sentence for this sort of theft (transportation). Acknowledging his youth and that this was his first offence, the judge sentenced Elijah to three months in the county gaol and to be twice whipped (corporal punishment being considered a useful deterrent to young offenders).<sup>23</sup>

We think Elijah was taught to read and write in prison, but it did little to curb his disorderly behaviour. He was convicted twice more, and on his third offence, considered a lost cause and transported for 7 years; by this point he was 16.<sup>24</sup>

We presented Elijah's case in outline to focus groups who confirmed that it was this sort of story – of otherwise unknown people – that they wanted to hear. One respondent said: *"You can relate it back to yourselves...I can relate it to my boys."*<sup>25</sup>

When our research followed Elijah to Australia, we found him in an extraordinary position; ending up as executioner at Melbourne Gaol where he was responsible for the demise of the infamous outlaw Ned Kelly. It was concerning to find Elijah was reputedly good at his job, showing little emotion, but alacrity in meting out corporal punishment to other prisoners.<sup>26</sup>

This case resonates with many debates about youth offending today: what are the causes – the product of a poor environment or a 'bad nature'? How should we deal with young offenders? And what impact does the experience of the criminal justice system have on young people?

Our contemporary commentator for this case is Gareth Evans, writer, academic and a former prisoner. He reflects on his own experiences in light of Elijah's:

*"I found myself resenting the structures that were meant to be in place to help people like us; social services and the police were really behind when it came to supporting my family and I through that. And so I think I grew up with an acute awareness that my following the rules didn't necessarily culminate in my enjoying the benefits of following the rules so it was difficult to see the point of respecting social authority...I think our current model of our judicial system, our prison system, occasionally gets looked at in the light of rehabilitation of wanting to make sure people don't commit crime but I think it's more that...people ultimately just want retribution from it, which makes it quite sad, and difficult to make prisons do the things that are likely to help someone to not reoffend... I believe if you want someone to be nice then you have to be nice to them"*<sup>27</sup>

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<sup>23</sup> *Dorset County Chronicle*, 10 April 1834; DHC: NG/PR 1/D/2/2 1827-1838

<sup>24</sup> PP: Reports of the Inspectors of Prisons, III Southern and Western District 1836; DHC: DHC: NG/PR 1/D/2/2 1827-1838; Q/SM 1/17 Order Book 1836-1845; The National Archives: HO 9/14 Letter book and register of the Leviathan convict hulk.

<sup>25</sup> Family Focus Group, facilitated by TWRResearch (2017)

<sup>26</sup> 'The execution of Edward Kelly', *Kilmore Free Press* 18 Nov 1880; *South Australian Register* 11 April 1884.

<sup>27</sup> G. Evans, interview for multi-media guide, Shire Hall historic courthouse museum 2018.

## CASES IN COURT

Elijah's case is one of four that visitors can choose from to explore in the courtroom itself. The narratives are structured so that each section maps onto different parts of the court space. We made an interpretive decision to use our visitors to populate the court space, to create that sense of dynamism and interaction, but also as a way of enhancing visitor engagement.

Visitors have the opportunity to literally follow in the footsteps of those involved, enhancing their connection with past experiences. Encouraging exploration of the different spaces is also aimed at reinforcing the different perspectives and protagonists involved in a single case. The freedom to move about the space, that would be limited by costumed interpreters or mannequins, means visitors can occupy positions of authority and decision-making as well as casting themselves as those on the receiving end of the law.

## CONCLUSIONS

So, is any of this working?

From independent visitor reviews, observations and more in-depth interviews, there is evidence that visitors are engaging with the lived experience of people in the past:

*'Intelligent, innovative and ironically set the past free and brought it to life'*<sup>28</sup>

Interviewees talked about the stories told as 'real history', not merely accurate accounts but the experiences of ordinary people in the past, histories from below: *'what real people felt, went through', 'somebody who actually existed.'*<sup>29</sup>

Emotional, empathetic engagement was enhanced by telling these stories in the spaces in which they happened:

*'I sat on one of the more comfortable courtroom benches enthralled with the case and soaking up the atmosphere of the room.'*

Entering the court from the cells into the dock proved particularly powerful:

*'You get a real feel of the place, especially when you come up from the dingy cells into the bright and (put yourself in the place of an accused person) daunting courthouse.'*

*'Being able to roam the court and sit as a defendant, a juror and as the judge (with period hats to try on) was a great experience and made this museum a unique immersive and interactive experience.'*<sup>30</sup>

Visitors - of all ages - use the costumes available in the courtroom to hold their own trials, to imagine themselves as judges, jurors, defendants and witnesses - interpreting

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<sup>28</sup> Tripadvisor review May 2018.

<sup>29</sup> Visitor interviews, 31 May and 26 July 2019.

<sup>30</sup> And quote above, both Tripadvisor May and June 2018 and Aug. 2019.



the space for themselves. We also see unconnected groups of visitors interacting with each other in these role-plays.<sup>31</sup>

Some visitors offered critical reflections, particularly on the causes of crime and how judgements were and are formed. In this context, class and economic circumstance were repeated themes:

*'[Being] very poor...just like these people...doesn't make you a criminal'*

*'I know it's the same today, the rich and powerful have all the power.'*

*'We may ponder about the bias and inequality of that 'system'...The museum demonstrates the importance of maintaining these historic buildings as a way of understanding the past, and bringing that into the future.'*<sup>32</sup>

So, I'm taking some wins here in terms of an accurate, authentic, accessible, more ethical and still engaging experience.

However, a sense of injustice in the past is frequently evident in visitor responses:

*"There is an overall theme of justice (or, rather, injustice) looked at historically."*

*"How lucky we are..."*

*'be happy that we live in better times'*<sup>33</sup>

Whilst the case studies can connect visitors with past lives in a meaningful way, they can also reinforce a progressive narrative of the operation of the law – 'that it was worse back then'.

This may be attributed to the drama in our case studies. Whilst accurate, in many respects, our case studies are still exceptional.<sup>34</sup> Those that leave the fullest record often are. And by following the defendants quite literally into the dock - but perhaps more importantly - beyond the courtroom, we lose sight of the other parties in these cases, the victims, or the judges and jurors. Whilst we must consider the impact of the judgements made, we could engage visitors more directly with the decision-making process – asking them to make the choices, corralled by the law, that had such bearing on people's lives.

The distance to the past might also be reduced by more explicit connections to the present. Whilst we have contemporary commentators like Gareth, we could offer more opportunities for reflection on current issues. I've been involved in a number of public discussions at the museum: we've considered issues of court closures and legal aid cuts in the UK, and the problems this causes for popular access to the law. I was fortunate enough to be part of a panel with the human rights lawyer, Clive Stafford-Smith, where we discussed the historic parallels between the trial of the Tolpuddle martyrs, and

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<sup>31</sup> Observation and discussion with visitor experience volunteers, site visit, Nov. 2019.

<sup>32</sup> Visitor interviews, 26 July 2019; Tripadvisor Dec 2018.

<sup>33</sup> Tripadvisor June and Dec 2018; visitor interview 26 July 2019.

<sup>34</sup> Barton and Brown, 248.

political detainees still held at Guantanamo Bay.<sup>35</sup> At both events, members of the audience asked ‘what can we do?’ We need to embed debates like these in the permanent exhibits to see if we can stimulate the same sort of reaction.

I wanted to end on a personal note. Whilst it’s clear that work still needs to be done, I have learned an extraordinary amount as part of the interpretation team at Shire Hall. In trying to find ways of effectively presenting criminal justice to the public, I have reconsidered how I communicate my own research – and to whom, and what the social function of it is.

It’s very easy for historians to criticise historical narratives in museums, but we should be more willing to get our hands dirty.<sup>36</sup> We share the responsibility and challenge with criminal justice heritage sites, to change perceptions past and present.

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<sup>35</sup> R. Wallis, ‘Shire Hall in context’, 24 February 2019 <https://shirehalldorset.org/events/nineteenth-century-criminal-justice-shire-hall-in-context/>; ‘Art and Activism’, 15 August 2019 <https://shirehalldorset.org/events/art-and-activism-discussion/>

<sup>36</sup> Similar calls for collaborative work made by Johnson and Pickin, 23.