

THOMAS WAKLEY AND THE MEDICAL CORONERSHIP—OCCUPATIONAL DEATH AND THE JUDICIAL PROCESS

by

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During a brief period beginning in 1838, coroners' inquests were an unusually controversial component of the English legal system. In considering volatile issues such as employers' responsibility for hazards to workers and the public, a particular type of coroners' inquiry managed to provoke extensive debate about medical and legal professionalism, as well as forcing discussion of the specific legal issues involved. For examinations of the bodies of occupational accident victims had become in the 1830s something newly complicated.² In order to explain the sudden vociferousness of coroners' courts, it is crucial to understand the role of one coroner in particular. That man, Thomas Wakley (who is best known today as the founder of the *Lancet*), was both the source of much of the inquests' potency and the reason for their undoing. Despite some of Wakley's successes in ensuring that inquests would be conducted on a more scientific basis, his crusade on behalf of a "medical coronership" had unfortunate results for the victims of workplace accidents.

The 1830s brought great urgency to a search for financial relief among the victims of occupational accidents and their families. For in that decade, not only were there increasing numbers of labourers who were physically divorced from the attention of their employers when they were involved in accidents at work; the first push of railway construction threw thousands of disabled and largely unskilled navvies on to the charity of communities near the new lines. Whether either personal attachment or legal notions such as the doctrine of *respondeat superior* ever did encourage employers to look after their injured employees is a matter for conjecture.³ But the law courts apparently envisioned a time in which employers had been bound to assist

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²This essay is based in part on an examination of approximately 2000 separate accounts of coroners' inquests as recorded in local records, law reports, medical journals, and newspapers during the period 1830–50. For allowing access to rare sources, I appreciate the efforts of staff members at a number of record repositories and libraries, especially: the record offices in Bedfordshire, Berkshire, Cumbria, Essex, Kent, Manchester, Middlesex, and Shropshire; the British Library; the Public Record Offices at Kew and Chancery Lane; the British Newspaper Library at Colindale; the Wellcome Institute for the History of Medicine; the libraries of the University of Warwick and Cambridge University; and the National Institutes of Health, History of Medicine Division.

³See, for instance: Lawrence M. Friedman and Jack Ladinsky, 'Social change and the law of industrial accidents', in L. Friedman and H. Scheiber (editors), *American law and the constitutional order*, Cambridge, Mass., Harvard University Press, 1978, pp. 269–282.

workmen in certain occupations when they suffered accidents on the job.⁴ There can be little doubt, however, that when labourers began to work farther away from their employers—whether in sweatshops in the East End of London or in more “industrial” places such as cotton mills in Manchester—employers felt correspondingly less moral and legal pressure to provide medical or financial aid in the event of accidents.

Railway construction, involving hundreds or thousands of workers along many miles of line, presented such a striking example of employer callousness to employee welfare precisely because similar large-scale enterprises were relatively rare in the 1830s. Work for most employees was not becoming more “industrial” during the 1830s and ’40s; steam engines were surprisingly under-used even in vast heavy enterprises such as loading-docks. When many employees worked for a single employer, they tended to be engaged in discrete tasks which often were skilled in nature—as on building construction sites, where carpenters, painters, plasterers, and gilders worked for “great” contractors such as William Cubitt.⁵ In many areas near the first major railways, private philanthropy and religious charity could not begin to deal with the problem of injured navvies. Parish authorities tended to give relief grudgingly, and deaths among the construction workers created alarming disruptions of public order. Expressing the common belief that railway contracting was spectacularly profitable, several communities began clamouring for Parliament to require railway companies to provide financial relief for the victims of construction accidents along the lines.

The families of some workers who had died on the job gradually began to find justice in an unexpected quarter—coroners’ inquests on the bodies of the accident victims. From about the time of the building of the first passenger train lines until the mid-1840s, coroners’ inquests directed the attention of the English public to several new occupations in which employees might suffer injuries—notably railway and steamship construction and operation.⁶ (It was especially significant that hazards present for railroad and steamship employees easily translated into dangers for the travelling public.) Grass-roots participation in “coroners’ courts”—in the form of service on juries, as witnesses or merely as spectators—served as more than simple catharsis for the grieving families of victims of accidents at work.

The conduct of some of the inquests had repercussions for the law of liability for accidents, in so far as a few coroners’ courts attempted to provide financial remedies for the miseries that accidents had caused.⁷ When Thomas Wakley, who served as coroner in an area in which occupational fatalities were frequent occurrences,

⁴Terence Ingman, ‘The origin and development up to 1899 of the employer’s duty at common law to take reasonable care for the safety of his employee’, Council for National Academic Awards PhD thesis, 1972.

⁵For a discussion on the nature of work during this period, see: Raphael Samuel, ‘Workshop of the world: steam power and hand technology in mid-Victorian Britain’, *History Workshop*, 1977; 3: 6–72.

⁶Cornelius Walford, ‘On the number of deaths from accident, negligence, violence, and misadventure in the United Kingdom and some other countries’, *J. Roy. Statistical Soc.*, 1881, 44, Part 3: 444–527; and P. E. H. Hair, ‘Deaths from violence in Britain’, *Population Studies*, 1971, 25: 5–24.

⁷Engels probably overestimated the extent to which juries in manufacturing areas attempted to penalize employer negligence. See editor’s comments in Friedrich Engels, *The condition of the working class in England*, Stanford, Calif., Stanford University Press, 1968, pp. 185–187; see also ‘Special Reports of the Inspectors of Factories’, *Parliamentary Papers* (PP), 1841, X: p. 201.

decided to promote aggressively his views on the need for a medical rather than a legal coronership, the medical and legal communities became intensely interested in the direction of inquiries into workplace deaths. Thus it may have been the actions of Wakley, along with the somewhat upstart ideas of inquest jurors on accident compensation, which eventually managed to bring down the wrath of high court judges and Parliament on to the inquest process.⁸

In discussing some of the more innovative activities of coroners' courts during the two decades after 1830, it is critical to note that the great majority of coroners' inquests were predictable affairs, much as they had tended to be since at least the fourteenth century.⁹ When he got word of any sudden, accidental, or violent death, the coroner for the locality in which the body of the victim was discovered was supposed to convene an investigation into the cause of death. Although the inquiries traditionally were concerned with establishing reasons for deaths in a medical sense, there had accumulated a considerable body of common law on the subject.¹⁰

In many instances when coroners legally were required to hold inquests, they and the panel of jurymen who probed the deaths of victims had no difficulty in ruling that the deaths had been from causes which easily were discovered—for example, when deaths were due to providence (such as being struck by lightning, bitten by a rabid animal, or collapsing of a heart attack after a history of heart disease). Even when deaths occurred through accidents in which some human agency had been involved, most coroners and their juries viewed the fatalities as essentially unavoidable—they often termed them “purely accidental”.¹¹ As late as the 1840s, it was unusual for a single one of the hundreds of inquests held each year in a given locality to excite much controversy. For the families and friends of the deceased, coroners' inquests could prove sad affairs, to be sure; but a large percentage of the inquiries, nonetheless, remained unchanged in character from those which had occurred half a century earlier. The routine conduct of most inquests in Middlesex, for example, reflected the fact that a large majority of accident victims—even occupational accident victims—were dying in ways which were familiar to coroners' juries.¹²

⁸For a full discussion of some other factors relevant to compensation legislation in the period, see P. W. J. Bartrip and S. W. Burman, *The wounded soldiers of industry*, Oxford, Clarendon Press, 1983.

⁹See, for instance: William Kellaway, 'The coroner in medieval London', *Studies in London history*, London, Hodder & Stoughton, 1969, pp. 75–91; Thomas R. Forbes, *Crowner's quest*, Philadelphia, American Philosophical Society, 1978; J. Havard, *The detection of secret homicide*, London, Macmillan, 1960; R. F. Hunnisett, *The medieval coroner*, Cambridge University Press, 1961; R. H. Wellington, *The king's coroner*, London, W. Clowes, 1905; and J. F. Waldo, 'The ancient office of coroner', *Trans. Medico-Legal Soc.*, 1911, 8: 101–133.

¹⁰See, for example, Edward Umfrville, *Lex Coronatoria, or the law and practice of the office of coroner*, Bristol, J. M. Gutch, 1822. Umfrville's treatise, first published in 1761, was the standard manual for local coroners throughout the late eighteenth and early nineteenth centuries. In the period after 1830, however, the responsibilities of coroners changed to such an extent that several other works began to rival Umfrville's in popularity. Among those newer manuals were: Richard Clark Sewell, *A treatise on the law of coroner*, London, John Crockford, 1850—Sewell was the editor of the 1822 edition of Umfrville; and William Baker, *A practical compendium of the recent statutes, cases, and decisions affecting the office of coroner* . . . , London, Butterworths, 1851.

¹¹Murders obviously were another matter; coroners' courts could hand down indictments in those cases. And suicides, although frequently discovered by juries, rarely were labelled as such in formal inquest documents.

¹²Forbes, *op. cit.*, note 9 above; and *idem*, 'Coroners' inquests in the county of Middlesex, England, 1819–42', *J. Hist. Med.*, 1977, 32: 375–394.

The goals and personalities of a few well-known coroners were a crucial element in the process through which inquests into occupational deaths occasionally became more than routine inquiries. Coroners necessarily had a hand in every step of inquest procedure—from the summoning of juries through the writing of inquisition documents to the publication of recommendations from the hearings. As guides in the performance of their duties, coroners could turn to treatises containing regulations and case law; they could rely upon their own experience and the custom of their jurisdictions; and still they could have room for personal discretion at a number of junctures during each proceeding.¹³

When a coroner received word that an unexpected death had occurred within his purview, he initially had to determine whether he ought to hold an inquest at all. He steered a thin course in some instances between discharging his duty to investigate suspicious deaths and angering his fellow-citizens by interfering in “domestic matters”. The dilemma became acute, for example, when coroners reasonably might have wished to investigate the sudden deaths of domestic servants (a huge class of employees during this period). The maxim repeated by commentators such as Umfreville that coroners should not “intrude themselves into private families” probably discouraged a number of inquiries into the deaths of abused servants, just as it helped prevent investigations of some child abuse and infanticide. When coroners and their juries did venture to deal with such cases, they trod very cautiously. One woman who with her husband stood accused of beating and starving to death a consumptive apprentice stoutly maintained her right to treat the boy as she saw fit. And incredibly, the coroner’s jury which heard her statement declared afterwards only that she and her husband had been “very reprehensible”—that is not criminally responsible—“in keeping the deceased upon such a short diet”.¹⁴

Even when sudden deaths occurred within prisons and poorhouses, the administrators of those facilities might resent coroners’ efforts to hold inquests on the victims’ bodies. One workhouse master, irritated that an inquest had been convened in regard to a death that he considered routine, pointed out to the presiding coroner that the inquest document failed to specify the name of the victim. The coroner—none other than Thomas Wakley—shot back: “If this is not the body of the man who was killed in your vat, pray, Sir, how many paupers have you boiled?”¹⁵

Although they had access to long lists of eligible jurymen among whom they could distribute responsibility for jury service, coroners might face a struggle simply in getting jurors to sit at inquests. Prospective panel members often viewed the inquiries as either boring or as so potentially controversial that they would be time-consuming. When Charles Dickens received a call to serve at an inquest run by Thomas Wakley, he surprised the beadle who had come to fetch him by agreeing to

¹³In allowing coroners’ courts the authority to draw upon their local customs, higher courts warned that they would examine coroners’ practices very closely and would demand complete consistency within each jurisdiction. See, for instance, the case of *Wakley v. Cooke and Healey* (1849) 4 Ex. 511.

¹⁴*Examiner* 22 January 1848, p. 60. For an interesting gloss upon the subject of domestic violence, see: Leonore Davidoff, ‘Mastered for life’, *J. soc. Hist.*, 1977: 406–428.

¹⁵S. Squire Sprigge, *The life and times of Thomas Wakley*, London, Longmans, Green, 1897, pp. 383–385; *Lancet*, 1842, ii: 401–403; and George Behlmer, ‘Deadly motherhood: infanticide and medical opinion in mid-Victorian England’, *J. Hist. Med.*, 1979, 34: 409.

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go along—Dickens suggested, only partly tongue-in-cheek, that the beadle was accustomed to having prospective jurors bribe him in order to avoid jury duty. If they were not satisfied with the excuses given for absences, coroners had the authority to compel jurors to serve and to fine them for failure to appear.¹⁶

A still more serious problem for coroners in conducting inquests was that of obtaining medical assistance; it could be of particular concern when coroners themselves had no medical training. Although a few public-spirited medical men readily agreed to lend their expertise to the inquest process—examples exist from the eighteenth century—their participation was by no means legally compelled.¹⁷ After the passage of Thomas Wakley's "Medical Witnesses Remuneration Bill" in 1836, coroners were authorized to compensate medical personnel for their time in testifying before inquests. But the mere availability of medical testimony did not rid inquests of either guesswork or controversy surrounding causes of death; indeed, in some cases of deaths through occupational accident, medical witnesses simply may have served to create further confusion for jurymen. Such surely was the case, for instance, when a surgeon named Atkinson swore before a rapt coroner's jury that there was no doubt "that the miasm or effluvium from the grave was the cause of death" of a Westminster gravedigger and his young servant.¹⁸

The statutory provision for medical witnesses at inquests did help to make inquiries more precise, if not correct; still, coroners during the 1830s were discovering that medical expertise was only one form of sophisticated knowledge to which they needed access. When they directed inquiries into accidents involving steam power, for instance, coroners increasingly depended on the testimony of inventors and engineers to attest to the exact causes of mechanical failures and boiler explosions. At the inquest on bodies of engineers killed by an explosion on the steamship *Victoria*, the coroner, William Baker, heard expert witnesses representing most of the parties involved; they testified on topics such as the design of the boiler which had ruptured and the advisability of a manual operation of the boiler's safety valve.¹⁹

The presence of steam power in some workplaces and on public transport had created enough hazards to make the duties of coroners burgeon correspondingly. That increasing authority of coroners was quickly challenged, in particular by lawyers who saw inquests as taking on too many functions of the civil process (such as calling employers to task for negligence) and by local governmental officials such as

¹⁶In most areas, twelve men sat on each panel, but occasionally inquest documents show thirteen or fourteen jurors' signatures, along with the coroners'; see, for example, documents from Essex—Roxwell manor inquisitions, 20 February 1837. Umfreville, *op. cit.*, note 10 above, p. 119; *The Times*, 25 September 1838, p. 6.

¹⁷R. F. Hunnisett, 'The importance of eighteenth-century coroners' bills', in E. W. Ives and A. H. Manchester (editors), *Law, litigants, and the legal profession*, London, Royal Historical Society, 1983, p. 131.

¹⁸The bill for the payment of medical witnesses was 6 and 7 Will. IV, c. 89. See, generally, H. H. Pilling, 'Social change and the coronership', *Medicine, Science, and the Law* 1970, 10: 239; and Sprigge, *op. cit.*, note 15 above, pp. 277–288. In regard to the death of the gravedigger, see: 'Fatal consequences of the effluvium in metropolitan graveyards', *Lancet*, 1840, i: 405–406.

¹⁹Baker, *op. cit.*, note 10 above, p. 266. 'Victoria explosion inquest', *Mechanics' Magazine*, 25 August 1838, 29: 342–368.

justices of the peace, who envied coroners' growing local influence.²⁰ Resentment over coroners' new importance crystallized into a debate over whether the coronership ought to be an office for medical or for legal professionals.

Traditionally, coroners were not required to be trained in either law or medicine; they tended to be simply local officials, usually having some familiarity with the law but possessing only a smattering of medical knowledge. Although by the 1830s coroners in larger cities usually came to office with some formal legal training, there was no requirement that they have any. Given the complexity of rules of evidence with which coroners needed to be familiar, for instance, they ought to have found some knowledge of criminal trial procedure to be helpful to them. Coroners might have to determine, for example, how to rule on difficult questions such as whether atheists, Quakers, and Jews could testify at inquests, whether witnesses could be allowed to incriminate themselves, whether dying declarations of witnesses to accidents were admissible as evidence, and even whether jurymen might abbreviate their first names in signing an inquisition document.²¹ The advising and directing of juries was an even more substantial legal morass for coroners; settling on a definition of manslaughter which could withstand the scrutiny of a high court was notoriously difficult.

As inquests into occupational deaths took on an increasingly contentious tone in the late 1830s, several coroners made heroic efforts to stay abreast of legal technicalities concerning accidental deaths, in order to avoid any overturning of the inquest results by higher courts. Coroners' hearings produced final documents which could contain recommendations for further actions against criminally responsible persons. The inquisition documents thus were similar to indictments, and could be quashed because of written imperfections.

Coroners quite correctly warned their juries to be substantively moderate as well as procedurally correct in reaching verdicts; there was little doubt that high courts could be sympathetic to overturning an inquisition on the grounds that it had been written improperly, when in fact they were concerned with the substance of the inquest result. Ostensibly, for example, the reason that the Court of Queen's Bench voided an inquisition document concerning an accident on the steamer *Victoria* was the inquest jury's failure to specify the meaning of the word "instantly" as it referred to the time of death of several victims of a boiler explosion. That disallowance of the carefully-composed document on such insubstantial grounds, although not utterly without precedent, was certainly related to the fact that the inquest jury had imposed a huge fine—or "deodand"—on the owner of the ship.²²

It was possible to argue, however, that even coroners with extensive legal training could not have made some of the fine distinctions required in separating deaths by

²⁰ Havard, op. cit., note 9 above, pp. 9, 43–44.

²¹ Umfreville, op. cit., note 10 above, p. 124; Baker, op. cit., note 10 above, p. 305; 2 Hawkins P. C. C. 609; *Wakley v. Cooke and Healey* (1849) 4 Ex. 511; *Woodcock's Case* 1 Searle, c. 502; Baker, op. cit., note 10 above, p. 298; *The King v. Evett* (1827) 6 B. and C. 247; *The Queen v. Brownlow* (1839) 11 Ad. and E. 119.

²² See a portion of the coroners' charge to the jury in *The Times* 18 June 1838, p. 5. Nullification of that inquest document occurred in the case of *The Queen v. Brownlow and Others* (1839) 11 Ad. and E. 119. For a bitter criticism of the *Brownlow* decision, see *Lancet*, 1839, ii: 340–341. See below for a discussion of the deodand.

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unfortunate accident from deaths due to criminal negligence.²³ Therefore, rather than calling for still more legal expertise on the part of coroners, at least one body of opinion suggested that coroners might serve the public purpose best if they were medical men:

The training of the mind to act FOR the law, and to fulfill ALL its injunctions in the court of the Coroner, is not to be effected in the red-and-black-ink shops of scribbling and miserable-minded attorneys, but in those high (marks) of natural law, the Temples of Medical Science . . . Attorneys are elected coroners, and there they SIT, untroubled, ungalled, unstimulated, unnoticed by the public, careless if unnoticed, insolent if reproached, afraid to be touched . . .²⁴

The medical coronership had found an important advocate in Thomas Wakley. At the very centre of efforts to make coronership an office for medical professionals rather than lawyers was the medical journal, the *Lancet*, with Thomas Wakley as its editor-in-chief. Wakley had been using the *Lancet* as a mouthpiece for his views on the need for medically-trained coroners for several years before he was elected coroner for the western district of Middlesex in 1839. When he stood for election, he already had offended enough lawyers through articles in the journal for a group of Middlesex magistrates to attempt to persuade the Lord Chancellor to appoint two coroners to fill the single district vacancy. Although they failed in that effort to dilute Wakley's authority, he continued to nurse a grudge against them. In fact, after that episode, the high salaries of lawyers became one of Wakley's favourite topics. He was foolhardy enough to declare within the halls of Parliament that no lawyer could be worth a salary of £3000 per annum, and he was openly disparaging of the capabilities of county magistrates.²⁵

Wakley's unfortunate tendency to act abrasively helped to alienate some of the very professionals whose support he needed to carry through reforms of the coronership. In the early days of his editorship, Wakley had to pay £100 in damages for his allegation in the *Lancet* that the surgeon Bransby Cooper had taken undue advantage of the fame of his uncle Sir Astley Cooper, the senior surgeon at Guy's Hospital at the time. It is of some interest that Bransby Cooper's attorney in the case was Sir James Scarlett, later Lord Abinger, who as a Baron of the Exchequer wrote the 1837 decision in *Priestley v. Fowler*, which had momentous consequences for the ability of injured employees to sue their employers for negligence.²⁶ Wakley's remarks about élitism and nepotism in the Royal College of Physicians also angered so many of the leading doctors in London that by the time he proposed his bill for the payment of medical witnesses, he had to present it as a reform of the inquest system rather than as a measure which had the support of the medical community.²⁷ Many

²³See, for example, Lord Denman's differentiation between "misadventure" and "felony" in *The Queen v. Polworth* (1841) 1 Q.B. 819. In his *Practical compendium* (op. cit., note 10 above, p. 288) William Baker struggled to understand the high courts' definitions of manslaughter, culpable negligence, and non-criminal negligence; *The King v. Allen and Clarke* (1835) 7 C. and P. 153; *The King v. Green* (1835) 7 C. and P. 156.

²⁴'Court in Ireland for the protection of murderers', *Lancet*, 1840, ii: 932-935.

²⁵Sprigge, op. cit., note 15 above, pp. 375-377, 319-321, 146-155. For a discussion of Wakley's career, see: Gavin Thurston, 'A queer sort of thing', *Medico-Legal J.*, 1969, 37: 165-171.

²⁶See note 47 below.

medical men who criticized Wakley's approach to his duties as coroner viewed him simply as a cynical rabble-rouser. The *Medical Times*, for instance, declared that "his conduct raises an issue, . . . that there can be no court of justice unpolluted which this libellous journalist, this violent agitator, and this sham humanitarian is allowed to disgrace with his presidentship."²⁸

He had earned a reputation as a forceful speaker in the House of Commons largely through his plea for a remission of the sentences of the Tolpuddle Martyrs; in making that speech, of course, he managed to irritate Russell and the Whigs who had encouraged the sentencing of the Dorset labourers. But, although the Chartists actively sought his support after he worked for the reprieve of cotton-spinners who had been sentenced to transportation following violent demonstrations in Glasgow in 1837, he refrained from close association with them.

Wakley generally kept from expressing the most radical of his political opinions in the course of inquests.²⁹ Yet even as he sought to reform the coronership as an office, he had ample opportunities daily to address the question of accidents at work. From his actions at individual inquests to his anonymous editorials in the *Lancet*, Wakley showed concern for the financial miseries which new forms of occupational accidents had caused for victims and their families. When Wakley published an account of the quashing of the *Victoria* inquest, his comments reflected dismay that a high court so obviously was attempting to undermine the substance of the jurors' finding of negligence by the employer. They also contained smug remarks about the fact that the coroner who had written the voided document was a lawyer.³⁰ Even before Parliament had thoroughly studied the issue of employer liability, the *Lancet* publicly advocated that large-scale employers should provide a system of compensation for employees who were injured at work.³¹

The proponents of legal training for coroners responded vigorously to Wakley's crusade. They not only argued that lawyers were better able to sort out the details of conducting inquests as judicial hearings; but they went so far as to allege that medical coroners—especially Wakley—were seeking to profit from the small fees collected for each inquiry by holding too many inquests. Since a good proportion of inquests in Middlesex were concerned with occupational fatalities, and since some better-known inquests had been related to deaths at work, that type of inquest came under

²⁷See, generally: M. Jeanne Peterson, *The medical profession in mid-Victorian London*, Berkeley, University of California Press, 1978, pp. 25–27.

²⁸Wakley recovered damages of £350 from the editors of the *Medical Times* for those remarks which were made in reference to the "Hounslow Heath inquest"—his 1846 inquiry into the death of an army man from flogging.

²⁹Sprigge, *op. cit.*, note 15 above, pp. 237, 262–277, 312, 319–321.

³⁰'Quashing of an inquest drawn by an attorney coroner', *Lancet*, 1839, ii: 340–342. Wakley degenerated into paranoia, however, when he accused the London press of not reporting extensively on the disallowance of the document merely because the decision in *Brownlow* involved a coroner who was an attorney. With undisguised glee, the *Lancet* told readers of the election of "medical gentlemen" as coroners; see, for example, *Lancet*, 18 March 1843, i: 909.

³¹*Ibid.*, 1843, ii: 657–661. And see an inquest regarding an accident on the Great Western Railway—*The Times*, 21 March 1839, p. 6. Parliamentary action on the subject of employer liability came after the legislature had investigated accidents among railway navvies, in a series of hearings in 1845–46. See: 'Report from the Select Committee on Railway Labourers', *PP*, 1846, 530, XIII, p. 411.

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particular scrutiny. At a series of meetings in late 1839, just after Wakley began serving as a Middlesex coroner, a committee of Middlesex magistrates aired their concerns about “the increase of inquests”.³² The magistrates were correct that there had been an increase in the number of inquests in the past few years in London. They were misguided, however, in shackling medical coroners with the responsibility for that development; and they were grossly unfair in characterizing the typical medical coroner (reference to Wakley was thinly veiled) as “a sort of parish jackal, who was remunerated in proportion to the number of inquests which were held”.³³

The coroner William Baker, already well known because of his direction of the *Victoria* inquest, provided several explanations for an increase both in the number of inquests and the amount of fees collected in connexion with them. He agreed that explanation was in order, citing the jump in his own receipts from £1771 in 1836 to £4134 in 1838. In the three years in question, some administrative changes had occurred: fees for inquests were to be paid from the poor rates by county treasurers rather than by the traditionally stingy overseers; a new scale of fees for coroners’ duties was in effect; and, also by statute, Parliament had provided for the payment of medical witnesses through Wakley’s legislation. Therefore, although more money passed through coroners’ hands in 1838, they did not necessarily reap a huge increase in the portion of it paid to them for their services.³⁴ Other coroners linked the increasing number of inquiries to better police investigations of violent crime, the necessity of gathering accurate statistics on deaths for the Registrar General (after statutory provision for births and deaths registration in mid-1837), and even the availability of burial societies.³⁵

Growth in the number of inquests—particularly controversial ones—was possible in metropolitan areas for reasons even less tied to complaints about particular institutions. In particular, the development of steamships and railways, which were built out from London extremely rapidly in the mid-1830s, had brought about a large increase in travel to and within towns. With brisk trade, and the steam power which contributed to it, went an expanded opportunity for accidents involving passengers, bystanders, and employees. Although steam power was not quantitatively the predominant factor in relation to accidental deaths, fatal accidents on railways and steamships tended to attract publicity and interest out of all proportion to their numbers.³⁶

By far the most common finding of inquest juries concerned with occupational deaths during this period was one of “accidental death”. To that verdict, many juries

³² Some of the proceedings of those sessions are reprinted in Baker, *op. cit.*, note 10 above, pp. 669–670; and Thomas Wakley, ‘Inquests in Middlesex’, *Lancet*, 1839, ii: 254–261.

³³ Baker, *op. cit.*, note 10 above, pp. 669–670. In fact, Wakley had been living beyond his means; but he stood to profit little from the coronership. Sprigge, *op. cit.*, note 15 above, p. 390. See also the *Examiner*, 12 August 1843, p. 502. For a discussion of other London coroners’ expenses, see: Forbes, *op. cit.*, note 12 above, p. 376.

³⁴ William Baker, *A letter . . . on the subject of the increase of inquests*, London, Homan, 1839.

³⁵ Joseph Baker Grindon, a coroner for Bristol, noted that he had performed 91 inquests in that city in 1836; by 1847 the number had reached 243. J. B. Grindon, *Compendium of the law of coroners*, London, Crockford, 1850, p. ix. Also see: Baker, *op. cit.*, note 10 above, pp. 52–71; W. D. Chowne, *Oration delivered before the Medical Society of London, March 8, 1841*, London, G. Davidson, 1841, pp. 68–69.

³⁶ See, for example: M. W. Greenwald and G. I. Greenwald, ‘Coroners’ inquests—a source of vital statistics. Westminster, 1761–1866’, *J. Legal Medicine*, 1983, 4: 51–86.

added a nominal fine on any object which had “moved to the death” of a victim. In medieval England such fines had served as appeasements to the deity, paid by the owner of each instrument which had killed a victim in lieu of forfeiture of the object. The fine could have been paid either to the king or to the lord of the manor, who would distribute it “in pios usus” among the poor; and some of the money could have been given to the church for prayers for the souls of victims.³⁷ The fines, which were better known as “god-gifts” or “deodands”, by the early nineteenth century, had become trifling in value. For instance, even when an object as expensive as a farm animal had killed a wagoner, an inquest jury would tend to levy on the farmer who owned the animal a minimal fine—usually much less than the animal’s value. The receipts from deodands throughout Britain must have been very small indeed by about 1830; for the Crown, which ought to have collected most of them, along with assorted local authorities, such as the corporation of Liverpool and the Duchy of Lancaster, were unconcerned about the fiscal effects of a proposed abolition of deodands in 1846. The small sums which the Royal Almoner was able to gather as deodands he tended to return immediately to the families of the victims in question.³⁸ But in spite of their relative disuse, deodands enjoyed a resurgence in the 1830s and ’40s among inquest juries in a few visible jurisdictions. Especially with the assistance of the Middlesex coroners William Baker and Thomas Wakley, coroners’ courts began to use deodands to indicate their displeasure with employers after certain types of occupational accidents.³⁹

Primarily, juries utilized deodands to indicate that they perceived negligence on the part of the employers of the victims of fatal accidents at work; the employers’ policies toward safety at work might have been callous or shortsighted, or employers might have allowed the inattention of other employees to endanger the lives of their colleagues. Jurymen were particularly likely to impose deodands when they believed that employers had been placing the general public at risk, as well—thus the rather well-known examples of deodands upon railway engines and steamship boilers.⁴⁰ There was precedent for such a punitive employment of deodands; juries sometimes used them as punishments after “running down” accidents involving stagecoaches.⁴¹ And it was possible for coroners’ courts to wield the mere threat of the imposition of a large deodand—a railway engine, for example, which had “moved to the death” of a person could have had a value of several thousand pounds—in order to squeeze promises of aid to the family of a victim from an ungenerous employer.⁴² Obviously, the use of such an arcane legal device as an instrument with which to effect

³⁷ Umfreville, *op. cit.*, note 10 above, p. 59; Sewell, *op. cit.*, note 10 above, p. 151. And see William Blackstone, *Commentaries on the laws of England*, Oxford, Clarendon Press, 1765–69; reprinted, Chicago, University of Chicago Press, 1979, vol. 1, pp. 290–292. For a commentary on whether the fines were ever used as criminal forfeitures, see Lord Denman’s opinion in *The Queen v. Polworth* (1841) 9 Dowl. P. C. 1048.

³⁸ Harry Smith, ‘From deodand to dependency’, *Amer. J. Legal Hist.*, 1967, 2: 389–403.

³⁹ For a discussion of other uses of the deodand in the nineteenth century, see Havard, *op. cit.*, note 9 above, pp. 14–15.

⁴⁰ W. W. Westcott, ‘A note upon deodands’, *Trans. Medico-Legal Soc.*, 1909–10, 7: 91–97.

⁴¹ Smith, *op. cit.*, note 38 above, p. 390.

⁴² See several examples as reported in *The Times*: 11 October 1833, p. 3; 2 February 1836, p. 1; 6 June 1839, p. 6.

punishment and compensation for occupational accidents was a development which infuriated lawyers and judges as well as employers.

Some of the importance of coroners' juries during the period, therefore, lay in their role in hearing occupational accident cases and occasionally reaching verdicts favourable to employees. Before higher judicial bodies, the prospects of victims of accidents at work were considerably grimmer. One means of appreciating the bleakness of the situation that injured employees faced if they resorted for remedy to the high courts is to consider the fact that members of the public had a greater chance of success to recover the cost of baggage damaged on a railway trip than railroad employees had of obtaining compensation for injuries at work.⁴³ Still worse, the families of fatal accident victims lost all hope of civil recovery from grossly negligent employers because of the ancient legal maxim that "the action dies with the person".⁴⁴

Given such reluctance on the part of the higher courts in hearing the claims of accident victims, along with their persistent efforts to undermine the use of deodands, it seems hardly possible that the plight of victims could not have been improved by several pieces of legislation relating to them in 1846—an act regarding fatal accidents, the Deodands Abolition Bill, and a short act dealing with poor removal. Yet the legislation as a whole only marginally helped the legal or financial position of accident victims. Although its backers represented it as a fundamental change in English law, the Fatal Accidents Act allowed suits for wrongful death on grounds so narrow as to preclude most working-class victims. The Poor Removal Act made it more difficult for parochial authorities to ignore the victims of accidents or their widows but said little else about their care.⁴⁵

The Deodands Abolition Bill, which passed through Parliament as a twin measure to the fatal accidents legislation, drastically curtailed the vigour with which coroners' courts could express their concern about occupational accidents. Thomas Wakley's reasons for voting in the end to abolish deodands remain rather obscure, particularly if one regards him as more than a "sham humanitarian". He may have been convinced by sponsors of the legislation that fatal accidents compensation would prove quite broad in scope, in the spirit of the exhaustive inquiry of the Commission on Railway Labourers (1845–46). Or perhaps he thought that in order to achieve even minor gains in the legal standing of accident victims, deodands would have to be sacrificed to the "railway interest" in Parliament.⁴⁶ Any question of legislators'

⁴³F. G. Cockman, *The railway age in Bedfordshire*, Bedford, Bedfordshire Historical Society, 1974, pp. 97–99. In *Elwell v. Grand Junction Railway Company* (1839) 5 M. and W. 669, the Court of Exchequer stated that a railway company was obliged to carry safely items such as trunks and umbrellas belonging to passengers, and that passengers were entitled to sue for the loss of their baggage under a common carriers' act of 1830 (4 Will. IV c. 4).

⁴⁴This is to say nothing of the inaccessibility of the civil process due to its enormous expense for litigants who were permitted to sue. See P. C. Alcock, 'A study of legal aid and advice in England and Wales', Council for Academic Awards MPhil. thesis, 1976, p. 27; Bartrip and Burman, *op. cit.*, note 8 above, pp. 26–28.

⁴⁵*Ibid.*, p. 101; and Michael E. Rose, 'Settlement, removal, and the New Poor Law', in D. Fraser (editor), *The New Poor Law in the nineteenth century*, New York, St Martin's Press, 1976, pp. 25–44; 9 and 10 Vict. c. LXVI (Poor Removal Act); 9 and 10 Vict. c. LXII (Deodands Abolition Act); 9 and 10 Vict. c. XCIII (Fatal Accidents Compensation Act).

intent aside, the abolition of deodands effectively assured railway contractors and steamship owners that inquest juries no longer could penalize them for negligence. That assurance in turn made the financing of enterprises involving steam power a much more predictable (and profitable) proposition.⁴⁷

The forces of capital had powerful allies in Parliament and the high courts; it is something of a surprise that coroners' courts ever were able to use the deodand on behalf of occupational accident victims. It may have been the egotism as well as the conscience of Thomas Wakley which gave new life to the coroner's inquest and its medieval device. But Wakley's activities on behalf of a medical coronership also may have helped to solidify opposition to a strong inquest process on the part of lawyers, judges, and magistrates, who saw themselves as involved in a struggle for local authority. Still worse, he seemed to have wished for juries to have a say in the difficult question of employer liability, just at the time when tort was becoming a potentially lucrative battleground for lawyers as a result of steam travel.

After 1846, Wakley continued to use the inquest process as a forum for some of his political and social views—the inquest at Hounslow Heath was a good example of the fervour which he could still excite. But since he rarely again dabbled in the investigation of occupational accidents, after 1846, the victims of workplace negligence in effect were left to the tender mercies of the English judiciary. By 1851, the higher courts had made it painfully apparent that workers might expect little sympathy if they mounted civil actions against their employers.⁴⁸ It would take thirty years for the English legal system again to grant significant redress to the victims of occupational accidents; without the aid of coroners' courts, they faced negligent employers alone.

⁴⁶ Bartrip and Burman, *op. cit.*, note 8 above, p. 100; *Hansard*, 3rd series, LXXVII (24 February 1845), cc. 1027–31; and LXXXVIII (11 August 1846), c. 626. The author of the deodands abolition and fatal accidents legislation was Lord Campbell, who happened to be the son-in-law of Lord Abinger.

⁴⁷ This also was the effect of judicial decisions such as *Priestley v. Fowler* (1837) 3 M. and W. 1, and *Farwell v. Boston and Worcester Railway* (1842) 38 Am Dec. 339, which dramatically limited the conditions under which injured workers could sue their employers for negligence. For a similar view, see: Leonard W. Levy, *The Law of the Commonwealth and Chief Justice Shaw*, New York, Harper & Row, 1957, pp. 178–182.

⁴⁸ See, for example, the well-known cases of *Wigmore, Administratrix, etc., v. Jay* (1849) 6 Railway Cases 445; and *Hutchinson, Administratrix, etc., v. the York, Newcastle, and Berwick Railway Company* (1850) 6 Railway Cases 438.