



LEEDS
BECKETT
UNIVERSITY

Citation:

Rutherford, H and Sandford-Couch, C (2023) Joseph Bouet in the Durham criminal court (c.1825–1856): picturing nineteenth century courtroom actors. Part 2 three case studies. *Law and Humanities*. pp. 1-27. ISSN 1752-1483 DOI: <https://doi.org/10.1080/17521483.2023.2223803>

Link to Leeds Beckett Repository record:

<https://eprints.leedsbeckett.ac.uk/id/eprint/9791/>

Document Version:

Article (Published Version)

Creative Commons: Attribution 4.0

© 2023 The Author(s).

The aim of the Leeds Beckett Repository is to provide open access to our research, as required by funder policies and permitted by publishers and copyright law.

The Leeds Beckett repository holds a wide range of publications, each of which has been checked for copyright and the relevant embargo period has been applied by the Research Services team.

We operate on a standard take-down policy. If you are the author or publisher of an output and you would like it removed from the repository, please [contact us](#) and we will investigate on a case-by-case basis.

Each thesis in the repository has been cleared where necessary by the author for third party copyright. If you would like a thesis to be removed from the repository or believe there is an issue with copyright, please contact us on openaccess@leedsbeckett.ac.uk and we will investigate on a case-by-case basis.



Joseph Bouet in the Durham criminal court (c.1825–1856): picturing nineteenth century courtroom actors. Part 2 three case studies

Helen Rutherford & Clare Sandford-Couch

To cite this article: Helen Rutherford & Clare Sandford-Couch (2023): Joseph Bouet in the Durham criminal court (c.1825–1856): picturing nineteenth century courtroom actors. Part 2 three case studies, *Law and Humanities*, DOI: [10.1080/17521483.2023.2223803](https://doi.org/10.1080/17521483.2023.2223803)

To link to this article: <https://doi.org/10.1080/17521483.2023.2223803>



© 2023 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group



Published online: 06 Jul 2023.



[Submit your article to this journal](#)



Article views: 48





[View related articles](#)



[View Crossmark data](#)

Joseph Bouet in the Durham criminal court (c.1825–1856): picturing nineteenth century courtroom actors. Part 2 three case studies

Helen Rutherford ^a and Clare Sandford-Couch ^b

^aNorthumbria Law School, Northumbria University, Newcastle upon Tyne, United Kingdom;

^bLaw School, Leeds Beckett University, Leeds, United Kingdom

ABSTRACT


Between c.1825–1856, a French-born artist, Joseph Bouet, made approximately sixty pencil sketches in the criminal courtroom at Durham, of legal actors including judges, lawyers, and defendants. Our research is the first detailed analysis of these images by legal scholars. It is presented in two parts, which can be read as separate and independent pieces, but each gain from being read in conjunction with the other.

In Part 1 of this series of two articles we discussed potential theoretical approaches to analysis of the images and their importance to socio-legal and legal historical scholarship (cross ref). In this Part 2, we explore Bouet's courtroom sketches of legal actors as the rare and unusual starting point for a microhistorical analysis examining individual interaction(s) with the criminal justice process in the mid-nineteenth century. This article demonstrates that with detailed research these previously overlooked images can offer a unique window into aspects of nineteenth century legal history, with much to tell us about legal institutions, the people who worked within them and the 'objects/subjects' of the law. This study makes an important contribution to the growing body of scholarship on the interface between history, law and the visual.

KEYWORDS Bouet; Durham; images; judges; defendants; microhistory; legal actors; nineteenth century; court art

Introduction

Between c.1825–1856, a French-born artist, Joseph Bouet, made approximately sixty pencil sketches of legal actors in the courtroom at Durham. The images include judges, lawyers, goalers, solicitors, witnesses, and defendants. The drawings are pasted onto album pages in two books in a seemingly random fashion. [Figure 1](#) is an example of a typical page. Legal imagery from this period in North East England is rare, yet our research is the first detailed analysis

CONTACT Helen Rutherford  helen.rutherford@northumbria.ac.uk

© 2023 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group

This is an Open Access article distributed under the terms of the Creative Commons Attribution License (<http://creativecommons.org/licenses/by/4.0/>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited. The terms on which this article has been published allow the posting of the Accepted Manuscript in a repository by the author(s) or with their consent.



Figure 1. Example of a page from the Album of Joseph Bouet drawings (Durham University Library Add MS 1300/9- 1300/14). [Reproduced by permission of Durham University Library and Collections].

of these images by legal scholars. This article forms Part 2 of our analysis and represents the further development of the larger research project initiated in Part 1 *Joseph Bouet in the Durham Criminal Court (c.1825–1856): Picturing Nineteenth Century Courtroom Actors. Part 1: Lines of Enquiry.*

In Part 1 we introduced the artist, Joseph Bouet [Figure 2](#), and outlined the background to our research, and the questions we could pursue to analyse the images of legal actors in the albums. We demonstrated that the images are a unique and valuable resource for legal and criminological historical research. In this second article we expand upon our preliminary work and in three detailed case studies show the potential of the images for further study. Our approach is to use selected images from Bouet's pencil sketches of legal actors, hand-drawn in the courtroom at Durham, as the rare and unusual starting point for microhistorical analysis. Microhistory is notoriously difficult to define, nor does it have a coherent set of practices or methods.¹ Historians and commentators disagree over what can and should constitute a microhistory.² Broadly, microhistory is

¹For an introduction, see Sigurður Gylfi Magnússon and István M Szijsártó, *What is Microhistory?* (Routledge 2013) ; and Alex Tepperman 'Status Quotidian: Microhistory and the Study of Crime', in TJ Kehoe and JE Pfeifer (eds), *History and Crime* (Emerald 2021) 143.

²For a recent survey of microhistorical theory, practice, and historiography, see Richard Bell, 'Peepholes, Eels, and Pickett's Charge: Doing Microhistory Then and Now' (2022) 12 (3) *The Journal of the Civil War Era* 362.

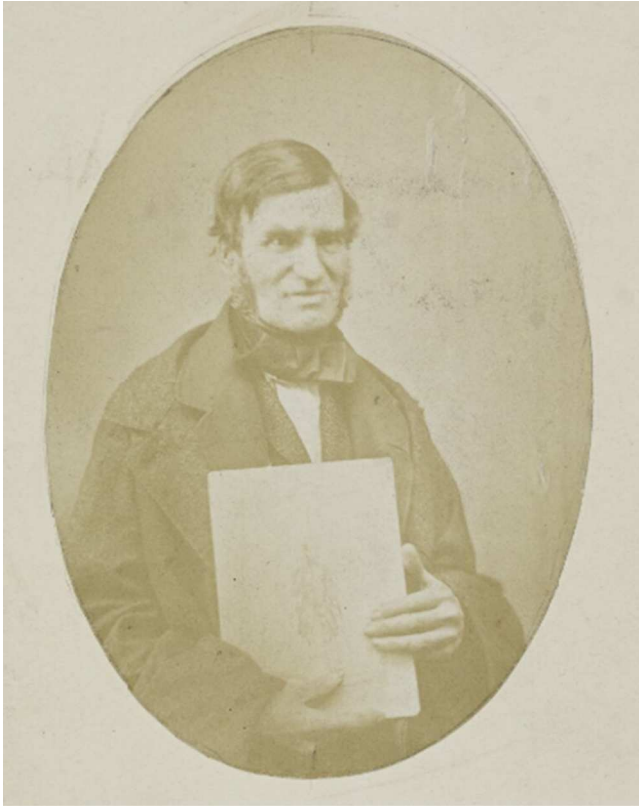


Figure 2. Unknown *Photograph of Joseph Bouet* (Durham University Library Add MS 17). [Reproduced by permission of Durham University Library and Collections].

historical analysis that starts with something ‘small’ or specific, whether an event, a place, or an individual, and then moves beyond that starting point, pulling together evidence to shed light on a particular historical context. Importantly, ‘small’ does not mean ordinary or insignificant. A micro-historical analysis can reveal how the life of an individual connects to something broader, often revealing new insight into the society and culture in which they lived. This ability to address broader questions can be a key advantage of microhistorical analysis.³ Using an image as the focus of our research we examine individual interaction(s) with the criminal justice process in the mid-nineteenth century in north east England.

³As an example, Robert Darnton, ‘Workers Revolt: The Great Cat Massacre of the Rue Saint Severin’ in *The Great Cat Massacre and Other Episodes in French Cultural History* (Basic Books 1984) 75–104. Others have questioned whether that broader connection is indeed essential: see Sigurður Gylfi Magnússon, ‘Far-Reaching Microhistory: The Use of Microhistorical Perspective in a Globalized World’ (2017) 21 (3) *Rethinking History* 312.

Microhistorical analysis is particularly well-suited to our source material. Many true-crime microhistories have started with the records of a court case.⁴ As Anne-Marie Kilday and David Nash noted, 'Court cases are themselves microhistories of the law at work in individual instances and for individual people.'⁵ However, our source material is unusual. The images are not formal official records. They record acts of eye witnessing, drawn directly from life, showing an immediacy which enables us to stand 'face-to-face' with the subject. Each image in Bouet's sketches foregrounds one small moment of an individual's life. The images afford a unique insight, depicting a contemporaneous record of a specific moment in criminal trial proceedings, meaning these are not only drawings of people but also of events.

In his sketches Bouet focused tightly on the human figure, rather than the broader 'culture of the courtroom'. Here we follow his example, centring the individual legal actor in each case study. In doing so, we examine and rediscover the lived experience of those individuals within the criminal justice system. Using a hand-drawn sketch as our primary source has the potential to offer an emotional perspective difficult to establish from written documents. Court records and other formal records of the criminal justice process do not reveal human responses. Newspaper reports may include details of emotional outbursts in a trial, but this is mediated through the reporting process, arguably reflecting what was expected rather than what happened. Significantly, from our rare and unusual starting point of Bouet's sketches from life, our three case studies demonstrate the potential of microhistorical analysis to recover more dimensions of the lives and the lived experiences of legal professionals and of non-elite individuals. The case studies are chosen as representative of the portraits of legal actors in the albums. Judges are the most numerous category of legal actors drawn by Bouet, and the subject of our first study is Baron Samuel Martin. Martin was a significant figure in legal circles. Having started out as a special pleader, he then became a well-respected barrister on the Northern Circuit before being knighted and appointed a Baron of the Exchequer and a Privy Counsellor. He was also an MP for three years. Yet, as our case study reveals, it is possible to learn more about even such a seemingly well-known person from Bouet's sketch. Also, such a well-known subject enables us to compare Bouet's images to other images of Martin, offering perspective on Bouet's representations of his subjects.

⁴See for example, the contributions to Anne-Marie Kilday and David Nash (eds) *Law, Crime & Deviance Since 1700: Micro-Studies in the History of Crime* (Bloomsbury 2017) and, David Nash and Anne-Marie Kilday (eds) *Fair and Unfair Trials in the British Isles, 1800–1940 Microhistories of Justice and Injustice* (Bloomsbury 2020).

⁵Nash and Kilday, *Law, Crime and Deviance* (n 4) 3.

The subjects of case studies 2 and 3 were defendants in murder trials. The second study features Joseph Snaith Wooler, a gentleman, accused of murdering his wife and tried, and acquitted, in front of Baron Martin in 1855. The third study is of a miner, John Price, convicted of manslaughter and transported to Australia. In our analyses of these images, we focus on the ‘objects/subjects’ of law. Defendants can appear as figures at the margins of law, even though their experience is at the centre of a criminal trial – studying and contextualizing these images offers an opportunity to challenge this marginalization. Similarly, one advantage of microhistory as an approach is that it can shed light on the experiences of ‘ordinary’ people, overlooked persons and marginalized voices.⁶ This does not mean these two figures in particular are insignificant. That we are able to reconstruct their stories is because the sketches capture a moment when ‘ordinary’ people interacted with the criminal justice process and that interaction ensured that they became automatically exceptional. Indeed, it may be too easy to overlook how exceptional an environment the courtroom is – perhaps mundane to legal professionals, but an extraordinary and alien place for many standing trial.

The case studies in this article (Part 2) expand upon the larger research project we outlined in Part 1 to demonstrate the rich and varied lines of inquiry that can be pursued from an individual image in one of Joseph Bouet’s albums.

Case studies

Case study one: Baron Samuel Martin (1801–1883)

Our first case study is of Sir Samuel Martin, Anglo-Irish Baron of the Exchequer.⁷ The albums include three sketches of him by Bouet.

The sketch of Martin in [Figure 3](#) is undated. It is a pencil sketch on cream/light buff coloured paper.⁸ Martin appears in profile, showing the left-hand side of his face; a choice possibly dictated by Bouet’s position in the courtroom. Martin wears the wig, robe and formal neck bands of a judge sitting in court. The head and shoulders are sketched in detail; beyond this, outlines suggest his clothing and posture. Spectacles with small round lenses perch half way down his ‘tip tilted’ nose. He looks slightly downwards, the expression quite sombre.

The image reproduced at [Figure 4](#) is dated 1853, and is a more polished portrait, on lighter paper, alongside a man identified as Milbank. Frederick

⁶For example, some of the most famous microhistories including Carlo Ginzburg, *The Cheese and the Worms: The Cosmos of a Sixteenth Century Miller* (Routledge and Kegan Paul 1980), and Natalie Zemon Davis, *The Return of Martin Guerre* (Harvard University Press 1983).

⁷See J M Rigg and Hugh Mooney ‘Martin, Sir Samuel (1801–1883), judge’ *Oxford Dictionary of National Biography* (Oxford University Press 2004).

⁸Joseph Bouet, *Sketch of Baron Martin* (DUL Add MS 1300/227A).



Figure 3. Joseph Bouet, *Sketch of Baron Martin* (Durham University Library Add MS 1300/227A). [Reproduced by permission of Durham University Library and Collections].

Aclom Milbank was High Sheriff of Durham in 1853.⁹ The double portrait, and the positioning of the men, suggests Bouet made the sketch while attending the opening of the Durham Assizes on 4 March 1853.¹⁰ Again, Martin appears in left-hand profile, wearing spectacles, wig, robe and neckbands. His dark clothing is more noticeable. He looks forwards with a less sombre expression than in [Figure 3](#).

The third image of Martin, in [Figure 5](#), is dated 4 March 1853.¹¹ Again, in light pencil sketch on pale-coloured card, it features Martin in left-hand

⁹Joseph Bouet, *Sketch of Baron Martin* (DUL Add MS 1300/236).

¹⁰Separate images of Milbank and Martin in the album are dated 4 March 1853 (DUL Add MS 1300/237 and 1300/238); similarities suggest that the double portraits shared that date.

¹¹Joseph Bouet, *Sketch of Baron Martin* (DUL Add MS 1300/238).



Figure 4. Joseph Bouet, *Sketch of Baron Martin and Frederick Aclom Milbank* (Durham University Library Add MS 1300/236). [Reproduced by permission of Durham University Library and Collections].

profile, with the same wig, gown, neck bands, and spectacles. He looks forward with a slight smile.

a. Assessing the ‘accuracy’ of Bouet’s representation of the judge

We thought it would be instructive to compare Bouet’s images to other images of Martin, not least to enable us to assess the ‘accuracy’ of Bouet’s representations of his subjects.

Figure 6 is a mezzotint of Sir Samuel Martin, published 20 April 1853, by William Walker, after Henry Wyndham Phillips, found in the National Portrait Gallery.¹² It is contemporaneous with the images by Bouet in **Figures 3, 4** and **5**. Similarities are evident between these images, one posed and elaborate, the others sketched ‘in action’.

Figure 7 is an undated carte de visite of Baron Martin.¹³ ‘Carte de visite’ were introduced to the UK in 1857 and were the first type of photographic image capable of being mass produced. Collecting them became a Victorian

¹²Henry Wyndham Phillips *Sir Samuel Martin* (William Walker 1853) Mezzotint. Reproduced by kind permission of the National Portrait Gallery.

¹³London Stereoscopic Company, *Carte de Visite of The Hon Baron Martin* (nd).



Figure 5. Joseph Bouet, *Sketch of Baron Martin* (Durham University Library Add MS 1300/238). [Reproduced by permission of Durham University Library and Collections].

pastime. Many carte portraits were produced of senior members of the judiciary. This carte is undated. Martin appears much older than in Bouet's sketches, the photograph likely taken later than 1853. The carte records him as a member of the Court of Exchequer. Martin was appointed judge of the Exchequer Court in 1850 and remained in that post until his retirement in January 1874. The carte bears similar branding etc. to other cartes produced by the same company and dated by Leslie Moran to c.1873–5.¹⁴ We suggest this carte is similarly dated.

Bouet's sketches of Martin bear a strong facial resemblance to the mezzotint and to the later photograph, so we conclude that Bouet sought to capture accurate representations of the physical likeness of his 'sitter'.

¹⁴Leslie J Moran, 'A previously unexplored encounter: the English judiciary, carte de visite and photography as a form of mass media' (2018) 14 *International Journal of Law in Context* 539, 542. The 'Effie Chitty' album studied by Moran includes a carte of Baron Martin: *ibid.*, 550.

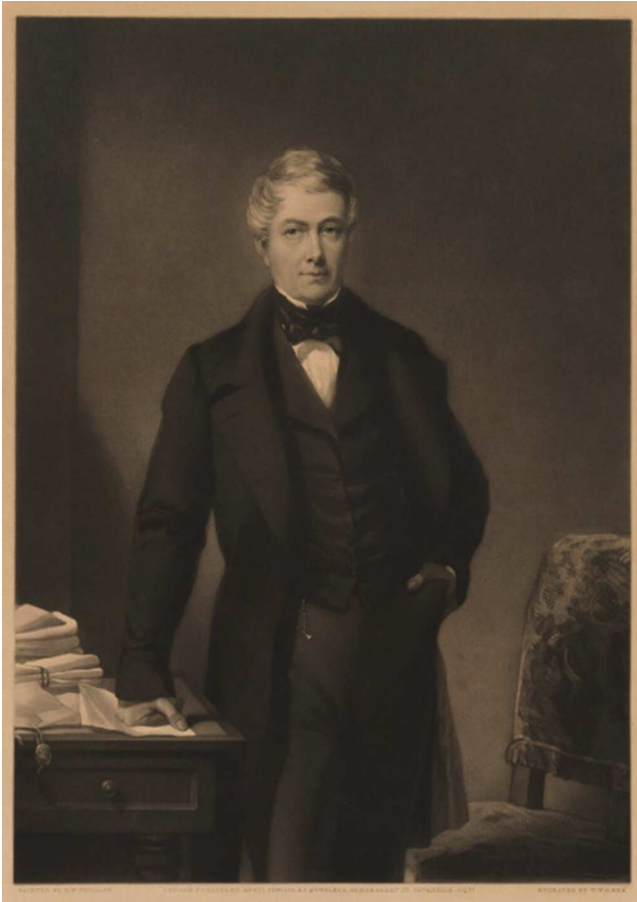


Figure 6. Henry Wyndham Phillips, *Sir Samuel Martin* (William Walker Mezzotint, NPG D38289 1853). © National Portrait Gallery, London.

Evidence of this intention is particularly relevant when addressing images of lesser-known subjects (see Case Study 3 below).

b. What of Martin as a man? Images and Legal Biography

Bouet's images contribute towards a biography of Martin.¹⁵ Martin was born in 1801 in Londonderry and was pupil (and son-in-law) to Sir Frederick Pollock. Called to the bar in 1830, he joined the Northern Circuit, taking silk in 1843. He was briefly an MP (1847–1850). In 1850 he was knighted and appointed a Baron of the Exchequer.¹⁶ Martin died in 1883. His entry in Oxford Dictionary of National Biography noted:

¹⁵On links between the man and the judge, see Antonio Buti, 'The Man and The Judge: Judicial Biographies and Sir Ronald Wilson' (2011) 32 (1) *Adelaide Law Review* 47.

¹⁶'Obituary' Edward Walford, *The Law Times* (London, 20 January 1883).



Figure 7. Carte de visite portrait of The Hon Baron Martin (The London Stereoscopic & Photographic Company)

He was a judge of unusual strength. ... His knowledge of business and quick mastery of the essential points made his judgments terse and precise. As a criminal judge he did not shrink from imposing heavy sentences, but his natural kindness often led him to find mitigation.¹⁷

The obituary written by Edmund Burke offers more colour,

As a judge his great practical knowledge, his shrewd common sense, and genial humour made him extremely popular with the profession and the public. His

¹⁷(n 7).

judgments were remarkable for their brevity, and, although always ready to vindicate the law by pronouncing heavy sentences, he was unremitting in his endeavours to obtain their alleviation whenever circumstances appeared to justify his direct intervention. Numerous traits are cited of his kindness and unwearied care of persons in distress – criminals or their victims – whose cases came before him in the course of his duties, whilst his zeal to discharge those duties thoroughly led him to say of himself that he wished to have inscribed on his tombstone, ‘Here lies a judge who never left a *remanet*’.¹⁸

‘Remanet’ has several meanings, including a remainder, or something left over; in English law, an action that has been stood over, or a proceeding which is delayed or deferred; also, a bill in parliament postponed to another session. The anecdote suggests a sense of humour in a man who would compose his own epitaph and conclude it with a play on words recalling his legal and political careers.

Martin’s ‘good nature’ was commented upon by William Ballantine, in his *Some Experiences of a Barrister’s Life*.¹⁹ Sir Henry Hawkins considered Martin ‘one of the most pleasant companions you could meet’.²⁰ According to the Dictionary of Ulster Biography, ‘he was known affectionately as “the good Sam Martin”’.²¹ Edward Manson, in *Builders of our law during the reign of Queen Victoria* included several examples of Martin assisting impecunious individuals who appeared before him.²² Martin’s good nature was also evident in Ballantine’s comment that,

Baron Martin summed up against the prisoner, as in law he was bound to do, but did it in a way to show that he should have been glad if the law had been otherwise, and the jury accommodated themselves to his views by acquitting him.²³

Martin believed ‘[an] English jury will attend to what you tell them and apply their minds to what you tell them is the question, and they will give an honest verdict upon it’.²⁴ One account recorded his summing up, ‘Gentlemen of the jury, the man stole the boots; consider your verdict’.²⁵

Not all comment on Martin was positive. Ballantine noted:

This learned judge had been a very successful advocate upon the Northern Circuit, where, however, he had not had any experience in the criminal courts, and although essentially humane and kind-hearted, was hasty in forming opinions, and slow in changing them.²⁶

¹⁸Edmund Burke, *Annual Register for the Year 1883* (London 1884) 120.

¹⁹William Ballantine, *Some Experiences of a Barrister’s Life* (Richard Bentley 1890) 223.

²⁰Henry Hawkins, *The Reminiscences of Sir Henry Hawkins (Baron Brampton)* (Edward Arnold 1904) 142.

²¹(The Dictionary of Ulster Biography) <www.newulsterbiography.co.uk/index.php/home/printPerson/1136> accessed 15 August 2022.

²²Edward Manson, *Builders of our law during the reign of Queen Victoria* (Horace Cox 1904) 218.

²³Ballantine (n 19) 255.

²⁴Royal Commission, *Report of the Capital Punishment Commission; together with the minutes of evidence and appendix* (C 3590,1866) 46.

²⁵Manson (n 22) 218 (although the author caveated this anecdote).

²⁶Ballantine (n 19) 282.

Manson found Martin ‘not brilliant or versatile’, suggesting that Martin had enjoyed preferment by his father-in-law, Chief Baron Pollock.²⁷

Martin’s appreciation of horseracing was considered particularly notable: ‘Martin was a keen horseman and was said to have been a good judge of horses.’²⁸ Manson stated that, ‘The library in his chambers ... consisted of law books, the Bible, and the Racing calendar’, and ‘His knowledge of the Racing Calendar was something extraordinary, although he never made a bet’.²⁹ His *Times* obituary noted Martin’s chief characteristic as ‘a passionate fondness for the turf’.³⁰ Burke also commented on Martin’s lifelong interest in racing.³¹ ‘When in France, his attendance at the Bois de Boulogne was assiduous, much to the scandal of his friends who could not overlook the fact that the racing was commonly conducted on Sunday.’³² On his retirement from the Bench Martin was elected an honorary member of the Jockey Club.³³ His interest in horse racing may even have found its way into his summing up in the ‘Burdon Slow Poisoning’ case (Case Study 2), where Martin reportedly commented, ‘I may observe that, if I were to make a surmise, there is a person on whom my fancy would rest rather than upon the prisoner’.³⁴ This alludes to jargon associated with the turf: ‘Where a trainer and/or owner has more than one runner in a race, the horse considered to be the stable’s main *fancy* is referred to as the stable’s first string.’³⁵

In his sketches of Martin, Bouet captures something of a sense of humour and kindness around the mouth, absent in [Figures 6 and 7](#).

Furthering a legal biography approach, the narrow social milieu of the Bench is evident in some of Martin’s decisions and opinions. In evidence to the Committee of The Royal Commission on Capital Punishment 1866, Martin stated that to form a real judgment of the deterrent effect of capital punishment, recourse must be had to persons who are well acquainted with the lower classes, but that he had never conversed with the lower classes to ascertain their feelings. Martin explained, ‘It very seldom occurs that any person in the middle class of life is indicted for murder’, and that he could recall only two examples, one of which was, ‘a man who had been in the service of the East India Company and had returned and settled in Durham’.³⁶ (See Case Study 2.)

²⁷Manson (n 22) 216.

²⁸ODNB (n 7)

²⁹ibid.

³⁰‘Baron Martin’ *The Times* (London, 10 January 1883) 6.

³¹Burke (n 18) 120.

³²Robert Thomas Molloy, ‘Fletcher v. Rylands: A Re-examination of Juristic Origins’ (1942) 9 (2) *The University of Chicago Law Review* 266, 276, from Benjamin Coulson Robinson, *Bench and Bar: Reminiscences of One of the Last of an Ancient Race* (Hurst and Blackett Limited 1889) 109.

³³(n 7).

³⁴See Case Study 2 below.

³⁵See (Great British Racing) <www.greatbritishracing.com/guide-to-racing/jargon-buster/>accessed 22 February 2022.

³⁶Royal Commission (n 24) [245].

Knowledge of judges – and their social background – is of interest to historians seeking to understand landmark legal decisions. Martin was one of eleven judges who decided *Fletcher v. Rylands* and *Rylands v. Fletcher*.³⁷ In 1911, Francis Bohlen attributed the contrasting reception to that decision in England and America to deep-seated differences in approaches to land ownership.³⁸ Bohlen posited that, ‘in England, the dominant class was the landed gentry, whose opinion the judges, who either sprang from this class or hoped to establish themselves and their families therein – naturally reflected’, and that such opinions would naturally differ from those in America, where ‘The whole Puritan movement was one long revolt against all the conceptions, social, political and religious, of the aristocracy.’³⁹ Robert Thomas Molloy noted, ‘The two judges whose judgments in *Fletcher v. Rylands* represented what to Bohlen seems the Puritan middle-class interest and philosophy were Chief Baron Jonathan Frederick Pollock and his son-in-law, Baron Samuel Martin.’⁴⁰ However, as Molloy wrote of Martin, ‘this race-track frequenting Irishman fits none too snugly into his theoretical place in the Bohlen picture [of aristocratic judges] or the Protestant Ethic.’⁴¹

Our short case study centred upon images of Baron Martin demonstrates how Bouet’s sketches can contribute to work on judicial imagery and legal biography. His images offer insight into a less formal aspect of a judge’s character, which in turn sheds light on their outlook and approach. As with those that follow, this case study reveals the possibilities within the albums.

Case study two: Joseph Snaith Wooler (1810–1871)

This is, upon the whole, one of the most remarkable cases in our criminal records, both from the circumstances and the manner of the murder, and from the mystery which yet surrounds it.⁴²

Figure 8 is a sketch of the defendant in a trial that raises fascinating questions about the state of medical knowledge, early forensic science, the reception of detailed medical evidence and the role of expert medical witnesses in the mid-nineteenth century courtroom.⁴³ The image also visually represents a differentiation in the Victorian mind between the ‘respectable’ and the ‘criminal’ classes.

The sketch is in heavy pencil on grey-green-ish coloured backing. This image is more finished or ‘worked up’ than many in the albums. The hair,

³⁷*Fletcher v Rylands and Another* (1865) 3 H&C 774; 159 ER 737.

³⁸Francis H Bohlen, ‘The Rule in *Rylands v Fletcher* Part I’ (1911) 59 (5) *University of Pennsylvania Law Review and American Law Register* 298.

³⁹*ibid* 318.

⁴⁰Molloy (n 32) 273.

⁴¹*ibid* 276.

⁴²‘The Murder of Mrs Wooler’ *The Gateshead Observer* (Gateshead, 15 December 1855) 3.

⁴³Joseph Bouet, *Sketch of Joseph Wooler* (DUL Add MS 1300/243).



Figure 8. Joseph Bouet, *Sketch of Joseph Wooler* (Durham University Library Add MS 1300/243). [Reproduced by permission of Durham University Library and Collections].

coat and necktie are notably darker than the outlines in other sketches. The sitter has dark hair and a chinstrap beard; he wears a dark coat and white shirt with high collar and a necktie or cravat. His arms rest in front, the hands unseen. His expression is sombre, staring down towards his right, his eyes unevenly set in his head. That Bouet adopted a three-quarter pose rather than side profile suggests a different vantage point in court from that for Baron Martin and many of the judicial portraits. It is signed 'N.S.B.' – Nicolas Sébastien Bouet, the name Bouet adopted in 1851. The image is dated 'Dec 6th 1855' and the subject is identified as 'J S Wooler'.

Joseph Snaith Wooler was born in 1810 and lived at Great Burdon, County Durham. He was, 'a gentleman of good education'⁴⁴ of 'large property'⁴⁵ and

⁴⁴'Durham Assizes' *Newcastle Guardian and Tyne Mercury* (Newcastle, 8 December 1855) 8.

⁴⁵'The Burdon Poisoning' *The Durham Chronicle* (Durham, 3 August 1855) 7.

'independent means.'⁴⁶ Wooler appears under the category 'Gentlemen' in the catalogue of Bouet's work compiled by David Cross.⁴⁷ More importantly, for our purposes, Wooler was a defendant, tried at Durham Assizes for the murder of his wife by arsenic poisoning.⁴⁸ The date annotated on the image by Bouet is significant, indicating that he sketched Wooler during his appearance before the grand jury on 6 December, rather than at the trial, which commenced on 7 December 1855.⁴⁹

The case, known as the 'Burdon Slow Poisoning Case', attracted considerable popular interest and was reported throughout England.⁵⁰ A detailed account was published in 1855 in Darlington and sold in London.⁵¹ The events were the subject of public lectures; for example, in March 1856, to the Newcastle and Gateshead Pathological Society.⁵² The facts were complex – prosecuting counsel took over two and a half hours for his opening address.⁵³ The trial lasted three days, yet the jury reached their verdict within ten minutes, following a clear summing up by Baron Martin.⁵⁴ That Wooler was acquitted caused much surprise. One newspaper commented:

The case is enshrouded in the deepest mystery ... The hypothesis of suicide was precluded by the whole tenor of the evidence. Mrs Wooler was murdered, or poisoned by mistake. Who made the fatal error? or – for, after all, this is the important point – who was the murderer?⁵⁵

Perhaps the verdict should not have been unexpected as, 'There was little more to the prosecution case than the scientific evidence and the fact that Joseph Wooler, who took an active part in nursing his wife, had ample opportunities to poison her'.⁵⁶ A contemporary view went further, identifying the

⁴⁶For example, in 'The Mysterious Case of Poisoning near Darlington' *The Sun* (London, 1 August 1855) 1. *The British Banner* referred to him as 'described as an esquire': 'The Mysterious Slow Poisoning at Darlington' (London, 2 August 1855) 4.

⁴⁷David A Cross, *The Art of Joseph Bouet (1795–1856): a catalogue of two albums in Palace Green Library (Special Collections) Durham University with reference to other works located in Durham and elsewhere* (Unpublished 2003) 177.

⁴⁸Jane Brecknell married Joseph Snaith Wooler on 25 January 1837. She died on 27 June 1855.

⁴⁹Bouet is not listed amongst the members of the Grand Jury at the Crown Court empanelled on 6 December 1855 (n 44) 8.

⁵⁰The account in *The Durham Chronicle Third Extraordinary Edition* (Durham, 10 December 1855) ran to four pages with a note that a full report of the closing address for the defence would appear in the *Chronicle* on 15 December. See also Charles Dickens *Household Words* (London, 28 November 1855) 267.

⁵¹__ *The Great Burdon slow poisoning case. Report of the investigation before the magistrates at Darlington; together with the evidence of JS Wooler* (Robert Swales 1855; Simpkin, Marshall & Co 1855). It was reprinted from the Darlington and Stockton Times reports.

⁵²George Robinson *Observations on some recent cases of poisoning: read before the Newcastle and Gateshead Pathological Society, March 13, 1856* (D Dunghlinson 1856).

⁵³The prosecution cost the County of Durham £512, a significant sum: (1856) 33 *Medical Times and Gazette* 50.

⁵⁴See Case Study 1. Bouet sketched Martin several times, but not, it seems, at the trial of Wooler.

⁵⁵'Durham. The Slow Poisoning Case' *Derby Mercury* (Derby, 19 December 1855) 2

⁵⁶Tony Ward, 'A Mania for Suspicion: Poisoning, Science and the Law' in Judith Rowbotham and Kim Stevenson (eds), *Criminal Conversations: Victorian Crimes, Social Panic, and Moral Outrage* (Ohio State University Press 2005) 140, 143.

'Great Burdon Slow Poisoning Case' as 'an instance, as far as we know, singular, in which a prosecution for murder was carried on with unexampled acrimony, from a basis of medical testimony alone, altogether unsupported by moral or circumstantial evidence'.⁵⁷

For a legal historian, much interest in the case lies in the reception of detailed medical evidence and the role of expert medical witnesses, not least the harsh criticism of a Dr T H Jackson, Mr Henzell (assistant to Mr Jackson) and Dr Hazelwood (or Haslewood), who had attended Jane Wooler. Defence counsel was scathing in his closing speech, describing the conduct of the doctors as 'infamous': he 'might show that every one of them is much more open to suspicion than Mr Wooler', with each having means and opportunity to administer the poison. Although the medical men had no motive, none had been found for Joseph Wooler either.⁵⁸ Baron Martin described the conduct of the medical witnesses as 'reprehensible'.⁵⁹ The *Times* supported his criticism,⁶⁰ while another newspaper suggested, 'The conduct of the medical men is so unaccountable that it is impossible to release them from a very grave responsibility':

the fact is now established before a court of law, by the medical witnesses themselves, that a case of poisoning was going on before their eyes, and they neither interfered to rescue the victim, nor to rescue the innocent by fastening the crime on the true culprit.⁶¹

An article in the *Association Medical Journal*, perhaps unsurprisingly, expressed support for the doctors.⁶² It noted that the inquest jury had, 'entirely exonerated the medical attendants from any blame whatever'.⁶³ There was recognition that their position was difficult: 'if medical men failed to recognise the symptoms of poisoning, they were seen as incompetent; if they made allegations without suitable proof, they were open to the law of libel and professional ruin'.⁶⁴ The Medico-Chirurgical Society of Edinburgh debated what doctors placed in similar positions ought to do.⁶⁵ Sir Robert Christison, Professor of Medicine, observed, 'It is now much the

⁵⁷ _ _ 'The Doctor in the Witness-Box', (1856) 47 *The Dublin University Magazine: a Literary and Political Journal* 178.

⁵⁸ *Durham Chronicle* (n 50) 3.

⁵⁹ 'The Darlington Slow Poisoning Case' *York Herald* (York, 15 December 1855) 7; 'Trials at the Assizes' *Lloyd's Weekly Newspaper* (London, 16 December 1855) 9; (1856) 97 *The Annual Register, or, a View of the History and Politics of the Year 189*.

⁶⁰ 'Winter Assizes' *The Times* (London, 12 December 1855) 8.

⁶¹ 'The Darlington Slow Poisoning Case' *Barnsley Independent* (Barnsley, 15 December 1855) 4.

⁶² _ _ 'The Burdon Slow Poisoning Case', (1855) 3 (154) *Association Medical Journal* 1114.

⁶³ _ _ 'Extraordinary Case', (1855) 134; *Association Medical Journal* 717.

⁶⁴ M Anne Crowther, 'Forensic medicine and medical ethics in nineteenth-century Britain' in Dorothy Porter, RB Baker and Roy Porter (eds), *The Codification of Medical Morality: Historical and Philosophical Studies of the Formalization of Western Medical Morality in the Eighteenth and Nineteenth Centuries Volume Two: Anglo-American Medical Ethics and Medical Jurisprudence in the Nineteenth Century* (Springer Netherlands 1993) 173, 179.

⁶⁵ (1856) 1 (8) *Edinburgh Medical Journal* 759.

fashion with lawyers, whether civil or criminal, to rail... at medical evidence'.⁶⁶ He defended the doctors and criticized their treatment by defence counsel, suggesting 'The medical profession will look to the Bench for protection against superfluous, undeserved, unmeasured abuse'; without such protection, 'in the discharge of a duty at all times arduous, anxious and disagreeable', medical men might prefer to avoid such cases. However, in the Wooler trial, 'the Judge, as reported, very feebly repelled the unwarrantable assault of the prisoner's counsel'.⁶⁷

Baron James Parke wrote to Alfred Swaine Taylor querying aspects of the trial.⁶⁸ Taylor, recognized as the 'father of British forensic medicine', held the professorship of medical jurisprudence at Guy's Hospital from 1831–1877.⁶⁹ He had a professional interest in the role of expert witnesses and the weight to be given to medical evidence, having acted as a toxicological expert witness for the prosecution in many notorious poisoning trials of the nineteenth century, including John Tawell (convicted 1845), William Palmer (1856), Dr Thomas Smethurst (1859, but reprieved, partly due to medical evidence) and Catherine Wilson (1862). Taylor was instructed for the defence of Wooler, after the inquest jury returned an open verdict, deciding that Mrs Wooler died of poisoning but with no evidence as to who had done it or how the poison had been administered.⁷⁰ Permission was given for Mrs Wooler to be exhumed,⁷¹ and Taylor examined the liver, heart, lungs and other parts of her body.⁷² He travelled to County Durham to give evidence.⁷³ He found the medical evidence consistent with death from arsenic, taken in small portions in solution administered at intervals. However, this could not necessarily be attributed to the actions of Joseph Wooler.

Baron Martin noted that the case rested upon circumstantial evidence and he did not believe the prosecution case constituted grounds for convicting the prisoner.⁷⁴ Indeed, Martin seems to have pointed the finger of suspicion elsewhere: 'there was a person upon whom his fancy would rest, rather than the prisoner, if he were called upon to give an opinion'.⁷⁵ This insinuation was variously reported in newspaper accounts: 'there was a person whom he

⁶⁶Robert Christison, 'The Wooler Poisoning Case' (1856) 1 (7) *Edinburgh Medical Journal* 625, 628.

⁶⁷Christison (n 66) 718.

⁶⁸The letter (dated 12 January 1856) is part of the Alfred Swaine Taylor Collection on forensic medicine and toxicology, (The Science Museum Group MS/2203/C/4).

⁶⁹In Alfred Swaine Taylor, *The Principles and Practice of Medical Jurisprudence* (J Churchill & sons, 1865). Chapters 8–30 address poisoning. On Taylor, see (the Royal College of Surgeons) <www.rcseng.ac.uk/library-and-publications/library/blog/alfred-swaine-taylor/> accessed 22 November 2022.

⁷⁰Inquest juries weigh the evidence to find a cause of death, not to establish guilt or innocence.

⁷¹*The Durham Chronicle* (n 50) 2.

⁷²*Newcastle Guardian and Tyne Mercury* (n 44) 8.

⁷³*The Durham Chronicle* (n 50) 2.

⁷⁴*ibid* (n 50) 4.

⁷⁵'Durham Assizes' *Supplement to the Newcastle Chronicle* (Newcastle, 14 December 1855) 9. See Case Study 1 above.

should be inclined to find guilty rather than the prisoner',⁷⁶ and similarly, 'he could only say for himself, that if he were making any surmise, or allowing his imagination to take escape, there was a person upon whom his suspicions would rest other than the prisoner.'⁷⁷ Martin did not name a suspect. Christison stated that, 'if any specific individual may be understood to have been in the Judge's eye – which however seems not clear – I can only say, I have no idea who is pointed at.'⁷⁸ A contemporary magazine went further:

... there was no evidence of the husband having purchased arsenic, or having had any in his possession ... The doctors had unlimited access to the poison in every form ... it was Mr Wooler who pressed for the exhumation of the body ... and he who paid Professor Taylor for making the examination. On the other hand, these proceedings were resisted by Doctor Haslewood ...

The Journal highlighted what it termed 'remarkable variation' between Dr Jackson's deposition and his evidence at trial.

Dr Jackson asked Baron Martin to explain the meaning of his closing expression respecting the probable guilt of a person other than the prisoner, because, as the principal medical man examined, 'his lordship's words may mean either that he [Jackson] gave the deceased poison wilfully or through culpable neglect'. Martin's reported response is opaque:

Your complaint is confined to the expression which you describe as the closing expression of my summing up – viz., 'that there was another person whom I would be inclined to find guilty rather than the prisoner'. I am certain I never made use of such an expression, or anything tantamount to it. It is impossible for me to state with verbal accuracy what I then said; I can be certain of my meaning only.

Martin maintained that he was mis-reported, his words intended to state that it appeared to him, 'there was no proof against anyone; but that if I were to indulge in mere surmises and fancy, not the prisoner but some other person would first occur to my mind.'⁷⁹ However, *The York Herald* noted that,

Baron Martin's concluding words ... will not readily be forgotten. Through the medium of the press, they are now patent to the world, and their publication, we have little doubt, will ultimately lead to the detection of the cruel perpetrator of this most barbarous act.⁸⁰

A local doctor, in 1856, indicated a contemporary awareness of deficiencies in how the law treated medical evidence: 'Had a proper machinery for medico-

⁷⁶'Great Burdon Slow Poisoning Case' *Supplement to the Teesdale Mercury* (Barnard Castle, 12 December 1855) 9.

⁷⁷*York Herald* (York, 15 December 1855) 7; *Barnsley Independent* (Barnsley, 15 December 1855) 4; *The Examiner* (London, 15 December 1855) 795.

⁷⁸Christison (n 66) 711.

⁷⁹Charles Dickens, *The Household Narrative of Current Events* [1855] 28 December 267.

⁸⁰(n 77) 7.

legal investigation existed in this country, and a public prosecutor been in action, I believe that evidence sufficient to convict the murderer of Mrs Wooler might have been obtained.⁸¹ The *Gateshead Observer* speculated that Martin's 'pregnant hint may bring forth the truth ... But in all probability, the cloud which hangs over the grave of the unhappy lady will never be removed.'⁸² Indeed, no one was subsequently charged with poisoning Jane Wooler.⁸³ Joseph Wooler continued to live at Great Burdon until his death in 1871.⁸⁴ When he died his effects were valued at under £600, perhaps indicating the cost of organizing a defence to the murder charge, which the *Manchester Guardian* estimated would be, 'not less than 2,000 guineas'.⁸⁵ Wooler's attempt to reduce his solicitors' bill led to an argument as to costs in the High Court, where Lord Campbell stated that an attorney was entitled to be paid for, 'his activity and labour, and not according to measurement', i.e. not the length of the documents drafted.⁸⁶

In addition to provoking an examination of a fascinating trial, Bouet's sketch of Wooler suggests other avenues for legal and criminological historical research. As a 'Gentleman', Wooler's position in the dock challenged Victorian assumptions about respectability. The first volume of Henry Mayhew's *London Labour and the London Poor* was published in 1851.⁸⁷ Although it 'sought to rouse the consciences of respectable readers', a side-effect was to reinforce a perceived distinction between responsible law-abiding members of society and the 'unrespectable poor', which fostered the notion of a 'criminal other'. Belief in this concept and the threat it posed to 'respectable' society continued in the mid-nineteenth century and beyond.⁸⁸ As Guy Woolnough noted, 'The corollary of the concept of a criminal class is that the educated, respectable middle classes might have made an occasional error of judgement but could not be criminal.'⁸⁹ As discussed in Case Study 1, Baron Martin, judge in the Wooler case, stated that he

⁸¹Robinson (n 52) 12. George Robinson MD had been apprenticed to Sir John Fife, the Newcastle surgeon whose expertise was sought in the Wooler case: see (Royal College of Physicians) </history.rcplondon.ac.uk/inspiring-physicians/george-robinson> accessed 15 August 2022.

⁸²(n 113) 5.

⁸³The 'unsolved' case continues to attract speculation. In *The Secret Poisoner: A Century of Murder* (Yale University Press 2016) Linda Stratmann suspected the poisoner was the Woolers' servant, Ann Taylor, who continued as Joseph Wooler's housekeeper after the trial. The 1871 Census records both as resident in Haughton le Skerne.

⁸⁴Joseph Snaith Wooler (3 May 1810 - 25 September 1871). His gravestone features the name of his wife; see (Flickr) <www.flickr.com/photos/54196835@N04/49263367702/> accessed 19 April 2022.

⁸⁵As reported in 'The Darlington Slow Poisoning' *The Globe* (London, 21 December 1855) 4.

⁸⁶'The Burdon Slow Poisoning Case' *Durham Chronicle* (Durham, 29 May 1857) 8.

⁸⁷Henry Mayhew, *London Labour and the London Poor: A Cyclopaedia of the Condition and Earning of those that will work, those that cannot work, and those that will not work* (G Newbold 1851).

⁸⁸Victor Bailey, 'The Fabrication of Deviance: "Dangerous Classes" and "Criminal Classes" in Victorian England' in John Rule and Robert Malcolmsen (eds), *Protest and Survival: Essays for E. P. Thompson* (The New Press 1993) 221; 232; 239.

⁸⁹Guy N Woolnough, 'A Victorian fraudster and bigamist: Gentleman or criminal?' (2019) 19 (4) Criminology and Criminal Justice 439, 443.

could recall only two examples of ‘a person in the middle class of life ... indicted for murder’, one of whom was Wooler.⁹⁰

Bouet faced a difficulty when drawing Wooler: how to represent the distinction between gentleman and accused when sketching a person in the dock who represented both? The level of detail and ‘finish’ in the sketch of Wooler has more in common with images in the albums of the middle classes and professional men in Durham than with Bouet’s hasty outlined criminals on trial.⁹¹ This may simply reflect how long each person spent in the dock. However, Bouet’s sketch depicted something unusual in the mid-nineteenth century courtroom: a man at a liminal point between respectable gentleman and despised criminal. Against this background, the sketch by Bouet is nuanced. In the differing artistic treatment of Wooler and other criminals in the dock, we see a visual representation of the distinction in the Victorian mind between a ‘gentleman’ and a member of the ‘criminal classes’.⁹² Bouet’s drawing of Wooler reveals a striking and unusual crime microhistory, allowing larger structures to be revealed and generalizations to be tested. Addressing its legal, social and cultural context engages with the history of nineteenth-century crime and punishment, its discourse and policy.

Case study three: John Price (c1805-?)

The final case study in this article is Bouet’s sketch of a man, reproduced as [Figure 9](#), whom Cross termed an ‘Unknown Felon’.⁹³ Our research demonstrates how one image can act as a gateway to detailed study of crime and social history, as we identify this man and explore his trial and punishment, shedding light on the life courses of transported criminals in the mid-nineteenth century.

Although small (8.5 cm x 7.4 cm), this image is more ‘worked up’ than many others, suggesting Bouet spent time studying his subject. We know that Bouet sought to create an accurate likeness (see Case Study 1). It is a left-hand profile, but with the head turned slightly and the right eye partly visible.⁹⁴ The features are finely drawn in pencil, on a lighter coloured backing than for Martin and Wooler. The clothing is detailed and shown as well-worn. The hands are a striking feature, one not common in the

⁹⁰Royal Commission (n 24) xxi.

⁹¹Cross, too, notes that Bouet’s sketches of senior clergy and judges were ‘carefully finished’, with servants and felons usually ‘very summarily drawn’: Cross, (n 47) 7.

⁹²On changing nineteenth-century constructions of criminality, see Martin J Wiener, *Reconstructing the Criminal: Culture, Law and Policy in England, 1830–1914* (Cambridge University Press 1990) 32.

⁹³DUL Add MS 1300/144. Cross (n 47).

⁹⁴The left-hand profile may indicate Bouet’s position in the courtroom when sketching or a personal artistic preference; see also Case Study 1. Of the images identified, Bouet depicted felons in left-hand profile and judges mostly in left-hand profile but a number in right-hand profile; an interesting point deserving further study.

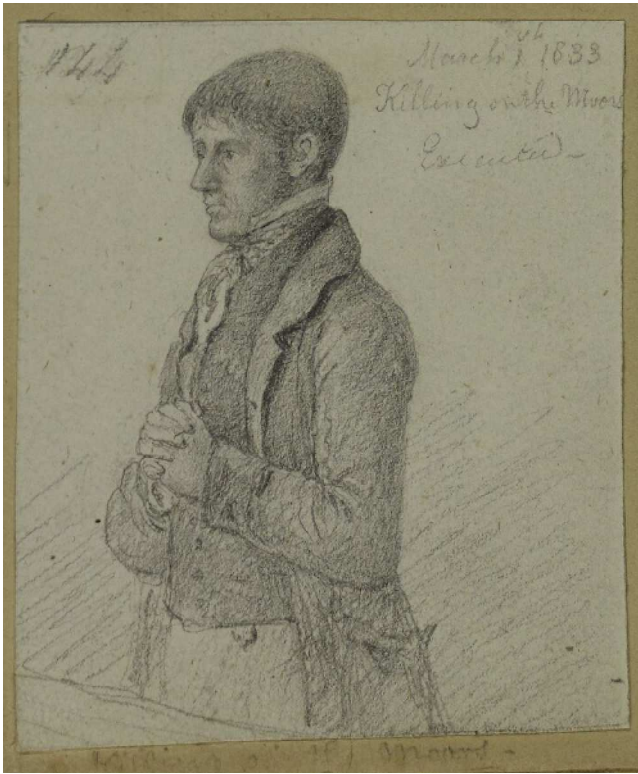


Figure 9. Joseph Bouet, *Sketch of John Price* (Durham University Library Add MS 1300/144). [Reproduced by permission of Durham University Library and Collections].

albums, as Bouet seemed to find hands difficult to render convincingly.⁹⁵ Their prominence suggests that this action caught Bouet's attention.

A handwritten note in the upper right-hand corner of the image reads:

March 1st 1833

Killing on the Moors

Executed

Although this inscription should make identifying the sitter relatively easy, no executions took place in Durham in 1833.⁹⁶

Our research has identified the man as a miner John Price, alias John Eccles or John Eales, aged 26, indicted for the wilful murder of William Holmes, on 10

⁹⁵Bouet often left the hands of his subjects unfinished (as in DUL Add MS 17/17) or obscured (DUL Add MS 17/58 and DUL Add MS 17/59).

⁹⁶The Capital Punishment UK website lists 36 executions in 1833, none in North-East England <www.capitalpunishmentuk.org/1828.html> accessed 15 August 2022.

August 1832.⁹⁷ Price and approximately 40 others, mostly miners, many armed with guns, were hunting for food on a moor in Weardale (which tallies with the note on the sketch). When challenged by a gamekeeper for poaching, fighting ensued. Holmes, one of the men sent to deter the poachers, was struck on the head, and died.⁹⁸ A witness said he saw John Price hit Holmes with the butt of a gun.⁹⁹

The trial of John Price took place during the Durham Spring Assizes, on Friday 1 March 1833, before Mr Justice Alderson.¹⁰⁰ Price pleaded distress, telling the court that he earned only 30 shillings a month and that his wife had delivered a stillborn child; 'he had thought it a greater sin to suffer his family to starve than to endeavour to provide for their wants by poaching'; several witnesses 'gave him an excellent character for his general humane disposition'.¹⁰¹ One witness stated that Price 'went without meat in order to give it to his mother'.¹⁰² The *London Courier and Evening Gazette* added that, 'none of the miners had poached until they were reduced to great distress from want of employ.'¹⁰³ The judge summed up the evidence and 'charged very humanely and favourably for the prisoner.'¹⁰⁴ Bouet's sketch – in particular the beseeching gesture of the hands – fits with the judge's observation of, 'the very proper feeling exhibited by the prisoner, and that he appeared to appreciate the situation in which he stood'.¹⁰⁵ The jury retired for eight minutes and acquitted John Price of murder but found him guilty of manslaughter. Price was sentenced to transportation to Australia for life. Transportation in this period was an alternative to capital punishment for crimes which did not, in the opinion of the judge, merit the death penalty.

Although there was no execution as referred to in the annotation in the album, the combination of the place – Durham Assizes court – the date – 1 March – and the crime – a killing on the moors – lead us to conclude that we have identified the man in Bouet's sketch. No longer Cross's 'Unknown Felon', we then followed the life course of John Price, from the courtroom in Durham.

Many considered the sentence unduly harsh. A petition for clemency, signed by 236 men, was sent to the Home Office; it described Price as 'a kind hearted humane honest young man', who supported his aged mother

⁹⁷John Eales' *Newcastle Courant* (Newcastle, 9 March 1833) 2; 'Durham Spring Assizes' *Durham County Advertiser* (Durham, 8 March 1833) 5.

⁹⁸'Desperate and Fatal Affray' *Durham County Advertiser* (Durham, 17 August 1832) 6.

⁹⁹'Durham Assizes' *Newcastle Courant* (Newcastle, 9 March 1833) 2.

¹⁰⁰Bouet sketched Alderson, but not at this trial: Joseph Bouet, *Sketch of Baron Alderson* (Add MS 1300/42).

¹⁰¹(n 99) 2.

¹⁰²*Durham County Advertiser* (n 97) 5.

¹⁰³'Lent Assizes' *London Courier and Evening Gazette* (London, 4 March 1833) 4.

¹⁰⁴*ibid.*

¹⁰⁵*Durham County Advertiser* (n 98).

and committed the offence, ‘from necessity arising from the very depressed state of the lead mines and the consequent temptation to poach for the purpose of obtaining subsistence’.¹⁰⁶ Working conditions as a lead miner were harsh and wages fluctuated.¹⁰⁷ Research by Christopher Hunt underscores the difficult social and economic conditions underlying this petition.¹⁰⁸ Hunt found the lead miners were generally law-abiding, but poaching was ‘a serious temptation ... both as a sport and as a supplementary source of food supply’.¹⁰⁹ Despite this, Price had not previously appeared in court.¹¹⁰

The petition was to no avail. Price was moved, alongside others convicted at Durham Assizes, to Woolwich, and the prison hulk *Justitia*.¹¹¹ From the *Justitia*, Price joined the convict ship *Lord Lyndoch* on 30 May 1833, bound for Australia.¹¹² Price features in the British convict transportation registers 1787–1867, the handwritten record of the Master William Johnston, and the medical journal kept by Surgeon Superintendent David Watson.¹¹³ From the surgeon’s record, we learn more about him; his education, social circumstances, work and – significantly, given that Bouet’s image prompted our research – his physical appearance:

John Price

Aged 28, a Lead and Coalminer from Cumberland, with no prior convictions.

He could Read

Religion Protestant

Married [no children noted]

Native Place Cumberland

Trade or Calling Lead and Coalminer

Offence Manslaughter

Tried Where Durham Assizes When 27 February 1833

Sentence Life

Former Conviction None

¹⁰⁶Home Office Registers of Criminal Petitions, (HO19 Piece number 5) 76.

¹⁰⁷See Tim Barmby, ‘Bingtale and Fathomtale – Lead Miners’ Earnings in 19th Century Allendale’, (unpublished paper, 2016):

¹⁰⁸Christopher John Hunt, *Lead Miners of the Northern Pennines in the Eighteenth and Nineteenth Centuries* (Davis Books 1984).

¹⁰⁹Christopher John Hunt, *The Economic and Social Conditions of Lead Miners in the Northern Pennines in the Eighteenth and Nineteenth Centuries* (MLitt thesis, Durham University 1968) 373.

¹¹⁰‘Assize Intelligence’ *Morning Post* (London, 5 March 1833) 4.

¹¹¹*Sworn List of the Justitia Convict Hulk Quarter ending the 31st Day of March 1833*, 102.

¹¹²The spelling varies in the records, including Lord Lynedoch; Lord Lyndoch; Lord Lyndock.

¹¹³John Price, one of 330 convicts transported on the *Lord Lyndoch* [Lord Lyndoch], 30 May 1833. Convict Transportation Registers (TNA 63 123).

Height 5 feet 5¾ inches

Complexion Ruddy

Colour of Hair Brown Eyes Hazel

Particular Marks or Scars. Remarks. Scar over right eyebrow, forefinger of left hand has been broken.

Comparing Bouet's sketch with this physical description is frustrating. Details of complexion, hair and eyes might well be accurate; however, Bouet shows his subject in left-side profile, obscuring any scar over the right eyebrow, and, with the hands clasped, we cannot see whether the forefinger of the left hand is broken.

The *Lord Lyndoch* departed Sheerness on 4 June 1833, arriving in Port Jackson on 18 October 1833.¹¹⁴ On board were 329 convicts, including '103 lifers', like Price. 7000 convicts arrived in Australia in 1833 — the largest number to arrive in any one year.¹¹⁵ Convicts were a source of labour, constructing buildings, roads, and bridges under government direction, or were assigned to free settlers as labourers or servants. By 1836, two-thirds of the convicts in the colony worked for private masters, and government convicts comprised a small group.¹¹⁶ However, the *New South Wales General muster list* reveals that, 4 years into his sentence, Price remained in Sydney, working for the government.¹¹⁷ This may indicate that Price had been employed elsewhere and returned to government control after some misdemeanour, or that he had skills keeping him in government employ.

If well-behaved, convicts were not usually required to serve their full term and could apply for a ticket of leave. After 1821 convicts with a life sentence usually had to serve ten to 12 years before they could be granted a ticket, which allowed convicts to integrate into society, with some restrictions. In January 1842 - 9 years after he arrived in Sydney - Price was granted his ticket of leave, conditional on his remaining in Cambelltown (sic).¹¹⁸ As Australia's colonial population increased in 1820s and 30s, fewer convicts remained in towns. Campbelltown is around 30 miles from Sydney.¹¹⁹ In 1841 the population was 446.¹²⁰ It was in a farming district, producing food for Sydney. Price may have been involved in agriculture, possibly as a

¹¹⁴(Convict Records) < convictrecords.com.au/convicts/price/john/6375> accessed 19 April 2022.

¹¹⁵(National Museum Australia) <www.nma.gov.au/defining-moments/resources/convict-transportation-peaks> accessed 15 August 2022.

¹¹⁶(Hyde Park Barracks) <<https://hydeparkbarracks.sydneylivingmuseums.com.au/>> accessed 29 August 2022.

¹¹⁷*New South Wales General muster list L-Q for 1837* 304–05.

See also (State Library New South Wales) <guides.sl.nsw.gov.au/life-in-the-colony/work_assignments> accessed 19 April 2022.

¹¹⁸'Ticket of Leave' *Australasian Chronicle* (Sydney, 25 January 1842) 4.

¹¹⁹See Carol Liston, *Campbelltown: The Bicentennial History* (Allen & Unwin 1988).

¹²⁰'Campbelltown' *The Sydney Morning Herald* (Sydney, February 8 2004).

labourer, working on a government farm, or for a landowner. Private assignment on distant country estates became a common convict experience; isolated from view, many faced appalling conditions and treatment, vividly described in the autobiographical *Ralph Rashleigh; or, The Life of an Exile*, written in 1844.¹²¹

Price may not have worked on a farm. By 1833 Campbelltown had the largest concentration of flour mills outside Sydney.¹²² However, it is surprising that Price was not sent to work in coal mines north of Sydney. In 1830 the Australian Agricultural Company took over the government's Newcastle coal mines. The Company experienced a labour shortage, particularly when assignment was severely limited in late-1838, and an adequate supply of coal could not be maintained.¹²³ Arguably, Price, a lifer and former miner, would be useful. For example, working in the coal mines was Isaac Eccleston,¹²⁴ a miner, tried at Durham for housebreaking on 23 July 1831, sentenced to transportation for life, and assigned to the Company in 1832.¹²⁵ Price may have had a lucky escape; the Newcastle NSW coal mines were brutal places.

Tickets of leave were renewed annually. Price's ticket was extended in 1843 to allow him to travel the forty miles between Camden and Sydney with agricultural produce.¹²⁶ 'Lifers' with a ticket could qualify for a conditional pardon after 10 or 12 years, but we have been unable to find a pardon for Price. The next record we uncovered shows that Price had his ticket cancelled by magistrates in Yass in 1851, for being absent from the district.¹²⁷ Yass is a (very) small town, 180 miles south-west of Sydney. It was a sheep farming area, suggesting that Price had been working in agriculture until 1851, first in Campbelltown, and Camden, then in Yass.

And so, in 1851, finally, John Price got his freedom – in a fashion. The last trace we have is a notice in the *New South Wales Government Gazette* on 27 June 1851, recording him as being illegally at large. Exercising what agency he had available to him, he absconded from the criminal justice system. Fascinatingly, the physical description of Price, now 46, in the notice is identical to that of the convict transported 18 years previously, just as Bouet had

¹²¹James Tucker, *Adventures of An Outlaw. The Memoirs of Ralph Rashleigh a Penal Exile in Australia. 1825–1844* (New York 1929) 144.

¹²²Liston (n 119) 50.

¹²³See (State Library New South Wales) <www.sl.nsw.gov.au/stories/australian-agricultural-and-rural-life/australian-agricultural-company> accessed 19 April 2022; (Living Histories) <livinghistories.newcastle.edu.au/nodes/view/68157> accessed 19 April 2022.

¹²⁴Variouly, Eccleston, or Egglestone, or Egliston. (Convict Records) <convictrecords.com.au/convicts/eccliston/isaac/120492> accessed 19 April 2022.

¹²⁵(Free settler or felon) <www.freesettlerorfelon.com/convict_ship_isabella_1832.htm; accessed 19 April 2022. His six accomplices, also transported, were assigned to the AA Company at Newcastle, New South Wales. On these 'Seven Lads of Jarrow' see Ellen Wilkinson, *The Town that was Murdered* (Victor Gollancz 1939) 30.

¹²⁶Butts of Ticket of Leave Passports, 1835–1869 (NRS 12204).

¹²⁷'Tickets of leave' *New South Wales Government Gazette* (Sydney, 20 June 1851) 971.

drawn him, in the courtroom in Durham in 1833: 'height 5 feet 5¾ inches; ruddy comp., brown hair, hazel eyes, scar over right eyebrow, forefinger of left hand has been broken.'¹²⁸

This case study demonstrates the importance of Bouet's sketches in the context of legal and criminological historical research. In researching the outcomes for the criminal subjects in the sketches, we can reveal the impact of the law and the legal process upon the individual. And the images themselves are important sources, not simply in tracing criminal histories or providing illustrations. Bouet's sketches show the 'criminal body', the clothing of the defendant, and his physical response to the ordeal of a criminal trial, facing a capital charge. But what is perhaps most fascinating is that Bouet's images allow us glimpses of the faces of transported felons. Men like John Price would rarely have been the subject of an artwork, or indeed of any other image at this time. Through Bouet's work we have an opportunity to put a face to his story.

Conclusions

In this article, we have explored what stories lie in and behind Bouet's images from the Durham courtroom. This has been an exercise in detection, following clues drawn from the sketches to determine where they lead. Our case studies demonstrate that with careful research, using newspapers and surviving records, a microhistorical analysis of Bouet's sketches offers fascinating insights into the lives of marginal, and more well-documented figures, and the nineteenth century legal world in the courtroom in Durham and beyond.

Through Bouet's sketches of Baron Martin we gain an unusual perspective of a judge in the act of administering justice. In the images of Snaith and Price we have a unique opportunity to observe, men at a moment of great emotion, on trial for their lives; the sketches offering a 'snapshot' of justice and control in the nineteenth century. Snaith and Price had different fates but without the images captured by Bouet their stories could have been lost or overlooked. As our case studies demonstrate, there is much evidence to be uncovered in and from the images. Visual sources can support the evidence of written documents, but – significantly in this case – they add depth and texture. Through the albums we can see and share Bouet's non-verbal responses to his experience in the Durham courtroom. The sketches, drawn directly from life, enable us to stand 'face-to-face' with the subjects depicted, a perspective generally unavailable to all except eye witnesses in the courtroom. As a legal 'outsider', Bouet's sketches offer a unique perspective on the nineteenth-century criminal justice process. His images of legal actors in the Durham courtroom reveal the law in practice, and legal institutions

¹²⁸ 'Absent from their districts' *New South Wales Government Gazette* (Sydney, 27 June 1851) 1012.

at work. The albums are especially important because, in his wide choice of subjects, Bouet offers a broader context to our understanding of the legal world of the mid-nineteenth century.

In our two articles on the courtroom sketches of Joseph Bouet, we have demonstrated that images in a specific legal historical context deserve more academic attention. Such images are socio-legal documents; studying them in depth makes an important contribution to socio-legal, and legal historical, scholarship.

Acknowledgements

The authors are grateful to Durham University Library and Collections for permission to reproduce images from the Bouet albums, and to the Durham University Palace Green Library archives for their assistance. Thank you also to the anonymous reviewers for their insightful comments.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

The authors acknowledge financial support from Northumbria Law School for the purchase of the right to use the mezzotint image of Sir Samuel Martin.

A note on the Figures

The images we use in our analysis appear in both articles 1 and 2 as Figures 1 to 9. Images 3-9 form the basis of the case studies in this part.

ORCID

Helen Rutherford  <http://orcid.org/0000-0003-1976-4505>

Clare Sandford-Couch  <http://orcid.org/0000-0001-7655-9001>