[2013] *ANZLH E-Journal,* Refereed Paper No 9

Reading the *Old Bailey Proceedings**

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**I would like to thank the two anonymous reviewers for their comments on this article.*

One of the main challenges for historical studies of law arises from the necessity of keeping an eye on a variety of shifting parts. In part because of the still rather rigid compartmentalisation of both the study of law and its academic practice, and despite the influence of critical legal studies (which promotes 'recontextualisation as critique'[1]), closely interrelated aspects of doctrine, procedure and evidence can appear as if independent of each other. Scholars of the substantive criminal law may be inclined to focus on rules themselves (offences, defences), and to run the risk of carefully tracking changes that are disconnected or abstracted from the context in which these rules are given life (under particular social, institutional and organisational conditions). Conversely, scholars of procedure and evidence may not appreciate the ways in which their subject matter (decision-making, trial practices) articulates on an intellectual level (as changed epistemology, for instance). Yet, it is the interplay of the intellectual and what I am calling the actual—the way in which legal change is realised or cashes out 'on the ground'—that is what is exciting about the historical study of law, and that gives it distinctive critical purchase in a legal academy still heavily influenced by doctrinal scholarship.

[1] See Nicola Lacey, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (Oxford: Hart, 1998) ch. 7, suggesting this strategy of critique is shared by critical legal studies and feminist legal theory. For a careful discussion of the value of critical legal studies more generally, see also Nicola Lacey, 'Normative Reconstruction in Socio-Legal Theory', *5 Social Legal Studies* (1996): 131.

In this short article, I reflect on the value of the *Old Bailey Proceedings* (*OBPs*) in light of the development of the modern criminal trial—the gradual appearance of the processes of prosecution, adjudication and punishment familiar to us in the current era. As is well known, the development of the modern criminal trial was a multifaceted development, with change occurring on a procedural, doctrinal and epistemological level.[2] The multifaceted character of the emergence of the modern criminal trial presents a challenge to legal historians. The set of changes associated with the development of the modern criminal trial stretches both beyond the end of the eighteenth century, and its origins can be traced back to before 1700, but, here, I focus on the eighteenth century, the period in which 'significant and fundamental' change in the process of prosecution, trial and punishment produced the modern criminal trial.[3] Some of the key features of the modern criminal trial, including prosecution and defence counsel (although the latter had a limited role until after 1800),[4] a distinction between fact and law, and the outlines of some laws of evidence and procedure,[5] appeared over the 1700s. The broad timeframe over which the development of the modern criminal trial occurred has corresponded with a tendency among legal scholars to tell the story in a broad, overarching narrative arc, as more or less straightforwardly about the emergence of the adversary process, for instance,[6] which risks occluding some of the subtleties or 'messiness' of the changes.

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[2] See e.g. J. M. Beattie, *Crime and the Courts in England, 1660–18*00 (Clarendon Press: Oxford, 1986); R. Antony Duff et al., *The Trial on Trial: Towards a Normative Theory of the Criminal Trial, Vol. 3* (Oxford: Hart Publishing, 2007); Nicola Lacey, *Women, Crime and Character: From Moll Flanders to Tess of the D'Urbervilles* (Oxford: Oxford University Press, 2008); J. H. Langbein, *The Origins of the Adversary Criminal Trial* (Oxford: Oxford University Press, 2003); Dana Rabin, *Identity, Crime, and Legal Responsibility in Eighteenth-Century England* (New York: Palgrave, 2004).

[3] Beattie, *Crime and the Courts in England*, 267.

[4] On the nineteenth century, see David J. A. Cairns, *Advocacy and the Making of the Adversarial Criminal Trial 1800–1865* (Oxford: Clarendon Press, 1998).

[5] See generally Langbein, *The Origins of the Adversary Criminal Trial*; Beattie, *Crime and the Courts in England 1660–1800*; Antony Duff et al., *The Trial on Trial, Vol. 3* (Oxford: Hart Publishing, 2007).

[6] See e.g. Langbein, *The Origins of the Adversary Criminal Trial*. For critical discussion of Langbein's argument about adversary procedure, see Duff et al., *The Trial on Trial, Vol. 3*, ch. 1.

As I discuss in this paper, the *Old Bailey Proceedings*, recently digitised and available online, offer one particularly promising way 'in' for legal historians and others seeking to study the subtleties of the emergence of the modern criminal trial over the 1700s. The *OBPs* have been studied by a number of lawyers, historians and other scholars. John Langbein, who continues to be widely recognised as the leading authority on the *Old Bailey Proceedings*, pioneered the study of the trial records.[7] Since Langbein's research was published, interest in the *OBPs* has only increased (a trend that has been facilitated by the digitisation of the trial records, the relevance of which I discuss below). Recent scholarship has seen a more elaborate critique of the *OBPs* as sources, with researchers reading across the records for a sense of the picture they paint of criminal justice generally, for instance.[8] Some scholars have also compared the trial records contained in the *OBPs* with other trial collections, provoking insights about the specificity of the *OBPs* collection.[9] Revisiting the *OBPs* here assists in formulating a closer, more fine-tuned and even more prosaic story about the large-scale changes that fall under the short-hand phrase, the development of modern criminal practices.[10]

Reading the Sources

The *OBPs* are a collection of records of many of the trials that took place at the Old Bailey, London's main criminal court, between 1674 and 1913.[11] This long time span traverses a range of profound changes in the social, political and institutional life of

[7] See e.g. John H. Langbein, 'Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources', *The University of Chicago Law Review 50* (1, 1983): 1–136.
[8] See e.g. Robert S. Shoemaker, 'The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London', *Journal of British Studies 47* (2008): 559.
[9] See e.g. McKenzie, 'Selecting the *Select Trials*'.
[10] See also, Arlie Loughnan, *Manifest Madness: Mental Incapacity in Criminal Law* (Oxford: Oxford University Press, 2012), ch. 1.
[11] See http://www.oldbaileyonline.org/static/Proceedings.jsp (last accessed 28 October 2013). The matters heard at the Old Bailey consisted of the more serious criminal offences committed in London and Middlesex.

criminal law and process. Over the 1700s, for instance, the scope of the criminal law (the so-called 'bloody code') expanded significantly, and there were major changes in the dynamic division of labour in the courtroom (with the judge coming to be more of an umpire of the proceedings[12]), and in relation to sentencing (with the advent of transportation as punishment). For the period of the 1700s, the *OBPs* database contains almost 50,000 trial records, covering a wide range of offences and a variety of offenders. The records provide an abridged version of most (although not all) of the trials that took place at the Old Bailey, representing more quotidian cases than the *Select Trials*, for instance.[13] The collection constitutes a unique means of studying ordinary trial process, as it changed over time. Like any sources, the *OBPs* must be read carefully, and, as sources, they raise several issues. I briefly discuss three of these issues in turn, with an eye on the broader issue of how the *OBPs* assist in telling a close story about the development of the modern criminal trial.

Publication and People: The Purpose(s) of the *OBPs*

One of the issues identified by historians working with the *OBPs* is the change in the purpose of the *Proceedings*, which raises the issue of their readership or audience, and the broader issue of lay participation in criminal justice. From the outset, the *OBPs* were published (eight times per year) by the City of London as a commercial activity, with a license to publish issued to various London printers on an annual basis.[14] As Robert Shoemaker argues, because they were first intended for a popular (albeit

[12] K. J. M. Smith Lawyers, *Legislators and Theorists: Developments in English Criminal Jurisprudence 1800–1957* (Oxford: Clarendon Press, 1998), 44.
[13] Regarding the *Select Trials*, see Andrea McKenzie, 'Useful and entertaining to the generality of Readers: Selecting the Select Trials, 1718–1764' in *Crime, Courtrooms and the Public Sphere in Britain, 1700–1850*, ed. David Lemmings (Aldershot: Ashgate, 2012), 43–69.
[14] Shoemaker, 'The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London', 563. As Simon Devereaux points out, however, the publisher did not necessarily make a profit in which case he had to petition the City of London for financial relief: see Simon Devereaux, 'The City and the Sessions Paper: "Public Justice" in London, 1770–1800', *Journal of British Studies 35* (1996): 468.

literate middle and upper class) audience, the *OBPs* tended to deal with the sensational or scandalous aspects of the Old Bailey trials in greater detail than other aspects of the trials (such as legal argument).[15] The popularity of the *OBPs* as reading material reflected the growing popular interest in crime during the 1700s. In addition, the popular audience of the *Proceedings* included potential or actual prosecutors: in advance of the appearance of an organised state-based system of prosecution, the *OBPs* seem to have performed an educative function, disseminating information about the norms governing the practice of appearing in court.[16]

Particularly later in the century, the *Proceedings* were intended to appear both accurate and impartial and, from 1778, printers were required to certify that the records were 'true, fair and a perfect narrative of the whole evidence'.[17] This was one aspect of a wider effort to reinforce the authority of criminal justice in the face of a perceived increase in crime and disorder.[18] As Simon Devereaux argues, from the 1770s, the *Proceedings* sought to promote an image of 'public justice' that the City authorities considered amenable, one that demonstrated that the courts were capable of dealing with the threat posed by serious crime.[19]

It was from about this time that the length of the *OBP* records (sometimes merely a few paragraphs in the early decades of the eighteenth century[20]) increased substantially.[21] The increased length of the records coincided with their use as legal or

[15] Shoemaker, 'The Old Bailey Proceedings', 563–64.
[16] See further Shoemaker, 'The Old Bailey Proceedings', 559.
[17] Shoemaker, 'The Old Bailey Proceedings', 561.
[18] See Martin Wiener, *Reconstructing the Criminal: Culture, Law and Policy in England, 1800–1914* (Cambridge: Cambridge University Press, 1990).
[19] Devereaux, 'The City and the Sessions Paper', 467–68.
[20] E.g. Alice Hall, *OBP*, 17 January 1709 (t17090117–19).
[21] See Devereaux, 'The City and the Sessions Paper', 468.

administrative resource. In the last three decades of the century, the *OBPs* came to be relied upon by the Recorder, the chief sentencing officer of the court, for the purposes of obtaining reliable information about convicts, which was used in the exercise of discretion as to sentencing (death or transportation, for instance).[22] By the end of the 1700s, with the development of an informal practice of judicial review of decisions from the Old Bailey, the free copies of the *OBPs* that the publisher was required to provide to the City of London were used by 'the twelve' in their decision-making.[23] In the context of at first ad hoc, and, later, more systematic, administrative use, the City continued to fund the publication of the *OBPs* although by then the costs of publication had come to exceed the licensing fee paid by the publisher.[24]

The change in the purpose(s) of the *OBPs* over the course of the 1700s hints at the broader changes that occurred in relation to lay involvement and interest in criminal justice processes over this period. On the one hand, the changing purposes(s) of the *Proceedings* corresponded with declining public readership, as, from the 1770s, 'respectable society lost interest in the criminal experiences of individual members of the lower classes'.[25] On the other hand, however, over the eighteenth century, the scope of the jury's role in criminal trials expanded, amplifying the significance of lay evaluation of alleged criminal conduct. The particularistic nature of eighteenth century criminal justice combined with enhanced sentencing options to ensure that the jury had 'wide discretion' to acquit or convict, or, in capital cases, to convict of a lesser charge.[26] Indeed, as the *OBPs* indicate, reliance on these partial verdicts—a

[22] Devereaux, 'The City and the Sessions Paper', 471.
[23] Devereaux, 'The City and the Sessions Paper', 473–77.
[24] Devereaux, 'The City and the Sessions Paper', 481.
[25] See Shoemaker, 'The Old Bailey Proceedings', 579.
[26] Beattie, *Crime and the Courts in England*, 398.

'largely jury administered scheme of mitigation',[27] whereby a defendant was convicted of a misdemeanour rather than a felony, for instance—provided a ready means of reducing the punishment a convicted prisoner would face.[28] The great role of lay people in criminal evaluation meant that jury mitigation came to take on 'a kind of legitimacy it had not possessed before'.[29] This point relates to the content of the *OBP* records, to which I now turn.

Prosecution, Defence, Evidence and Proof: The content of the *OBP* records

In addition to the particularities of their publication, another issue in working with the *OBPs* as sources relates to the content of the trial records. Several note takes and shorthand writers (employed by the City of London and the Lord Mayor) generated the records published as the *OBPs*.[30] But, as historians have pointed out, triangulation with other sources (some of which are now included alongside the *OBP* trial records[31]) reveals that these records represent a selective account of the relevant court proceedings. The commercial imperative to sell copies of the *OBPs* (meaning that the records needed to provide entertainment), and the publisher's intention to convey an image of authority and respectability, gave the *OBPs* what one author has labelled a 'split personality'.[32]

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[27] Martin J. Wiener, *Reconstructing the Criminal: Culture, Law and Policy in England, 1830–1914* (Cambridge: Cambridge University Press, 1990), 59.
[28] An example from the period is provided by the trial for theft of William Wilson in 1750. Wilson was charged with stealing several items and money, but convicted only of the theft of one item, a hamper, and not subject to punishment. See *OBPs*, William Wilson, 11 July 1750 (t17500711–53).
[29] Green, *Verdict According to Conscience*, 278.
[30] Shoemaker, 'The Old Bailey Proceedings', 563.
[31] These 'associated records' include confessions, indictments, letters, petitions and warrants: see http://www.oldbaileyonline.org/static/Linked-records.jsp (last accessed 28 August 2013).
[32] See Michael Harris, 'Trials and Criminal Biographies: A Case Study in Distribution' in *Sale and Distribution of Books from 1700*, ed. R. Myers et al (Oxford: Oxford Polytechnic Press, 1982), 10, cited in Shoemaker, 'The Old Bailey Proceedings', 563.

From the 1720s, the *OBPs* presented the trials as verbatim records of what was said in court, as opposed to short summaries of the proceedings. But the records remained selective, with testimony summarised into narrative form (although actually adduced in court from a series of questions), and repetition (from witnesses, for instance) omitted.[33] As Shoemaker notes, records of trials resulting in acquittals tended to be significantly shorter than convictions, and, focused on convictions, the *Proceedings* conveyed the message that criminality would be punished.[34] Further, even in relation to trials that resulted in convictions, the *Proceedings* tended to more tightly circumscribe the evidence for the defence, which made convictions appear 'more justified' than they had in the courtroom, and which legitimated to the wider public the convictions and punishments meted out.[35]

This has been referred to as the ideological bent of the *Proceedings* by one of the academic directors of the *Old Bailey Proceedings Online*, the project to digitise the collection (discussed below): Shoemaker argues that the cumulative effect of these approaches was to simplify trial stories, represent justice as unproblematic, and minimise legal argument and technicality (such as directions from the bench, or questions from the jury).[36] But of course there are limits to the intentionality of these sources. As Andrea McKenzie points out in relation to the *Select Trials*, this 'bias' could well reflect a conviction that readers would 'share the same assumptions and reach the same judgements' as those who generated the records.[37] In any case, while John Langbein, the leading *Old Bailey Sessions Papers/Proceedings* scholar, argues

[33] Shoemaker, 'The Old Bailey Proceedings', 566–67.
[34] Shoemaker, 'The Old Bailey Proceedings', 567.
[35] Shoemaker, 'The Old Bailey Proceedings', 570; see also McKenzie, 'Useful and entertaining to the generality of Readers', 43–69.
[36] Shoemaker, 'The Old Bailey Proceedings', 572.
[37] See McKenzie, 'Useful and entertaining to the generality of Readers', 46–7.

that, although the *Proceedings* compressed the trials, they did not include 'fabrication or invention of content',[38] it is clear that this is not the only issue for researchers reflecting on the content of the *OBP* records.

The slant towards the prosecution, and the brevity with which the defence case was summarised, means that it is necessary to be particularly careful when studying the *OBP* records in order to generate insights regarding defence arguments. This was the period of the exculpatory criminal trial, when it was up to the defendant to prove his or her innocence, not for the prosecution to prove guilt.[39] In the eighteenth century, a robust distinction between criminal responsibility and criminal liability was as yet inchoate, and the boundary between defences (relevant to liability) and factors in mitigation (relevant at sentencing), was still porous. In this context, the kinds of arguments raised against conviction (who, in the absence of lawyers, were speaking for themselves in court) revolved around an individual's (good) character.[40] Here, what Nicola Lacey calls 'local knowledge'—about the defendant, and his or her family—was crucial.[41] In relation to claims about exculpatory mental incapacity—as a result of 'madness', or intoxication, for example—such arguments depended on ordinary people's knowledge of mental conditions.[42]

In addition, the omission of technical matters such as judicial directions to the jury, means that, from the *OBP* records, some acquittals, or partial verdicts, or other, miscellaneous trial outcomes, appear as if from nowhere. As a result, it is sometimes

[38] Langbein, *The Origins of the Adversary Criminal Trial*, 185.
[39] See Duff et al., *The Trial on Trial, Vol. 3*, chapter 2.
[40] See further Nicola Lacey, 'Responsibility and Modernity in Criminal Law', *Journal of Political Philosophy 9* (3, 2001): 249.
[41] Lacey, 'Responsibility and Modernity in Criminal Law', 265.
[42] See further Loughnan, *Manifest Madness: Mental Incapacity in Criminal Law*, in which I address the development of a lay knowledge of mental incapacity out of what can be called common knowledge.

necessary to (thoughtfully, and with due care) read between the lines of the trial records. This kind of reading is circumscribing not amplifying—it does not involve fabrication of content. Rather, it demands certain provisos, and qualifications on conclusions, where appropriate. For instance, if the trial record includes discussion of the defendant's 'good character', and the verdict is an acquittal, it is arguably only likely or plausible, rather than certain, that such a condition influenced the jury in reaching its conclusion.[43] Similarly, if the record indicates that the defendant had 'several Witnesses who gave him the Character of a very sober Man', it is arguable but not conclusive that this was related to the decision to reduce the charge from murder to manslaughter.[44] This type of reading of the sources might be described as a deflationary one. I return to types of reading, below.

These examples of the contingent relationship between evidence and trial verdict raise the broader issue of evidence and proof. Evidence and proof practices changed in important ways over the 1700s. These changes were associated with the rise of the adversarial trial process. The nascent regularisation of prosecution and the gradual entry of lawyers (defence counsel began to participate in criminal trials from the 1730s, although they were limited to gathering and adducing evidence, and examining and cross-examining witnesses, and could not address the jury[45]) combined to shift the focus from the particular defendant him or herself to those who spoke about or on behalf of him or her.[46] These changes corresponded with changing ideas about proof: the reconfiguration of the criminal trial meant that it became a 'contest between two cases', based on the presentation of evidence, and the dynamic came to be one of

[43] See e.g. Arthur Bethell, Martha White, *OBP*, 22 May 1740 (t17400522-9).
[44] See e.g. Un-named man, *OBP*, 13 July 1715 (t17150713-58).
[45] See Clive Emsley, *Crime and Society in England 1750–1900* (London: Pearson Longman, 2005), 183–211.
[46] See Duff et al., *The Trial on Trial, Vol. 3*, 203–13.

testing the prosecution case.[47] It is this dynamic that lies at the heart of the modern criminal trial.

But these changes in proof practices unfolded alongside significant continuities in the fact-finding format of criminal trials in the eighteenth century. For instance, the *OBP* records covering cases arguments orientated around mental incapacity reveal that ordinary people continued to be called to testify about 'madness' throughout the 1700s (and beyond).[48] While the changing epistemology of 'madness', according to which various individuals, including midwives and doctors, could claim specialist knowledge, ordinary people were still regarded as competent to identify and speak in court about 'madness'. This in turn points to the significance of the different types of knowledge that bear on evaluation and adjudication practices. Up to and including the eighteenth century, alongside experts, non-experts continued to play a role in adjudication and evaluation of claims to mental incapacity. As I have suggested elsewhere, and in contrast to the usual story told about the rise of expert knowledge of mental incapacity, the development of medical and psychiatric expertise about 'madness' from this period onwards went only some way towards covering the field of knowledge practices in criminal law, and space remained for non-experts and non-expert knowledge.[49]

[47] Duff et al., *The Trial on Trial, Vol. 3*, 44.
[48] See e.g. Mary Jones, *OBP*, 18 May 1768 (t17680518-39), Thomas Haycock, *OBP*, 28 June 1780 (t17800628-34), and Thomas Baggot, *OBP*, 28 June 1780 (t17800628-113) regarding intoxication; and Philip Parker, *OBP*, 8 December 1708 (t17081208-34), Thomas Nash, *OBP*, 12 April 1727 (t17270412-21), Susannah Milesent, *OBP*, 11 November 1794 (t17941111-1) regarding insanity; and, more generally, see Stephan Landsman, 'One Hundred Years of Rectitude: Medical Witnesses at the Old Bailey, 1717–1817', *Law and History Review 16* (1998): 445–494; see also Loughnan, *Manifest Madness: Mental Incapacity in Criminal Law*, chapter 6.
[49] See further Arlie Loughnan, 'In a Kind of Mad Way: A Historical Perspective on Evidence and Proof of Mental Incapacity', *Melbourne University Law Review 35*, (3): 1049–1070.

Access and Coding: Digitisation of the sources

Over and above the issues raised by the sources is a set of issues raised by their collation into an electronic database (via which my own research has been conducted). Digitisation raises a separate set of issues, as the academic researchers directing this process and managing the website, are aware.[50] The availability of the sources in digitised form should be recognised as having generated a layer of interpretation or mediation between the reader and the (hard copy) sources. While it is of course true to say that, happily, this process has made the *OBPs* more accessible to a wider range of individuals,[51] it must be recognised that this development also creates issues for researchers.

These issues arise in part because of the fact of digitisation itself: with the documents recreated ('rekeyed' rather than scanned), and thus now presented in a different form to the reader, one that removes sensory perceptions from the (rational) reading process, the carapace of context that would frame the particular trial record has been removed. In addition, these issues arise because each trial record has been coded to render the database 'searchable' (by date, by defendant, by offence, by verdict and, indeed, by any word string, e.g. 'woman of the night').[52] This coding is particularly valuable for researchers interested in quantitative analyses of the *Proceedings* (e.g. how many individuals convicted of murder in the eighteenth century were women?; is there any pattern in prosecutions for forgery?), or in the language used in the

[50] See Tim Hitchcock and Robert Shoemaker, 'Digitising History From Below: The Old Bailey Proceedings Online, 1674–1834', *History Compass 4* (2, 2006): 199–200. The *OBPs* website contains numerous documents drafted by these scholars in what may be read as an effort to inform the use of the *OBPs*: http://www.oldbaileyonline.org/static/Value.jsp (last accessed 28 August 2013). These materials seem to be directed at researchers, and there is a separate set of materials for use by secondary school teachers: see http://www.oldbaileyonline.org/static/Guides.jsp (last accessed 28 August 2013).

[51] See T. P. Gallanis, 'Review Notice: The Old Bailey Proceedings Online', *The Journal of Legal History 26*, (1, 2005): 105–07.

[52] For a discussion of how the materials were coded, see Hitchcock and Shoemaker, 'Digitising History From Below', 193.

Proceedings, and also for lay researchers (and searching for a particular named individual tried at the Old Bailey, for instance). But, at the same time, it entails risks relating to maintaining accuracy, and avoiding anachronistic labelling and over-simplification. It is vital to be cognisant of this, and, in some instances, it is also necessary to read *against* this reading when approaching the *OBPs*.

For this researcher, an instance of 'reading against' arises in relation to the issue of what counts as a special verdict, a discrete trial outcome. Although generally taken to refer to the verdict that follows a successful insanity plea ('not guilty by reason of insanity'), this just one example of a special verdict: it is *a* special verdict, not *the* special verdict. Special verdicts are a type of verdict that includes statements of fact (sometimes referred to as statement of reasons[53]): the jury returns a special verdict finding particular facts and reserves the legal inference to be drawn from them for the judgment of the court.[54] The *OBPs* have coded special verdicts as one particular trial outcome.[55] But this coding includes cases in which the judgment was respited, which are technically distinct. And the category does not include murder charges that resulted in verdicts that the killings had occurred in self-defence (*se defendendo*) or by accident (*per misfortunam*), which, in advance of the development of more elaborate defence doctrines, are best understood as forms of special verdict.[56]

[53] See NSWLRC Criminal Procedure: Jury in a Criminal Trial Discussion Paper 12 (1985).
[54] It is the inclusion of facts that makes such verdicts 'special'. They stand in contrast to general verdicts ('guilty' or 'not guilty'), which do not include any statement of fact, and which determine or conclude both the legal and factual matters at issue in the trial.
[55] The *OBPs* note that, where special verdicts were returned the final judgement was deferred and the eventual verdict and punishment may have been reported in a subsequent edition of the *Proceedings*: see Old Bailey Online, http://www.oldbaileyonline.org/static/Verdicts.jsp#specialverdict.
[56] The jury practice of issuing special verdicts forms the subject matter of my current work drawing on the *Old Bailey Proceedings*. A draft version of a paper on this topic was presented at the Reading the Sources workshop, UTS Law School, Sydney, 26 July 2013.

Mindful of each of these features of the *OBPs*, from the perspective of a legal historian working on the development of the modern criminal trial, it seems that it is good scholarly practice to ensure that the trial records are treated, as far as possible, as an end in their own right, rather than as a window onto the (truth of the) wider trial. For instance, as a matter of expression, this might involve referring to 'the trial record', not 'the trial', when citing the *OBPs*, but it is more than mere semantics. Here, it seems advisable for researchers to engage in careful consideration regarding what conclusions the records can genuinely support, and to be wary of over-broad conclusions that might betray inattention to the detail of the sources.

Conclusion

Sources such as the *Old Bailey Proceedings* provide an invitation to scholars to advance the legal scholarly discourse. Recalling the point, with which this article began, that it is the interplay of the intellectual and what we might call the actual—the way in which ideas are given life—that is exciting about the historical study of law, it should be apparent that the *Old Bailey Proceedings* are exciting indeed. As suggested in this article, in relation to the emergence of the modern criminal trial, the *OBPs* provide a rich set of sources that encourage scholars to explore the subtleties of the multifaceted development of modern prosecution, adjudication and punishment practices. These subtleties complicate the story, still most likely to be told in broad overarching narratives, of the marked change in criminal process into the modern era.