Illustrations as Legal Historical Sources
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In an important sense, most problems of legal history reduce themselves to what the jargon calls "source problems." Time and again we find that the reason we are having trouble understanding the origins or development of some institution or practice or doctrine is that the sources fail us. The events were not recorded, or were imperfectly recorded, and our vision is correspondingly impaired.

A main activity of legal historical scholarship is the search for new sources, or for new techniques of making awkward bodies of identified materials more usable. Ordinarily, the prowl for new sources is confined to the written word, that is, to manuscripts and printed works. Immense contributions have been made by the present generation of legal historians in establishing the importance of classes of manuscripts that had been neglected in earlier work. I might mention some examples associated with research conducted at the University of Chicago Law School. John Dawson found in the medieval manorial rolls of Redgrave Manor, now housed in Regenstein Library, the starting place for his great comparative study of the history of the jury. Charles Gray has pioneered the use of manuscript law reports from the Tudor-Stuart period. He obtained important findings by recognizing that "many cases that never found their way into print are reported in manuscript, and many printed cases, including famous ones, appear in alternative manuscript versions, often clearer or more complete versions."

In quite recent work Richard Helmholz has been using the records of the English ecclesiastical courts to show that some of the most fundamental doctrinal shifts in the history of the common law may have had their roots in the practice of church courts.

The incessant search for new sources is not limited to manuscript materials—or even to the printed word. I once found myself hunting among funerary inscriptions in English cathedrals for evidence of changes in the status and authority of the justices of the peace. Research on the history of the adversary system and the law of evidence has led me to sources that, only a decade or so ago, I never dreamed existed—sensation-mongering pamphlets that were hawked on the streets of London and the shorthand diaries of a chief justice of King’s Bench.

In recent years I have come to take an interest in contemporary illustrations—mostly woodcuts and engravings that were published in seventeenth- and eighteenth-century printed works—as sources that can sometimes shed a little light on questions of legal history. Changes in production techniques for books and scholarly journals have made it easier to reproduce illustrations inexpensively. In an article in a current number of the University of Chicago Law Review I reprinted about a dozen—hoping that, in the words of the poet, "the pictures [would] for the page alone." I am reproducing here a few of these and other illustrations.

Mr. Langbein is Max Pam Professor of American and Foreign Law and Russell Baker Scholar. The Law School Record gratefully acknowledges the cooperation and permission of the following collections: Pretrial procedure: illustration of Sir John Fielding presiding, by permission of the British Library. Sanctions: illustrations by John Seller, by permission of the Guildhall Library, City of London. Torture: illustrations from the Constitutio Criminalis Theresiana, from the copy in the Max Planck Institut für Europäische Rechtsgeschichte, Frankfurt. Assize procession and Hogarth: illustrations reproduced by permission of the Trustees of the British Museum.
This is the earliest depiction that I have found of the pretrial procedure for investigating cases of serious crime in London in the eighteenth-century. It shows Sir John Fielding, the blind half-brother of Henry Fielding, the novelist, presiding at a pretrial examination in his Bow Street chambers. Fielding's pretrial work, which was subsidized and otherwise encouraged by the state, is becoming a subject of considerable scholarly interest. We are beginning to see in Fielding's practice the key transitional phase of the development by which the rural tradition of private prosecution was adapted to handle huge urban case loads.
In an age before the state possessed the administrative capacity to operate prisons, the blood sanctions—death and mutilation—were the only practicable resort in cases of serious crime. The illustrations reprinted here come from a little book of engravings depicting criminal sanctions circa 1680. It now seems that the copy of this work in the Guildhall Library, London, is the only one that survives. I had occasion recently to reproduce the illustration of pillorying in a discussion of some cases in which persons who had been ordered placed in the pillory were stoned or beaten to death by London mobs. One look at the illustration shows why the person pilloried was so defenseless. It should be said that the object of the sanction was not to expose the sufferer to such physical abuse.

Pillorying was meant as a dignitary sanction, a form of public humiliation, but it risked physical abuse when hostile sentiment exceeded the capacity of the constabulary to protect the offender.

Another illustration from the same source shows burning at the stake, the particularly gruesome form of capital sanction reserved for women offenders who committed treason. (For men the sanction was at least as ghastly—hanging, drawing, and quartering.) Careful readers will notice that the caption describes the sanction as applying both to high and to "petty" treason. Petty treason was committed when a woman killed her husband. Other sources tell us that it was customary for the executioner to strangle the woman before lighting the pyre.
Anglo-American law escaped the worst chapter of Continental criminal procedure, which lasted from the thirteenth to the eighteenth century: the law of torture, by which courts decided when the circumstantial evidence against a suspect was sufficiently grave that he might be subjected to examination under torture for further disclosures that could seal his guilt. I had occasion a few years ago to write a book explaining something of the origins and final decline of this procedural system, as well as its failure to take hold in the common law.\textsuperscript{11} I reproduce here two illustrations of one of the main modes of torture, the legscrew. These illustrations come from the appendix to the Austrian criminal procedure statute book of 1769,\textsuperscript{12} and were meant as how-to-do-it guides for local craftsmen and court officers in constructing and operating such devices. I thought these “official” illustrations made the point—graphically, as we say—that the law of torture was not simply the third degree, not illegal rough stuff. It was a carefully regulated part of a profoundly flawed system of criminal procedure.
Twice a year the judges of the royal central courts rode out in pairs to visit the counties of England as itinerant trial commissioners. They tried both civil and criminal cases of the more serious sorts to juries composed of men from the county in which the matter originated. Much of Anglo-American civil procedure was shaped by the tradition of centralized pleading followed by decentralized jury trial. I reproduce an engraving of the Chelmsford assize procession, showing the judges arriving in the town in 1762.
I conclude this selection with a familiar illustration that has, however, a special significance for the legal historian. Hogarth's famous *Industry and Idleness* series chronicles the progress of two apprentices, the industrious one who ascends to become an alderman and finally lord mayor of London; and his erstwhile colleague, who falls into a career of debauchery and crime. Plate 10 of the series depicts the idle apprentice, now apprehended for felony, brought before his former colleague, the industrious apprentice, shown exercising the office of a London alderman. Hogarth was interested in the dramatic potential of the confrontation between apprehended felon and successful alderman, but legal historians are interested in the procedure. The reason the felon was before an alderman is that the aldermen of London served in a rotation as pretrial examining officers in cases of serious crime. They interviewed victims and accused and bound over witnesses and defendants for trial at the Old Bailey. They performed for the core area of London, the so-called “City,” the function that Sir John Fielding discharged for the rougher part of the metropolis when he was sitting at Bow Street.

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8. "First published as the frontispiece to 3 The Malefactor's Register; or, the Newgate and Tyburn Calendar (London, n.d. [1779]) (5 vols.).