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CAPTURED RED HANDED:
THE IMPACT OF SOCIAL MEDIA ON THE
EVOLVING CONCEPTS OF THE CRIMINAL
DEFENDANT AND THE PRESUMPTION OF
INNOCENCE

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Advances in media technology has made it possible for crimes to be documented and commented upon in real-time. Increasingly, crimes are being recorded as they occur by the public on mobile devices and uploaded onto the Internet for global commentary. This public discussion of criminal activities is supplemented by an increasingly pervasive and moralistic media commentary on criminal activity. As a result, guilt can appear to be predetermined through a trial by media and substantiated by apparent “proof” before the individual comes to trial. This thesis considers how such “evidence” of guilt alters perceptions of the defendant and role of the criminal trial in determining guilt. Applying the theory of genealogy, we analyse the role the English defendant has played in the criminal trial and identify that the concept of the defendant is changeable and has been influenced by external pressures. Using the theory of moral mandates this changeable role of the defendant is tested through a qualitative analysis of newspaper commentary and posts on Twitter and YouTube. Two case studies are considered (the Boston Marathon bombing and the Woolwich murder), representing crimes tried in domestic criminal courts. These are compared with one case study of an international crime (allegations against Gaddafi’s tactics during the Libyan civil war to consider the impact of social media on international criminal trials. Through this analysis this thesis identifies some pressure points where social media “evidence”, supplemented by crime news commentary could facilitate another change in the role of the defendant, through the erosion of the presumption of innocence.

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Introduction

In the early hours of the 2nd May 2011 US Navy SEALs stormed a Pakistani compound in Abbottabad, near the nation's elite military training base. Five residents of the compound, four men and one woman, were fatally shot after a brief gun battle against the American troops. There were no SEAL casualties. The United States' President, Barack Obama, announced the outcome of the mission during a televised conference, stating that "justice had been done" to the leader of an organisation "committed to killing innocents in our country and across the globe".¹ This news resulted in jubilant Americans celebrating in the streets and chanting patriotic slogans.² The SEALs had targeted the man widely considered to have masterminded a series of terrorist attacks, the most notable of which was the coordinated plane hijacking on September 11th 2001,³ known by the American idiom "9/11". Osama bin Laden was dead.

The covert capture mission, codenamed Operation Neptune Spear, and conducted in conjunction with the Central Intelligence Agency (CIA), was highly controversial and its legality has since been questioned.⁴ Nevertheless, it was supported by the majority of Americans; a poll conducted shortly after the Operation found that 86 per cent approved of the mission, with a similar number (87 per cent) believing that the mission, and its outcome, was justified.⁵ Praise for the mission came from Republicans as well as Democrats,⁶ and the global political rhetoric appeared to be one of approval that justice had been served. For example, the day after the news broke, David Cameron's congratulations of the US Special Forces in the House of Commons was met with vocal praise from MPs. The British Prime Minister at that time described the operation as a "great achievement for America, ... [in killing] a mass murderer".⁷

¹ Obama *Osama bin Laden Dead* (2/5/11) <<https://www.whitehouse.gov/blog/2011/05/02/osama-bin-laden-dead>> accessed 27/2/16.

² "Celebrating the Death of Osama bin Laden" (*Time Magazine* 3/5/11) <<http://content.time.com/time/photogallery/0,29307,2068860,00.html>> accessed 27/2/16.

³ *Supra* Obama n1.

⁴ See, for example, Ambos and Alkatout "Has 'Justice Been Done'? The Legality of Bin Laden's Killing Under International Law" (2012) 45 *Israel Law Review* 341-366 and the reply from Wallace "Operation Neptune's Spear: The Lawful Killing of Osama Bin Laden" (2012) 45 *Israel Law Review* 367-377.

⁵ "Associated Press-GfK Roper Public Affairs Poll" (5-9/5/11) <<http://www.pollingreport.com/terror2.htm>> accessed 24/3/16.

⁶ Dao and Sussman "For Obama, Big Rise in Poll Numbers after Bin Laden Raid" *The New York Times* (New York 4/5/11).

⁷ "David Cameron: Bin Laden's Death 'Justice'" (*BBC* 2011) <<http://www.bbc.co.uk/news/uk-politics-13273051>> accessed 7/12/15.

Similarly, the United Nations' Secretary-General Ban Ki-moon discussed his relief stating "that justice ha[d] been done to such a mastermind of international terrorism".⁸

Bin Laden's death raises serious questions about the role of the criminal trial in determining guilt and exacting justice. This was an individual who had received the ultimate criminal sanction (death) despite never having been found guilty in court. Bin Laden aside, four individuals were killed with impunity by a foreign military presence and in front of children, in a country that was not at war with the United States. Their mere association with bin Laden, it seems, rendered them sufficiently culpable to warrant death. The reaction of world leaders also contributed to the unprecedented nature of the event. Even the Secretary-General of the UN, an organisation responsible for the maintenance of diplomacy and human rights adherence,⁹ praised America's undertaking. Yet the reaction of the American public at the news, and the political approval of the mission, suggest that a criminal verdict was not needed for justice to be seen to be exacted. These sentiments were reflected by journalist Jeffery Toobin, who commented in the *New Yorker* that "bin Laden didn't get a trial and didn't deserve one".¹⁰ Such sentiments suggest that the criminal trial is something that is earned and can be taken away if the accusations are serious enough.

Despite the bin Laden example, it cannot be said that due process is being universally eroded. Less than a year after bin Laden's death, on the 14th March 2012, the International Criminal Court (ICC) issued its first verdict, finding Thomas Lubanga Dyilo guilty of war crimes committed in the Democratic Republic of Congo.¹¹ The ICC sends a clear message; that guilt for even the worst criminals¹² must be ascertained in a criminal trial. As such, the ICC can be considered the apex of the presumption of innocence. Yet, despite this, the commendations and celebrations of bin Laden's death suggest that there is a more resonant justice paradigm for the worst criminals, one that transcends the trial. Complications of capturing bin Laden aside, the jubilation at his killing by members of the public, journalists and the political elite, profoundly conflicts with the dominant global rhetoric of a rights-adhering trial for all.

⁸ Secretary-General "Secretary-General, Calling Osama bin Laden's Death 'Watershed Moment', Pledges Continuing United Nations Leadership in Global anti-Terrorism Campaign" (*un.org* 2/5/11) accessed 14/4/16.

⁹ Charter of the United Nations.

¹⁰ Toobin "Killing Osama: Was it Legal?" (*The New Yorker* 2/5/11) <<http://www.newyorker.com/news/news-desk/killing-osama-was-it-legal>>.

¹¹ *The Prosecutor v. Thomas Lubanga Dyilo* ICC-01/04-01/06.

¹² The Court's founding treaty, the Rome Statute, makes it clear that the ICC is responsible for "grave crimes that threaten the peace, security and well-being of the world" (Preamble) and the case is "of sufficient gravity to justify further action by the Court" (Article 17(d)). As a result, the Court is highly selective, only those defendants accused of the worst crimes are of interest to the ICC.

The creation of the ICC represented a global reaffirmation that all defendants, no matter the accusation, were entitled to be presumed innocent until proven guilty beyond reasonable doubt in a fair and impartial criminal trial.¹³ In contrast to the rhetoric of the ICC, bin Laden was not only denied due process of law, but he was deemed underserving of it. This runs contrary to the principle of fundamental human rights, but nevertheless remains a popular notion in discussions of serious crimes or obviously guilty defendants. Indeed, in an article for the BBC, Professor Jon Silverman ultimately considered a criminal trial to be inappropriate for bin Laden.¹⁴ He cited the difficulty of establishing bin Laden's guilt in a rights-adhering criminal trial and concludes that such a process may thwart justice being exacted against a global and serial criminal. According to Silverman there are some criminals, such as bin Laden, who are widely considered to be so guilty and whose crimes are so atrocious, that not only are they underserving of a criminal trial, but that such a process can operate to obstruct justice rather than deliver it.

The Presumption of Innocence: The Litmus Test for Due Process Erosion

Before considering the bin Laden example in more detail, it is worth considering what is meant by "due process" in this thesis. It is a phrase that has a growing presence in criminal procedures. Despite this, it is a concept that has remained undefined.¹⁵ The nuances of due process are subject to academic debate, which is beyond the scope of this thesis to consider. Rather, to ascertain the impact of social media on the criminal trial and to better understand how the concept of the defendant developed, it is sufficient to note that due process provides a series of defensive protections against the state. Inspired by Enlightenment philosophy, at the essence of due process is the rights-bearing defendant who needs to be safeguarded against potential state abuse of power.¹⁶ It is a recognition that the criminal justice process can end in the deprivation of liberty and, in some jurisdictions, death. Thus, an individual's fundamental rights should only be denied in this way after a rigorous consideration of culpability. Part of this is the understanding that the state has considerably greater resources than the accused.

¹³ Enshrined under Article 66 of the Rome Statute. Other rights of the accused can be found under Article 67.

¹⁴ Silverman "Should Osama Bin Laden Have Been Caught and Tried?" (BBC 4/5/11) <<http://www.bbc.co.uk/news/world-south-asia-13279532>> accessed 10/12/14.

¹⁵ Vogler "Due Process" in Rosenfeld and Sajó (eds) *Comparative Constitutional Law* (Oxford University Press 2012).

¹⁶ *Ibid* p.938-939.

In recognising due process as inherently linked to the protection of the criminal defendant, the presumption of innocence becomes the cornerstone for due process adhering criminal trials. Established internationally under Article 11 of the UDHR, alongside four other key due process criteria,¹⁷ the presumption of innocence provides the primary safeguard against state tyranny and arbitrary punishment. Without this presumption, it is more likely that a defendant will be convicted for a crime that they did not commit or be disproportionately punished.

The fact that the presumption of innocence is a central component of the criminal trial means that it provides an ideal litmus test for assessing the erosion, if any, of due process rights. As with other due process provisions, the presumption of innocence remains undefined and the mechanics and interpretation of this safeguard can differ between jurisdictions.¹⁸ It is a presumption based not on fact but rather “is a moral and political principle, based on a widely shared conception of how a free society ... should exercise the power to punish”.¹⁹ At its broadest sense the presumption of innocence denotes an institutional requirement to assume that the defendant is not guilty of the accusations made against him or her and to place the burden of proof on the prosecution.

The nuances of the presumption of innocence are subject to academic debate and extend to considerations of procedure and substantive definitions. However, it is being increasingly accepted that the presumption of innocence extends beyond the criminal trial to include the pre-trial phase.²⁰ Thus, institutions outside the courtroom, such as the police force and the media must necessarily maintain a defendant’s presumption of innocence. Nevertheless, it is increasingly the case that media reporting of a criminal act can instead establish a presumption of guilt against the defendant.²¹ This can occur despite legal requirements that the media must maintain due process adhering language. Indeed, the public’s conviction of bin Laden’s guilt was substantially influenced by the media’s reporting of him and the crimes that he was accused of committing. In this way,

¹⁷ The right of the defendant to equal protection before the law (Article 7), the right not to be arbitrarily subject to state sanctions or interference with their private or family life (Articles 9, 12) and the right to a fair and public trial (Article 10).

¹⁸ Quintard-Morénas “The Presumption of Innocence in the French and Anglo-American Legal Traditions” (2010) 58 *The American Journal of Comparative Law* 107-149.

¹⁹ Ashworth “Four Threats to the Presumption of Innocence” (2006) 10 *International Journal of Evidence and Proof* 241-278 p.249.

²⁰ Something that was recognised by Article 6 European Convention on Human Rights.

²¹ Greer and McLaughlin “Media Justice: Madeleine McCann, Intermediatization and ‘Trial by Media’ in the British Press” (2012) 16 *Theoretical Criminology* 395-416, Greer and McLaughlin “‘Trial by Media’: Policing, the 24-7 News Mediasphere and the ‘Politics of Outrage’” (2011) 15 *Theoretical Criminology* 23-46.

we can highlight the role of the media as a potential threat to the presumption of innocence, and to due process more generally.

The death of bin Laden is an extreme example. Nevertheless, it illustrates how perceptions of guilt and justice can occur outside the traditional courtroom processes and due process safeguards. Academic studies have established how media depiction of a defendant or a particular type of crime can influence public attitudes by, for example, increasing a sense of punitiveness against a defendant vilified in the press.²²

This thesis aims to analyse the ways in which social media may be exercising an influence upon the presumption of innocence and how this could be serving to subtly alter the role of the defendant in the criminal trial. It will consider two ways in which social media could be exacerbating the media and public condemnation of the defendant. Firstly, we will consider how the growing use of smartphones, making it easier to document crimes as they are occurring, could be exacerbating a presumption of guilt by providing apparently conclusive “evidence”. Such “evidence” can then be posted onto social media sites for widespread dissemination. Secondly, we will analyse how social media could magnify a trial by media by providing a forum through which individuals can express feelings of shock and anger at the crime.

Assessing the impact of social media on the presumption of innocence will be assessed qualitatively through analysis of social and news media commentary of three case studies. Research on the potential impact of social media on perceptions of crime and justice has been minimal and predominantly quantitative.²³ This introduction aims to illustrate some of the areas of concern as a result of the growing use of technology to document and distribute “evidence” of criminal acts. Doing this situates the research contained in subsequent chapters within a broader context and enables better understanding of how social media can interact with, and impact upon, the criminal justice system. As most individuals still obtain information about crimes from traditional news outlets, such as newspapers or television news programmes,²⁴ the influence of social media on perceptions of the defendant are linked to the way they are portrayed by journalists. Thus, academic commentary on crime news provides a useful starting point, as this will enable us to better understand the potential impact of social

²² Cohen describes these types of individuals “folk devils”, discussed in greater detail in Chapter Two. Cohen *Folk Devils and Moral Panics: The Creation of the Mods and Rockers* (3rd edn, Routledge 2002).

²³ See, for example, Burnap, Williams, *et al.* “Tweeting the Terror: Modelling the Social Media Reaction to the Woolwich Terrorist Attack” (2014) 4 *Social Network Analysis and Mining* 1-14, Williams and Burnap “Cyberhate on Social Media in the Aftermath of Woolwich: A Case Study in Computational Criminology and Big Data” (2016) 56(2) *British Journal of Criminology* 211-238.

media on criminal justice. Here, bin Laden and the reporting of 9/11 can help illustrate how the news media can influence public perceptions, condemning a suspect as so guilty that they do not deserve a criminal trial.

The Role of the Media in Establishing Guilt: The 9/11 Example

The public celebrations of the outcome of Operation Neptune Spear can be explained, at least in part, by the news media's portrayal of bin Laden and the crimes he was accused of perpetrating. As the alleged leader of al-Qaeda,²⁵ bin Laden had been implicated in a wide range of criminal activities, including masterminding a series of terrorist attacks in the 1990s and early 2000s.²⁶ However, it was his apparent involvement with four plane hijackings on the Western coast of the United States in 2001 that led to the celebration of his death in 2011. It was the first successful attack on American soil by foreign agents since Pearl Harbour²⁷ and drastically altered the political rhetoric, both within the US and amongst her allies.²⁸ Within a month America had declared war on Afghanistan, the nation believed to be harbouring leading members of al-Qaeda. Within two years US forces were also fighting alongside allied troops in Iraq as a consequence of the 9/11 legacy.²⁹

The events of September 11th were unexpected, dramatic and deeply shocking. Four passenger aeroplanes, belonging to two major US airlines, were hijacked in a coordinated suicide terrorist attack.³⁰ A total of 3,985 people were killed, comprising of air passengers, those within the buildings targeted, and rescue crew. Of particular interest to this thesis is the way in which the attacks of 9/11 were captured by eyewitnesses and the effect of this on the media portrayal (and public perceptions) of

²⁴ Newman, Fletcher, *et al.* *Reuters Institute Digital News Report 2016* (Reuters Institute for the Study of Journalism 2016) p.86.

²⁵ For a detailed consideration of al-Qaeda, see Gunaratna *Inside Al Qaeda: Global Network of Terror* (N.Y. Berkley Books 2003), Burke *Al-Qaeda: The True Story of Radical Islam* (Penguin 2004).

²⁶ See Alexander and Swetnam *Usama bin Laden's al-Qaida: Profile of a Terrorist Network* (N.Y. Transnational Publishers 2001) p.33, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (N.Y. Norton 2004) p.47-70.

²⁷ A link that was made by many newspapers. See Brennen and Duffy "'If A Problem Cannot Be Solved, Enlarge It': An Ideological Critique of the 'Other' in Pearl Harbor and September 11 New York Times Coverage" (2003) 4 *Journalism Studies* 3-14, Winfield, Friedman, *et al.* "History as the Metaphor Through Which the Current World Is Viewed: British and American Newspapers' Uses of History Following the 11 September 2001 Terrorist Attacks" (2002) 3 *Journalism Studies* 289-300.

²⁸ See Birkland "'The World Changed Today': Agenda-Setting and Policy Change in the Wake of the September 11 Terrorist Attacks" (2004) 21 *Review of Policy Research* 179-200, Young "The War Room" in Meyerowitz (ed) *History and September 11th* (Temple University Press 2003). For a detailed consideration of the conversation between senior politicians both within the US and her allies in the immediate aftermath of 9/11 see, *supra* *The 9/11 Commission Report* n26 p.325-338.

²⁹ Ralph *America's War on Terror: The State of the 9/11 Exception from Bush to Obama* (Oxford University Press 2013) p.23-42.

³⁰ For a detailed timeline of events see *supra* *The 9/11 Commission Report* n26 p.1-46, 278-315.

bin Laden. In this regard it was the trajectory of two of the planes, flown into the Twin Towers of the World Trade Center in New York, that had the greatest impact.³¹ Initial reports of the attack, accompanied by footage of smoke emanating from the building, were broadcast by local New York news station WNYW three minutes after the first plane crashed into the North Tower.³² With the news media starting to cover this plane collision, interrupting regular morning scheduling in order to provide details, the crash of the second plane into the South Tower was filmed and broadcast live to millions of viewers.³³ Subsequent eyewitness footage meant that “the full carnage and destruction [of the Twin Towers] were shown from every conceivable angle”.³⁴ The collapse of the buildings, the horror of those in downtown Manhattan and the entry of the first response firefighters into the North Tower were documented and broadcast by the news media in the aftermath of the attacks.³⁵

Described as the “most photographed disaster in history”,³⁶ there are countless images of 9/11.³⁷ Zelizer suggests that the imagery of a news event “is often more important than what is being witnessed”.³⁸ This is certainly true with 9/11 where eyewitness footage has become iconic, in part because they are emblematic of the shock and horror felt at the time.³⁹ Extensively published in the news media, images of September 11th heightened the emotive impact of the attacks and the condemnation of bin Laden.⁴⁰ As such it is possible to draw inferences from the public reaction to bin Laden in order to shed light on the possible repercussions for defendants whose alleged crimes have been documented by eyewitnesses and uploaded online.

³¹ Zelizer “Photography, Journalism and Trauma” in Zelizer and Allan (eds) *Journalism After September 11* (Routledge 2002) p.58-60, Hathaway “‘Life in the TV’: The Visual Nature of 9/11 Lore and Its Impact on Vernacular Response” (2005) 42 *Journal of Folklore Research* 33-56 p.42.

³² Mills “Images of Terror: Enduring the Scars of 9/11” (2009) 56 *Dissent* 75-80 p.75.

³³ Carey “American Journalism On, Before, and After September 11” in Zelizer and Allan (eds) *Journalism After September 11* (Routledge 2002) p.71-74, Redfield “Virtual Trauma: The Idiom of 9/11” (2007) 37 *diacritics* 55-80 p.65.

³⁴ *Ibid* Carey p.73.

³⁵ Craps “Conjuring Trauma: The Naudet Brothers’ 9/11 Documentary” (2007) 37 *Canadian Review of American Studies* 183-204 p.186-187, Anker “Villains, Victims and Heroes: Melodrama, Media, and September 11” (2005) 55 *Journal of Communication* 22-37, *supra* Zelizer n31 p.48-68, Redfield n33 p.66.

³⁶ Kirshenblatt-Gimblett “Kodak Moments, Flashbulb Memories: Reflections on 9/11” (2003) 47 *The Drama Review* 11-48 Accessed via <https://www.researchgate.net/profile/Barbara_Kirshenblatt-Gimblett/publication/228608555_Kodak_Moments_Flashbulb_Memoires_Reflections_on_911/links/5516d7d00cf2b5d6a0f07c42.pdf> downloaded 23/3/16>.

³⁷ *Supra* Zelizer n31.

³⁸ Zelizer “On ‘Having Been There’: ‘Eyewitnessing’ as a Journalistic Key Word” (2007) 24 *Critical Studies in Media Communication* 408-428 p.424.

³⁹ *Supra* Zelizer n31, Mills n32.

⁴⁰ Fahmy “Photojournalists’ and Photo Editors’ Attitudes and Perceptions: The Visual Coverage of 9/11 and the Afghan War” (2005) 12 *Visual Communication Quarterly* 146-163, *supra* Mills n32, Zelizer n31.

Research has established that imagery can influence public perceptions of crime news, allowing individuals to bear witness to news events despite not having first-hand experience of it.⁴¹ Imagery can also entrench the influence of the news media who act as gatekeepers of information.⁴² This was evidenced on September 11th where a public demand for information led to the crashing of websites belonging to many American newspapers.⁴³ Academic studies have established that journalists do not simply present the facts, but interpret them in order to satisfy newsworthiness agendas.⁴⁴ Imagery published alongside news stories helps to fulfil the need to sell news, whilst also maintaining an aura of objectivity.⁴⁵ Although images invite the reader to “see for themselves”⁴⁶ they actually facilitate media rhetoric which, in the case of crime news, can result in the media condemnation of the defendant.⁴⁷ This can be seen in media portrayals of bin Laden after 9/11.

Already believed to be involved in several other terrorist attacks against US embassies and military bases in the 1990s,⁴⁸ bin Laden was named as a suspect in the media almost immediately,⁴⁹ becoming a “celeb terrorist”.⁵⁰ This status ensured his lasting newsworthiness until his death in 2011. As a CNN terror analyst stated, even “if [bin Laden] was reading out of the telephone book it would be newsworthy”.⁵¹ As part of this process, and in conjunction with the 9/11 imagery, bin Laden was labelled as an “evil genius”.⁵² Accompanying photographs reinforced this through broad captions such as “Icon of Evil”.⁵³ Dehumanised by the media, bin Laden was depicted as

⁴¹ Hall “The Determination of News Photographs” in Cohen and Young (eds) *The Manufacture of News: Social Problems, Deviance and the Mass Media* (Constable 1973) p.241, *supra* Zelizer n31.

⁴² Chibnall “The Production of Knowledge by Crime Reporters” in Cohen and Young (eds) *The Manufacture of News: Social Problems, Deviance and the Mass Media* (Constable 1973).

⁴³ Allan “Reweaving the Internet: Online News of September 11” in Zelizer and Allan (eds) *Journalism After September 11* (Routledge 2002) p.123-124.

⁴⁴ *Supra* Chibnall n42, Cohen n22.

⁴⁵ Wardle “Monsters and Angels: Visual Press Coverage of Child Murders in the USA and UK, 1930-2000” (2007) 8 *Journalism* 263-284, *supra* Hall n41.

⁴⁶ *Ibid* Wardle p.265.

⁴⁷ Jones and Wardle “‘No Emotion, No Sympathy’: The Visual Construction of Maxine Carr” (2008) 4 *Crime, Media, Culture* 53-71.

⁴⁸ Bin Laden was tried in absentia in 1998 by a court in Manhattan for his alleged role in the East Africa embassy bombings. *USA v Usama bin Laden, et al.* (2000) No. 98 CRIM. 1023(LBS).

⁴⁹ *Supra* Winfield, *et al.* n27 p.293.

⁵⁰ Kampf and Liebes *Transforming Media Coverage of Violent Conflicts: The New Face of War* (Palgrave Macmillan 2013) p.42-64. See also Recuber “The Terrorist as Folk Devil and Mass Commodity: Moral Panics, Risk and Consumer Culture” (2009) 9 *Journal of the Institute of Justice & International Studies* 158-170 p.163.

⁵¹ As quoted in *ibid* Kampf and Liebes p.53.

⁵² Winch “Constructing an ‘Evil Genius’: News Uses of Mythic Archetypes to Make Sense of bin Laden” (2005) 6 *Journalism Studies* 285-299 p.288, Bird “Taking It Personally: Supermarket Tabloids After September 11” in Zelizer and Allan (eds) *Journalism After September 11* (Routledge 2002) p.149.

⁵³ *Supra* Zelizer n31 p.56.

fundamentally opposed to, and thus incompatible with, American values.⁵⁴ Rhetoric such as this served to “increase the hatred of the enemy” and reinforced “the status quo, [which] reassured [American] citizens that they were the victims”.⁵⁵ Facilitated by the media and the accompanying imagery, the 9/11 attacks came to be felt as a form of personal trauma and was compounded by the news media’s mourning of the victims.⁵⁶

The victim status of American citizens was reinforced by an increasingly militaristic rhetoric by politicians and the media that described the hijackers as enemies of the state rather than criminals.⁵⁷ In his presidential address to the nation after the attacks George Bush described the hijackers as “evil” five times, in a militaristic speech that juxtaposed their actions with the innocence of the American public.⁵⁸ This rhetoric also encouraged a greater sense of patriotism, demonstrated by an increasing display of American flags.⁵⁹ Such a display reinforced notions of togetherness and solidarity, further ostracising the suspects. It also established a sense of national mourning,⁶⁰ which reiterated the sentiment of a country at war.⁶¹ Indeed, one iconic photograph of three firefighters raising an American flag shortly after the collapse of the towers was cited as a source of inspiration by soldiers fighting in Iraq in 2003.⁶² The media and political discourse of a country under attack has had repercussions on public perceptions of terrorism, with an increasing demand in preventative detention based “solely on predictions of future dangerousness without regard to past conduct”.⁶³

Reinforced by media reference to Pearl Harbour,⁶⁴ the attacks on September 11th were presented as an act of war against America, not a crime committed by a sect of violent extremists.⁶⁵ Such notions moved the discourse away from the courtroom, with its due process protections, and onto the battlefield. This mind-set was demonstrated by the US Congress who passed SJ Resolution 23 three days after the attacks, authorising the use of military force against the perpetrators. The condemnation of bin Laden was starkly highlighted by the American *Globe* newspaper, which published a picture of bin

⁵⁴ Bond *Frames of Memory After 9/11* (Palgrave Macmillian 2015) p.65-66.

⁵⁵ *Supra* Winch n52 p.290. See also *supra* Anker n35.

⁵⁶ Indeed, there was little difference in rhetoric between the tabloid and broadsheet newspapers’ reporting of the 9/11 attacks. See *supra* Bird n52.

⁵⁷ Kellner “September 11, The Media, and War Fever” (2002) 3 *Television & New Media* 143-151.

⁵⁸ *Ibid.*

⁵⁹ Morgan, Wisneski, *et al.* “The Expulsion from Disneyland: The Social Psychological Impact of 9/11” (2011) 66 *American Psychologist* 447-454 p.450.

⁶⁰ See Bond, *supra* n54 p.65-78.

⁶¹ *Supra* Morgan, *et al.* n59 p.450.

⁶² *Supra* Mills n32 p.80.

⁶³ Margulies “Deviance, Risk, and Law; Reflections on the Deman for the Preventive Detention of Suspected Terrorists” (2011) 101 *The Journal of Criminal Law and Criminology* 729-780 p.730.

⁶⁴ *Supra* Winfield, *et al.* n27 p.294-295, Brennen and Duffy n27.

Laden on its front page with the tag line “Wanted Dead ~~or Alive~~”.⁶⁶ The striking out of the words “or alive” not only suggests a presumption of guilt but establishes a clear desire for revenge. Bin Laden became an enemy of the state to be stopped at all costs, not a suspected terrorist who needed to be brought to trial.

With bin Laden’s guilt determined within this context, the celebrations of the American public at news of his death becomes clearer. Bin Laden was viewed as an enemy of the state, inherently linked to the emotive imagery of the 9/11 attacks. However, this context ensured that contrary opinions, such as those considering the role of American foreign policy, were effectively silenced.⁶⁷ As Kellner states “the trouble with the discourse of ‘evil’ is that it is totalizing and absolutistic, allowing no ambiguities or contradictions”.⁶⁸ With bin Laden portrayed in this way until his death, it is perhaps unsurprising that the American public celebrated the outcome of Operation Neptune Spear as a resounding success. The media rhetoric of 9/11 provides a clear example of how media presentation of a crime and the emotive imagery that often accompanies such events can have a powerful influence on public perceptions of the defendant, something that has been well established by academic research. In order to better understand the role of social media and eyewitness footage on public perceptions of the presumption of innocence, it is useful to have regard to the academic commentary of the influence of the news media.

The Influence of News on Perceptions of Crime and the Defendant

What stories are reported, and the way in which they are reported, has a profound impact on how the public react to a news event.⁶⁹ The over-emphasis on entertaining and sensationalist news stories, driven by an underlying market agenda, dictates what is reported.⁷⁰ Studies on newsworthiness have identified categories that a potential news event should satisfy in order to be considered worth reporting.⁷¹ In an increasingly competitive commercial environment, news stories are ultimately selected on their

⁶⁵ *Supra* Kampf and Liebes n50 p.43.

⁶⁶ *Supra* Bird n52 p.150.

⁶⁷ *Supra* Brennen and Duffy n27 p.11.

⁶⁸ *Supra* Kellner n57 p.145.

⁶⁹ Roshier “The Selection of Crime News by the Press” in Cohen and Young (eds) *The Manufacture of News: Social Problems, Deviance and the Mass Media* (Constable 1973), *supra* Cohen n22.

⁷⁰ *Supra* Chibnall n42, Greer and McLaughlin “Trial by Media” n21.

⁷¹ The different categories of newsworthiness will be considered in greater detail in Chapter Two but for further information, see Galtung and Ruge “The Structure of Foreign News: The Presentation of the Congo, Cuba and Cyprus Crises in Four Norwegian Newspapers” (1965) 2 *Journal of Peace Research* 64-90, Chibnall *Law-and-Order News: An Analysis of Crime Reporting in the British Press* (Tavistock 1977), Jewkes *Media and Crime* (SAGE 2004).

capacity to sell.⁷² Thus, serious criminal activity, such as attacks against strangers, are more likely to be reported on.⁷³ Moreover, the need to sell results in a simplified reporting style with more emphasis placed on sensationalist and entertaining news stories.⁷⁴ As part of this, crime news is often presented through a personal angle, making for a more engaging story and encourages the reader to connect to the crime.⁷⁵ This public connectedness is further encouraged through the media imagery that accompanies the news story.⁷⁶ The resultant effect is the public feeling greater sympathy towards the victim of the crime,⁷⁷ who, in typical binary fashion,⁷⁸ is presented as a virtuous sufferer against the defendant's pathological evil. Thus, crime reporting centres on the commission of the crime and the outrage produced, rather than providing an in-depth consideration of, or attempt to understand, the defendant. Moreover, despite the increasing variety of news outlets, the public are still predominantly reliant on traditional news sources for information of a story.⁷⁹ Public understanding of crime events is thus heavily influenced by the traditional operational values of the media. Rather than being the primary source of news, social media supplements crime news reporting, with individuals primarily using online networks to respond to the headlines.⁸⁰

The news media is particularly influential in public attitudes of crime as it is often the primary source of information that the public accesses about criminal justice.⁸¹ However, media focus on the commission of the crime and the way the defendant is portrayed can lead to a conflict of agendas between news reporting and the courtroom. Rights-adhering trials aim to assess the legal culpability of the defendant, considering any mitigating evidence presented. In contrast, the media agenda, as has been noted, is dictated by the need to sell. Problematically, the need to entertain and the simplistic media reporting of crime news can omit the legal complexity of any criminal act. This

⁷² Barnett "Will a Crisis in Journalism Provoke a Crisis in Democracy?" (2002) 73 *The Political Quarterly* 400-408.

⁷³ *Supra* Jewkes n71p.58-59.

⁷⁴ Rosie and Gorringer "What a Difference a Death Makes: Protest, Policing and the Press at the G20" (2009) 14 *Sociological Research Online* 4, Hall "A World at One With Itself" in Cohen and Young (eds) *The Manufacture of News: Social Problems, Deviance and the Mass Media* (Constable 1973).

⁷⁵ *Supra* Jewkes n71 p.49-50.

⁷⁶ Greer, Ferrell, *et al.* "It's the Image that Matters: Style, Substance and Critical Scholarship" (2007) 3 *Crime, Media, Culture* 5-10, *ibid* Jewkes p.59, *supra* Wardle n45.

⁷⁷ *Ibid* Jewkes, Greer "News Media, Victims and Crime" in Davies, *et al.* (eds) *Victims, Crime and Society* (SAGE 2007), Gewirtz "Victims and Voyeurs at the Criminal Trial" (1995) 90 *Northwestern University Law Review* 863.

⁷⁸ *Ibid* Jewkes, *supra* Chibnall n71.

⁷⁹ *Supra* n24.

⁸⁰ Kwak, Lee, *et al.* *What is Twitter, a Social Network or a News Media?* (ACM 2010) 591-600 p.597.

can subsequently influence how the criminal justice process is perceived by the public.⁸² For example, factors that may exculpate the defendant, such as mental incapacity, are largely ignored by the media.⁸³ Instead, the news media's binary depictions of the monstrous defendant against the innocent victim can encourage a greater sense of punitiveness, irrespective of the defendant's legal culpability.⁸⁴ As a result, perceptions of justice can depend on a guilty verdict not a fair trial.⁸⁵

Although the criminal justice process is expected to be fair, transparent and open to the public,⁸⁶ the rhetoric of the media often prevails.⁸⁷ The legal jargon, procedural rules and an inhospitable courtroom environment means that the criminal trial remains difficult for the layperson to understand.⁸⁸ As such, the due process rhetoric of the courtroom conflicts with the media-led notion of an evil and guilty defendant, something that can be exacerbated by the publication of social media "evidence".

This thesis considers how these sentiments can be exacerbated by engagement with footage of the crime, which can serve to make a defendant's guilt appear obvious. There is a clear conflict in the agendas of the news media and the criminal trial, something that social media stands poised to exacerbate. Social media does not just provide a platform through which the public can engage with news events, but, along with eyewitness footage, it can also shape media reporting of news.⁸⁹ This is particularly true for crime news, whose condemnation of the accused can be validated by eyewitness footage. However, when such footage provides apparent "evidence" of an individual's guilt, media reporting can contradict due process rhetoric, most notably the presumption of innocence, which can result in a trial by media.⁹⁰ This will be explored in greater detail in Chapter Two, however it is worth briefly outlining the trial by media

⁸¹ Moran "Mass-Mediated 'Open Justice': Court and Judicial Reports in the Press in England and Wales" (2014) 34 *Legal Studies* 143-166.

⁸² See *supra* Cohen n22.

⁸³ Wardle "The 'Unabomber' vs. the 'Nail Bomber': A Cross-Cultural Comparison of Newspaper Coverage of Two Murder Trials" (2003) 4 *Journalism Studies* 239-251.

⁸⁴ *Supra* Wardle n45.

⁸⁵ This is what Skitka describes as the "moral mandate effect", something that is discussed in greater detail later in the introduction of this thesis and in Chapter Two. Skitka and Houston "When Due Process Is of No Consequence: Moral Mandates and Presumed Defendant Guilt or Innocence" (2001) 14 *Social Justice Research* 305-326.

⁸⁶ See, for example, the *Criminal Procedure Rules* issued by the Crown Prosecution Service.

⁸⁷ *Supra* Cohen n22, Wardle n83, Chibnall n42, Mawby "Chibnall Revisited: Crime Reporters, the Police and 'Law-and-Order News'" (2010) 50 *British Journal of Criminology* 1060-1076.

⁸⁸ See, for example, Jacobson, Hunter, *et al.* *Structured Mayhem: Personal Experiences of the Crown Court* (Criminal Justice Alliance 2015).

⁸⁹ This can be clearly seen with the change in rhetoric of the G20 protests, discussed in greater detail in Chapter Two. See also, Rosie and Gorrington *supra* n74, Greer and McLaughlin "'This Is Not Justice': Ian Tomlinson, Institutional Failure and the Press Politics of Outrage" (2012) 52 *British Journal of Criminology* 274-293.

⁹⁰ See, for example, *ibid* all sources.

phenomenon in the introduction in order to highlight how pressures external to the criminal trial can impact on due process.

Trial by Media

A media-established presumption of guilt can have long-lasting implications for the defendant and erode due process safeguards, both during the pre-trial stage and, in extreme cases, within the courtroom. Such a phenomenon, known as a trial by media, results in the accused being presumed guilty due to adverse media commentary and irrespective of the defendant's actual guilt. Several examples of trial by media can help to illustrate how a media-led presumption of guilt can impact upon perceptions of the defendant and how social media stands poised to exacerbate this phenomenon.

One notorious example of a trial by media involved Christopher Jefferies, the landlord of Joanna Yeates, whose body was found on Christmas Day in 2010. Yeates' missing person notice had attracted widespread media attention. She was a young, attractive woman who seemingly had everything to live for, making her an "ideal victim" from a media reporting perspective.⁹¹ Her disappearance, so close to Christmas, increased public concern and there was intense media interest in police investigations. An initial suspect, Jefferies was arrested on the 30th December. He was released without charge on New Years' Day, but remained a formal suspect until the 4th March. Eventually Yeates' neighbour, Vincent Tabak, was convicted of her murder in 2011. Although there was no apparent evidence of Jefferies' guilt at any point, media reporting strongly implied it. Newspapers presented him as a "peeping-tom" and "strange".⁹² As a result of this commentary the school that he had previously worked at publicly distanced themselves from him.⁹³ Eight newspapers were sued for libel by Jefferies and settled out of court, paying damages for their coverage of his arrest.⁹⁴ Both *The Sun* and *The Mirror* were further found to be in contempt of court as a result of

⁹¹ For criteria of an "ideal victim", see *supra* Greer n77.

⁹² For further details about the media speculation against Jefferies, see Cathcart "The Ordeal of Christopher Jefferies" (*FT Magazine* 2011) <<http://www.ft.com/cms/s/2/22eac290-eee2-11e0-959a-00144feab49a.html#axzz3Coo4Bhj8>> accessed 24/3/15.

⁹³ Walker "Clifton College is in the Dock over Christopher Jefferies" *The Daily Telegraph* (London 5/12/11).

⁹⁴ BBC "Jo Yeates' Landlord Settles Libel Case out of Court" (*BBC* 29/7/11). <http://www.bbc.co.uk/news/uk-14339807> accessed 24/3/15.

their coverage of proceedings.⁹⁵ Jefferies has spoken of the ordeal, describing the press as a “grotesquely distorting mirror” who “vandalised” his identity.⁹⁶

The ordeal of Christopher Jefferies’ trial by media is largely recognised as just that, a harrowing and terrible incident to experience. He was awarded damages for the libellous actions of several newspapers and received a formal apology from the police.⁹⁷ There is no evidence to suggest that there has been a long lasting and detrimental impact on his reputation. Indeed, his plight was helped by the fact that the media were able to quickly focus on Tabak, who was arrested at the end of January. However, some victims of a trial by media report that sections of the public still believe in their guilt, long after they have been exonerated of blame. Australian Lindy Chamberlain is one such victim.⁹⁸ In 1980 Chamberlain’s baby, Azaria, disappeared during a family camping trip. Chamberlain’s story that a dingo had taken the baby was met with suspicion by many members of the public and the media. Despite the fact that the body of the baby was not found, and amid wild speculation from the press, she was found guilty of the murder of her daughter in 1982 and sentenced to life imprisonment. She was released three years later after new evidence emerged to corroborate her version of events. Even though this occurred over three decades ago, there are still members of the public who believe that Chamberlain was guilty of child neglect, at the very least.⁹⁹

Chamberlain’s case illustrates the lasting effect adverse media reporting can have on suspects, which can continue long after they have been legally exonerated. Social media has the capacity to magnify media reporting, increasing feelings of shock and outrage against the defendant. This was demonstrated in the trial of Casey Anthony in Florida, who was accused of the murder of her daughter Caylee. The disappearance of 2-year-old Caylee Anthony in July 2008 resulted in an extensive and high-profile search for her. When her body was eventually found in December, her mother became a prime suspect and Casey was formally charged and prosecuted for Caylee’s murder.

⁹⁵ Halliday “Sun and Mirror Fined For Contempt of Court in Christopher Jefferies Articles” *The Guardian* (London 29/7/11).

⁹⁶ BBC “Christopher Jefferies: How I Was Hounded” (*BBC Magazine* 2014) <<http://www.bbc.co.uk/news/magazine-25625572>> accessed 24/3/15.

⁹⁷ BBC “Christopher Jefferies Told ‘Sorry’ by Police over Arrest Distress” (*BBC* 16/9/13) <<http://www.bbc.co.uk/news/uk-england-bristol-24104834>> accessed 24/3/15.

⁹⁸ Gelineau “Azaria Chamberlain’s Disappearance Revisited: Once Again, Australian Courts Asks, ‘Did a Dingo Kill the Baby?’” (*Huffington Post* 18/2/12) <http://www.huffingtonpost.com/2012/02/18/azaria-chamberlain-dingo-kill-baby_n_1286229.html> accessed 31/1/15.

⁹⁹ “Coroner Clears Lindy Chamberlain, but Will the Public Now Clear Lindy” (*Herald Sun* 13/6/12) http://www.heraldsun.com.au/subscribe/news/1/index.html?sourceCode=HSWEB_WRE170_a&mode=premium&dest=http://www.heraldsun.com.au/news/opinion/will-the-public-now-clear-lindy/story-fncw91kq-1226393565152?nk=e5b7ca19bbc9322d0e59cf9fd3b2e08f&memtype=anonymous accessed 31/1/15.

The prosecution alleged that Casey had killed her daughter and that remnants of duct tape on the face of the toddler substantiated this claim. Rife with circumstantial evidence, the prosecution was unable to prove beyond reasonable doubt that Anthony murdered her daughter and the jury found her not guilty of any offence linked to Caylee's death. However, Anthony's repeated lies to the police, exacerbated by rampant speculation both in the news and online, led many to continue to believe in her guilt. Dubbed by *Time Magazine* as the "first major murder trial of the social media age",¹⁰⁰ many expressed outrage and disbelief at the not guilty verdict¹⁰¹ (although she was found guilty of providing false information to the police). There was a surge of Internet activity on the websites of several US news channels and the trending topics on Twitter during this time, with 325,283 tweets about the trial during the announcement of the verdict alone.¹⁰² Shortly after the verdict, a Gallup Poll, conducted with *USA Today*, found that two-thirds of Americans believed that Anthony had "definitely" or "probably" murdered her child.¹⁰³ This pervasive feeling of guilt still generates news stories, as media report on apparent activities of her daily life in scornful tones, continuing to imply her guilt.¹⁰⁴ As a result, despite the verdict, Anthony's life continues to be adversely affected as a result of the intense media scrutiny¹⁰⁵ and public outrage.¹⁰⁶

The trial by media phenomenon clearly illustrates how media reporting can have an adverse effect on overall perceptions of the defendant. More troublingly, this can manifest itself as a pervasive belief in the defendant's guilt, which can last long after they have been exonerated or the trial has been concluded. Yet despite this, there

¹⁰⁰ Haberman "Vindication at Last for a Woman Scorned by Australia's News Outlets" *The New York Times* (New York 16/11/14).

¹⁰¹ Conley "Public Ire over Casey Anthony Verdict; Social Media Sites Explode with Opinions" (*ABC News* 2011) <<http://abcnews.go.com/Health/casey-anthony-verdict-outrage-spills-online/story?id=14002257>> accessed 24/3/15, Hightower "Shock and Outrage Great Casey Anthony's Not Guilty Verdict" (*CNS News* 2011) <<http://www.cnsnews.com/news/article/shock-and-outrage-greet-casey-anthony-s-not-guilty-verdict>> accessed 24/3/15.

¹⁰² Horn "Not Guilty Verdict for Casey Anthony Causes a Surge in Internet Traffic" (*PC Mag* 2011) <<http://www.pcmag.com/article2/0,2817,2388119,00.asp>> accessed 24/3/15.

¹⁰³ Bello "Casey Anthony Verdict Doesn't Sit Well with Most Americans" *USA Today* (Virginia 8/7/11).

¹⁰⁴ See, for example, Casarez "What Life Is Like for Casey Anthony" (*CNN* 2014) <<http://edition.cnn.com/2014/07/03/justice/casey-anthony-today/index.html>> accessed 24/3/15. Also published in "A Tanned and Smiling Casey Anthony Is Pictured for the First Time since Her Acquittal Three Years Ago but Her Lawyer Insists She Has Been Living Like a Hermit" *Daily Mail* (London 7/7/14).

¹⁰⁵ A bizarre example of media interest is a story reported by entertainment website *tmz.com* who documented the fact that Anthony went for a meal out 18 months after the court's verdict. "Casey Anthony: Fried in Florida" (*TMZ* 2012) <<http://www.tmz.com/2012/12/12/casey-anthony-restaurant-dining-french-fries-hot-wings/>> accessed 24/3/15.

¹⁰⁶ Blanco "Casey Anthony: Her Strange Life 3 Years Later" (*People* 2014) <<http://www.people.com/article/casey-anthony-life-today-three-years-after-acquittal>> accessed 24/3/15.

remains surprisingly little academic commentary on the phenomenon outside the United States.¹⁰⁷ Furthermore, there is limited academic analysis of the possible impact of social media on public attitudes of the defendant and how this might affect the criminal justice process. As demonstrated in Anthony's case, social media has the capacity to increase negative public attitudes against the defendant, who are vilified and ostracised from society. Angry at the courtroom verdict protestors gathered outside of the prison where Casey Anthony was being detained on the day of her release. As a result of this public outrage Anthony needed increased security as she left the prison.¹⁰⁸ Long after she had completed her sentence for lying to the police, Anthony is still featuring in news stories. The increase in social media activity after the Florida verdict, and online posts expressing disbelief at the outcome, provides a stark illustration of the way in which individuals are using social media to digest and connect with crime news. We will now consider how social media could be influencing perceptions of guilt. As this is a phenomenon that has received little academic consideration, it is worth first outlining the influence of social media on crime news more generally.

Social Media's Role in Crime News

Social media is increasingly becoming an important part of daily life. People not only connect with colleagues, friends and family through the Internet, but are also using it to network with potential employers and colleagues (via websites such as LinkedIn), follow the lives of celebrities¹⁰⁹ and engage in a virtual conversation with media outlets. Television shows such as BBC's *Question Time* and Channel Four's *The Last Leg* engage with news topics through, in part, direct viewer participation on social media. Large corporations are also changing the way they interact with the public, incorporating social media into their advertising, using online profiles (or pages) through which they can directly engage with their customers and target market.¹¹⁰ The news media also use social media to collate opinions and identify potential news events, with many journalists having Twitter accounts that are readily advertised as part of the

¹⁰⁷ Something mentioned by Greer and McLaughlin "'Trial by Media': Policing, the 24-7 News Mediasphere and the 'Politics of Outrage'" (2011) 15 *Theoretical Criminology* 23-46 p.27.

¹⁰⁸ Liston "Amid Security, Anthony Released from Florida Jail" (*Reuters* 2011) <<http://www.reuters.com/article/2011/07/17/us-crime-anthony-idUSTRE76E4NJ20110717>> accessed 24/3/15.

¹⁰⁹ Eight of the top ten most followed accounts on Twitter, for example, are celebrities. See Twitter Counter, <<http://twittercounter.com/pages/100>> accessed 29/1/15.

¹¹⁰ "Advertising World 'Transformed by Social Media'" (*BBC* 6/8/12) <<http://www.bbc.co.uk/news/business-19147393>> accessed 29/1/15. For examples see, Cassinelli "13 Best Social Campaigns of 2013" (*Postano* 31/12/13) <<http://www.postano.com/blog/13-best-social-media-campaigns-of-2013>> accessed 29/1/15.

byline. Thus, social media is proving to be a powerful tool in creating an easy, fast and cheap dialogue between the power elites and the public.

The dynamism of social media is particularly pronounced during serious events such as natural disasters and violent crime. In times of crisis where, electricity becomes unavailable during a natural disaster,¹¹¹ or when regimes limit access to Internet sites,¹¹² Twitter, for example, has demonstrated itself to be a powerful tool for distributing information. News reporters are starting to turn to individuals on the ground who are using social media tools, such as live-tweeting, as a source of information.¹¹³ Indeed, much of the initial details relating to the Egyptian uprising against the Mubarak government in 2011, was discovered through #Egypt hashtag.¹¹⁴ Journalists also use Twitter in order to gauge public sentiment on a given topic, something that was exemplified by *The Guardian* newspaper in 2011, as it visualised public engagement with the *News of the World* hacking allegations.¹¹⁵ The way social media has supplemented news reporting, particularly during blackouts of traditional media, raises questions about the impact that sites such as Twitter have, not only on traditional journalism but also on the quality of the information provided. As Papacharissi and Oliveira ask, “If [Twitter] ... is the only channel of information sharing we can access, then what exactly are we listening to?”¹¹⁶ Such conversations may be short-lived,¹¹⁷ nevertheless, social media is increasingly becoming the means through which information is, at least initially, disseminated.¹¹⁸ News of Fusilier Drummer Lee Rigby’s death, for example, murdered outside his London barracks, emerged with the live-tweeting of events online by eyewitnesses, long before any information was provided by more mainstream news sources.¹¹⁹

Regarding crime events, social media is starting to influence how criminal activity is reported, as well as public perceptions of the crime and the justice process.

¹¹¹ Potts, Seitzinger, *et al.* *Tweeting Disaster: Hashtag Constructions and Collisions* (ACM 2011).

¹¹² Papacharissi and de Fatima Oliveira “Affective News and Networked Publics: The Rhythms of News Storytelling on #Egypt” (2012) 62 *Journal of Communication* 266-282 p.269.

¹¹³ See Knight “Journalism as Usual: The Use of Social Media as a Newsgathering Tool in the Coverage of the Iranian Elections in 2009” (2012) 13 *Journal of Media Practice* 61-74.

¹¹⁴ Meraz and Papacharissi “Networked Gatekeeping and Networked Framing on #Egypt” (2013) 18 *The International Journal of Press/Politics* 138-166, *supra* Papacharissi and de Fatima Oliveria n112.

¹¹⁵ See, Richards, Gaul, *et al.* “How Twitter Tracked the News of the World Scandal” (*The Guardian* 13/7/11) <<http://www.theguardian.com/media/interactive/2011/jul/13/news-of-the-world-phone-hacking-twitter>> accessed 16/7/14.

¹¹⁶ *Supra* Papacharissi and de Fatima Oliveria n112 p.269.

¹¹⁷ *Supra* Kwak, *et al.* n80 p.597.

¹¹⁸ Bruns and Burgess “Researching News Discussion on Twitter” (2012) 13 *Journalism Studies* 801-814 p.803, *supra* Kwak, *et al.* n80 p.599. For a specific example of this phenomenon see *supra* Papacharissi and de Fatima Oliveria n112.

¹¹⁹ This will be considered in greater depth in Chapter Three.

Globally, eighty per cent of adults online now own a smartphone, spending an average of 1.87 hours a day using such smart devices to access the Internet.¹²⁰ Boasting a wide range of features on a small, portable device, many smartphones have high-resolution camera and video recording capabilities. As a result, it is very easy to document a crime as it is occurring and then to upload it to a social media site for widespread dissemination. The public impulse to film a crime was starkly highlighted when Hollie Gazzard was fatally stabbed outside her workplace on a busy street in Gloucester in 2014. A number of eyewitnesses filmed the crime, prompting the police to issue a warning against the publishing of footage on social media.¹²¹ The response of some individuals to film a serious offence provides a powerful indication as to how prevalent video recording equipment has now become, and how it is starting to alter public behaviour when witnessing a crime. The increased access to on-the-go Internet and the advances in technology, leading to greater accessibility of smartphones and faster Internet speeds, will only increase the public impulse to film criminal acts.

Social media is also altering the way in which the public engage in crime news. Historically, the impact of crime reporting was geographically limited; only those in close proximity, either as a result of knowing the victim or living in the area of the crime, were directly affected by the criminal act. Obviously, the establishment of a mass media, such as newspapers, interested in the reporting of the crime, greatly expanded the scope of crime news and enabled information of the most serious of criminal activities to be distributed nationally. As a result of online networking sites and the digitalisation of newspapers, however, the capacity of an individual to be directly impacted by a crime has increased. It is now possible for individuals to transcend geographical boundaries and express condemnation of the crime or sympathy towards the victim internationally. Such activities have manifested themselves in the creation of virtual condolence books,¹²² tribute videos posted online, or comments on social media sites such as Twitter and Facebook.¹²³

¹²⁰ Globalwebindex GWI Device Summary (2014)
 <http://www.globalwebindex.net/hubfs/Reports/GWI_Device_Report_-_Q3_2015_Summary.pdf>
 accessed 27/1/15.

¹²¹ "Hollie Gazzard Attack Was Filmed by Bystanders, Say Police" *The Guardian* (London 19/2/14), Fricker and Smith "Police Blast 'Ghouls' Who FILMED Hairdresser Being Stabbed to Death and Paramedics' Efforts to Save Her" *The Mirror* (London <20/2/14), Withnall "Gloucester Hairdresser Stabbing: Police Criticise 'Distasteful' Onlookers Who Used Mobile Phones to Film Death of 20-Year-Old Hollie Gazzard" *Independent* (London 20/2/14).

¹²² See Greer "Crime, Media and Community: Grief and Virtual Engagement in Late Modernity" in Ferrell, *et al.* (eds) *Cultural Criminology Unleashed* (The GlassHouse Press 2004).

¹²³ Marwick and Ellison "'There Isn't Wifi in Heaven!' Negotiating Visibility on Facebook Memorial Pages" (2012) 56 *Journal of Broadcasting & Electronic Media* 378-400, Kern, Forman, *et al.* "RIP: Remain in Perpetuity. Facebook Memorial Pages" (2013) 30 *Telematics and Informatics* 2-10, Carroll

Studies have shown that discussions of emotive topics with like-minded individuals are likely to strengthen sentiments of grief at a crime.¹²⁴ Moreover, humans tend to seek like-minded individuals as a way of reaffirming their own values.¹²⁵ In this way, social media has the capacity to magnify the sentiments expressed online, as an individual's online posts are reaffirmed and fuelled by others posting similar sentiments. Thus, comments about the defendant, compounded by media reporting and online footage of the crime, are likely to have a strong influence on overall perceptions of the criminal justice process and the presumption of innocence.

The Role of Social Media in Establishing "Guilt"

Footage of a crime can serve to condemn the defendant prior to trial, supplementing the imagery of crime news.¹²⁶ Heightening its emotive impact, eyewitness documentation of the crime, uploaded online, can provide apparent "evidence" of the defendant's guilt, which can call into question the court's insistence on the presumption of innocence. Video-blogging sites, such as YouTube, which enable widespread viewing and commentary are increasingly being used to publish eyewitness footage of crimes. In recent years YouTube has hosted videos documenting apparent war crimes,¹²⁷ police misconduct¹²⁸ and video confessions of perpetrators both before¹²⁹ and after the crime.¹³⁰ There is even a YouTube channel devoted to distributing the raw footage of crimes in a bid to help police investigations.¹³¹ Apparent "evidence" of a criminal act can now be globally available for public scrutiny and commentary. This, coupled with the increasing use of social media as a virtual condolence book, can serve to condemn the defendant as guilty prior to a criminal verdict.

and Landry "Logging On and Letting Out: Using Online Social Networks to Grieve and to Mourn" (2010) 30 *Bulletin of Science, Technology & Society* 341-349.

¹²⁴ Bond *The Power of Others* (Oneworld 2014) p.164-169.

¹²⁵ *Ibid* p.168.

¹²⁶ *Supra* Jewkes n71 p.59-60.

¹²⁷ Petersen "Syria: Video Purports to Show Massacre of Pro-Bashar Fighters in Aleppo" (*Global Post* 2012) <<http://www.globalpost.com/dispatch/news/regions/middle-east/syria/120802/syria-aleppo-massacre-video-free-syria-army-war-crime-youtube-video>> accessed 24/7/14.

¹²⁸ Antony and Thomas "'This is Citizen Journalism at its Finest': YouTube and the Public Sphere in the Oscar Grant Shooting Incident" (2010) 12 *New Media & Society* 1280-1296.

¹²⁹ Jauregui "Student's Disturbing Video and Mass Shooting 'Appear Connected': Police" (*Huffington Post* 25/7/14) <http://www.huffingtonpost.com/2014/05/24/elliott-rodger-video-confession_n_5385175.html> accessed 24/7/14, Lovett and Nagourney "Video Rant, Then Deadly Rampage in California Town" *The New York Times* (New York 24/5/14).

¹³⁰ Rayner, Marsden, *et al.* "Slaughtered 'Like a Piece of Meat' on the Daytime Streets of London" *The Daily Telegraph* (London 23/5/13), Atkins and Lines "Watch Shocking Footage of Terrorists Charging at Police Car in Attempt to Kill WPC" (*The Mirror* 24/5/13) <<http://www.mirror.co.uk/news/uk-news/woolwich-attack-video-watch-shocking-1907772>> accessed 25/7/14.

¹³¹ Raw Crime available at RawCrime <<https://www.youtube.com/user/RawCrime/about>> accessed 25/3/15.

The growing public connectedness to a crime can manifest as a social media campaign to raise awareness of the event and also aid in the criminal investigation. This can subsequently impact on the presumption of innocence for those accused of such high-profile crimes. Following the disappearance of Jill Meagher in Melbourne in 2012, for example, police released CCTV images of the moments when she was last seen, including her talking to a man in a blue hooded jumper. That man, Adrian Bayley, was subsequently convicted of Meagher's rape and murder. The arrest of Bayley, following a prominent missing person campaign on social media, prompted intense online vitriol against him, including a Facebook page that called for his public hanging.¹³² Public anger directed to Bayley on social media was such that Victoria Police had to issue online warnings stating that such comments would prejudice a jury during the trial.¹³³

Apparent online "evidence" not only has an impact on perceptions of the defendant but, in some highly troubling situations, could be altering the way in which the trial itself is conducted and eroding due process. Events and media reporting in the aftermath of a mass shooting at a cinema in Denver, Colorado in 2012, starkly highlight how footage of a crime, even of its aftermath, can have serious repercussions on perceptions of the defendant and their criminal trial rights. When a masked gunman stormed into a midnight showing of the latest Batman film, *The Dark Knight Rises*, scenes of panic and horror in the cinema were filmed and posted online. Several news outlets published this footage as part of their coverage of events¹³⁴ and social media became a global outlet to express sentiments of shock and horror at the shooting.¹³⁵ Such footage added to the emotion of the crime and extensive details were published of

¹³² This page has since been taken down.

¹³³ Victoria Police (*Facebook* 2012) <<https://www.facebook.com/victoriapolice/posts/392963264109149>> accessed 25/3/15, Morris "Police Demand Facebook Ban Pages Attacking Lead Suspect in Australian Murder Case" (*Daily Dot* 3/10/12) <<http://www.dailydot.com/society/adrian-ernest-bayley-jillian-meagher-facebook-page/>> accessed 31/1/15.

¹³⁴ Willcox "Footage Shows Aftermath of Cinema Shooting" (*BBC* 20/7/12). <<http://www.bbc.co.uk/news/world-us-canada-18925312>> accessed 25/3/15, "Mobile Phone Footage from Denver Cinema Shooting" (*The Daily Telegraph*, 20/7/12). <<http://www.telegraph.co.uk/news/worldnews/northamerica/usa/9414632/Mobile-phone-footage-from-Denver-cinema-shooting.html>> accessed 24/3/15, "Batman Fans Flee Colorado Cinema after Shooting" (*The Guardian* 20/7/12) <<http://www.theguardian.com/world/video/2012/jul/20/batman-colorado-cinema-shooting-video>> accessed 24/3/15.

¹³⁵ Truitt "Social Media Tributes Pouring in after Theatre Shooting" *USA Today* (Virginia 21/7/12), "Aurora Shooting Twitter: How News Of The 'Batman' Massacre Spread" (*Huffington Post* 20/7/12) <http://www.huffingtonpost.com/2012/07/20/aurora-shooting-twitter-batman_n_1688821.html> accessed 29/1/15, Sutter "Theater Shooting Unfolds in Real Time on Social Media" (*CNN* 20/7/12) <<http://edition.cnn.com/2012/07/20/tech/social-media/colorado-shooting-social-media/>> accessed 29/1/15.

the prime suspect, James Holmes,¹³⁶ some of which were inaccurate.¹³⁷ Indeed, the intense media speculation led one person to publicly identify the wrong individual on social media.¹³⁸ Like bin Laden, the media speculation irrevocably linked Holmes to the shootings. Media reporting not only affected public perceptions of the defendant but may have also altered courtroom proceedings. Just before Holmes' was due to plead, the presiding judge stated, in an advisory to the defendant that, should Holmes plead not guilty by reason of insanity, he should receive a polygraph test and truth serum as part of his psychiatric evaluation.¹³⁹ Such a move was heavily criticised by psychiatrists who pointed out the fallibility of such methods,¹⁴⁰ which clearly encroached on Holmes' presumption of innocence. The fear here is that this extraordinary move by the judge was instigated, or at least influenced, by the media speculation.

The Holmes example demonstrates that, much like the imagery surrounding the 9/11 attacks, eyewitness footage is increasingly supplementing media's reporting of crime news and is having lasting repercussions on the way in which the defendant is perceived. At its most basic, this documentation of the crime can have a serious effect on the defendant's presumption of innocence, as exemplified by public attitudes against Adrian Bayley. As is increasingly the case, video footage by eyewitnesses, supplementing the reporting of a crime, serves to entrench a public presumption of guilt. The judge's statement prior to James Holmes' plea, suggests that even professionals of criminal justice are not always immune from the emotive and shocking scenes of crime footage. When the commission of a criminal act is clearly shown on film, institutional insistence on the presumption of innocence can seem hollow. This is can also be the case even when the footage is of the aftermath of the crime, where the defendant is not filmed, but the impact of his or her actions on the victims are stark and emotive. Attitudes towards the defendant's guilt are potentially compounded by the fact

¹³⁶ Sherwell "Batman Shooting Suspect James Holmes: The Making of a Sick Joker" *The Daily Telegraph* (London 21/7/12), Lohr "Colorado Shooting: What We Know About James Holmes" *Huffington Post* (New York 20/7/12).

¹³⁷ Mirkinson "Aurora Shooting: ANC's Brian Ross Incorrectly Suggests Tea Party Link" (*Huffington Post* 20/7/12) <http://www.huffingtonpost.com/2012/07/20/brian-ross-tea-party-colorado-shooting_n_1689471.html> accessed 29/1/15.

¹³⁸ Peterson "Amateur Social Media Sleuth Outs Wrong James Holmes on Facebook" (*Daily Caller* 2012) <<http://dailycaller.com/2012/07/20/amateur-social-media-sleuth-outs-wrong-james-holmes-on-facebook/>> accessed 24/3/15.

¹³⁹ Banda and Elliot "Judge William Sylvester Oks Medication, Polygraph for James Holmes If He Takes Insanity Plea" *Huffington Post* (New York 11/3/13), Coffman and Johnston "Accused Colorado Gunman Could be Medicated for Psychiatric Exams" (*Reuters* 11/3/13) <<http://www.reuters.com/article/2013/03/11/us-usa-shooting-denver-idUSBRE92A11520130311>> accessed 29/1/15.

that social media enables, and in some instances encourages, the public dissection of crime news and increase the moral condemnation of the defendant, as illustrated by the public reactions to Anthony and Bayley. Thus, social media is becoming an important source of news reporting of crime events. The sensationalist rhetoric of the news media, and the simplified presentation of the crime, is heightened by online commentary and footage. As a result of this heady partnership, the defendant's guilt can be confirmed in the pre-trial stage and discussion of the crime can be distilled to base sentiments of punishment and condemnation.

Why Does This Matter? The Moral Mandate Effect

Adverse commentary from the media, and on social media does not necessarily prejudice the criminal trial. It is expected that criminal justice professionals remain (as far as is possible) uninfluenced by outside commentary.¹⁴¹ Jefferies was never charged, despite a foregone conclusion of guilt in the media. Similarly, it appears that Holmes was never subjected to the unconventional methods to ascertain his sanity. It can therefore be tempting to assume that the extensive safeguards within the criminal justice process prevent external contamination and ensure that the defendant is treated fairly and justly. However, research conducted by American psychologist Linda Skitka has illustrated exactly how an assumption about the defendant's guilt can affect assessments of the criminal trial. In her article "When Due Process is of No Consequence" Skitka found that in serious and shocking crimes an individual's assessment of justice can depend on the outcome of the trial. This prejudgment of the verdict is based on an individual's core morality (dubbed by Skitka as a moral mandate) and occurs irrespective of procedural safeguards or trust in the judicial system. More problematically, Skitka contends that, should the courtroom fail to deliver the required verdict, there can be serious and long-lasting implications for the perceived legitimacy of the trial process.¹⁴² Skitka's findings explain the public condemnation of Casey Anthony's not guilty verdict and the continued adverse reaction against her. Such a thesis can also explain the public reaction to the news of bin Laden's death. The power of moral mandates is amplified in the digital age, where footage of the crime can not only provide apparent "evidence" of the defendant's guilt but it can also serve to

¹⁴⁰ Langley "Aurora Judge Rules 'Truth Serum' Can Test Suspect's Insanity" (*Psychology Today* 2013) <<https://www.psychologytoday.com/blog/beyond-heroes-and-villains/201303/aurora-judge-rules-truth-serum-can-test-suspects-insanity>> accessed 24/3/15.

¹⁴¹ See, for example, the *Criminal Procedure Rules* issued by the Crown Prosecution Service.

¹⁴² *Supra* Skitka and Houston n85.

heighten feelings of shock and horror that can condemn the defendant and trigger a moral mandate. The reporting style of crime news, supplemented by social media, can have lasting implications on the perceived legitimacy of the criminal justice process itself.

Skitka's research discusses how the moral mandate effect could alter the legitimacy of the trial. She does not define legitimacy and it is beyond the scope of this thesis to consider the extensive legal commentary considering legitimacy and the criminal justice process. Indeed, the public legitimacy of domestic courtrooms is a largely philosophical matter. Established as a core, and necessary, component of a peaceful and democratic society, any trial that delivers a verdict contrary to public expectations is unlikely to suffer a long-term reduction in legitimacy. After all, it is the courtroom that legitimises the punishment of a guilty defendant, without it justice would be exacted by a lynch mob. Although there was widespread shock expressed at the court's not guilty verdict in the Anthony case for example, public outrage was primarily directed at Casey Anthony and not the courtroom officials. In the fledgling international courts,¹⁴³ where all crimes on the docket fall into the category of a moral mandate, this phenomenon can have a profound impact. Moreover, the presence of social media is primed to exacerbate a need for a particular verdict.

Individuals are increasingly documenting war crimes and crimes against humanity and uploading them on to YouTube for widespread dissemination and commentary. Alleged war crimes in Syria, against rebel fighters by the Assad regime and the gassing of citizens in Aleppo, which constitutes a crime against humanity, would not have come to light were it not for the videoing of the aftermath by rebel fighters and eyewitnesses.¹⁴⁴ In these instances, with the wide mens rea of international crimes,¹⁴⁵ the guilt of the ruling class in Syria becomes seemingly clear-cut and the need for a criminal trial less so. It is under similar circumstances that the guilt of bin Laden was established, as he apparently confessed to instigating the 9/11 attacks on video.¹⁴⁶ Thus, if justice could be served to bin Laden without the need for a criminal

¹⁴³ Such as the International Criminal Court, the Special Court for Sierra Leone and the International Criminal Tribunal for Rwanda.

¹⁴⁴ See, for example, "Watching Syria's War" <<http://projects.nytimes.com/watching-syrias-war>> accessed 1/2/15, Mohammed "Social Media Buzz: Don't Gas the Bunnies!" (*Syria Deeply* 10/12/12) <<http://www.syriadeeply.org/articles/2012/12/2210/social-media-buzz-façade-gas-bunnies/>> accessed 1/2/15.

¹⁴⁵ For further detail of the components of international crimes such as war crimes and crimes against humanity see, as an example, the Rome Statute and the accompanying ICC Rules of Procedure and Evidence.

¹⁴⁶ A video emerged a few months after the 9/11 attacks that purports to show bin Laden discussing the hijackings to supporters of his cause. See Bramber "Bin Laden: Yes, I Did It" *The Daily Telegraph*

trial, it must be questioned whether costly and lengthy trials are needed for Assad and other suspected international criminals. It is the apparent logic of this conclusion which highlights the dangers associated with the media, social media, and due process.

What is important for this thesis is the recognition that the moral mandate effect creates a disconnect between the rhetoric of the court and the rhetoric of the public. Such a disconnect is not an unknown phenomenon, with the trial by media being one example of the competing rhetoric of the court and the media. It is suggested here that this disconnect could be exacerbated by social media “evidence” of guilt. This places external pressure on the court. Social media “evidence” can reinforce public condemnation of the defendant to the extent that due process is considered unnecessary. The public celebrations of bin Laden’s death certainly suggest that this is the case in some extreme instances. The growing use of smartphones and the increased public instinct to document crimes could result eventually in changed perceptions and practices in the criminal justice process. The fear is that the erosion of the presumption of innocence could be impacting on the role of the defendant in the criminal trial as the criminal justice process adjusts to an age where graphic pre-trial representations of the crime are more commonly witnessed by the public.

Throughout history, the concept of the defendant’s role in the criminal trial has been fluid. As we discuss in Chapter One this fluidity is largely influenced not by internal, procedural considerations of the criminal trial, but by external factors, over the course of a significant period of time. Thus, the modern-day concept of the defendant, deserving of a fair trial and defensive safeguards, was one that was developed gradually. Moreover, whilst due process has been subsequently entrenched in domestic and international legislation, scholars are uncertain as to why, and how, it initially came about.¹⁴⁷ It is therefore possible that social media is serving once again to change the role of the defendant, in a way that is currently imperceptible to the contemporary trial, but may result in drastic consequences for the future development of criminal procedure and due process.

Greater consideration of the fluid concept of the defendant will be given in the first chapter of this thesis. The primary importance here is the understanding that if due

(London 11/11/01). However, he did not admit to the crime to the press until several years later. See Baier, McCaleb, *et al.* “Bin Laden Claims Responsibility for 9/11” (*Fox News* 30/10/04) <<http://www.foxnews.com/story/2004/10/30/bin-laden-claims-responsibility-for-11/>> accessed 1/2/15.

¹⁴⁷ Langbein *The Origins of Adversary Criminal Trial* (Oxford University Press 2003), Beattie “Scales of Justice: Defense Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries” (1991) 9 *Law and History Review* 221-267, Vogler *A World View of Criminal Justice* (Ashgate 2005) p.129-155.

process can be developed gradually and in direct contravention of established legal principles, it can be eroded in the same manner. Thus, Skitka's theory of moral mandates takes a more sinister dimension. It is possible that the influence of social media on public attitudes of justice is serving to subtly erode the due process provisions available to defendants accused of crimes that engage a moral mandate. It is this phenomenon that is the central focus of this thesis.

Thesis Structure

This thesis seeks to address areas that have not been extensively explored in existing criminological scholarship regarding the influence of social media on the criminal trial, in particular in relation to the worst crimes. It suggests that the purpose of the trial for these crimes is being radically altered by media commentary and that a more careful consideration of the role of the defendant and the purpose of the trial is critical to a resolution of the conflict between due process and trial by media/trial by social media.

Chapter One will provide a historical consideration of the role of the defendant in order to illustrate the external factors that have influenced the way in which he or she has interacted with the criminal trial. This will entail a consideration of the historical development of due process. In so doing it becomes clear that the role of the defendant is a fluid concept that is closely linked to the purpose of the criminal trial itself. It will be argued that the concept of a rights-bearing defendant, necessary for the establishment of due process, was developed gradually over the course of the eighteenth century. This was despite there being no clear policy for the adoption of due process methods. Understanding of the development of the defendant's role in the criminal trial is crucial to understanding any potential erosion of modern-day due process. If due process can be established in the absence of a comprehensive policy to create it, it is possible that it can be gradually eroded regardless of what we regard as the constitutional entrenchment of contemporary due process.

Chapter Two will consider the impact of the news media on public opinion of the criminal justice process. As part of this, we will analyse any potential erosion of due process, in particular the presumption of innocence. This will include a more detailed consideration of the trial by media phenomenon and of moral mandate theory, furthering current scholarship on crime news. We will draw upon established academic understanding of news media influence on public attitudes of crime and apply it to social media. In this way, the impact of social media on crime news will be analysed, including consideration of the communal connection to crime events and the public

ostracising of the defendant, the moral mandate effect and Lang and Lang's theory of inferential structures. Through this analysis, it will be suggested that social media is magnifying public responses to crime news and creating an increased demand for a particular verdict.

Chapters Three and Four will apply the theoretical analysis of the first two chapters to a qualitative consideration of three case studies, in order to assess more concretely the impact of the media on due process. Each case study features a defendant whose crime (or its aftermath) has been filmed by eyewitnesses and uploaded onto social media. This footage has then been used by the news media in order to supplement their coverage of the crime. Both chapters will use a template analysis of prominent Twitter hashtags and comments on YouTube videos of the crime, in order to contrast public commentary with the news media reporting. In this way, the influence of social media on public perceptions of the defendant will be empirically considered.

Chapter Three will analyse the media coverage and the public reactions of the Boston Marathon bombing and the subsequent trial, conviction and sentencing of Dzhokhar Tsarnaev. This will then be compared with the reporting of, and responses to the murder of Lee Rigby and the subsequent trial of Michael Adebolajo and Michael Adebowale. In so doing it will consider the way in which these defendants have been subjected to a trial by media, the impact of social media on public perceptions of the two defendants and how the interaction of the two processes alters overall perceptions of justice. Both case studies will help to illuminate the impact of reporting on public perceptions of the crime and whether or not social media is facilitating a changing role for the defendant and eroding due process.

Chapter Four will use the same methodology as Chapter Three in order to consider the impact commentary has had on public perceptions of crimes allegedly committed by Colonel Gaddafi in Libya. In this way, we will ascertain whether there has been an impact on the overall legitimacy of the international courts as a result of footage of, and popular commentary on, serious humanitarian incidents. As has been noted, Skitka's moral mandate theory could have serious repercussions for international criminal tribunals, whose global legitimacy is still uncertain. Thus, it is important to consider how crime news and social media "evidence" influences public attitudes of defendants of international crimes.

We can end this thesis where we began, with fears over the impact of high-profile cases such as bin Laden. Analysis of the above case studies will provide an empirical consideration of the role of social media in facilitating popular notions of

justice. If public perceptions of justice are increasingly occurring outside the due process frameworks of the courtroom, then it is possible that the criminal trial will no longer be a right afforded to all defendants. It has been suggested in the news media that a criminal trial was not necessary for bin Laden and nor did he deserve one.¹⁴⁸ Indeed, the celebrations at bin Laden's death illustrate that justice can be exacted outside of the courtroom and without the need for due process. His guilt had been long established as a result of media commentary on the 9/11 attacks. Consideration of the influence of social media on crime news suggests that the defendant is increasingly being judged prior to the trial. If perceptions of justice are really occurring during the pre-trial phase, then questions as to the purpose of the criminal trial arise. After all, if the defendant is clearly guilty then the need for a criminal trial could be questioned. Such sentiments could lead us down a slippery slope to the eradication of due process safeguards. The potential for this process to occur as a result of social media influences is the focus of this thesis.

¹⁴⁸ *Supra* Toobin n10.

Chapter One

The Changing Role of the Defendant in History

There is a common perception that the role of the defendant in criminal trials is static; that the criminal trial has and will always protect the rights of this central figure. Indeed, without a defendant, a criminal trial could not be held. A trial in such circumstances hardly seems to make sense. However, the perception of a static defendant is one that does not pay heed to history. Foucault's writings on genealogy warns us to be cautious of taking for granted the modern meaning of concepts and ideas, such as punishment¹⁴⁹ or sexuality.¹⁵⁰ For example, in *Discipline and Punish* Foucault stated that "today we are largely inclined to ignore [the disappearance of the spectacle of punishment] ... perhaps it has been attributed too readily and emphatically to a process of 'humanization', thus dispensing with the need for further analysis".¹⁵¹ A similar argument could be made regarding analysis of the role of the defendant. Rather than being a static concept, Foucault established that contemporary understanding of punishment, as a form of private penance rather than a public spectacle, is the result of inevitable historical trends.¹⁵² Punishment transformed from a mechanism of state revenge to something that focused on the rehabilitation of the convict.¹⁵³ As a result, punishment not only moved away from a form of violent theatre, but it also resulted in a contemporary view of punishment that is more humane than it had been conceived in the past.¹⁵⁴ Thus, genealogy argues that analysing the way in which a concept has developed in history can provide a deeper understanding of its contemporary meaning.¹⁵⁵ And, as we discuss in this chapter, this is certainly true for the role of the defendant. A historical analysis of criminal justice establishes that the defendant has had a fluid role in the criminal trial, being influenced and altered by external factors.

Noting that the defendant has been a fluid concept in the criminal trial alters our modern understanding of the defendant, and the associated due process protections. At its essence, due process requires a rights-bearing defendant that is central to the criminal

¹⁴⁹ Foucault *Discipline and Punish: The Birth of the Prison* (Translated: Sheridan) (Vintage Books 1995).

¹⁵⁰ Foucault *The History of Sexuality* (Translated: Hurley) (Penguin 1981).

¹⁵¹ *Supra* Foucault n149 p.7.

¹⁵² *Ibid.*

¹⁵³ *Ibid* p.7-10.

¹⁵⁴ For analysis of this see Downing *The Cambridge Introduction to Michel Foucault* (Cambridge University Press 2008) p.75-78.

¹⁵⁵ Garland "What is a 'History of the Present'? On Foucault's Genealogies and Their Critical Preconditions" (2014) 16 *Punishment & Society* 365-384 p.372-374.

trial.¹⁵⁶ With key concepts of due process, such as the presumption of innocence, recognised in every known human rights document since 1948,¹⁵⁷ it appears that due process is becoming increasingly entrenched in criminal jurisdictions. However, if we can identify the historical role of the defendant as being a clearly malleable concept, then questions emerge about the stability of our current understanding of the defendant. Additionally, if we can identify the factors in history that have influenced the changing nature of the defendant, then we are better placed to identify and analyse factors that might instigate change in the present. As set out in the Introduction, the focus of this thesis is on the very modern phenomenon of social media, which it will be argued is one such factor.

By considering the historical development of modern concepts we can better understand their meanings.¹⁵⁸ As Garland notes, genealogy allows researchers to suggest “that the institutions and practices we value and take for granted today are actually more problematic ... than they otherwise appear”.¹⁵⁹ He argues that a genealogical study does not consider the origins of a concept but rather “traces how contemporary practices and institutions emerged out of specific struggles, conflicts, alliances, and exercises of power, many of which are nowadays forgotten”.¹⁶⁰ Thus, a historical understanding of the development of criminal justice helps to illustrate how the recent influence of social media on crime reporting can have troubling implications for the role of the modern defendant and his or her due process rights in the criminal trial. It will be seen in this chapter that the defendant’s role in the criminal trial has changed considerably as the justice process developed. Moreover, the role of the defendant has adapted to broader social forces, changing criminal procedure even when there has been no concerted policy to make any such alterations. For example, the concept of a rights-bearing defendant, central to due process, did not emerge until the eighteenth century. More significant for the purposes of this thesis, is the understanding that due process rights for the accused developed haphazardly, throughout the course of a century and in direct conflict with established legal traditions. Thus, the question arises that if safeguards for the accused can be inserted into the criminal trial in an

¹⁵⁶ Discussed in greater detail below.

¹⁵⁷ *Supra* Ashworth n19 p.243.

¹⁵⁸ In an interview in 1984, Foucault stated that “I set out from a problem expressed in the terms current today and I try to work out its genealogy. Genealogy means that I begin my analysis from a question posed in the present”. Kritzman “Power and Sex: An Interview with Michel Foucault” in Kritzman (ed) *Michel Foucault: Politics, Philosophy, Culture: Interviews and Other Writings, 1977-1984* (Routledge 1988) p.262.

¹⁵⁹ *Supra* Garland n155 p.372.

¹⁶⁰ *Ibid* p.372.

indirect manner, it is also possible for due process to be similarly abrogated. If the role of the defendant is a fluid one, it is possible that the influence of factors such as social media, and public outrage at certain defendants, could serve to once again alter the criminal trial.

This chapter aims to develop a clearer understanding of the way in which external factors can influence criminal procedure, in particular the changeable concept of the defendant, something that has not yet been considered by legal historians. This will help us to better understand if external factors such as social media could also be impacting upon the role of the criminal defendant, considered in subsequent chapters of this thesis. Foucault acknowledged that his theoretical discussions were not designed to be adopted verbatim to historical analysis of concepts but rather to be used as a “toolbox” to facilitate the modern understanding of ideas.¹⁶¹ It is not intended to provide a Foucauldian analysis of the development of the defendant in this chapter. Rather this chapter is adopting a toolbox approach to genealogy. By acknowledging that historical developments shape contemporary understandings, as the genealogical approach would suggest, it is possible to consider the importance of the role that the defendant plays in the criminal trial, and the factors that may impact upon criminal procedure.

Setting the Boundaries of the Historical Analysis

It is beyond the scope of this chapter to analyse historical procedural transformations across the globe. Nor is it possible to provide a comprehensive analysis of the historical developments relating to the defendant or to the criminal process. This chapter will focus primarily on the transformation of the Anglo-American criminal process. Chapter Three of this thesis considers the impact of social media on domestic criminal trials using two case studies that are drawn from the Anglo-American adversarial tradition. Thus, this historical focus will enable us to better understand the implications of social media on the adversarial defendant. In order to provide a better understanding of the development of the Anglo-American defendant, the transformation of the accused within this system will be broadly compared to the developments of the inquisitorial methodology in Europe. As such, this chapter will ultimately analyse how the concept of the defendant has changed in the two dominant methods of criminal justice in the world.¹⁶² Furthermore, consideration of these two procedural mechanisms is significant

¹⁶¹ Foucault *Prisons et Asiles dans le Mécanisme du Pouvoir Dits et Ecrits: 1954-1988*, vol 2 (Gallimard 1994) p.523-524.

¹⁶² Vogler in his analysis of criminal justice methods postulates three types of criminal procedure with popular justice comprising the third method *supra* Vogler n147 p.15.

when exploring the impact of the media on trials at the International Criminal Court and other such tribunals, which will be discussed in Chapter Four. Although the Rome Statute is, officially, procedurally neutral,¹⁶³ the Court has drawn inspiration from both European criminal justice models.¹⁶⁴

It is possible to identify two key turning points in English criminal procedure, the foundation of the Anglo-American adversarial tradition; the demise of the ordeal in the thirteenth century and the birth of adversariality in English criminal courts in the eighteenth century. The demise of the ordeals in the thirteenth century resulted in a division of criminal procedure between English law and the rest of Europe. The Roman-canon method, which developed throughout continental Europe, replaced the system of divine proofs with another rigorous standard of guilt that largely sidelined the defendant and was characterised by the logical consideration of evidence and the use of torture. In contrast, England maintained the principle of community justice by developing the criminal jury, who were expected to use their local knowledge to judge the defendant's guilt. By the eighteenth century there was a growing recognition that the criminal trial was an important safeguard against the abuse of state power. It was within this context that due process was introduced as part of the development of the adversarial procedure. Consideration of the rise in adversariality is crucial to understanding the role of due process in the criminal trial and, thus, how it may be subsequently eroded.

Although scholars have traced due process phraseology such as “innocent until proven guilty” as far back as thirteenth century inquisitorial jurists,¹⁶⁵ such terminology, whilst commendable, does not necessarily provide protections for the defendant. Rather, they are part of a strict system of proofs required by the Roman-canon method to provide a legitimate mechanism of ascertaining guilt after the abolition of the system of divine proofs in 1215.¹⁶⁶ As such, pre-eighteenth century references to due process-like provisions do not constitute a series of protections afforded to the defendant, but are instead part of a procedural mechanism designed to validate a system after a radical, and sudden, procedural overhaul.

The notion of a defendant deserving of rights by virtue of being human is a wholly modern one. It developed gradually from eighteenth century Enlightenment ideals which championed individualism and the rationality of mankind and was

¹⁶³ Kress “The Procedural Law of the International Criminal Court in Outline: Anatomy of a Unique Compromise” (2003) 1 *Journal of International Criminal Justice* 603-617 p.605.

¹⁶⁴ Ambos “International Criminal Procedure: ‘Adversarial’, ‘Inquisitorial’ or Mixed?” (2003) 3 *International Criminal Law Review* 1-37 p.34.

¹⁶⁵ Pennington “Innocent until Proven Guilty: The Origins of a Legal Maxim.” (2003) 63 *Jurist* 106-124.

suspicious of the extensive powers of the state, which could give rise to tyranny.¹⁶⁷ Thus, due process provisions emerged during an adversarial revolution in the English courts,¹⁶⁸ as part of the recognition that the state had access to substantially greater resources, something that was keenly felt in criminal trials. The safeguards that emerged aimed to protect the defendant by redressing this imbalance in the criminal trial.¹⁶⁹ Thus, due process is founded on principles of fairness and a rights-bearing defendant, who needs to be protected from the might of the state.

Recognising that due process requires a rights-bearing defendant, and is therefore an adversarial concept, is not to say that the adversarial method is better than the inquisitorial process. Indeed, the professionalised bureaucracy present in many continental justice systems created a sophisticated system of evidence that ensured that the defendant could be convicted only on the highest standard of proof, a protection that was not afforded to the English defendant in the jury trial.¹⁷⁰ Nor is it intended to criticise any one modern-day criminal process. Although it is possible to describe the procedure in much of continental Europe as being strongly influenced by the legacy of the inquisitorial process, and the Anglo-American criminal justice method as being strongly adversarial, the development of modern-day criminal justice everywhere reflects a range of different methodologies. There is no one modern-day criminal procedure in the world that can be described as purely “adversarial” or “inquisitorial”.¹⁷¹ Thus, the analysis in this chapter does not seek to place a value judgement on either of the procedures considered. Rather, it seeks to provide an overview of the procedural changes throughout a substantial period in English history. By so doing it aims to establish the influences that have transformed the role of the defendant.

This chapter will contain four sections, considering the criminal process before and after two turning points in English procedure, the demise of the ordeal and the development of adversariality. It must be emphasised that the focus of this chapter is on the position of the defendant. It does not aim to provide a general history of criminal process, as a result some key points in the development of English criminal procedure must necessarily be discussed briefly or ignored. The development of English procedure will also be broadly compared with the criminal method on the Continent. Section One

¹⁶⁶ Something that will be discussed in greater detail later in this chapter.

¹⁶⁷ *Supra* Vogler n147 p.129-130.

¹⁶⁸ *Supra* Vogler n15.

¹⁶⁹ *Supra* Vogler n147 p.129-130.

¹⁷⁰ *Ibid* p.25-30.

will consider the communal justice mechanisms of Anglo-Norman society, designed to deter the use of the damaging tradition of the blood feud. As part of this we will consider how the emphasis on rehabilitation developed into a system of ordeals whereby the accused was subjected to divine judgement in rituals that mirrored acts of penance. Section Two will briefly consider the development of the Roman-canon method in Continental Europe to provide a comparison with the jury system maintained in England. The English jury has changed considerably since the eleventh century, something that we consider in Section Three. A jury that gradually became reliant on evidence presented at court led to a prosecutorial bias that was exploited by the state for political trials in the seventeenth century and resulted in elite criticisms of the criminal procedure. This paved the way for the growth of adversariality and procedural safeguards to protect the defendant from state authority, something that will be considered in Section Four of this chapter.

Only by recognising the very different roles that the defendant has played in the criminal justice process over a long historical period are we able to understand how vulnerable due process is to external factors. Such a recognition is necessary in order to evaluate the potential impact of social media “evidence” on the criminal justice process. Examples provided in the Introduction illustrate how social media can serve to heighten the pre-trial condemnation of the accused. The fluid role that the defendant plays in the criminal trial demonstrates how new technologies, used to document and publicise crimes, do not merely encourage public condemnation of the particular accused but can also, through the moral mandate effect, threaten the rights-bearing criminal procedure by putting pressure on the presumption of innocence.

Section One: Communal, Reconciliatory Justice

It was noted in the introduction that English criminal procedure was significantly altered after the withdrawal of papal support for the ordeal in 1215. It is perhaps surprising that English criminal justice did not change after the Norman Conquest in 1066, described as “a cataclysm of the first magnitude”¹⁷² for English society. However, whilst the Norman-imposed feudal system had a significant impact on the English societal structure,¹⁷³ a criminal justice system that entrenched hierarchical structures was not a novel concept in England. Criminal justice had reflected Anglo-Saxon

¹⁷¹ *Ibid* p.16

¹⁷² van Caenegem *The Birth of the English Common Law* (2nd edn, Cambridge University Press 1988) p.4.

¹⁷³ Baker *An Introduction to English Legal History* (Butterworths 1990) p.257.

hierarchy long before 1066. For example, the death of a noble Anglo-Saxon, a *thegn*, by a lesser *creol* would require the death of six *creols* in recompense.¹⁷⁴ Similarly, the most brutal methods of criminal punishment were reserved for Anglo-Saxon slaves.¹⁷⁵ Anglo-Norman justice was also centred on the societal hierarchy.¹⁷⁶ Although those within the hierarchical structures were drastically altered after the Conquest, the mechanisms for control remained unchanged. Indeed, William I “was not a voluminous legislator”,¹⁷⁷ and as part of his claim to the English throne by lawful succession,¹⁷⁸ made only minor adjustments to criminal justice. Thus, the criminal trial under the Normans did little to alter the position of the defendant, which remained influenced by Anglo-Saxon traditions.

Anglo-Norman justice more closely resembled the modern law of tort than criminal law. The focus of justice was on the wrong caused and exacting pressure in order to ensure that compensation was paid.¹⁷⁹ With no apparent formal mechanisms, justice was an institution that revolved around the notions of self-help and private vendetta.¹⁸⁰ The blood-feud was at the heart of justice¹⁸¹ and kinsmen, in a complex web of obligations, were relied upon for support, should a feud arise.¹⁸² The blood-feuds threatened the peace and stability of Anglo-Saxon nations,¹⁸³ resulting in a recognition that a more formal mechanism of justice was needed in order to prevent the cycle of violence. A rudimentary court system emerged from the tenth century¹⁸⁴ and tried individuals accused of wrong-doing (*botless*)¹⁸⁵ that were deemed too serious to be amended through monetary compensation alone.¹⁸⁶ Its purpose was to calculate the appropriate level of payment in order to adequately alleviate the harm caused¹⁸⁷ and

¹⁷⁴ Hostettler *A History of Criminal Justice in England and Wales* (Waterside Press 2009) p.17.

¹⁷⁵ *Ibid* p.17.

¹⁷⁶ The author of the *Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill*, the first text on the law left out the majority of the population in his consideration of the law as they were unfree villeins, *supra* van Caenegem n172 p.5.

¹⁷⁷ Stenton *English Justice Between the Norman Conquest and the Great Charter 1066-1215* (George Allen and Unwin 1965) p.6, 54-59.

¹⁷⁸ *Supra* Baker n173 p.14.

¹⁷⁹ Harding *The Law Courts of Medieval England* (George Allen & Unwin 1973) p.14.

¹⁸⁰ *Supra* Hostettler n174 p.12.

¹⁸¹ Miller “Choosing the Avenger: Some Aspects of the Bloodfeud in Medieval Iceland and England” (1983) 1 *Law and History Review* 159-204 p.160-161.

¹⁸² Hyams “Feud and the State in Late Anglo-Saxon England” (2001) 40 *The Journal of British Studies* 1-43 p.4, Stenton *Anglo-Saxon England* (3rd edn, Oxford University Press 1971) p.277, *supra* Harding n179 p.13-14, *ibid*.

¹⁸³ *Supra* Stenton n177 p.6-7.

¹⁸⁴ *Supra* Harding n179 p.29.

¹⁸⁵ These offences, which would later be considered felony crimes, included murder, theft and treason. See Olson “Of Enchantment: The Passing Of The Ordeals And The Rise Of The Jury Trial” (2000) 50 *Syracuse Law Review* 109-196 p.139.

¹⁸⁶ *Supra* Hostettler n174 p.17, Harding n179 p.28.

¹⁸⁷ *Supra* Hyams n182 p.4, Stenton n182 p.277, Harding n179 p.13-14, Miller n181.

establish amity between the parties.¹⁸⁸ The role of the Anglo-Norman defendant, therefore, was to keep the peace and prevent the escalation of the blood feud.

The Anglo-Norman Defendant as Keeper of the Peace

Wrongdoing was considered an affront to the local community and was linked to the Anglo-Norman folklore of the hero, who was celebrated in contemporary songs and poems. This individual, committed to the virtue of honour, valour, deference and belonging, had been “woven into the English legal fabric” and had been entrenched into the national identity, uniting Norman feudalism with Anglo-Saxon companionship.¹⁸⁹ The word felon had contemporary synonyms of *traisoun* in Legal French and Middle English and *comitatus* in Old Germanic, both of which denoted the betrayal of a good faith.¹⁹⁰ The Anglo-Norman defendant was considered to have failed their community and as a result those caught in the act of committing a crime could be summarily executed.¹⁹¹ A guilty Anglo-Norman defendant was considered to have a “corruption of the blood”, which warranted the confiscation of the defendant’s lands and possessions and would also implicate his or her family, who would be unable to inherit from relatives in the future.¹⁹²

The responsibility for the detection of crime during the Medieval period rested with the affronted community. The first person to come across a crime in Anglo-Norman England was expected to raise a hue and cry, creating awareness of the act by making noise.¹⁹³ Those failing to do so would run the risk of being prosecuted themselves.¹⁹⁴ The notion that the public is affronted by a criminal act, and their role in facilitating the capture of the perpetrator survives in inquisitorial systems,¹⁹⁵ such as the French doctrine of *flagrant délit*,¹⁹⁶ and has some troubling implications for the impact of social media on the criminal defendant. As such, it is worth briefly departing from

¹⁸⁸ *Supra* Olson n185 p.158.

¹⁸⁹ *Ibid* p.191.

¹⁹⁰ *Ibid* p.180.

¹⁹¹ Pollock “King’s Peace in the Middle Ages” (1899) 13 *Harvard Law Review* 177-189 p.182, Hurnard “The Jury of Presentment and the Assize of Clarendon” (1941) 56 *The English Historical Review* 374-410 p.396, Green *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800* (University of Chicago Press 1985) p.8.

¹⁹² *Supra* Baker n173 p.572, Greenberg “The Victim in Historical Perspective: Some Aspects of the English Experience” (1984) 40 *Journal of Social Issues* 77-101 p.84.

¹⁹³ *Ibid* Greenberg p.85-86, Baker p.574.

¹⁹⁴ *Supra* Harding n179 p.68, Hostettler n174 p.19, Greenberg n192 p.81.

¹⁹⁵ Vogler and Fouladvand “Standards for Making Factual Determinations in Arrest and Pretrial Detention: A Comparative Analysis of Law and Practice” in Thaman and Ross (eds) *Handbook of Comparative Criminal Justice* (Edward Elgar 2016) (forthcoming), Terrill *World Criminal Justice Systems: A Comparative Survey* (8th edn, Hoboken Taylor and Francis 2014) p.144.

¹⁹⁶ See *ibid* Vogler and Fouladvand.

our historical analysis to consider the potential implications for this doctrine. Under s53 of the French *Code de Procédure Pénale*, a defendant becomes “*flagrant*” if they are caught in the commission of the crime,¹⁹⁷ or if there has been a public outcry against them.¹⁹⁸ In these circumstances the police are granted the same investigatory powers as the examining magistrate,¹⁹⁹ circumventing an important defensive safeguard.²⁰⁰ There is a presumption of culpability, resulting in a lower standard of proof. The French Criminal Chamber has ruled that the direct accusation of the victim,²⁰¹ or the smell of cannabis from the street²⁰² constitutes sufficient evidence for conviction.²⁰³ With pre-trial safeguards curtailed, this principle is open to abuse of power, something that has been demonstrated by the use of *flagrant délit* in Haiti. Application of this doctrine in the former French colony has been criticised for regularly using the criterion of public outcry to arrest and detain defendants “based on nothing more than unsubstantiated rumor”.²⁰⁴ Under this doctrine, then, if the defendant’s factual guilt is apparent then the presumption of innocence is eroded. As we discuss in later chapters, although nothing of this kind exists formally within English law, similar pressures can be created by the “hue and cry” of media, and social media in particular.

Proving guilt in Anglo-Norman justice, however, bears no resemblance to modern standards. The Anglo-Norman criminal trial was not designed to weigh up the evidence presented to it in order to ascertain the defendant’s guilt,²⁰⁵ thus neither the offender, nor their intent, was taken into account.²⁰⁶ Rather, this was a process based on proofs, whereby the guilt of the defendant was determined by a higher power, namely God.²⁰⁷ A defendant who pleaded not guilty was required to place himself or herself in the hands of God and the community that he or she was accused of affronting.²⁰⁸ Pleading was part of the defendant’s “implicit avowal of membership”²⁰⁹ to the community. As part of this, an attempt at contrition, such as promising an act of

¹⁹⁷ This phrase is interpreted loosely and covered where the defendant is in the process of committing the criminal act and for 48 hours after the act is committed.

¹⁹⁸ Tomlinson “Nonadversarial Justice: The French Experience” (1983) 42 *Maryland Law Review* 131-195 p.156.

¹⁹⁹ *Ibid* p.156.

²⁰⁰ *Supra* Vogler and Fouladvand n195.

²⁰¹ Judgement of the Criminal Chamber, April 22, 1992.

²⁰² Judgement of the Criminal Chamber, November 4, 1999.

²⁰³ For further detail, see *supra* Vogler and Fouladvand n195.

²⁰⁴ Fuller, Texier, *et al. Prolonged Pretrial Detention in Haiti* (Vera Institute of Justice 2002) p.23.

²⁰⁵ *Supra* Baker n173 p.85.

²⁰⁶ *Supra* Hostettler n174 p.15.

²⁰⁷ Hyams “Trial by Ordeal: The Key to Proof in the Early Common Law” in Arnold (ed) *On the Laws and Customs of England* (University of North Carolina Press 1981) p.92.

²⁰⁸ *Supra* Olson n185 p.179, 182-183.

²⁰⁹ *Ibid* p.179.

penance, could be enough for reconciliation, staying the desire for vengeance and potentially leading to the acquittal of the accused.²¹⁰ Factors such as self-defence or necessity could also be significant in exculpating the suspect.²¹¹ It was these underlying societal objectives, fuelled by religious superstition and the universal power of the divine, that formed the basis for the trial by ordeals that characterised criminal justice throughout Europe at this time.

The Ordeals and the Law of Proofs

The early Medieval trial was not designed to determine the factual guilt of the defendant.²¹² In small and insulated communities, typical of the Anglo-Norman period, factual guilt was often known.²¹³ Thus, the key consideration was how to restore amity between the accused and the victim.²¹⁴ In this early form of criminal procedure, the divine was central to the trial. It was believed that only God could judge an individual and whether their claims were “pure” or “just”.²¹⁵ Trial by ordeal was a form of communal justice stemming from the highly superstitious and religious belief system of Anglo-Norman society.²¹⁶ In this way, the criminal justice system could be described as being based on the laws of proofs. In the system of proofs, once the accusation was made, the onus was on the defendant to prove his or her innocence,²¹⁷ undergoing the trial to prove their good character or atone for their crimes. Thus, the criminal trial at this time encouraged reconciliation vital to the small and interdependent Anglo-Norman communities.

There were three noteworthy modes of proof in English criminal justice in this period and each one can be described as a form of ordeal for the defendant.²¹⁸ The first one, trial by compurgation, was the most common form of establishing guilt. Closely resembling communal traditions of justice, it was only available to defendants of good character. The sworn testimony of a number of compurgators (known formally as

²¹⁰ *Ibid* p.158-161.

²¹¹ *Ibid* p.183-184.

²¹² *Supra* Hostettler n174 p.19.

²¹³ *Supra* Hyams n207 p.95.

²¹⁴ *Supra* Olson n185, Brown “Society and the Supernatural: A Medieval Change” (1975) 104 *Daedalus* 133-151 p.138.

²¹⁵ *Ibid* Brown p.137.

²¹⁶ Radding “Superstition to Science: Nature, Fortune, and the Passing of the Medieval Ordeal” (1979) 84 *The American Historical Review* 945-969.

²¹⁷ Pollock and Maitland *The History of English Law before the Time of Edward I: Volume II* (Cambridge University Press 1911) p.607.

²¹⁸ Olsen defines an ordeal as “a test of deed or word, fraught with moral danger that yielded the Deity’s judgement mediated through man’s practical wisdom” *supra* n185 p.118. See also *supra* Hyams n207 p.92.

juratores or oath-helpers) would attest to the defendant's trustworthiness.²¹⁹ Twelve men of good repute were compelled to make a decision based on their own knowledge of the defendant, as well as providing testimony to the crime.²²⁰ The standard Anglo-Norman assessment of guilt, the ordeal of compurgation most closely resembled the modern jury trial.²²¹ The second method of ordeal was the trial by battle, which pitted the accused and accuser against one another in combat. The third and final method of ordeal considered here is the unilateral trial by ordeal, which most closely resembled acts of penance. Only those defendants with the worst reputation were subjected to this ordeal.²²² In a highly orchestrated and religious ceremony, the supervising priest invited God to pass judgement on the accused. The rituals were widespread, varied and involved a physical and seemingly painful test, with the most common rituals being hot or cold trials.²²³ All three methods were designed to restore harmony to the community and satisfy aggrieved parties. This was vital in a society that was characterised by its collections of small, rural communities that depended upon one another to survive.²²⁴

The Ordeals as a Method of Penance and Reconciliation

There is convincing evidence to suggest that the ordeals were merciful, granting the accused an opportunity to atone for their sins.²²⁵ For example, although cursory readings of trial by unilateral ordeal depict a brutal ceremony where the accused was twice damned,²²⁶ it appears that the unilateral ordeal operated as a form of penance to allow those defendants of bad repute to rehabilitate back into the community.²²⁷ Indeed, there appears to be consensus amongst academics that the ordeals had a high success rate.²²⁸ It was not unusual in this society for religious penance to be physical and painful, thus providing an incentive for the guilty party to undergo the unilateral ordeal

²¹⁹ *Supra* Baker n173 p.87, Harding n179 p.27, Hyams n207 p.93.

²²⁰ *Ibid* Harding p.25, 29.

²²¹ Helmholz "Crime, Compurgation and the Courts of the Medieval Church" (1983) 1 *Law and History Review* 1-26 p.13, *supra* Baker n173 p.86, Harding n179 p.25.

²²² *Supra* Hostettler n174 p.48, Hyams n207 p.122.

²²³ Kerr, Forsyth, *et al.* "Cold Water and Hot Iron: Trial by Ordeal in England" (1992) 22 *The Journal of Interdisciplinary History* 573-595 p.573.

²²⁴ *Supra* Hyams n207 p.95.

²²⁵ *Supra* Olson n185, Hyams n207 p.95, 98, Brown n214 p.138, Damaška "Rational and Irrational Proof Revisited" (1997) 5 *Cardozo Journal of International and Comparative Law* 25-39 p.29.

²²⁶ Leibermann, in his work chronicling the legal system of this era, provides the most detailed description of the processes. *Die Gesetze der Angelsachsen*, vol 2 (Halle a. S 1903) p.530. Note: I am grateful to Anne Wesemann for providing the translation for this text, the original of which is in German.

²²⁷ *Supra* Olson n185.

²²⁸ *Supra* Kerr, *et al.* n223, Radding n216, Leeson "Ordeals" (2012) 55 *Journal of Law and Economics* 691-714.

as a means of gaining absolution for their misdeeds.²²⁹ Furthermore, Anglo-Norman folklore consisted of epic tales where the protagonist experienced personal hardship in order to prove his or her worth. Contemporary literature of the time, such as *Beowulf* and *The Song of Roland*, associated death and pain with heroism and valour.²³⁰ Considered in this light, the ordeal becomes a symbol of heroism, as the suspect is prepared to be exposed to extreme pain to prove their innocence.

In the rural communities of Anglo-Norman society, stability and cohesiveness were paramount. The ordeal provided a mechanism that reinforced this in a manner that ensured justice remained communal. The formal set of rules and rituals reflected the more complex communities that had developed beyond the kinsman, whilst staying true to the religious beliefs of the era. Given that a criminal trial is “likely to leave one party dissatisfied and in a mind to make trouble”,²³¹ the ordeal system, with its communal focus and divine judgement, ensured that the lust for vengeance remained satiated.²³²

The system of ordeals provided an indisputable verdict on the defendant’s guilt. The requirement of twelve individuals for the ordeal of compurgation was significant in the small, disparate communities of this period and thus provided a high innocence threshold.²³³ Those defendants that passed the compurgation did so because the community attested to their willingness to absolve the accused. Similarly, the outcome of the trial by battle was an indisputable mechanism through which the parties could literally fight out their grievances. The unilateral physical ordeal was reserved for the most contentious of crimes, where communal reconciliation might prove difficult, allowing for the “tactic ‘de-fusing’ of the issue”.²³⁴ In a highly orchestrated and religious ceremony, the supervising priest invited God to pass judgement on the accused. Here, a divine verdict was established and the ordeal plays into superstition and faith by providing an outcome that is difficult for the accuser to disagree with.²³⁵ It was a process centred not around the suspect or the victim, but on the wrong caused and the disharmony that resulted as a consequence of the crime. Thus, the unilateral ordeal can be seen as a powerful mechanism to ensure cohesiveness within the community which encouraged reconciliation amongst the parties.²³⁶

²²⁹ *Supra* Olson n185 p.125-127, 149-152.

²³⁰ *Ibid* p.125.

²³¹ *Supra* Stenton n177 p.7.

²³² *Supra* Brown n214 p.138.

²³³ *Supra* Helmholz n221 p.13, Hyams n207 p.93, Green n191 p.10.

²³⁴ *Supra* Brown n214 p.138.

²³⁵ *Supra* Radding n216 p.956.

²³⁶ *Supra* Olson n185.

The trial by ordeal became an unsuitable mode of justice as English society developed and became less insular.²³⁷ By the thirteenth century, society and the Catholic Church were moving away from the “mystical expedients”²³⁸ of the ordeal towards a philosophy based on rational proofs and natural phenomenon, rather than divine interference.²³⁹ Trial by ordeal was finally eliminated in 1215, amidst mounting criticism of the process,²⁴⁰ when the Fourth Lateran Council, in the largest assembly in the history of the Catholic Church,²⁴¹ forbade members of the clergy from performing the religious rites that were essential for the ordeals. For English criminal justice, the alternative was the already present jury trial. For most of Europe, however, the replacement was the forensic and systematic Roman-canon method.²⁴²

Section Two: The Roman-Canon Method

The retention of the jury system in England was something of a historical anomaly. Its early development, prior to the demise of the ordeal, resulted in a procedural diversion from the rest of Europe. Thus, when the Fourth Lateran council withdrew papal support for the ordeals, European jurisdictions were required to find an alternative criminal procedure. The Roman-canon method is the precursor for the inquisitorial procedure, the most widely practiced criminal methodology in the world.²⁴³ Thus, it is worth briefly describing the Continental criminal process in order to provide a comparator through which to better understand the English criminal defendant. It is important to note that the primary focus of this chapter is on the development of the Anglo-American concept of the defendant. Therefore, it is beyond the scope of analysis to provide an in-depth consideration of the development of the Roman-canon method, which is complex and encompasses a wide variety of criminal jurisdictions.²⁴⁴ Rather, this section will briefly consider the essential characteristics of European inquisitorial methodology, but it will not analyse the criminal procedure within specific jurisdictions.

²³⁷ *Supra* Hyams n207 p.100.

²³⁸ Chenu *Nature, Man, and Society in the Twelfth Century* (Translated: Taylor and Little) (University of Chicago Press 1968) p.5.

²³⁹ *Ibid* p.4-18, *supra* Hyams n207 p.101-104.

²⁴⁰ See, for example, *supra* Langbein n147 p.134-6.

²⁴¹ Hamilton *The Medieval Inquisition* (Edward Arnold (Publishers) Ltd 1981) p.31.

²⁴² *Supra* Vogler n147 p.20.

²⁴³ *Ibid* p.19. Although there is no modern criminal justice system that can be described as purely inquisitorial.

²⁴⁴ For more detail on the development of the Roman-canon method and the inquisitorial system, see *ibid*.

Initially developed as a means to prosecute heresy,²⁴⁵ the Roman-canon method became the prevailing procedure for most of Europe.²⁴⁶ It was in part influenced by the development of officialdom and the continued rationalisation of royal authority in eleventh century Europe.²⁴⁷ Concerned primarily with the salvation of the soul, absolute power to prosecute was given to the inquisitor.²⁴⁸ Guilt was decided not by God, as per the ordeals, but by a rational and forensic enquiry of the facts, usually conducted by a judge.²⁴⁹

By eliminating divine judgement from proceedings and replacing it with that of highly fallible humans, the Roman-canon method was at risk of being seen as having a lower standard of proof than the ordeal.²⁵⁰ In order to compensate for this, a rigid set of proof formulas was devised; a defendant could only be convicted if proof of guilt was “more clear than daylight”.²⁵¹ Moreover, the burden of proof rested on the prosecutor.²⁵² It is important to note that this did not amount to due process protections for the accused in the form of a presumption of innocence, as some academics have claimed.²⁵³ Rather, these provisions were primarily designed to ensure the smooth running and accuracy of the criminal trial and did not seek to protect the defendant.²⁵⁴ Thus, whilst these mechanisms may have been beneficial to the inquisitorial defendant, they cannot be described as providing defensive protections and therefore cannot be considered to be due process rights.

The highest form of evidence in the Roman-canon method was a suspect’s confession (“the queen of proofs”).²⁵⁵ Where such proof was unavailable, various other forms of evidence were identified and attributed mathematical values of full and half proofs that could be accumulated to conclusively establish guilt. Circumstantial evidence, for example, was attributed a lower standard of proof.²⁵⁶ In this way, the

²⁴⁵ Lea *The Inquisition of the Middle Ages: Its Organisation and Operation* (Eyre and Spottiswoode 1963) p.55-56, *supra* Vogler n147 p.25.

²⁴⁶ *Ibid* Vogler p.19.

²⁴⁷ Langbein *Prosecuting Crime in the Renaissance: England, Germany, France* (The Lawbook Exchange Ltd 1973) p.135.

²⁴⁸ *Supra* Vogler n147 p.26.

²⁴⁹ For more detail about the theory behind the process see *ibid* p.19-21.

²⁵⁰ Langbein *Torture and the Law of Proof* (University of Chicago Press 1977) p.6.

²⁵¹ Andrews *Law, Magistracy and Crime in Old Regime Paris, 1735-1789*, vol 1: The System of Criminal Justice (Cambridge University Press 1994) p.442.

²⁵² *Supra* Vogler n147 p.28.

²⁵³ *Supra* Pennington n165, Eichbauer “Medieval Inquisitorial Procedure: Procedural Rights and the Question of Due Process in the 13th Century” (2014) 12 *History Compass* 72-83 p.74-75, Brundage “Full and Partial Proof in Classical Canonical Procedure” (2007) 67 *Jurist* 58-71.

²⁵⁴ For further detail about the theoretical underpinnings of the inquisitorial methodology and of due process see *supra* Vogler n15 and n147.

²⁵⁵ Ruthven *Torture: The Grand Conspiracy* (Weidenfeld and Nicolson 1978) p.51.

²⁵⁶ See, for example, *supra* Langbein n247 p.4-5.

Roman-canon method provided a sophisticated scheme of evidence whereby the suspect's guilt was determined in the strictest manner.

It was this high requirement of proof that resulted in the most infamous characteristic of the Roman-canon method, the use of torture.²⁵⁷ Torture was not inflicted arbitrarily, rather it formed an essential component of proof,²⁵⁸ and was not regarded as a form of punishment.²⁵⁹ It could not be used unless there existed at least a half-proof of the defendant's guilt.²⁶⁰ The purpose of torture was to force the accused to give information relating to the crime that only the perpetrator could know.²⁶¹ It was administered in a cold, clinical and systematic way. There could be no leading questions from the judge, nor could he threaten the defendant with the promise of further, harsher methods of inflicting pain upon failure to confess to the crime.²⁶² Torture could be likened to the ordeal as a logical, if brutal, method for establishing categorical proof.

Despite the procedural limitations, it would be naïve to suggest that these rules for torture were followed to the letter. Indeed, a system which granted such wide discretionary powers to the presiding judge makes it likely that these rules were frequently broken, as something noted by contemporary legal writers.²⁶³ Regardless of the stringent proof requirements, crimes that were difficult to prove, such as heresy,²⁶⁴ and notorious crimes that were the subject of widespread gossip, could result in the accused being simply summoned to court with no proof-taking occurring.²⁶⁵ In effect, the accumulation of evidence against an individual could be drawn from gossip and speculation, probably exaggerated by fear, which proved sufficient to accuse and interrogate an individual.

As the inquisitorial system was developed and codified, the role for the defendant became increasingly marginalised. The trial was merely a process to pass a verdict and it was the only component of the criminal justice system that was public.²⁶⁶ As a result, the defendant could spend the entire procedure locked in a cell, potentially for years, without any knowledge of the investigations or when the judgement would be given.²⁶⁷

²⁵⁷ *Supra* Vogler n147 p.29.

²⁵⁸ *Supra* Langbein n247.

²⁵⁹ *Ibid.*

²⁶⁰ *Supra* Vogler n147 p.29.

²⁶¹ *Supra* Langbein n247 p.5.

²⁶² *Supra* Ruthven n255 p.62-64.

²⁶³ *Ibid* p.59-60.

²⁶⁴ *Supra* Lea n245 p.160-161.

²⁶⁵ *Supra* Damaška n225 p.937.

²⁶⁶ *Supra* Vogler n147 p.38.

²⁶⁷ *Ibid* p.36.

Although the defendant had a minor role in the inquisitorial criminal trial, the system of proofs necessitated the development of an extensive pre-trial procedure which ensured against arbitrary convictions. The process was instigated by either a public or private prosecution and investigated by an examining magistrate or other officer of the state.²⁶⁸ If the facts merited a criminal trial, witnesses were interrogated and the evidence was compiled in a document and passed to the prosecutor.²⁶⁹ This compilation of the evidence, given to the court and referred to throughout the justice process, is one of the hallmarks of the inquisitorial system.²⁷⁰ Furthermore, the emphasis on a professional and bureaucratic mode of criminal justice created a hierarchical system of control, ensuring that the process was continuous and authoritarian.

It was a markedly different role for the Continental criminal defendant to that in the English criminal trial. The Roman-canon method ensured a marginal role for the accused within the trial itself, exposing the defendant to the potential abuse of judicial power. Indeed, the inquisitorial methodology has been used by authoritarian states in order to entrench power and expedite convictions, seen, for example, in the Soviet Union and Nazi Germany in the twentieth century.²⁷¹ Similarly, elements of the inquisitorial methodology were used in England during the seventeenth century in order to convict political defendants accused of treason.²⁷² Nevertheless, despite these abuses of the inquisitorial methodology, the emphasis on categorical proof, underpinned by rigorous pre-trial investigation and a system of appeals, all had positive effects for the defendant, providing a robust method of testing the evidence.²⁷³ In contrast, the development of compurgation into the jury system delayed the development of criminal evidence in England. The emphasis on communal justice meant that the focus of the English criminal trial remained on delivering merciful verdicts, rather than rigorously proving factual guilt. It also established a systemic prosecutorial bias. The role of the English jury in altering the concept of the defendant is something that we shall now consider.

²⁶⁸ *Supra* Langbein n247 p.131.

²⁶⁹ For more detail see *ibid* p.129 onwards.

²⁷⁰ Vogler has classified four key characteristics for the inquisitorial methodology. There must be a hierarchical system of authority. Second, the process is continuous and bureaucratic. Third, is the placing of intolerable pressure on the defendant. Finally, the ideology of inquisitoriality is on forensic enquiry and rational deduction. *Supra* n147 p.19-21.

²⁷¹ See *supra* Vogler n147 p.61-89.

²⁷² For more detail, see Cockburn *A History of English Assizes 1558-1714* (Cambridge University Press 1972) p.188-261.

²⁷³ For further detail about the theoretical underpinnings of the inquisitorial methodology see *supra* Vogler n147 p.19-21.

Section Three: The Jury Trial

The trial by jury has come to represent a fundamental component of common law systems and has contributed to some of the most essential characteristics of the procedure.²⁷⁴ The reliance on oral testimony, delivered in the courtroom and the rapidity of the trial, would not have developed in England without the jury system.²⁷⁵ Indeed, the bureaucratic and document-focus of the continental Roman-canon method, led to the gradual demise of lay participation throughout Europe.²⁷⁶ The English jury, on the other hand, ensured a flexible method of adjudication. Unlike the forensic Roman-canon method, the English jury was able to mitigate the perceived harshness of the English penal code for those defendants considered to be deserving of mercy. This capacity necessitated a more central role for the defendant in the criminal trial, as deservedness could not be determined without consideration of the accused.

The development of the jury system is long and obscure. It is beyond the scope of this chapter to consider its influence as a whole. Nevertheless, there are two phases of the criminal jury that are important for our consideration of the development of the concept of the defendant and will form the basis for the structure of this section. The first, the creation of the self-informing jury, which was a progression of the ordeals, ensured that adjudication of the defendant remained within the community affected by the crime. This established the English criminal trial as one based on what the defendant was believed to deserve, as the self-informing jury drew upon their knowledge of the accused to establish whether a guilty verdict was merited. The second phase of the criminal jury was the development of the instructional jury, entrenched by the Marian Statutes in the sixteenth century. The instructional jury relied less on their community knowledge and more on the testimony of witnesses. As a result, the demise of the self-informing jury facilitated an increasing reliance on the courtroom professionals and the rise of the adversarial process. It did this in two ways. Firstly, the instructional jury maintained its communal roots and was thus able to continue to moderate the perceived harshness of criminal sanctions per the defendant's deservedness. Secondly, the instructional jury left an investigatory deficit, which resulted in an inherent prosecutorial bias. This bias was abused by the crown in trials of treason during a period of authoritarianism in the seventeenth century. The resultant Treason Trials Act,²⁷⁷ discussed in the third section of this chapter, was the first example of a rights-bearing

²⁷⁴ *Ibid* p.199.

²⁷⁵ *Ibid*.

²⁷⁶ Dawson *A History of Lay Judges* (Harvard University Press 1960).

²⁷⁷ 7 & 8 Will. 3, ch. 3, § 1 (1696).

defendant and paved the way for the development of adversariality in the eighteenth century.

The Self-Informing Jury

The first juries in the twelfth and thirteenth centuries drew upon local knowledge of the crime and the defendant.²⁷⁸ Trial by jury was an evolution of the ordeal of compurgation,²⁷⁹ thus guilt was determined by the community and the trial centred on maintaining the peace.²⁸⁰ Comprised of twelve freeholders within the hundred²⁸¹ where the crime was committed,²⁸² members of the jury were considered to be witnesses to the wrongdoing; rather than judging the merits of the case they primarily attested to the accused's character.²⁸³ Thus, the jury came to the courtroom more to speak than to listen²⁸⁴ and external witness testimony during the trial was rare.²⁸⁵ Although knowledge of the crime was not a prerequisite for jury service, with no formal system of evidence-gathering outside of the courtroom, the juries were expected to use all opportunities to discover information about the crime.²⁸⁶ This made the jury, at least to some extent,²⁸⁷ self-informing.²⁸⁸

The self-informing jury system ensured a flexible process where the guilt of the defendant rested on local values and the accused's place within the community. Determining guilt was reminiscent of the ordeal; enabling reconciliation to remain a factor in adjudication and thus limiting the desire for personal vengeance.²⁸⁹ Although

²⁷⁸ Langbein "The Origins of Public Prosecution at Common Law" (1973) 17 *American Journal of Legal History* 313-335 p.114-115.

²⁷⁹ *Supra* Olson n185 p.172, 181-182. See also Fisher "The Jury's Rise as Lie Detector" (1997) 107 *Yale Law Journal* 575-713 p.596, 601.

²⁸⁰ *Supra* Pollock n191 p.179, Olson n185 p.185-187.

²⁸¹ By this period, England was divided into shires, the legacy of which remain today. Each shire was then sub-divided into hundreds. This was roughly the amount of land that could support 100 families. The shires and the hundreds within had administrative and judicial powers over the populace, with the hundred courts dealing with the lesser crimes. See *supra* Hostettler n174 p.12, 17-18.

²⁸² Klerman "Was the Jury Ever Self-Informing?" (2003) 77 *Southern California Law Review* 123-149 p.128, Groot "The Early-Thirteenth-Century Criminal Jury" in Cockburn (ed) *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton University Press 1988) p.5, Macnair "Vicinage and the Antecedents of the Jury" (1999) 17 *Law and History Review* 537-590 p.583.

²⁸³ *Supra* Olson n185 p.181-183, *ibid* Groot p.33, *ibid* Macnair p.554, Donahue "Proof by Witnesses in the Church Courts of Medieval England: An Imperfect Reception of the Learned Law" in Arnold (ed) *On the Laws and Customs of England* (University of North Carolina Press 1981) p.151.

²⁸⁴ *Supra* Langbein n147 p.64.

²⁸⁵ *Supra* Klerman n282 p.138-143, Damaška "The Quest for Due Process in the Age of Inquisition" (2012) 60 *American Journal of Comparative Law* 919-954 p.937.

²⁸⁶ *Supra* Langbein n147 p.64.

²⁸⁷ It is possible that the juries were never entirely self-informing, see Groot "The Jury of Presentment Before 1215" (1982) 26 *American Journal of Legal History* 1-24.

²⁸⁸ *Supra* Klerman n282 p.131-132.

²⁸⁹ *Supra* Olson n185 p.177-181.

the defendant was required to prove his or her innocence,²⁹⁰ once the validity of the accusation was established, juries were often willing to deliver partial verdicts or acquit entirely if the defendant was of a good character, was accused of a first offence, or if he or she had dependants to support.²⁹¹ Indeed, McLane argues that juries were more interested in “establishing the notoriety of these habitual petty offenders than with prosecuting specific offenses they had committed”.²⁹² This was reflected in the high acquittal rate of the early juries,²⁹³ who were able to decide according to their conscience or the defendant’s remorse.²⁹⁴

Although it is clear that the jury was self-informing during the twelfth and thirteenth centuries, at some point the jury evolved into one dependant on the instructions of the court and the evidence presented to them.²⁹⁵ By the fifteenth century, records suggest that juries used evidence presented in the courtroom to adjudicate, rather than relying on their own knowledge of the crime.²⁹⁶ The demise of the self-informing jury led to a growth in power for the presiding judge, who increasingly instructed the jury about the evidence presented and the guilt of the defendant.

It is unclear how the move towards an instructional jury occurred. Langbein argues that this was the result of great social movement after the Black Death in the fourteenth century.²⁹⁷ Groot, on the other hand, suggests that the jury was always reliant on trial evidence to some extent and this reliance grew as state institutions increased their power.²⁹⁸ Regardless of the reason, it is apparent that, by-and-large, the jury ceased to identify as witnesses of the crime.²⁹⁹ By the fifteenth century the balance of power in the courtroom had shifted in favour of the trial judge who heard the same evidence as the jury and was able to draw upon his professional expertise in order to influence a verdict.

²⁹⁰ *Supra* Hostettler n174 p.56.

²⁹¹ McLane “Juror Attitudes Toward Local Disorder: The Evidence of the 1328 Lincolnshire Trailbaston Proceedings” in Cockburn (ed) *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton University Press 1988) p.47-53. See also *supra* Macnair n282 p.576-578.

²⁹² *Ibid* McLane p.49.

²⁹³ For statistics see *ibid* p.55.

²⁹⁴ See *supra* Olson n185 p.183-185.

²⁹⁵ There is evidence to suggest the demise of the self-informing jury during the thirteenth century. See *supra* McLane n291 p.56, Pugh “The Duration of Criminal Trials in Medieval England” in Ives and Manchester (eds) *Law, Litigants and the Legal Profession* (Swift Printers 1983) p.110.

²⁹⁶ *Supra* Langbein n147 p.64.

²⁹⁷ See *ibid* p.64.

²⁹⁸ *Supra* Groot n287.

²⁹⁹ *Supra* Langbein n278 p.314-315.

The Instructional Jury

As society developed, the means for jury selection changed. It was no longer practicable for jurors to be selected from within the hundred that the crime was committed. From the thirteenth and fourteenth centuries, jury members were increasingly drawn from the county as a whole, rather than from the affected community.³⁰⁰ The criteria for jury selection began to focus as much on the status of the juror as on his proximity to the crime.³⁰¹ For example, the requirement to have an annual income of at least forty shillings³⁰² ensured that the jury was comprised of the most prominent members of the wider community. As a result, they were unlikely to know the inner workings of the locality affected by the crime and role the accused played in it.³⁰³ Thus, decisions became necessarily based on the information provided to the jury in the courtroom, as directed to them by the presiding judge.

The time constraints of the travelling courts, requiring the rapid and efficient determination of a verdict, also aided the rise of the instructional jury. The timetable of the assize circuits, including travelling between the districts, allowed for approximately two days for trial hearings within each community.³⁰⁴ This timetable was inflexible³⁰⁵ meaning that the average length of the trial was between ten and twenty minutes.³⁰⁶ The rapidity of the trial would continue long into the eighteenth century, when the increased presence of counsel would slow down proceedings.³⁰⁷ The trials were often very simple and guilt was largely evident.³⁰⁸ Pugh has postulated that the short trial time also indicated that the jury were not prepared to convict a defendant whose guilt was not immediately conclusive, proving that the instructional jury were unable to supplement the evidence at court with their own knowledge.³⁰⁹ This also suggests that the instructional jury was prepared to decide according to the defendant's moral character rather than their factual culpability.³¹⁰

³⁰⁰ *Supra* Langbein n147 p.64, Lawson "Lawless Juries? The Composition and Behaviour of Hertfordshire Juries, 1573-1624" in Cockburn (ed) *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton University Press 1988) p.123.

³⁰¹ Powell "Jury Trial at Gaol Delivery in the Late Middle Ages: The Midland Circuit, 1400-1429" in Cockburn (ed) *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton University Press 1988) p.96, *supra* Lawson n300 p.123-124.

³⁰² *Ibid* Powell p.83.

³⁰³ *Supra* Lawson n300 p.123.

³⁰⁴ *Supra* Powell n301 p.82.

³⁰⁵ *Supra* Langbein n147 p.24.

³⁰⁶ *Supra* Pugh n295 p.108, 110. Langbein estimates the trial to last between 15 and 20 minutes on average *supra* n147 p.16. See also Green n191 p.109, 111.

³⁰⁷ Hostettler *The Politics of Criminal Law Reform in the Nineteenth Century* (Barry Rose 1992) p.44-45.

³⁰⁸ *Supra* Langbein n147 p.22.

³⁰⁹ *Supra* Pugh n295 p.110.

³¹⁰ *Supra* Langbein n147 p.59

Juries often sat for whole sessions, deciding on cases consecutively,³¹¹ and sometimes sitting on more than one occasion.³¹² It became common practice for defendants to be tried one after another in batches, with the jury breaking in order to determine verdicts only after hearing the pleas and evidence of several cases.³¹³ This semi-professional jury could no longer be declared self-informing, as it was highly unlikely that every jury member was aware of the circumstances of each crime and the reputation for every defendant that they heard. Indeed, one case provides a notable example of this, whereby the criminal trial had all but finished before the court realised that they were trying the wrong man.³¹⁴

The rise of the instructional jury meant that the judiciary developed greater powers to administer proceedings, impacting the role of the defendant. The judge presided over the trial, directing the jury as to the correct procedure when necessary and issuing the final judgement.³¹⁵ As the power of the presiding judge developed considerably over the course of the Middle Ages, he was expected to summarise, comment upon and advise the jury on the evidence presented.³¹⁶ Such advice included telling the jury whose evidence he found the most persuasive.³¹⁷ As such, judges had considerable authority over the court and were in a capacity to influence the verdict of an uninformed jury.³¹⁸ Judges could comment on the evidence presented and, eventually, coerce a particular verdict by demanding the reasoning behind the jury decision, which sometimes involved threatening jurors.³¹⁹

With proceedings directed by the judge, a law of evidence developed,³²⁰ long after that found in Roman-canon methods, enabling judicial distinction between decision of fact (for the jury to determine) and a decision of law (presided over by the judge). This process was gradual,³²¹ but nevertheless had a profound impact on the role

³¹¹ *Supra* Powell n301 p.84, 89.

³¹² *Ibid* p.95.

³¹³ *Supra* Cockburn n268 p.117-118, Cockburn “Twelve Silly Men? The Trial Jury at Assizes, 1560-1670” in Cockburn (ed) *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton University Press 1988) p.164-171, *supra* Green n191 p.134, 139.

³¹⁴ *Supra* Langbein n147 p.18.

³¹⁵ *Supra* van Caenegem n172 p.71.

³¹⁶ *Supra* Langbein n147 p.15, Cockburn n313 p.179, King “‘Illiterate Plebeians, Easily Misled’: Jury Composition, Experience and Behavior in Essex 1735-1815” in Cockburn (ed) *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton University Press 1988) p.291-292, Landsman “The Rise of the Contentious Spirit: Adversary Procedure in Eighteenth Century England” (1990) 75 *Cornell Law Review* 497-1426 p.499.

³¹⁷ *Ibid* Langbein p.29, *supra* Green n191 p.138.

³¹⁸ *Supra* Cockburn n272 p.114-116, 122.

³¹⁹ Discussed in more detail in the next subsection in the chapter.

³²⁰ Langbein “Historical Foundations of the Law of Evidence: A View from the Ryder Sources” (1996) 96 *Columbia Law Review* 1168-1202 p.1171.

³²¹ *Supra* Powell n301.

the defendant had at trial. A jury, reliant on information provided at court, fundamentally altered the procedural principles of the criminal trial. Described by Langbein as the “accused speaks”³²² trial, it was vital that the Medieval defendant testified in his or her defence.³²³ Indeed, trial judges actively discouraged guilty pleas, which prevented the court from hearing the oral testimony of the accused.³²⁴ This led to a long-standing prohibition against defence lawyers in the courtroom, who were deemed unnecessary to the trial, as conviction of the defendant required clear and unarguable proof.³²⁵ Judges were assumed to be a sufficient safeguard for the defendant against unscrupulous witnesses or an unfair process,³²⁶ a role that they appeared to take seriously.³²⁷ Indeed, long before the notion of a rights-bearing defendant, there was a presumption of life, resulting in ambiguous evidence, at least in theory, being interpreted in favour of the accused.³²⁸ However, the presumption of life was far from a presumption of innocence.³²⁹ One of the defining principles in the accused speaks trial is the supposition that the defendant was the best person to know the facts of the crime, having been close enough to events to be accused.³³⁰ In this way, there was a subtle and underlying presumption of guilt.

The trial at this time maintained the traditional notion of a contest between the victim and the defendant.³³¹ In a criminal process that can be described as accusatorial, the victim spoke as part of the accusation, whilst any defendant who pleaded not guilty was expected to testify directly to the jury and provide evidence as to their innocence.³³² Unlike defence witnesses, prosecution testimony was delivered under oath, lending considerable authority to the accusations.³³³ Indeed, as Cockburn asserts, judges were known to instruct the jury not to put too much weight on the unsworn testimony of the accused.³³⁴ This was exacerbated by the fact that a private prosecutor was considered to

³²² See *supra* Langbein n147 p.48-61. See also Beattie *Crime and the Courts in England, 1660-1800* (Princeton University Press 1986) p.340-341.

³²³ *Supra* Fisher n279 p.603.

³²⁴ *Supra* Langbein n147 p.19, Beattie n147 p.232.

³²⁵ *Supra* Cockburn n272 p.121, Langbein n147 p.16, Green n191 p.136.

³²⁶ *Ibid* Langbein p.28-33, Green n191 p.135, *supra* Beattie n147 p.223.

³²⁷ *Ibid* Langbein p.28-29, 31.

³²⁸ *Ibid* p.33.

³²⁹ Langbein argues that a presumption of innocence was not an established evidentiary requirement in the criminal courts until the nineteenth century. Langbein “The Criminal Trial Before the Lawyers” (1978) *The University of Chicago Law Review* 263-316 p.266.

³³⁰ *Supra* Beattie n322 p.241.

³³¹ *Supra* Langbein n147 p.13-16, Cockburn n272 p.122, Green n191 p.134-135.

³³² This was to avoid contradictory sworn testimony in the courtroom, which, it was believed, would have forced one party to perjure themselves and thus face eternal damnation. *Supra* Fisher n279 p.604-609.

³³³ *Ibid* p.604-609.

³³⁴ *Supra* Cockburn n272 p.121.

be a witness, and therefore impartial³³⁵ something that the defendant was not. Furthermore, unlike prosecution witnesses,³³⁶ defence witnesses could not be compelled to testify for the defendant.³³⁷ This was to avoid contradictory sworn testimony in the courtroom, which, it was believed, would have forced one party to perjure themselves and face eternal damnation.³³⁸ The effect of this was to provide an inherent prosecutorial bias in courtroom proceedings.

The Impact of Prosecutorial Bias on the Role of the Defendant

The prosecutorial bias in the English criminal trial was statutorily entrenched in the middle of the sixteenth century with the passage of the Marian Statutes.³³⁹ This legislation aimed to improve an investigatory deficit in English criminal law that was a consequence of the demise of the self-informing jury.³⁴⁰ With a jury unwilling to convict a defendant without conclusive proof of guilt, the demise of the self-informing jury may have created an inherent procedural advantage for the defendant.³⁴¹ Acquittals due to a lack of evidence were common and sometimes there was no trial at all.³⁴² This created a perception that crimes were going unpunished due to a reluctance to instigate proceedings by the victim.³⁴³ By extending the powers of the Justices of the Peace (JP), to investigate crimes and compel prosecutions,³⁴⁴ the statutes added an official element to the investigation of the crime and regulated the role of the private prosecutor.³⁴⁵ This had the resultant effect of entrenching the instructional jury, any residual capacity to self-inform eliminated in favour of an official investigator.³⁴⁶ The role of the jury was now officially to be the passive receiver of evidence.

These increased JP powers were limited to prosecution evidence.³⁴⁷ The accused was still required to provide evidence and witness testimony in his or her defence. The accuser, on the other hand, was now obliged to initiate the prosecution and testify at trial.³⁴⁸ Furthermore, prosecution evidence could be buttressed by the written

³³⁵ *Supra* Langbein n147 p.38.

³³⁶ *Supra* Langbein n247 p.24.

³³⁷ *Supra* Fisher n279 p.603.

³³⁸ *Ibid* p.604-609.

³³⁹ See *supra* Langbein n278 p.317-324, n247 p.5-125.

³⁴⁰ *Supra* Langbein n147 p.65.

³⁴¹ *Ibid* p.65.

³⁴² *Supra* Cockburn n272 p.127.

³⁴³ *Supra* Powell n301 p.107, Langbein n247 p.39.

³⁴⁴ *Supra* Langbein n278 p.320-322.

³⁴⁵ *Supra* Langbein n247 p.34-35.

³⁴⁶ *Ibid* p.119, *supra* Langbein n278 p.319-323.

³⁴⁷ *Ibid* Langbein n278 p.322-323.

³⁴⁸ *Ibid* p.322, *supra* Langbein n247 p.35.

documentation of the criminal investigation by the JP, although it appears that this did not occur often.³⁴⁹ This included any interviews of the accused which, crucially, did not have to be written down verbatim or even at the time of the examination,³⁵⁰ increasing the potential for prejudicial evidence against the accused. These documents represented the testimony of the investigatory JP and were included as part of the evidence against the defendant.³⁵¹ As a result, the legislation afforded greater help to the accuser, statutorily entrenching an inherent prosecutorial bias.³⁵²

There is evidence to suggest that the procedural bias against the defendant was unintentional.³⁵³ It is clear from the preamble of the statute that the legislation did not aim to alter the procedure of the criminal trial.³⁵⁴ Langbein suggests that the drafter drew upon established practice, rather than seeking to instigate a new process.³⁵⁵ Instead, the focus of the statute appeared to stem from a desire to make prosecution more effective and keep it local and cheap.³⁵⁶ Indeed, the fact that obviously guilty defendants were being tried at all was probably regarded as a substantial progression of defensive rights.³⁵⁷ Thus, it is possible that the prosecutorial bias of the sixteenth century courtroom went unnoticed by state officials.³⁵⁸

The prosecutorial bias of the criminal trial made the criminal defendant vulnerable to abuse of power and was exploited by the crown in the seventeenth century during a period of royal authoritarianism. This period saw the judge acting as “a messenger for the monarch”³⁵⁹ who had the constitutional power to dismiss judges who did not comply with royal demands.³⁶⁰ The result was the near extinction of an independent judiciary in a criminal justice system that was influenced by state authoritarianism and over-zealous criminal law.³⁶¹ By the late seventeenth century, English criminal justice was a secretive and officious procedure that resembled the inquisitorial process in many ways.³⁶² Consequently, most judges became mouthpieces

³⁴⁹ *Ibid* Langbein p.36.

³⁵⁰ *Ibid* p.17-18.

³⁵¹ *Ibid* p.36, *supra* Langbein n147 p.41.

³⁵² *Ibid* Langbein n147 p.43.

³⁵³ *Supra* Langbein n247 p.11, 26, 38-39.

³⁵⁴ *Supra* Green n191 p.110.

³⁵⁵ *Supra* Langbein n247 p.65.

³⁵⁶ *Supra* Langbein n278 p.335, n247 p.43-44.

³⁵⁷ *Supra* Langbein n147 p.65.

³⁵⁸ *Ibid* p.65.

³⁵⁹ Landau *The Justices of the Peace, 1679-1760* (University of California Press 1984) p.47.

³⁶⁰ *Supra* Cockburn n272 p.227-230, 249.

³⁶¹ *Supra* Langbein n147 p.80-81.

³⁶² *Supra* Damaška n285 p.936-940, Vogler n147, Langbein n147.

for the crown, destroying public confidence in judicial impartiality.³⁶³ Judges and juries who issued verdicts that ran contrary to the will of the crown could be investigated and punished.³⁶⁴

The procedural reliance on an active judge³⁶⁵ meant that the bench was in a prime position to extort verdicts from the jury. When necessary judges demonstrated willingness to pressure the jury to return a particular verdict.³⁶⁶ Judges who did not wish to accept a jury verdict could question each juror individually as to the reason behind their decision.³⁶⁷ Juries who deliberated for an undue length of time were denied food, drink, candles and fires until a verdict was reached.³⁶⁸ There is also evidence that the jurors were visited by the sheriff during deliberations and spoken to “very vehemently”.³⁶⁹ During one notable trial of a group of Catholics, led by Richard White, the jury asked the judge “whom they should acquit and whom they should find guilty”.³⁷⁰

The exertion of royal pressure on the judiciary was facilitated by the now notorious Star Chamber.³⁷¹ With the guilt of the defendant at Star Chamber presumed,³⁷² the royal prerogative, which operated outside the common law principles, was used in order to sanction torture to obtain confessions and implicate other suspects. This was something that Blackstone described as a political rather than a judicial tool, arguing that “the rack ... [was] used as an engine of the state not of the law”.³⁷³ Regardless of the legal niceties and technicalities justifying its use, it cannot be forgotten that torture was applied to English defendants, something that undoubtedly had an impact on the wider trial process.³⁷⁴

The power imbalance between the prosecutor and the criminal defendant was starkly illustrated in a series of treason trials in the late seventeenth century. The increasing use of constructive treason meant that the scope of the crime could be expanded to suit the charge against a political defendant, rendering it very difficult for

³⁶³ *Supra* Cockburn n272 p.230-236.

³⁶⁴ Hostettler *Politics of Punishment* (Barry Rose 1994) p.66, *supra* Green n191 p.141.

³⁶⁵ *Ibid* Green p.138.

³⁶⁶ See *supra* Cockburn n272 p.248, Cockburn n313 p.159.

³⁶⁷ *Supra* Green n191 p.140.

³⁶⁸ Bellamy *The Tudor Law of Treason* (Routledge and Kegan Paul 1979) p.168. See also *ibid* p.140.

³⁶⁹ *Ibid* Bellamy p.169.

³⁷⁰ *Ibid* p.169.

³⁷¹ *Supra* Hostettler n364 p.68.

³⁷² *Supra* Landsman n316 p.507.

³⁷³ Blackstone *Commentaries on the Laws of England*, vol 2 (J. B. Lippincott Company 1893) p.325-326.

³⁷⁴ *Supra* Vogler n147 p.202-204.

the accused to establish a defence.³⁷⁵ The defendant was not able to see the indictment, nor were they able to compel witnesses to testify at trial.³⁷⁶ The most prominent criticism of the treason trial was the prohibition of defence counsel, which, it was argued, compounded the prosecutorial bias.³⁷⁷ Henry Cornish described the difficulty in understanding the technicalities of his trial in 1685. When asked by the court why there were no defence witnesses Cornish replied: “My Lord, I did not understand the case ... I am not a lawyer, I am not skilled in these things”.³⁷⁸ The broad scope of constructive treason, coupled with a lack of procedural safeguards created a defendant that was highly vulnerable to conviction. The prohibition against defence lawyers was particularly notable in treason trials as the crown invariably hired prosecution counsel, who were permitted to advocate during trial.³⁷⁹

Royal persecution of the Whigs led to repeated calls for the reform of the procedure of a treason trial. Abuse of royal power had ensured the conviction and execution of a series of defendants who had been accused of treason, but were probably innocent.³⁸⁰ Eventually, the Treason Trials Act was passed in 1696, providing the first example of a rights-bearing defendant, protected by criminal procedure against state abuse of power in the courtroom. The Treason Trials Act aimed at redressing the procedural imbalance for defendants accused of treason. For the first time in criminal history, defence counsel were sanctioned to represent the accused in certain trials. Furthermore, the Act recognises in its preamble that an individual accused of treason may be innocent. Whilst this stops short of a presumption of innocence, it was a first step to conceding that the courtroom procedure was not infallible and that safeguards were necessary to protect the defendant. The Act established that the underlying principle in treason trials should be equality of arms, rather than deference to the monarch. The defendant in these rare cases was now entitled to a number of pre-trial rights, such as being able to see the indictment, that embraced this new equality.

It is tempting to highlight the 1696 Act as the first step towards the procedural revolution that was to take place over the course of the next century. However, the defendant’s role in felony trials remained unchanged by the Treason Trials Act. Trials

³⁷⁵ Phifer “Law, Politics, and Violence: The Treason Trials Act of 1696” (1980) 12 *Albion: A Quarterly Journal Concerned with British Studies* 235-256 p.237, Shapiro “Political Theory and the Growth of Defensive Safeguards in Criminal Procedure: The Origins of the Treason Trials Act of 1696” (1993) 11 *Law and History Review* 215-255 p.221.

³⁷⁶ *Supra* Langbein n147 p.83-84.

³⁷⁷ *Ibid* p.84-86.

³⁷⁸ *Supra* Shapiro n375 p.224.

³⁷⁹ *Supra* Langbein n147 p.84.

³⁸⁰ *Ibid* p.68-78.

for the felon maintained its prosecutorial bias long into the eighteenth century, with defence council still officially barred from the courtroom until 1836 and where a general presumption of guilt still prevailed.³⁸¹ A universal concept of equality of arms did not yet exist and the elite reformers, who had vociferously voiced the shortcomings of criminal justice procedure for trials of treason, did not expand the debate to include felons.³⁸² Those accused of a felony crime were still prohibited access to counsel in court under the accused speaks trial and the verdict of the instructional jury.

The Impact of the Jury on the English Criminal Defendant

The English retention of the jury trial meant that the defendant could be convicted on circumstantial proof, juror bias and even hunches.³⁸³ Only the worst criminals in the Roman-canon procedure could be sentenced in such a manner, without any form of proof-taking.³⁸⁴ Moreover, lay judges could choose to formulate the evidence based on their personal convictions and many partial verdicts were delivered as a result of a loose interpretation of the facts.³⁸⁵ The line between law and fact, which was distinct in the Roman-canon method, was blurred in the English jury verdict. In this way, the jury could decide on factual culpability over legal liability, granting English criminal justice flexibility in deciding guilt according to a range of communal and individual factors.³⁸⁶ In particular, lay judges were able to give merciful decisions.³⁸⁷ As a result, the defendant had a central role in the criminal trial as a jury was not able to decide whether to mitigate a verdict without first hearing the testimony of the accused. The role of the jury and the English procedural interpretation of guilt ensured the continuation of the defendant's presence at the trial, something that was increasingly considered unnecessary in the Roman-canon method.

The ethos of the criminal trial throughout the sixteenth and seventeenth centuries centred on the notion of "just deserts".³⁸⁸ As part of this, a capital sentence

³⁸¹ Smith "Did the Presumption of Innocence Exist in Summary Proceedings?" (2005) 23 *Law and History Review* 191-199. For examples of the difficulties with this presumption in relation to property crimes see Thompson *Whigs and Hunters: The Origin of the Black Act* (Penguin Books 1985) p.211-212.

³⁸² In a historical anomaly, defence counsel were permitted to represent defendants of misdemeanours. However, in trials where the sanction was not capital, counsel was rarely hired. See *supra* Hostettler n174 p.97.

³⁸³ *Supra* Olson n185 p.190.

³⁸⁴ *Supra* Damaška n285 p.937.

³⁸⁵ *Supra* Lawson n300 p.119.

³⁸⁶ For example, McLane considers the possibility that the fourteenth century jury acquitted defendants who were facing a death sentence *supra* n291 p.58.

³⁸⁷ *Supra* Olson n185 p.174, *ibid* McLane p.58.

³⁸⁸ *Supra* Green n191 p.149.

was reserved only for those defendants considered beyond hope of salvation.³⁸⁹ The need to assess a defendant's morality entrenched the need for the accused to speak and limited defensive safeguards. The transformation of the self-informing jury into an instructional one, subtly shifted the focus of the criminal trial from the reconciliation of the parties to the regulation of immoral behaviour.³⁹⁰ It also created a greater reliance on courtroom personnel, giving judges considerable power over proceedings. Although the rapidity of the criminal trial meant that it was highly unlikely that the judge used their authority over the courtroom to aggressively direct the jury,³⁹¹ during an increased period of authoritarianism, in the time of the late Stuarts, the judiciary used their power in the courtroom to dictate the outcomes of trials. The treason trials of the late seventeenth century starkly highlighted the vulnerability of the defendant as a result of the prosecutorial bias and judicial deference to the crown. The first forms of defensive protections were instigated through the Treason Trials Act in 1696. Although the defensive protections of the Treason Trials Act were limited to the very rare crime of treason, it was the first example of a rights-bearing defendant. As has been noted, however, it was only the defendant accused of treason that was considered rights-bearing. The notion of a universal rights-bearing defendant developed over the course of the subsequent century as a result of the increasing presence of defence counsel, who persistently questioned the legal traditions that had resulted in a prosecutorial bias and facilitated the adversarial methodology.

Section Four: Adversariality

Some of the defining characteristics of the English criminal justice system were established during a procedural transformation in the criminal courts, in particular at the Old Bailey, during the eighteenth century.³⁹² At the heart of the adversarial procedure was an acknowledgment of the power imbalance between the state and the defendant and thus the need to protect the accused in the criminal trial.³⁹³ Influenced by Enlightenment thinking, it was recognised that criminal verdicts should only come from an impartial court and be made in public.³⁹⁴ One of the prevailing characteristics of the adversarial criminal trial is the presence of lawyers. Evidence shows that defence

³⁸⁹ *Supra* Beattie n322 p.421-423.

³⁹⁰ *Ibid* p.421-422.

³⁹¹ *Supra* Lawson n300 p.140.

³⁹² Langbein "Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources" (1983) *The University of Chicago Law Review* 1-136 p.2.

³⁹³ *Supra* Vogler n147 p.130.

³⁹⁴ *Ibid* p.130.

counsel started to appear in felony trials from the 1730s, with their activity in the courts steadily increasing throughout the century. Due to poor record keeping during this time,³⁹⁵ it is difficult to establish conclusively why defence counsel were permitted into the courtroom in the first place; the accused speaks trial ensured a long-standing prohibition of defence counsel for felony trials. Nevertheless, their presence had a profound impact on the defendant and how their criminal trial was conducted.

The adversarial criminal procedure in the eighteenth century drastically changed the concept of the defendant and did much to address the long-standing procedural imbalance of the trial. As Beattie describes, “defense counsel ... clearly pushed harder ... and became more actively committed to their clients’ interests, and more challenging of the rules under which they were allowed to work”.³⁹⁶ The introduction of due process safeguards, such as the presumption of innocence and the beyond reasonable doubt standard of proof,³⁹⁷ placing the evidentiary burden on the prosecution, can be attributed, at least in part, to the presence of defence counsel in the courtroom.³⁹⁸ This was a remarkable feat for a profession which, until 1836, was reliant on judicial discretion to allow them to represent their clients in the courtroom.

The presence of lawyers in the criminal trial effectively silenced the defendant. The accusatorial trial, requiring the vocal testimony of the accused, gave way to the adversarial trial, a procedure characterised by the dominance of lawyers. The emphasis of the adversarial criminal trial is on delivering the most effective argument to the judge and jury in order to secure the necessary verdict.³⁹⁹ This has led the adversarial method to be described as a contest between the two parties, where their lawyers are locked in a “verbal battle” in a form of “ritualised aggression ... in pursuit of ... winning the case”.⁴⁰⁰ Thus, lawyers have also contributed to some of the worst characteristics of the adversarial process.

Lawyers are primarily concerned with winning their case, perpetuating the evidentiary shortfalls of the English criminal trial. Unlike the inquisitorial process, which established a sophisticated evidentiary procedure, partisan advocates have little

³⁹⁵ Although it became increasingly systematic and impartial throughout the eighteenth century, for analysis of this see *supra* Langbein n392 p.3-36.

³⁹⁶ *Supra* Beattie n147 p.229.

³⁹⁷ The records are inconclusive as to the exact role that defence counsel played in facilitating this standard of proof however Langbein states that “at a minimum ... the presence of defense counsel was a force for consistency, as in the development of the law of evidence, helping transform judicial practice into an expectation of routine that would become a rule of law” *supra* n147 p.265.

³⁹⁸ *Ibid* p.258-266.

³⁹⁹ Kessel “Adversary Excesses in the American Criminal Trial” (1991) 67 *Notre Dame Law Review* 403-551 p.435-437, 442.

⁴⁰⁰ *Ibid* p.435.

incentive to divulge information to their opponents, particularly if it weakens their case. Thus, a successful outcome can depend entirely on the skill of the lawyers at trial. This has resulted in something that Langbein describes as the “wealth effect”, whereby wealthy parties have a significant advantage in the criminal trial by hiring skilled counsel and even paying for their own pre-trial investigation.⁴⁰¹

It is unclear exactly why lawyers for the accused were introduced into the courtroom. Langbein has argued that defence counsel had prosecutorial origins, which created a procedural imbalance that judges sought to mitigate by loosening the prohibition of advocates for the accused in the courtroom.⁴⁰² Vogler, on the other hand, suggests that the rise in lawyers in the criminal trials was a result of an increasingly market-driven society, facilitated by the Industrial Revolution.⁴⁰³ What is certain is that there was no clear policy in the eighteenth century to introduce defence counsel to all defendants, or to instigate what would be a drastic procedural transformation.⁴⁰⁴ Despite the clear departure from long-standing criminal procedure, such a change was not initiated by legislation. Indeed, legislative inclusion of defence counsel in the criminal trial was not seen until the passage of the Prisoner’s Counsel Act in 1836, a century after they were first seen at trial. Regardless of the logic behind the introduction of counsel for the accused, it is clear that they played a significant role in altering English criminal justice.

The development of the adversarial methodology changed the focus of the criminal trial from the accused to their counsel. Lawyers dominated the adversarial courtroom, silencing the accused. With no legislative authority for their presence during trial, the fact that defence counsel were allowed in the felony trial in the eighteenth century at all, after centuries of prohibition, was a remarkable departure from traditional conventions of criminal justice. Initially their range of activities during trial was severely restricted. The judiciary was unwilling to allow counsel to alter the accused speaks trial.⁴⁰⁵ Lawyers were permitted to cross-examine witnesses and raise points of law,⁴⁰⁶ however they were unable to directly address the jury or argue against facts put in evidence.⁴⁰⁷ This had significant implications for the defendant who was still

⁴⁰¹ *Supra* Langbein n147 p.21-22, 102-103.

⁴⁰² *Ibid* p.167-177. See also *supra* Beattie n147 p.224.

⁴⁰³ *Supra* Vogler n147 p.131, 140-141.

⁴⁰⁴ *Supra* Landsman n316 p.502.

⁴⁰⁵ *Supra* Beattie n147 p.230-231.

⁴⁰⁶ *Supra* Landsman n316 p.534.

⁴⁰⁷ *Supra* Beattie n147 p.231.

expected to provide his or her own defence and was not permitted to remain silent and allow counsel to speak on their behalf.⁴⁰⁸

The accused had to put forward their own defence, to bring forward their own witnesses, and provide any evidence that might indicate their innocence.⁴⁰⁹ Although the defendant technically had a right not to speak in court, as Langbein bluntly states, “the right to remain silent when no one else can speak for you is simply to slit your throat”.⁴¹⁰ That the defendant spoke in their defence was an important consideration in relation to the chances of being acquitted by the jury and enabled the judge to exercise his wide powers of discretion.⁴¹¹ As has been noted, the jury underpinned the English criminal trial and had the ability to make judgements based on the defendant’s character,⁴¹² the nature of the crime, and other mitigating factors. However, this was impossible to do without hearing the defendant’s direct plea. By the end of the eighteenth century this had drastically changed, with defendants increasingly asserting that arguments will be left to their counsel.⁴¹³

The Influence of Defence Counsel

Over the course of the century the impact of defence counsel on the criminal trial was profound. Although severely restricted in their capacity as advocates, defence counsel were able to cross-examine witness testimony in court, something which they seized upon.⁴¹⁴ Defence counsel had obvious incentives to challenge any and all evidence against their client, and to utilise strategy in order to win the case.⁴¹⁵ Over time they transformed the criminal trial from a brief and often bewildering experience for the defendant, into a zealous and combative process⁴¹⁶ whereupon two “gladiators” were pitched against one another in a verbal battle.⁴¹⁷ Defence counsel were able to object to the inclusion of certain forms of proof and, as a result, discredit hearsay and

⁴⁰⁸ *Supra* Beattie n322 p.360, Langbein n392 p.129-130. See also Smith “The Presumption of Guilt and the English Law of Theft, 1750-1850” (2005) 23 *Law and History Review* 133-171 who argues that there was a presumption of guilt in English criminal courts at this time.

⁴⁰⁹ *Supra* Beattie n147 p.230-231.

⁴¹⁰ Langbein “The Historical Origins of the Privilege Against Self-Incrimination at Common Law” (1994) *Michigan Law Review* 1047-1085 p.1054.

⁴¹¹ *Supra* Beattie n147 p.231, *ibid* p.1064.

⁴¹² When information about the defendant’s character was not provided, the jury was known to occasionally ask for it *supra* Langbein n329 p.305.

⁴¹³ *Supra* Langbein n147 p.266-273.

⁴¹⁴ *Supra* Landsman n316 p.535.

⁴¹⁵ *Ibid* p.531, 560.

⁴¹⁶ *Ibid* p.543, Feeley “Legal Complexity and the Transformation of the Criminal Process” *Sbjektivierung des Justiziellen Beweisverfahrens* (Vittorio Klistermann 1994) p.359.

⁴¹⁷ *Supra* Beattie n147 p.247.

circumstantial evidence against their client.⁴¹⁸ More significantly, defence counsel repeatedly questioned legal practices that disadvantaged the defendant, highlighting the procedural imbalance of the criminal trial by becoming increasingly sardonic and passionate in their remarks.⁴¹⁹ This constant and forceful challenge of legal norms represented a growing confidence in the defence lawyer and undoubtedly had an effect, over time, on the attitude of the courtroom. Beattie argues that this constant challenging of the procedural status quo had a profound impact on the legal debates and demands for reform outside of the courtroom. “The insistent examination by defense counsel of the prosecution witnesses, the casting doubt on the truth of the evidence and on the motives of those that brought it, encouraged a more skeptical habit of mind toward the prosecution”.⁴²⁰ In the early eighteenth century there were very few pamphlets discussing the criminal trial of the felon.⁴²¹ By the early nineteenth century, however, the literature on the subject was “substantial”.⁴²²

By their very nature, pushing at boundaries, challenging evidence and questioning established criminal procedure, the defence counsel played a significant role in establishing fundamental safeguards for the accused.⁴²³ The development of rules of evidence, instigated by defence counsel altered the role of the judge, who were still expected to ensure the integrity of the trial during the early eighteenth century. Judges continued to frequently question witnesses and comment upon the evidence presented to the jury.⁴²⁴ However, by championing their client, defence counsel had greater incentive than the bench to rigorously question the prosecution’s evidence, lacking such incentive, the judiciary normally took evidence presented in court at face value.⁴²⁵

A handful of lawyers, such as the prominent William Garrow,⁴²⁶ who was marked by his preference for defence advocacy,⁴²⁷ through their vigorous cross-examination, attacked the credibility of evidence against their client. Counsel capitalised on the limited rights they had in the courtroom to gain acquittals. They also

⁴¹⁸ *Supra* Landsman n316 p.565-572, Feeley n416 p.372-373.

⁴¹⁹ *Ibid* Landsman p.536, p.538.

⁴²⁰ *Supra* Beattie n147 p.235.

⁴²¹ See Shapiro “To a Moral Certainty: Theories of Knowledge and Anglo-American Juries 1600-1850” (1986) 38 *Hastings Law Journal* 153-193.

⁴²² *Supra* Beattie n147 p.233.

⁴²³ *Ibid*.

⁴²⁴ *Supra* Beattie n322 p.342-343. See also Langbein n392 p.126-127.

⁴²⁵ *Supra* Beattie n147 p.233.

⁴²⁶ Both Beattie and Landsman (*supra* n316) single William Garrow for comment, Beattie “Garrow for the Defence” (1991) 41 *History Today* 49-53.

⁴²⁷ Beattie remarks that 83 per cent of Garrow’s cases in his first three years at the Old Bailey were advocating for the defence *supra* Beattie n147 p.238.

demonstrated an aptitude for courtroom manipulation, by playing on the prejudices of the jury.⁴²⁸ The willingness of this small minority of advocates to directly challenge courtroom practices paved the way for some of the most important defensive safeguards. By the early 1780s, judges were advising juries that they must decide “whether there is sufficient evidence for you to be sure ... [of the prisoner’s guilt] without any hesitation or doubt”.⁴²⁹ The defendant’s presumption of innocence, and the notion of equality of arms, can be directly attributed to the work and legal arguments of these lawyers.⁴³⁰ Indeed, the increased rigour in criminal trials in the latter half of the eighteenth century led some commentators to complain that the balance had tilted too far in favour of the defendant.⁴³¹

Significantly, towards the end of the eighteenth century, defendants and private prosecutors were predominantly silent, leaving the advocacy of their case to their counsel.⁴³² Verdicts were increasingly given based on strong evidentiary principles which were rigorously cross-examined.⁴³³ The increase in the presence of lawyers in the criminal trial facilitated the advent of the concept of a rights-bearing defendant that was central in the justice process. However, the character that took centre stage in this methodology was invariably the lawyer. By the start of the nineteenth century, the prominence of the criminal lawyer necessitated a permanent change to criminal justice proceedings.⁴³⁴ The growth of defence counsel present in the criminal trial initiated the development of adversarial criminal procedure, what is extraordinary is the fact that this presence directly contravened the long-standing accused speaks legal tradition. Furthermore, the growth in lawyers demonstrates how easy it is to drastically alter the criminal trial, irrespective of previous long-standing traditions. Because this can facilitate better understanding of the potential impact of social media on the criminal trial, it is worth devoting some time to considering what we know about the inclusion of defence counsel.

⁴²⁸ *Ibid* p.239-244, *supra* Landsman n316 p.553-555.

⁴²⁹ Quoted in *ibid* Beattie p.249.

⁴³⁰ Gallanis “The Mystery of Old Bailey Counsel” (2006) 65 *Cambridge Law Journal* 159-173 p.163. See also *supra* Langbein n410, n329, Beattie n147 p.248-249.

⁴³¹ *Ibid* Beattie p.375.

⁴³² *Supra* Landsman n316 p.557.

⁴³³ *Supra* Feeley 416 p.356.

The Rise in Defence Counsel

We do not know for certain exact numbers of counsel (for either side). Trial reports, particularly at the beginning of the century, were piecemeal and sporadic,⁴³⁵ rarely mentioning the presence of lawyers. However, there are instances when the reports suggest cases where one of the parties benefitted from representation. As Beattie notes, “a pattern of persistent questioning”⁴³⁶ indicates the presence of a lawyer, despite the fact that they were not mentioned in court reports.⁴³⁷ Counsel were notably being used in criminal proceedings from around 1730,⁴³⁸ albeit subject to stringent restrictions.⁴³⁹ By the turn of the century they had become “familiar figures at the assizes” even though they only “appeared in a minority of cases”.⁴⁴⁰ Beattie’s collection of data in this area shows that there was a significant increase in defence counsel in the decade between 1775 and 1785. Only two per cent of those tried for felonies had a lawyer present at their trial in 1775. This had changed within a decade; by 1786 20.2 per cent accessed counsel, double the number of prosecutorial lawyers present, in 10.9 per cent of trials. This apparent increase in the use of counsel could be explained by the more detailed and thorough reporting of criminal trials in the latter half of the eighteenth century. However, Beattie contends that it is simply more likely that there were more lawyers in the courtroom at this time. The numbers are too large to be explained by better reporting, moreover the rise of counsel continued after the improvement in criminal reporting, suggesting that the two are not linked.⁴⁴¹

Table 1: Counsel at the Old Bailey

Year	Total no. of cases	No. of cases with counsel		Percent of cases with counsel	
		Prosecution	Defence	Prosecution	Defence
1740	422	13	2	3.1	0.5
1745	332	6	18	1.8	5.4
1750	563	3	6	0.5	1.1
1755	336	10	20	3.0	6.0
1760	436	7	19	1.6	4.4
1770	578	5	12	0.9	2.1
1775	620	5	13	0.8	2.1
1780*	451	17	33	3.8	7.3
1782	612	44	78	7.2	12.8
1784	1011	80	178	7.9	17.6
1786	902	98	182	10.9	20.2
1788	748	66	108	8.8	14.4
1790	795	78	158	9.8	19.9
1795	546	89	200	16.3	36.6
1800	813	172	227	21.2	27.9

*Excluding cases arising from the Gordon Riots
From *Old Bailey Sessions Papers*⁴⁴²

⁴³⁴ *Supra* Landsman n316 p.601, Beattie n147 p.250.

⁴³⁵ See *supra* Langbein n410, n324 p.264-277.

⁴³⁶ *Supra* Beattie n147 p.226.

⁴³⁷ See also *supra* Langbein n392 p.124-125.

⁴³⁸ *Supra* Beattie n147, Landsman n316 p.502, 533.

⁴³⁹ *Ibid* Beattie p.221, *ibid* Landsman p.534. See also *supra* Langbein n329 p.311-312.

⁴⁴⁰ *Ibid* Beattie p.221-222.

⁴⁴¹ *Ibid* p.228-229.

⁴⁴² *Ibid* p.227.

The figures highlighted in the table above indicate that defendants became progressively more likely to hire counsel over the course of the eighteenth century. Prosecutors were not similarly represented by lawyers,⁴⁴³ probably due to the expenses involved.⁴⁴⁴ It is possible that the prosecutorial bias of felony trials facilitated this rise in hiring defence lawyers. A defendant whose life was at stake, prosecuted through an unequal criminal procedure, was likely to see the importance in hiring representation. The prosecutor, represented by the crown and supported by the state in the investigation, would probably see little need to hire a lawyer.⁴⁴⁵ However, by the end of the eighteenth century the numbers of lawyers on both sides began to equalise, the rise in defence counsel saw a need for the prosecution to also seek representation.⁴⁴⁶ It is important, however, not to overstate the increase in representation, as lawyer's costs remained a barrier for many defendants. Indeed, consideration of the above table shows that, even by the turn of the century where lawyers were "common enough to become familiar figures in felony trials",⁴⁴⁷ defence counsel were present in just over a quarter of criminal cases (27.9 per cent) whilst the prosecutor was represented in just under a quarter of cases at 21.2 per cent.⁴⁴⁸ Nevertheless, the increase in hiring of counsel, even in a minority of cases, demonstrates how small changes to established methods can have a significant impact on criminal procedure. It is possible that social media can have a similar impact today. It is possible that any erosion of the presumption of innocence, even for those defendants captured red-handed by eyewitness footage could have a snowball effect on the erosion of due process.

Whilst there is a clear increase in representation throughout the eighteenth century, ascertaining exactly why lawyers were allowed into the courtroom, breaking with longstanding tradition, is more difficult. A lack of reliable and detailed documentation of eighteenth century courtroom proceedings makes it impossible to conclusively establish the reasons behind the change in behaviour and attitudes towards the use of lawyers in the criminal trial. A variety of factors are said to have contributed to the courts' willingness to allow defence counsel access to their client at trial. It may have helped, as Vogler contends, that the criminal courts were influenced by the procedural transformation occurring in the civil law courts as a result of the Industrial

⁴⁴³ *Supra* Feeley n416 p.340-341.

⁴⁴⁴ *Supra* Beattie n147 p.229.

⁴⁴⁵ *Ibid* p.229.

⁴⁴⁶ *Supra* Landsman n316 p.547-548.

⁴⁴⁷ *Supra* Beattie n147 p.226.

⁴⁴⁸ *Ibid* p.227.

Revolution.⁴⁴⁹ In the seventeenth and early eighteenth century, there was little financial incentive for lawyers to campaign for access to the criminal courtroom.⁴⁵⁰ The hiring of lawyers in the more fluid civil courts, on the other hand, was “merely a prudent means of protecting an investment”.⁴⁵¹ Criminal reform campaigners⁴⁵² often failed to distinguish between the civil and criminal procedures,⁴⁵³ blurring the reform arguments and effectively making them applicable to both jurisdictions. The changing nature of society and commerce in the late seventeenth and eighteenth centuries saw a financial benefit in allowing defence counsel access to the courtroom. In contrast, Beattie has argued that the relaxation of the prohibition against defendants indicted for treason exposed the judiciary (if not the felon) to defence counsel, who in turn highlighted the inherent prosecutorial bias.⁴⁵⁴ This, it has been suggested, became increasingly untenable as the judiciary saw the stark contrast between the trials for felons and those accused of treason.⁴⁵⁵

Regardless of why defence counsel were introduced, once able to represent their clients in (a small minority of) felony trials, they highlighted, and sought to address, the procedural imbalance in the criminal trial. The increase in thief-takers during the eighteenth century, for example, who sought rewards for suspects they indicted, starkly highlighted how the lack of procedural safeguards could result in the conviction of innocent defendants.⁴⁵⁶ The pervasive nature of capital punishment, entrenched in the Bloody Code,⁴⁵⁷ added to the perceived unfairness of the criminal trial. However, the restrictions placed on the activities of defence counsel in the courtroom clearly illustrate that the judiciary’s relaxation of the prohibition was not intended to result in the substantial altering of the accused speaks trial.⁴⁵⁸

Although largely instigated by lawyers in the eighteenth century, procedural change in the criminal courts was slow. It is possible that the bench was “lulled ... into inaction until the lawyers had become entrenched”.⁴⁵⁹ Certainly, the slow pace ensured that the judiciary were unable to react effectively to stop the change. As a result of the

⁴⁴⁹ *Supra* Vogler n147 p.141.

⁴⁵⁰ *Supra* Landsman n316 p.508.

⁴⁵¹ *Supra* Vogler n147 p.140.

⁴⁵² Such as the Levellers in the seventeenth century and the Wilkites in the eighteenth century.

⁴⁵³ *Supra* Green n191 p.372.

⁴⁵⁴ *Supra* Beattie n147 p.224.

⁴⁵⁵ *Ibid* p.224, *supra* Langbein n392 p.133. Although note Vogler’s disagreement on p.140-144 n147.

⁴⁵⁶ Landsman describes the rise in thief catchers “one of the most important reasons for the expansion of the role of counsel” p.579. *Supra* n316, Langbein n392 p.110-114.

⁴⁵⁷ Discussed above.

⁴⁵⁸ Indeed, judicial requirement that the accused spoke in their defence continued long after the introduction of defence counsel. See *supra* Langbein n147 p.266-273.

⁴⁵⁹ *Ibid* p.255.

pushing of procedural boundaries by lawyers, the felony defendant eventually came to be seen as rights-bearing and the criminal trial was considered to be an important protection against arbitrary punishment. The verdict was no longer based on the deservedness of the accused but, rather, was influenced by the arguments of counsel as presented to the jury. By the turn of the nineteenth century the accused speaks trial was diminishing. Although defendants without representation were still required to attest to their innocence, the adversarial trial saw the growing dominance of the lawyers and the subsequent silencing of the accused. As Cottu pointed out, “a hat on a pole would serve for the defendant in an English trial process”.⁴⁶⁰ Ironically the rights-bearing defendant resulted in the dominance of procedural and evidentiary rules and the demise of a criminal verdict based on the personal characteristics of the accused.

What is remarkable is that this procedural revolution came about seemingly unnoticed by courtroom personnel and political elites until it was too late to change it. What had begun as a judicial attempt to address the procedural imbalance in some limited cases, developed into a procedural revolution that simultaneously silenced and protected the accused.

The Entrenchment of the Adversarial Process

The adversarial procedure was not formally endorsed until the nineteenth century, after a prolonged campaign to statutorily ensure the courtroom presence of defence counsel. The rationale for adversariality stemmed from the criminal reform debates of the Victorian era, which legislatively consolidated the procedural transformation of the eighteenth century.⁴⁶¹ Public support for changing criminal procedure during this time was low and the law reform debates were instigated by Whig politicians and those opposed to capital punishment.⁴⁶² Creating a statutory right for defence counsel to represent their clients in the courtroom was discussed several times in the 1820s, but all of the proposed bills were defeated.⁴⁶³ MPs opposed to the legislative sanction of defence counsel in the criminal trial argued that such an introduction would conclusively erode the accused speaks trial, illustrating the endurance of English criminal justice tradition.⁴⁶⁴

⁴⁶⁰ Quote in *supra* Vogler n147 p.148.

⁴⁶¹ *Supra* Vogler n147 p.146.

⁴⁶² *Ibid* p.146.

⁴⁶³ *Supra* Hostettler n307 p.45-47, Beattie n147 p.250, Vogler n147 p.144, Bentley *English Criminal Justice in the Nineteenth Century* (The Hambledon Press 1998) p.105-108.

⁴⁶⁴ *Ibid* Hostettler p.46.

The scope of debates for criminal justice reform in Parliament in the 1830s broadened considerably, largely due to the efforts of William Ewart, who proposed wide ranging reforms, including the abolition of capital punishment, on several occasions.⁴⁶⁵ By the mid-1830s, voices supporting procedural change of the criminal trial were increasing. Many noted the inefficiencies of the current criminal justice system and there was a belief that enabling defence counsel to address the jury would help to resolve this, allowing a greater equality of arms between the parties in the courtroom.⁴⁶⁶ The legislative reform movement was supported by legal experts,⁴⁶⁷ in particular the Criminal Law Commission who saw defence counsel as an important safeguard for the accused.⁴⁶⁸ In 1836, felons were finally afforded the statutory right to defence counsel who were empowered to address the jury directly and offer observations on the evidence.⁴⁶⁹ The criminal trial had officially become professional.⁴⁷⁰

The passage of the Prisoner's Counsel Act (1836) legislated on some significant defensive safeguards, such as the presumption of innocence, that are the cornerstones of the adversarial principle today.⁴⁷¹ Dependant on the legal expertise of their counsel, the defendants' role in the criminal trial was vocalised by their defence counsel. The accused, whose character and personal circumstances had been central to the English criminal justice system, became hidden behind legal and evidentiary rules and principles. There was a growing debate in the middle of the nineteenth century about protecting the defendant from incriminating his or herself in the courtroom.⁴⁷² Provisions such as the Indictable Offences Act in 1848, which granted the defendant the right to silence and the 1873 Metropolitan Police Regulations, prohibiting any attempt by the police to force a confession from a suspect,⁴⁷³ made accessing a lawyer increasingly necessary in order to understand proceedings, let alone successfully arguing a defence in court. Thus, the silence of the accused became statutorily underpinned in the nineteenth century, marginalising the role of the defendant and further championing their lawyer. The demise of the accused speaks trial was complete.

Despite the growing need to hire counsel to help navigate the increasingly complex evidentiary rules of the criminal trial, the legislative reform did little to address

⁴⁶⁵ *Supra* Beattie n147 p.251.

⁴⁶⁶ *Ibid* p.256.

⁴⁶⁷ But not the bar, who were "notorious for their conservatism". *Supra* Bentley n463 p.107.

⁴⁶⁸ *Supra* Hostettler n307 p.47-49.

⁴⁶⁹ Langbein "The Prosecutorial Origins of Defence Counsel in the Eighteenth Century: The Appearance of Solicitors" (1999) 58 *The Cambridge Law Journal* 314-365 p.318.

⁴⁷⁰ *Supra* Vogler n147 p.145.

⁴⁷¹ *Ibid* p.138-139.

⁴⁷² *Ibid* p.147.

the problem of wealth imbalance which characterises the adversarial methodology.⁴⁷⁴ Lawyers were progressively becoming a prominent and necessary feature in the criminal trial, yet just over a quarter of defendants had representation, with many simply too poor to hire counsel.⁴⁷⁵ This did not go unnoticed by reformers, and a provision enabling legal aid for defendants appeared in all prisoner counsel bills debated in the early nineteenth century, including the bill of 1836. However, every legal aid provision contained in a reform bill was eliminated during Parliamentary readings.⁴⁷⁶

By the middle of the nineteenth century, judges, recognising these evidentiary changes, began to assign lawyers to defendants who were considered in need of representation.⁴⁷⁷ History has illustrated the precariousness of leaving important defensive safeguards to the bench and this provision was no exception. Indeed, in practice only defendants accused of murder were regularly assigned counsel, a privilege frequently denied to suspects in cases where the outcome was deemed obvious by the judge.⁴⁷⁸ It was not until the turn of the twentieth century and the passage of the Poor Prisoner's Defence Act in 1903, that a statutory scheme of legal aid was implemented. It appears that a significant impetus for this reform movement was the silencing of the accused, which culminated in the right (but not compulsion) to testify as a witness under oath.⁴⁷⁹ This notion was complicated by an erosion of the incompetency rule⁴⁸⁰ and a perceived defensive protection against self-incrimination.⁴⁸¹ Thus, it was eventually deemed necessary for the defendant to be represented in court in order to adequately traverse the increasingly complex rules of evidence and legal safeguards.

The adversarial process was also physically entrenched in the courtroom, the layout of which now formally reflected the dominance of lawyers. The open court of the fifteenth century, whereby spectators were free to move about the courtroom,⁴⁸² had changed by the Victorian era. By the eighteenth century purpose-built courthouses were

⁴⁷³ See *ibid* p.148.

⁴⁷⁴ Bentley describes the Prisoner's Counsel Act as "cruelly irrelevant" to the majority of criminal defendants. *Supra* n463 p.108.

⁴⁷⁵ *Ibid* p.108.

⁴⁷⁶ *Ibid* p.108-109.

⁴⁷⁷ *Ibid* p.110-115.

⁴⁷⁸ *Ibid* p.111-113.

⁴⁷⁹ *Ibid* p.125-130.

⁴⁸⁰ A legal principle that asserted that witnesses could not be seen to have an interest in the outcome of the criminal trial. Because the defendant was inherently interested in the outcome, the incompetency rule prevented him or her from testifying under oath.

⁴⁸¹ For more detail see *supra* Bentley n463 p.171-186.

⁴⁸² Mulcahy *Legal Architecture: Justice, Due Process and the Place of Law* (Routledge 2011) p.39, 87-89.

emerging,⁴⁸³ a trend that continued in the nineteenth century during a heyday of grand architecture.⁴⁸⁴ These new, specialised buildings separated court personnel and provided a more distinct space for counsel in the courtroom,⁴⁸⁵ reflecting in many ways the achievements of Victorian society and the transformation of the law.⁴⁸⁶ As “barristers literally moved centre stage in the court”,⁴⁸⁷ the change in layout further entrenched the adversarial methodology. The accused became completely separated from proceedings, conclusively silenced during their own criminal trial. Modern courtroom spaces, as initiated by the Victorians, completely enclose the defendant, who is now entirely segregated from the courtroom including defence counsel.⁴⁸⁸ The separation of the defendant had the converse effect of cementing the symbolic role of the accused in the criminal trial,⁴⁸⁹ by making them the most visible member of the trial,⁴⁹⁰ whilst also starkly highlighting their criminal status and championing the adversarial dominance of the lawyer.⁴⁹¹ This physical presentation of the defendant, which has been subject to criticism for infringing on due process safeguards,⁴⁹² can be seen as a paradoxical development in a criminal justice methodology that began by developing protections for the accused.

The identifying features of adversariality, in particular due process safeguards, were endorsed internationally in the middle of the twentieth century. After the devastation of the Second World War there was a renewed commitment to establish international human rights safeguards, including the protection of the criminal defendant from the might of the state. As Vogler comments “never at any period in the history of the world has the past of due-process-driven reform across the world been so rapid or so sustained”.⁴⁹³ Indeed, all international human rights treaties since have contained some form of due process protection.⁴⁹⁴ The 1948 Universal Declaration of

⁴⁸³ *Ibid* p.31.

⁴⁸⁴ *Ibid* p.112-113.

⁴⁸⁵ *Ibid* p.46, 52.

⁴⁸⁶ The Victorians saw the development of a professional police force, the rationality of the law including the merging of law and equity and the development of the county courts. See *ibid* p.134.

⁴⁸⁷ *Ibid* p.62.

⁴⁸⁸ *Ibid* p.64-67.

⁴⁸⁹ In a recent report by the Criminal Justice Alliance, which collected the personal experiences of the Crown Court, including defendants, victims and their respective witnesses, found that the criminal trial was an alienating and confusing process for both the accused and the victims. *Supra* Jacobson, *et al.* n88.

⁴⁹⁰ *Supra* Mulcahy n482 p.68.

⁴⁹¹ There have been more modern criticisms of the separation of the accused from the criminal trial which, it has been argued in a series of court cases, has the effect of eroding the defendant’s presumption of innocence. See *ibid* p.73-78.

⁴⁹² See, for example, Rosen “The Dock: Should It Be Abolished?” (1966) 29 *The Modern Law Review* 289-300.

⁴⁹³ *Supra* Vogler n15 p.943.

⁴⁹⁴ *Supra* Ashworth n19 p.243.

Human Rights (UDHR) enshrined the right to a fair trial.⁴⁹⁵ Operating alongside the UDHR, the First Protocol of the International Covenant on Civil and Political Rights (ICCPR) establishes the Human Rights Council, which can hear individual petitions regarding state abuse of due process against any state who has signed and ratified the protocol. The creation of the International Criminal Court in 2002, represented a global initiative that all defendants, no matter what the accusation, were entitled to a fair criminal trial. Whilst the European Convention on Human Rights (ECHR) Article 6 provisions are “aggressively”⁴⁹⁶ enforced and developed by the European Court on Human Rights. Domestically, development of pre-trial safeguards for the defendant culminated in the passage of the comprehensive Police and Criminal Evidence Act (PACE) in 1984.⁴⁹⁷ The existence of a rights-bearing defendant is now a fundamental component of English criminal justice, protected throughout the criminal justice process. More importantly, the need for due process is internationally recognised as a fundamental human right.

Conclusion

Consideration of the historical role of the defendant has identified a number of significant issues that are often taken for granted in modern criminal analyses, and undermine any perception of the role of the defendant as static. As has been established, the defendant’s role in the criminal trial is capable of extraordinary change, being influenced by factors that are external to the criminal procedure. Moreover, this change can be a considerable departure from legal traditions and can occur without a conscious policy to instigate such alterations. The criminal justice process reflects, in part, the needs of contemporaneous society.

During a period of sparsely populated but interdependent communities, the focus of the Anglo-Norman criminal trial was not on the defendant but on encouraging reconciliation to prevent a blood feud. The abolition of the ordeal in 1215 by the Fourth Lateran Council was one of a few conscious attempts to change the criminal procedure and marked a divide between criminal procedure in England and throughout most of Europe. The continental Roman-canon method developed in part to replace the rigorous standard of proof of guilt by divine judgement during the ordeals. It also developed as a

⁴⁹⁵ Article 7 affords the right to equal protection before the law, the right not to be arbitrarily subjected to state sanctions or interference. The right to private or family life are found under Articles 9 and 12, whilst Article 10 stipulates the right to a fair and public trial, finally the right to be presumed innocence is found under Article 11 of the UDHR.

⁴⁹⁶ *Supra* Vogler n15 p.943.

means through which to prosecute heretics. Neither of these purposes of the criminal trial during Medieval Europe required a central role for the defendant, who could be tried and convicted without his or her knowledge.

In contrast, the English jury system, developed, in part, as a way to cement the power of the new Norman kings, still drew upon community knowledge in order to establish guilt. A by-product of this requirement was the development of the accused speaks trial, which necessitated a central role for the defendant. Unlike the inquisitorial method developing in Europe, the self-informing jury stunted the development of the rules of evidence in England and, as communities grew and became more complex, this left an investigatory deficit in English criminal justice. The Marian Statutes, which aimed to address this imbalance indirectly, seemingly unintentionally changed the defendant's role once again, creating a prosecutorial bias and limiting the capacity for merciful verdicts. This bias, exploited by the crown during a period of authoritarianism, led to elite calls for reform for treason trials, the first example of the rights-bearing defendant as a concept. Although it happened gradually over the course of the eighteenth century and as a result of the mysterious increase in lawyers in felony trials, this rights-bearing defendant became entrenched in the adversarial process. Due process was statutorily enforced in England throughout the nineteenth century. As a result of a global commitment to human rights during the latter half of the twentieth century, due process has now been enshrined in international treaties, establishing, at least in theory, a universal rights-bearing defendant.

It must be remembered that the due process provisions afforded to the defendant during the rise of adversariality in the eighteenth century English courts occurred not as a result of a wholesale transformation of the criminal procedure but, rather, developed incrementally, over the course of a century. This change occurred despite a prohibition on defence counsel and explicit denial of what could now be considered due process protection for the accused, such as a pre-trial right to access the indictment.

Even though due process has been globally entrenched through international provisions, it is important that we take account of the damaging effects that seemingly minor erosions of procedural values can have on the overall process. As a result of social media "evidence" we could now be in a new era of criminal justice transformation. As we have seen with the introduction of defence lawyers in the criminal trial in the eighteenth century, courtroom procedure can be altered irrespective of long-standing traditions. Despite the fact that it is now an internationally recognised

⁴⁹⁷ *Supra* Vogler and Fouladvand n195.

legal safeguard, it is possible that due process is being eroded in order to match popular expectations for a particular verdict and maintain courtroom legitimacy.

As the focus of this thesis now moves to the present (and future), it is important to remember lessons from the past. If we understand the long dominance of the prosecution and a presumption of guilt in the criminal justice process, as associated with public outcry and a community understanding of guilt, then the potential dangers of media and social media to current conceptions of the defendant become clear. Indeed, where the shift to a rights-bearing defendant was constructed through the growing status and activism of defence counsel, the current degradation of that role through cuts to legal aid budgets should give further cause for concern. The tables, in short, are capable of turning again.

Chapter Two

The Spectacle of the Trial; How the Media Impacts

Perceptions of Justice

Crime captures the popular imagination.⁴⁹⁸ Since the invention of the printing press and the Elizabethan chapbooks, crime has featured extensively in the media.⁴⁹⁹ At the same time as the growth of the media, particularly since the nineteenth century, attendance in trials has been declining.⁵⁰⁰ As a result, due to little direct interaction with the criminal justice process, public understanding of the trial and the role the defendant plays in it, are inevitably shaped by media depictions of it,⁵⁰¹ such depictions of crime are as diverse as the media outlets themselves. Fictional media formats such as books, television shows and films have as significant an impact on public attitudes to the criminal justice process as non-fiction outlets.⁵⁰² Nevertheless, it is the news media that has the most influence on perceptions of the criminal justice process. Indeed, free access of the press into court is regarded as a central tenement of fair and open justice.⁵⁰³ Similarly, with attendance at trials in decline, crime news is the primary method the public use for accessing information about the crime and as such it is their portrayal of the defendant that is the most persuasive.⁵⁰⁴ Thus, it is the non-fiction news and social media's influence on its reporting practices that is the focus of this chapter, in particular newspapers, which are not subject to the Royal Charter requirements for impartiality.

The agenda of the news media is not synonymous with that of the criminal trial and can even directly contradict it. The commercialised needs of the news result in stories that seek to entertain, as well as inform.⁵⁰⁵ This contrasts with the purpose of a rights-adhering trial, where the objective is to establish the defendant's culpability. As a result of a need to sell news, greater coverage is given to sensationalist and moralistic

⁴⁹⁸ Grossman *The Art of Alibi: English Law Courts and the Novel* (The John Hopkins University Press 2002).

⁴⁹⁹ *Ibid* p.26-36.

⁵⁰⁰ *Supra* Moran n81.

⁵⁰¹ Cohen and Young "The Process of Selection" in Cohen and Young (eds) *The Manufacture of News: Social Problems, Deviance and the Mass Media* (Constable 1973), *Supra* Roshier n69, Chibnall n42.

⁵⁰² Reiner (ed) *Media Made Criminality: The Representation of Crime in the Mass Media*, (The Oxford Handbook of Criminology, Oxford University Press 2007). For an example see the literature on the CSI effect; Kim, Barak, *et al.* "Examining the 'CSI-effect' in the Cases of Circumstantial Evidence and Eyewitness Testimony: Multivariate and Path Analyses" (2009) 37 *Journal of Criminal Justice* 452-460.

⁵⁰³ *Supra* Mulcahy n482.

⁵⁰⁴ *Supra* Moran n81.

⁵⁰⁵ Chermak "Body Count News: How Crime is Presented in the News Media" (1994) 11 *Justice Quarterly* 561-582, *supra* Reiner n502.

crime commentary, resulting in an unrepresentative portrayal of crime and criminal justice.⁵⁰⁶ This can have an adverse effect on wider perceptions of the justice process and the defendant, particularly as such depictions occur in the non-fiction and supposedly information-driven news genre.⁵⁰⁷ In the introduction of this thesis we highlighted some examples where the condemnation of the defendant was influenced by social media. If we consider that the defendant is a fluid concept, discussed in Chapter One, then it is possible that social media could be facilitating further change in criminal procedure. In an era of growing smartphone documentation of, and social media commentary on, a crime, there is a need to once again consider the role the news media plays in influencing public perceptions of the crime and the criminal justice process.

The erosion of the defendant's due process rights by the media can be aptly summarised by the phrase "trial by media". This describes a troubling phenomenon whereby the accused is judged as guilty by the media prior to trial.⁵⁰⁸ As a result, some of the most basic rights afforded to the defendant, such as the presumption of innocence, are eroded in order to satisfy the commercialised needs of the press. Crime reporting allows the news media to appeal directly to its target audience, by providing the moral mouthpiece for societal values, whilst simultaneously reaffirming the belief systems of the reader.⁵⁰⁹ Greer and McLaughlin, in their recent analysis of the phenomenon, suggest that the rise in technology and the new dynamics of news distribution has transformed the manner in which the media operate.⁵¹⁰ The growing prevalence of social media is likely to dramatically increase the occurrence of trial by media by providing apparent "evidence" of a defendant's guilt.

Developments in modern technology enable eyewitnesses to film crimes as they occur and immediately upload this footage to social media sites, such as YouTube.⁵¹¹ The moral mandate effect suggests that such condemnation of the defendant in crimes that affect personal core values could result in the public questioning of the criminal trial, something that can be exacerbated when there is "evidence" of guilt. Therefore, if the verdict does not match public expectation, research has suggested that public condemnation of the defendant can potentially impact on the perceived legitimacy of

⁵⁰⁶ *Supra* Roshier n69, *ibid* Reiner.

⁵⁰⁷ Surette "Media Trials" (1989) 17 *Journal of Criminal Justice* 293-308.

⁵⁰⁸ The legislative safeguards designed to protect due process within the British court systems proving largely ineffective. Mansfield "Being Seen to be Done" (1995) 6 *British Journalism Review* 60-63, Langdon-Down "Trial by Media: Watching for Prejudice" *façadedant* (London 10/10/95).

⁵⁰⁹ *Supra* Chibnall n71.

⁵¹⁰ *Supra* Greer and McLaughlin n21 p.137-138.

⁵¹¹ Sagan and Leighton "The Internet and the Future of News" (2010) 139 *Daedalus* 119-125 p.122, Zuckerman "International Reporting in the Age of Participatory Media" (2010) 139 *Daedalus* 66-75 p.67.

the trial.⁵¹² Thus, if the guilt of a defendant accused of a crime that evokes a moral mandate is established in the pre-trial phase, facilitated by technological advances, public demand for a guilty verdict can put pressure on the criminal justice system. Even if changes to the criminal trial are slight, it can have enormous repercussions for the defendant's presumption of innocence.

It is worth noting here that this thesis seeks to consider the impact of social media in light of the moral mandate effect. This phenomenon only arises when crimes affect deeply held values. Thus, whilst many crimes are, by their nature, shocking, not all of them will trigger a moral mandate effect. However, as will be seen, it is possible for the media to escalate public shock and horror at a particular criminal act and could facilitate a widespread moral mandate effect. Media rhetoric can be reinforced by social media "evidence" of guilt, which juxtaposes a courtroom insistence of the presumption of innocence. Thus, the focus of this chapter is necessarily on those crimes that have received widespread media attention. As will be seen, such crimes are often the most serious, which are also more likely to trigger a moral mandate in an individual. Thus, it is not the intention of this chapter to consider all crimes, but rather those crimes, such as the Woolwich killing and the Boston Marathon bombing analysed in Chapter Three that most easily fit the sensationalised and entertainment requirements of the news media.

Discussion in this chapter will be divided into four sections. Section One will briefly consider how the withdrawal of the public spectacle of punishment coincided with an increased popularity for the crime genre. It suggests that this helped to facilitate sensationalism in crime news as part of the media need to entertain. Section Two will analyse the impact of social media on public perceptions of the defendant and their criminal trial. There will be a particular focus on how online forums can perpetuate feelings of shock and horror at the crime. As part of this we will briefly consider how crime news can encourage the public to grieve for the victims, particularly through their use of imagery. This section will also analyse the psychological theory the moral mandate effect in order to consider how predetermination of a defendant's guilt can impact on public confidence in the trial. Section Three will then draw upon the theoretical analysis considered in Section Two to discuss how crime news impacts public perceptions of the crime and subsequently the defendant. We will consider Katz's

⁵¹² *Supra* Skitka and Houston n85, Mullen and Skitka "When Outcomes Prompt Criticism of Procedures: An Analysis of the Rodney King Case" (2006) 6 *Analyses of Social Issues and Public Policy* 1-14, Skitka and Mullen "Moral Convictions Often Override Concerns About Procedural Fairness: A Reply to Napier and Tyler" (2008) 21 *Social Justice Research* 529-546.

theory about why individuals read crime news, which echoes the moral mandate effect and will enable us to better understand how crime news can facilitate the moral condemnation of the defendant. We will then briefly consider the operational values of the media. Media selectivity, known academically as “news values” or more broadly as “newsworthiness”, affect the way in which crime news is presented, which can further condemn the defendant. Finally, this section will analyse the trial by media phenomenon as this is a clear manifestation of the influence of the news media on the presumption of innocence, and one which has received little academic commentary in the UK. Section Four will consider how to analyse crime news. Two theoretical frameworks will be considered in greater depth, the hierarchy of credibility and inferential structures, describing the influence of newspaper bias on public perceptions. The impact of these two theories will be applied to the reporting of the G20 protests and the death of Ian Tomlinson to better understand their application. This illustrates the capacity journalistic bias has on establishing the discourse of a news event and thus how they can influence public perceptions (and public policy) of the news event and the criminal defendant.

The focus of this chapter is, therefore, on how perceptions of the defendant and the criminal justice process can be influenced by the way in which it is reported and consumed by the public. Academic consideration of crime news has overwhelmingly focused on the reporting practices of the news media, in particular newspapers, and how this could impact on public perceptions of crime. There has been limited research on how social media may be altering traditional reporting practices. This chapter will consider previous academic commentary in light of the potential impact of social media and move towards providing a theoretical framework through which to better understand the qualitative analysis in Chapters Three and Four.

Section One: The Legacy of the Spectacle of Punishment

Adversariality has brought a new dimension to the trial process.⁵¹³ By creating a rights-bearing defendant within the adversarial methodology it was recognised that the criminal trial should offer protections from the might of the state.⁵¹⁴ The establishment of the rights-bearing defendant was heavily influenced by Enlightenment philosophy, which dominated European academic commentary during the development of the adversarial criminal trial.⁵¹⁵ A key component of Enlightenment philosophy was the

⁵¹³ *Supra* Vogler n15 p.938.

⁵¹⁴ *Supra* Vogler n147 p.129.

⁵¹⁵ *Ibid* p.129.

notion of the rational individual.⁵¹⁶ Thus, the defendant was considered to be autonomous, intelligent and, consequently, responsible for his or her actions.⁵¹⁷ However, the concept of a rights-bearing defendant was directly at odds with the system of physical and public punishment that had been used in much of Europe since the Middle Ages.

Echoing the trial by ordeal, punishment aimed to bring absolution to the defendant, with pain representing their purgation.⁵¹⁸ Thus, criminal processes throughout Europe maintained the ideology of the confession through their punitive systems, with the convict expected to bear his or her crime openly, in public, and before God.⁵¹⁹ For those who refused to confess, the pain of punishment represented a powerful symbol of the fate of the unrepentant in Hell.⁵²⁰ Public forms of punishment also served to reinforce the morality of wider society, with all members of the local community expected to attend. Communal values were reaffirmed, as there was widespread denunciation of the criminal act.⁵²¹

Public punishment also served another more oblique purpose, that is to entertain. Described as the “gloomy festival of punishment”⁵²² Foucault acknowledges the entertainment value of justice in his seminal work *Discipline and Punish*, later describing it as a “theatrical reproduction”⁵²³ and likening the criminal process to a “joust”.⁵²⁴ Public punishments, despite their gruesome actions and underlying purposes, served as a day of raucous entertainment, rather than sombre reflection and condemnation.⁵²⁵ In England, for example, it has been alleged that the first guided tour was to the public hanging of two convicted murderers.⁵²⁶ Indeed, it was this attitude of the masses during public displays of corporal punishment and executions that led elite calls for reform in the early nineteenth century.⁵²⁷

⁵¹⁶ Perkin “The Social Causes of the British Industrial Revolution” (1968) 18 *Transactions of the Royal Historical Society* 135-136 p.130, *supra* Shapiro n375 p.3.

⁵¹⁷ Israel *Democratic Enlightenment: Philosophy, Revolution, and Human Rights 1750-1790* (Oxford University Press 2011) p.7.

⁵¹⁸ Merback *The Thief, the Cross and the Wheel: Pain and the Spectacle of Punishment in Medieval and Renaissance Europe* (Reaktion Books 1999).

⁵¹⁹ *Supra* Foucault n149.

⁵²⁰ *Supra* Merback n518.

⁵²¹ *Supra* Beattie n147 p.423.

⁵²² *Supra* Foucault n149 p.8.

⁵²³ *Ibid* p.45.

⁵²⁴ *Ibid* p.40-41.

⁵²⁵ *Ibid* p.8-9.

⁵²⁶ Stone and Sharpley “Consuming Dark Tourism: A Thanatological Perspective” (2008) 35 *Annals of Tourism Research* 574-595.

⁵²⁷ For a more detailed consideration of the abolition of public punishment in England, see *supra* Hostettler n307 p.128-146.

The juxtaposition between the rights-bearing and rational-thinking defendant during the trial and the poor wretch deserving of brutal punishment upon conviction to save their soul, was not one that was easily reconciled. The establishment of prison systems in the early nineteenth century and the rise of a professional police force, capable of maintaining the peace, helped to facilitate the transition of criminal punishment from public spectacle to private suffering.⁵²⁸ By the middle of the nineteenth century, public methods of punishment had been virtually eradicated from European penal systems.⁵²⁹

With the demise of the spectacle of punishment, publicity began to focus on the criminal trial.⁵³⁰ The adversarial battle between two opposing lawyers made the criminal trial an entertaining prospect for the booming media industry, both non-fiction and fictional.⁵³¹ Thus, the new criminal process brought with it a complication that was not considered by eighteenth and nineteenth century reformists; the competing relationship between the trial process and the media. Consumption of news and media sources drastically changed during the nineteenth century. Technological advances, such as the invention of the telegraph and the steam engine, facilitated news as a consumable medium by enabling the rapid distribution of news events and newspapers across the globe.⁵³² In Britain, Parliamentary repeal of tax on advertisements and stamp duty ensured the commercial viability of newspapers.⁵³³ A growing literacy rate further increased the consumption of literature and news throughout the Victorian period. As a result, the number of newspapers grew exponentially during the nineteenth century. In 1847, the hourly production of newspapers was 20,000, by 1870 this had increased to 168,000.⁵³⁴

The primary agenda of the growing Victorian media was to entertain, something reflected in the increasing tone of sensationalism.⁵³⁵ The criminal justice process, undergoing rapid transformation, became an obvious focus for the emerging media. With the introduction of new investigative techniques, arising from the establishment of a professional police force, crime and crime detection became a popular topic to be

⁵²⁸ *Supra* Hostettler n364 p.139-147.

⁵²⁹ *Supra* Foucault n149 p.8.

⁵³⁰ *Ibid, supra* Grossman n498 p.15-16.

⁵³¹ *Ibid* p.20-26.

⁵³² Casey "Common Misperceptions: The Press and Victorian Views of Crime" (2011) 41 *Journal of Interdisciplinary History* 367-391 p.373.

⁵³³ *Ibid* p.373.

⁵³⁴ *Ibid*.

⁵³⁵ *Ibid*.

serialised in literature and reported on in newspapers.⁵³⁶ A series of high-profile criminal cases such as the actions of Jack the Ripper, in London in the late nineteenth century, further added to the wider public interest.⁵³⁷ Crime, the traditional subject of the spectacle,⁵³⁸ became a prominent news story.⁵³⁹

The growth in adversariality in the previous century complicated the use of legal terminology in court, withdrawing the trial from the founding principle of community participation. The development of courtrooms during this period, as grandiose and intimidating buildings, further segregated the public from trial proceedings and limited courtroom accessibility.⁵⁴⁰ As this occurred, the media were increasingly seen as a crucial mouthpiece through which to relay information to the public.⁵⁴¹ The demise of the public spectacle of punishment coincided with a dramatic rise in the print medium. Thus, news outlets were primed to fill the entertainment vacuum left behind by the increase in private forms of criminal punishment. As a result, the media plays a central role in public understanding of, and attitudes towards, the criminal justice process.

The development of new media technology, such as the home television set after the Second World War, transformed once again how the public interacted with the media and the criminal justice process.⁵⁴² It was during this period that the first academic research was undertaken into the way in which the media operated, how the public consumed it and its subsequent influence on wider perceptions of criminal justice. During the latter part of the twentieth century, with the growth of a variety of news media forums, this created a new dimension in public perceptions of justice. Since the Second World War there has been a growing discussion amongst scholars about the increasing and pervasive media and the influence it has on public perceptions of crime and the justice process.⁵⁴³ Media depictions of the defendant, within the matrix of reporting on the crime, can result in a competing rhetoric that contrasts with the

⁵³⁶ *Ibid.* The prevalence of crime in popular culture can still be seen today see, for example, Yankah “Good Guys and Bad Guys: Punishing Character, Equality and the Irrelevance of Moral Character to Criminal Punishment” (2003) 25 *Cardozo Law Review* 1019.

⁵³⁷ *Supra* Chibnall n71 p.49-51.

⁵³⁸ *Supra* Reiner n502.

⁵³⁹ *Supra* Wardle n45.

⁵⁴⁰ *Supra* Mulcahy n482.

⁵⁴¹ *Ibid* p.92-97.

⁵⁴² See, for example, Powell Jr “The Right to a Fair Trial” (1965) 51 *American Bar Association Journal* 534-538, who expresses concerns about the media impact on the defendant’s right to a fair trial as a result of the rise in television.

⁵⁴³ A sample of this commentary includes *supra* Cohen n22, Hall, Critcher, *et al.* *Policing the Crisis: Mugging, The State and Law & Order* (Palgrave Macmillan 2013), Chibnall n42, Lang and Lang “The Inferential Structure of Political Communications: A Study in Unwitting Bias” (1955) 19 *The Public Opinion Quarterly* 168-183, Surette “The Media, the Public, and Criminal Justice Policy” (2003) 2 *Journal of the Institute of Justice & International Studies* 39.

courtroom's need for the presumption of innocence. In this way, crime news goes beyond the base reporting of criminal activity, expanding its coverage to include commentary on the crime and the defendant. This can result in the moral condemnation of the defendant in the pre-trial phase which can have lasting implications for the criminal trial.

The influence of crime news on public perceptions and the criminal justice system has received extensive academic commentary. However, the influence of social media on the way that crime is reported and the way the public digest crime has received only limited attention. It is possible that we are now in a new phase of media metamorphosis, with social media enabling a direct and more pluralistic means of news consumption, something that will be considered in more detail in subsequent chapters as we consider the impact of social media on perceptions of the defendant. As a result, there is a need to update the current literature on crime news to include social media.

Section Two: How Social Media Effects Public Engagement with Crime

Technology has created a broader range of news outlets, allowing for greater public involvement in, and engagement with crime.⁵⁴⁴ Search engines enable those interested in a news event to access a wide range of websites on the topic, providing a breadth of information outside the traditional reporting practices of the news media.⁵⁴⁵ Social media websites such as Twitter and YouTube, coupled with the rise in portable equipment that enable on-the-go Internet access,⁵⁴⁶ has the potential to alter the way in which individuals consume, discuss and, particularly in times of emergency,⁵⁴⁷ distribute the news. Individuals are now able to organise into virtual communities and are increasingly turning to online forums to comment upon crime news and express their outrage at the actions of the accused. Whilst the rise in new technology is still influenced by the news media,⁵⁴⁸ this new online community is transforming the way in which the public interact with the news.⁵⁴⁹ Moreover, social media is also altering how individuals process news events by providing dialogue that goes against the rhetoric of

⁵⁴⁴ Discussed in more depth in the Introduction.

⁵⁴⁵ Lindgren "YouTube Gunmen? Mapping Participatory Media Discourse on School Shooting Videos" (2011) 33 *Media, Culture and Society* 123-136.

⁵⁴⁶ Murthy "Twitter: Microphone for the Masses?" (2011) 33 *Media, Culture and Society* 779-789 p.781, 783.

⁵⁴⁷ *Ibid.*

⁵⁴⁸ *Supra* Kwak, *et al.* n80, for example, have found that news discussion on Twitter is largely instigated by news headlines p.597, Kennedy "Don't You Forget About Me" (2009) 11 *Journalism Studies* 225-242.

⁵⁴⁹ *Ibid* Kennedy, *supra* Lindgren n545.

the media.⁵⁵⁰ It is possible that modern society is at the cusp of a new stage in media development, raising important questions about the subsequent impact this could have on the criminal trial. How individuals engage with journalistic reporting is changing and this could be altering the way in which the public process news events. Moreover, traditional media formats are using social media as a means of interacting with their audience and further their underlying agenda.⁵⁵¹

There are several ways in which social media can impact on public engagement with crime news. Firstly, eyewitness footage of the crime can facilitate media and public condemnation of the defendant. Footage of a crime being carried out can be widely disseminated on social media. This can have the resultant effect of establishing the apparent guilt of the defendant, sometimes prior to being formally accused by the police. Video footage of the chaotic aftermath of a shooting at a cinema in Colorado during a screening of a Batman movie, or of the Boston Marathon bombing, resulted in negative press reporting of the men subsequently accused of each crime.⁵⁵² Similarly, the filming of the two men who killed Lee Rigby in the spring of 2013, resulted in both being named on Twitter and, subsequently, newspapers as the perpetrators, before the police had even confirmed them as suspects.⁵⁵³ Secondly, social media “evidence” can justify the moral mandate effect. With the “guilt” of the accused so apparent such footage can reaffirm public questioning of the need for a criminal trial. This can result in the moral condemnation of the defendant in the pre-trial phase which can have lasting implications for the criminal trial. Thirdly, social media encourages a communal connection to crime news allowing a greater number of people to feel personally aggrieved by the actions of the accused. It is this latter situation that we will consider first by analysing how social media can encourage a communal connection to crime news.

Social Media and the Communal Connection to Crime News

It is a distinctly human need to share emotions with others.⁵⁵⁴ This not only helps individuals to process the emotion but it also reaffirms their social ties and their place in

⁵⁵⁰ *Ibid* Kennedy, Lindgren.

⁵⁵¹ *Ibid* Lindgren p.129, May “Who Tube? How YouTube’s News and Politics Space Is Going Mainstream” (2010) 15 *The International Journal of Press/Politics* 499-511.

⁵⁵² Considered in the Introduction and Chapter Three respectively.

⁵⁵³ Considered in greater depth in Chapter Three.

⁵⁵⁴ Rimé “The Social Sharing of Emotion as an Interface Between Individual and Collective Processes in the Construction of Emotional Climates” (2007) 63 *Journal of Social Issues* 307-322, Rimé “Emotion Elicits the Social Sharing of Emotion: Theory and Empirical Review” (2009) 1 *Emotion Review* 60-85.

society.⁵⁵⁵ When these emotions are the result of a collective event, such as crime in the media, the need to share and the consequences of that sharing can be magnified.⁵⁵⁶ Arguably the more shocking the crime, the greater the need to share the emotions arising from that crime. Social media provides immediate outlets for sharing such emotions⁵⁵⁷ and explains the trending hashtags seen on Twitter, for example, after high-profile and spectacular crimes. International response to the 2014 siege of a Sydney café, and the fatal shooting at the headquarters of the French satirical magazine *Charlie Hebdo*, resulted in the global trending of the #Illridewithyou and #JeSuisCharlie hashtags as expressions of solidarity with the victims of the attacks. The #JeSuisCharlie hashtag was resurrected a few months later to show fraternity and protest against the capture of Japanese freelance journalist Kenji Goto by the militant group of extremists known as Islamic State (IS).⁵⁵⁸ Threatened with execution, sympathisers wrote, “I am Kenji” on social media sites, created an official Twitter account and Facebook page for the campaign, and held placards with the same phrase during demonstrations.⁵⁵⁹

The need to share emotion can have repercussions for the defendant. Rimé argues that the sharing of emotions will progressively establish an “emotional atmosphere”.⁵⁶⁰ Thus, the sharing of the negative emotions created as a result of crime news can create an atmosphere of negative emotion. This atmosphere of negative emotion can grow if shared publically online where it can attract a larger, global audience. Moreover, methods of communication online appear to be more angry, less constrained and particularly vitriolic against targeted individuals such as defendants. Coffey and Woolworth suggest that public commentary in relatively anonymous online forums encourages rhetoric that is less inhibited, noting in particular the profane and violent comments directed against the accused in their case study than when the crime

⁵⁵⁵ Tee, Paulsen, *et al.* “Revisiting Followership through a Social Identity Perspective: The Role of Collective Follower Emotion and Action” (2010) 24 *The Leadership Quarterly* 902-918.

⁵⁵⁶ *Supra* Rimé n554 “The Social Sharing of Emotion”.

⁵⁵⁷ For examples of this see Ronson *So You’ve Been Publically Shamed* (Picador 2015).

⁵⁵⁸ BBC “Kenji Goto: Abe Condemns ‘Despicable’ IS Hostage Video” (*BBC* 28/1/15) <<http://www.bbc.co.uk/news/world-middle-east-31006588>> accessed 30/1/14, Saul “Kenji Goto, Muath al-Kasaesbeh and Sajida al-Rishawi: The Three People at the Centre of the Isis Hfçadeis” *Independant* (London 29/1/15), Mallard “New ISIS Video Appears to Show Japanese Hostage Kenji Goto” (*Huffington Post* 27/1/15) <http://www.huffingtonpost.com/2015/01/27/kenjo-goto-isis-video_n_6554720.html> accessed 30/1/15.

⁵⁵⁹ Epatko “‘I am Kenji’ Facebook Page Rallies around Japanese Hostage” (*PBS Newshour* 29/1/15) <<http://www.pbs.org/newshour/rundown/kenji-facebook-page-rallies-behind-japanese-hostage/>> accessed 30/1/14, “Japan Turns to ‘I am Kenji’ Facebook Page on Hostage Crisis” *Daily Mail* (London 27/1/15), Johnson “Friend Wages ‘I am Kenji’ Campaign to Free Held Journalist” (*Japan Times* 25/1/15) <<http://www.japantimes.co.jp/news/2015/01/25/national/friend-wages-kenji-campaign-free-held-journalist/#.VMtt5sbVvzI>> accessed 30/1/14.

⁵⁶⁰ *Supra* Rimé n554 “The Social Sharing of Emotion” p.313-316.

was discussed in a face to face public meeting.⁵⁶¹ This suggests that feelings of shock and horror at the crime can be magnified online and can result in the greater condemnation of the defendant, something that is also encouraged by crime news.

During the twentieth century, there has been a shift in the rhetoric of crime news, which influences public reaction to the crime and subsequently the defendant. Wardle notes that in the early twentieth century, newspapers typically focussed on the defendant, with crimes being depicted as isolated events. By the end of the twentieth century, the focus of the newspapers had shifted to that of the victims. By suggesting that “it could happen to you”, criminal acts become more personalised, inviting greater reader engagement with the crime and empathy with the victims.⁵⁶² Media rhetoric is now such that serious crimes are being depicted as something that affects broader societies, going beyond those directly and geographically affected by it. Focus on the bereavement of the family not only encourages public empathy but active involvement in the news event, inviting members of the community to grieve with the victim’s immediate family and participate in the subsequent cries for justice.⁵⁶³ Greer suggests that this community exchange is becoming more important as a way of connecting in a society that is increasingly isolated and atomised.⁵⁶⁴ Technological developments such as those in social media are progressively being used as a way to associate with like-minded individuals across the world, sometimes to powerful effect. Social media forums such as Twitter and Blackberry Messenger, for example, were prominently used to keep up-to-date with information in the series of revolutions in the Middle East in 2011, known collectively as the Arab Spring,⁵⁶⁵ and the London Riots in the same year.⁵⁶⁶

The influence of social media becomes apparent when considered within the context of criminal justice.⁵⁶⁷ This is particularly true regarding heinous and shocking criminal acts, where the crime, highly mediatised, provides a focal point through which the public can express increased feelings of fear and isolation through a collective,

⁵⁶¹ Coffey and Woolworth “‘Destroy the Scum, and Then Neuter Their Families’: The Web Forum as a Vehicle for Community Discourse?” (2004) 41 *The Social Science Journal* 1-14.

⁵⁶² Wardle “‘It Could Happen to You’: The Move Towards ‘Personal’ and ‘Societal’ Narratives in Newspaper Coverage of Child Murder, 1930–2000” (2006) 7 *Journalism Studies* 515-533.

⁵⁶³ *Ibid*, *supra* Wardle n45, Greer n122.

⁵⁶⁴ *Ibid* Greer. See also Ericson “Mass Media, Crime, Law and Justice: An Institutional Approach” (1991) 31 *British Journal of Criminology* 219-249 p.222.

⁵⁶⁵ See, for example, Martha “Social Media Fuels Protests in Iran, Bahrain and Yemen” (*ABC News* 15/2/11) <<http://abcnews.go.com/International/social-media-fuels-protests-iran-bahrain-yemen/story?id=12926081>> accessed 26/1/14.

⁵⁶⁶ Tonkin, Pfeiffer, *et al.* “Twitter, Information Sharing and the London Riots?” (2012) 38 *Bulletin of the American Society for Information Science and Technology* 49-57.

⁵⁶⁷ *Supra* Greer n122.

communal outpouring of grief that transcends physical, geographical boundaries.⁵⁶⁸ Public grief has traditionally manifested itself locally through the laying of flowers and gifts, the signing of condolence books, and the participation in memorial services. The Internet is now enabling those who are not physically proximate to the tragedy to similarly participate in the public grieving process and express their sorrow and outrage in online forums.⁵⁶⁹ Grief becomes something that is ritualistically consumed, enabling the public to be personally aggrieved as a result of the crime, something that is reflected in the significant amount of violent and punitive comments on online discussion boards.⁵⁷⁰ Such phenomena are particularly apparent through the academic studies of child abductions, where the accused represents the physical manifestation of pure evil in modern society.⁵⁷¹ However, this emotional response, is not limited to child abductions and can also be seen in criminal acts that generate widespread shock and outrage. Thus, the Utøya massacre by Anders Breivik in 2011,⁵⁷² the Sandy Hook school shooting in 2012,⁵⁷³ and the murder of Lee Rigby in 2013,⁵⁷⁴ received similar public and widespread demonstrations of bereavement.

The manifestation of grief results in a highly charged emotional discourse surrounding the defendant. News stories presented within this context ensure that the audience is immediately sympathetic to the victim. This is exacerbated by the simplistic manner in which the media report the news, where the criminal act must satisfy a binary description of “good and evil” or “innocence and guilt”.⁵⁷⁵ As Wardle comments, “in this modern day morality tale, the monster must not be contextualised or explained. The offender personifies evil, so while we share the life of the victims in family snapshots and portraits, the offender appears without a past or history”.⁵⁷⁶

Smiling pictures of Holly Wells and Jessica Chapman, representing their innocence and youth, are juxtaposed by scowling, hunched photographs of Ian Huntley,

⁵⁶⁸ *Ibid.*

⁵⁶⁹ *Ibid.*

⁵⁷⁰ *Ibid* p.115-116, see also *supra* Coffey and Woolworth n561.

⁵⁷¹ *Supra* Greer and McLaughlin “Media Justice” n21, n122.

⁵⁷² See for example, Connolly “Norway Invites Ideas for Utøya Massacre Memorials” *The Guardian* (London 15/7/13), Young “The Norway Attacks” (*The Boston Globe* 27/7/11) <http://www.boston.com/bigpicture/2011/07/the_norway_attacks.html> accessed 24/2/14.

⁵⁷³ “Sandy Hook Elementary School Massacre Memorial Page” (*Facebook* 14/12/12) <<https://www.facebook.com/pages/Sandy-Hook-Elementary-School-Massacre-Memorial-Page/142591449223701>> accessed 24/2/14.

⁵⁷⁴ See, for example, Hopkins and Bunyan “Lee Rigby: An Ordinary Soldier Who Died in Extraordinary Circumstances” *The Guardian* (London 23/5/13), Tomlinson “‘You Did Not Deserve This’: Carpet of Floral Tributes for Drummer Lee Rigby is Growing Everyday After a Huge Outpouring of Grief at Murder” (*Daily Mail* 28/5/13) <<http://www.dailymail.co.uk/news/article-2332179/Drummer-Lee-Rigby-carpet-floral-tributes-grows-day-huge-outpouring-grief-Woolwich-murder.html>> accessed 26/2/14.

⁵⁷⁵ *Supra* Yankah n536, Greer n122.

found guilty of murdering the 10-year-old girls, and Maxine Carr, who initially provided him with a false alibi.⁵⁷⁷ Such depictions had a negative impact on public attitudes, who were constantly reminded of the victims and, thus, the horror of the crime. This was particularly true for Maxine Carr, deemed equally culpable for the murders, despite the fact that she likely had no knowledge of Huntley's involvement in the murders when she supplied the false alibi.⁵⁷⁸ Similarly, the release of personal photographs of the missing Welsh schoolgirl, April Jones, two months after her disappearance,⁵⁷⁹ served to increase public empathy towards the victim. Media depictions of the extensive and largely voluntary search-party⁵⁸⁰ reinforced the notion that it was a community, as well as a family, that was affected, something reflected in the large numbers of people who attended her funeral nearly a year later.⁵⁸¹ The implications for the accused are clear; through the methods of reporting used by the media, they are ostracised and dehumanised, not only denied the opportunity to gain public support, but are no longer deserving of a place in society.

In an intensely competitive market, the victim focus more easily satisfies the news values criteria, enabling the reader to identify with the crime by empathising with the victim.⁵⁸² Indeed, some criminal acts are known almost exclusively by the name of the victim,⁵⁸³ serving to perpetually remind the public of the horror of the crime. Mark Bridger, who was convicted of murdering April Jones, whose disappearance in 2012 prompted a high-profile search for the missing five-year-old, has become synonymous with his young victim. The victim-centric media has resulted in the name of the victim being remembered rather than the defendant, who is simply depicted as "April Jones' killer".⁵⁸⁴ The defendant becomes the personification of the crime, incapable of being viewed in any other light.

⁵⁷⁶ *Supra* Wardle n45 p.277.

⁵⁷⁷ *Supra* Greer n122 p.23.

⁵⁷⁸ *Supra* Jones and Wardle n47.

⁵⁷⁹ *Supra* Fricker n121.

⁵⁸⁰ Smith, Viera, *et al.* "The Search for April Jones - in Pictures" (*The Guardian* 3/10/12) <<http://www.theguardian.com/uk/gallery/2012/oct/02/search-april-jones-in-pictures/#?picture=397078927&index=0>> accessed 12/6/14.

⁵⁸¹ BBC "April Jones: Hundreds Attend Machynlleth Funeral" (*BBC* 26/12/13) <<http://www.bbc.co.uk/news/uk-wales-mid-wales-24275423>> accessed 12/6/14.

⁵⁸² *Supra* Jewkes n71, Greer n122, Gewirtz n77.

⁵⁸³ Barrett and Carter "Lee Rigby Murderers Sentences to Life in Prison" *The Daily Telegraph* (London 26/2/14), Evans "Lee Rigby Murderers Sentenced to Life Behind Bars in their Absence After Being Dragged from Dock Following Brawl" *The Mirror* (London 26/2/14), Brown "April Jones Murder - the Full Story: Alcoholic Paedophile Mark Bridger Turned Online Sex Fanfaçade Grim Reality" *Independent* (London 30/5/13), BBC "April Jones Killer Mark Bridger Drops Sentence Appeal" (*BBC* 13/1/14) <<http://www.bbc.co.uk/news/uk-wales-25715492>> accessed 15/6/14.

⁵⁸⁴ For example, Drake "April Jones' Killer Mark Bridger Moans 'Monster Mansion; Prison is Too TOUGH for Him'" *The Mirror* (London 31/5/14), Crossley "April Jones' Killer Mark Bridger Abandons

Growth in technology has warranted the need for crime stories to be supplemented with visual pictures in order to attract potential consumers.⁵⁸⁵ Images of the victim inevitably taken during happy occasions are juxtaposed with the images of the suspect in the present day, during the accusation process. Through this, the tragedy of the victim's fate becomes heightened by the press. As this use of imagery encourages the condemnation of the defendant, it is worth briefly considering how newspapers use imagery as part of their crime news reporting and how this can influence public perceptions.

Media Imagery

The use of imagery to convey a message to the audience is a well-established media process.⁵⁸⁶ Images provide an aura of objectivity, appearing to display events naturally and without the need for interpretation.⁵⁸⁷ The guilt of the accused can be strongly implied without technically breaking the procedural safeguards afforded to them.⁵⁸⁸ Many crimes cause widespread shock and condemnation precisely because of the accompanying imagery.⁵⁸⁹ The murder of Damilola Taylor, for example, has now become synonymous with images of the little boy skipping down the street, captured on CCTV minutes before he was killed.⁵⁹⁰ Similarly, video footage of James Bulger being led out of the shopping centre hours before he was murdered, added further horror to the innocent-faced mug shots of the two 10-year-old killers.⁵⁹¹

Studies on the impact of media presentation of these images can have the subversive result of persuading the reader to draw a particular conclusion.⁵⁹² Images “ask readers to ‘see for themselves’, limiting critical enquiry of the story with which they are being presented”.⁵⁹³ How the media portray these crimes, supplemented by stark visual imagery, with a victim-focused analysis, facilitates the discourse of the news event, influencing pre-established attitudes through media agendas. Moreover, media commentary after the event increases the emotional response of the public, demonstrated by popular campaigns against these crimes. The murder of Sarah Payne,

His Appeal Against Whole-Life Tarriff just Eleven Days Before Hearing is Due” *Daily Mail* (London 13/1/14), *supra* Brown n583.

⁵⁸⁵ *Supra* Greer, *et al.* n76, Wardle n45, Jewkes n71 p.59.

⁵⁸⁶ *Ibid* Wardle, *supra* Hall n41.

⁵⁸⁷ *Ibid* Wardle, *ibid* Hall, *supra* Jewkes n71.

⁵⁸⁸ *Ibid*, *supra* Jones and Wardle n47, Hall n41.

⁵⁸⁹ *Supra* Jewkes n71.

⁵⁹⁰ *Ibid* p.57, 60.

⁵⁹¹ *Ibid* p.60-62.

⁵⁹² *Supra* Wardle n45.

⁵⁹³ *Ibid* p.265.

for example, led to a campaign for the enactment of “Sarah’s Law” allowing the police to disclose information of known sex offenders residing in a local area. More disturbingly, the initial refusal of the Home Secretary to pass such a law resulted in the *News of the World* publishing information of all known sex-offenders at the time. This enabled public anger to manifest into mobs that directly targeted individuals, most famously in the Paulsgrove estate near Portsmouth.⁵⁹⁴ At its most extreme, disillusion with the justice system can mean that public outrage against crimes manifests into vigilante action against suspects.

Technological advances add to the imagery of a criminal event. Crimes can now be documented in real-time by using mobile phones and other portable video recording equipment. These images can serve to increase populist feelings of guilt against the defendant as the so-called “evidence” is posted online for global public scrutiny. Footage of the fatal shooting of unarmed Oscar Grant III, a black American, by a BART⁵⁹⁵ police officer in the early hours of New Year’s Day, 2009, sparked widespread protests, both peaceful and, later, violent.⁵⁹⁶ When police officer, Johannes Mehserle was convicted of involuntary manslaughter, but acquitted of second degree murder and voluntary manslaughter, being sentenced to two years in prison, further protests ensued. Mehserle’s guilt had been established as a result of the video footage, his presumption of guilt illustrated in the public protests, both of which escalated into small-scale riots.⁵⁹⁷ The imagery that accompanied the crime made a lasting impression and was eventually turned in to the film *Fruitvale Station*, referencing the station that Grant was shot at in 2013.

Condemnation of the suspect in the scenarios outlined above occurs at the time of police accusation, or, more troublingly, at the time when the crime is filmed or photographed and uploaded on to social media. In this way, crime stories become simplified to the base rhetoric of a victim wronged by an inherently evil perpetrator and of a society suffering as the result of a pervasive and malicious sect of individuals, capable of committing serious harm against the community. Newspapers reporting on

⁵⁹⁴ *Ibid* p.278.

⁵⁹⁵ The Bay Area Rapid Transit public transport system that connects San Francisco to the wider bay area in Northern California.

⁵⁹⁶ “Near Riot Breaks out at Oakland Protest” (*NBC Bay Area* 17/7/09) <<http://www.nbcbayarea.com/news/local/BART-Officer-Getting-Death-Threats.html>> accessed 21/1/14, “Hundreds Protest In Oakland over BART Shooting” (*NPR* 8/1/09) <<http://www.npr.org/templates/story/story.php?storyId=99120914>> accessed 21/1/14, McKinley “In California, Protests after Man Dies at Hands of Transit Police” *New York Times* (New York 8/1/09).

⁵⁹⁷ “Riots in California after Police Officer Who Shot Dead Unarmed Black Man is Cleared of Murder” *Daily Mail* (London 12/7/10), MacAskill “Oakland Riots after Verdict in Police Shooting of Oscar Grant” *The Guardian* (London 9/7/10).

child abductions or murders are increasingly publishing photographs of the mothers on their front pages, highlighting the personal trauma of the crime and magnifying the emotion of the news story.⁵⁹⁸ Thus, crime can become a news story if the victim satisfies the news values criteria and is photogenic, vulnerable and from a respectable background.⁵⁹⁹ The victim and/or their family remain in the media spotlight, incentivised by a desire to capture the culprit and to keep the memory of their loved-one alive.⁶⁰⁰ Public opinions of the mediated defendant, as facilitated by social media and the rhetoric of crime news, are formed within this nexus of public grief. Attitudes are shaped as a result of the crime committed, regardless of their apparent involvement in it and often in ignorance of any exculpating evidence.⁶⁰¹

Moral Mandates and the Negation of Fair Process

If the defendant is pre-judged by the media and the public, it can have serious repercussions on the perceptions of fairness of the criminal justice process. Footage of the defendant clearly committing the crime raises questions as to the need to establish guilt and thus the criminal trial itself. The very nature of public prejudgment results in an expected outcome of the trial prior to the verdict. The psychologist Linda Skitka, adapting the fair process effect, has found that, in certain circumstances, this can have repercussions for the overall assessment of the criminal trial and public perceptions of it.⁶⁰²

The fair process effect has established that individuals evaluate the legitimacy of an outcome based on the fairness of the process. Academic commentary on this issue largely focuses on the workplace and postulates methods that ensure employees feel satisfied in their working environments and the rules that they operate under.⁶⁰³ However, when extending the fair process effect to considerations of public perceptions of the outcomes of the criminal trial, analysis of the phenomenon changes.

In trials of serious crimes, which evoke a moral mandate effect, individual perceptions of justice are determined not by the process of the trial, but by the verdict given. Skitka, in a series of scholarly analyses of the fair process effect on criminal

⁵⁹⁸ *Supra* Wardle n562 p.528.

⁵⁹⁹ *Supra* Greer n122. See also Goode and Ben-Yehuda *Moral Panics: The Social Construction of Deviance* (2nd edn, Wiley-Blackwell 2009) p.30.

⁶⁰⁰ *Supra* Wardle n45, Greer and McLaughlin “Media Justice” n21.

⁶⁰¹ *Supra* Jones and Wardle n47, Wardle n83.

⁶⁰² *Supra* Skitka and Houston n85.

⁶⁰³ See, for example, Greenberg and Folger “Procedural Justice, Participation, and the Fair Process Effect in Groups and Organizations” in Paulus (ed) *Basic Group Processes* (Springer-Verlag 1983), Van den

trials, has consistently found that procedural fairness does not influence individual satisfaction with an outcome when a moral mandate has been evoked within that person.⁶⁰⁴ Her analysis suggests that a threat to someone's personal identity, or a violation of their moral standards, will ensure that that person, "will be highly motivated to act in ways that allow for public and private reaffirmation of the belief that they are authentically good and moral beings".⁶⁰⁵ This can have repercussions for criminal trials of evocative crimes that cause widespread and vocal condemnation. In these situations, judgements of fairness are made "against the yardstick of ... internalized moral values".⁶⁰⁶ If the outcome of a criminal trial is not what is demanded, as a result of their moral compass, individuals are liable to question the legitimacy of that trial. Greater emphasis is placed on the outcome, rather than the procedure, of any scenario that tests individual moral mandates.⁶⁰⁷ This phenomenon goes beyond a lack of understanding of the trial process amongst lay people. Skitka's work emphasises that the evoking of moral mandates generates a popular demand for a particular outcome, in order to resolve the feelings of outrage and unease, encouraged by media rhetoric, directed towards the defendant.

Moral mandates are described as a "selective self-expressive stan[ce] on a specific issue, not a generalised orientation toward the world".⁶⁰⁸ They can be characterised as strongly internalised feelings of morality that are rooted in core values such as "thou shall not kill" and are often presented as factual imperatives, or universal beliefs.⁶⁰⁹ Moreover, these core values are often emotional and knee-jerk and, therefore, idiosyncratic, providing "an inherent justification for one's response or actions".⁶¹⁰ As a result, personal identity is often linked with how people perceive fairness and moral values, something that is crystallised by self-affirmation theory.⁶¹¹ In such contexts, individuals do not consider the fairness of their (or other's) behaviours, but rather use

Bos, Bruins, *et al.* "Sometimes Unfair Procedures Have Nice Aspects: On the Psychology of the Fair Process Effect" (1999) 77 *Journal of Personality and Social Psychology* 324.

⁶⁰⁴ *Supra* Skitka and Houston n85, Skitka and Mullen n512, Skitka "Do the Means Always Justify the Ends, or Do the Ends Sometimes Justify the Means? A Value Protection Model of Justice Reasoning" (2002) 28 *Personality and Social Psychology Bulletin* 588-597.

⁶⁰⁵ *Ibid* Skitka p.588.

⁶⁰⁶ *Ibid* p.589.

⁶⁰⁷ Skitka "Of Different Minds: An Accessible Identity Model of Justice Reasoning" (2003) 7 *Personality and Social Psychology Review* 286-297.

⁶⁰⁸ Skitka and Mullen "Understanding Judgements of Fairness in a Real-World Political Context: A Test of the Value Protection Model of Justice Reasoning" (2002) 28 *Personality and Social Psychology Bulletin* 1419-1429 p.1420.

⁶⁰⁹ See Mullen and Skitka *supra* n512, Skitka, Bauman, *et al.* "Moral Conviction: Another Contributor to Attitude Strength or Something More?" (2005) 88 *Journal of Personality and Social Psychology* 895-917.

⁶¹⁰ *Ibid* Skitka, Bauman, *et al.* p.897, *supra* Skitka n607, Jewkes n71 p.17.

their own morality as a means to understand and determine the appropriate behaviour or outcome.⁶¹² Any transgressions of an individual's moral mandate by another person will often result in moral outrage and a negative perception of that person.⁶¹³ Those defendants that are accused of committing crimes that have a widespread impact on moral mandates (for example paedophilia, or violent murder) are likely to attract negative, knee-jerk and emotional reactions from the public. This can result in a phenomenon that Liberman has dubbed "moral punitiveness"⁶¹⁴ where the desire for retribution is rooted in an individual's morality, which has been deemed to have been assaulted. Moral mandates can demand a particular outcome, regardless of the procedure used. If that outcome is not met then the individual will perceive the trial as unfair, regardless of the procedural safeguards in place, and conclude the institution unjust.⁶¹⁵

Criminal trials that receive substantial publicity, "often involve defendants who ... shock the conscience of society".⁶¹⁶ Such crimes easily satisfy the commercialised needs of the press and can facilitate an individual's "moral workout" as they consume crime news. This can increase condemnation of the defendant, ostracising them from society, as the public empathise with the victim through the emotive language of the press. The resultant effect can be a trial by media. Technological developments stand poised to exacerbate perceptions of the defendant, both by the public and in the media. Skitka's application of moral mandates demonstrates that, for crimes that evoke a strong and widespread moral reaction, the public legitimacy of the court is linked with the outcome of the trial, regardless of the fairness of the process. Apparent online "evidence" can exacerbate this.

The moral mandate effect has not been considered by criminologists. As a result, this thesis seeks to test the implications of this theory, if any, in light of the rise in social media and the fluid role of the defendant. If the populist guilt of a defendant accused of a crime that evokes a moral mandate has already been established, then this can result in the public demand for a guilty verdict. Failure of the court to provide this verdict can have lasting repercussions for public opinions of the trial and subtly erode trust in the criminal justice process. The consequence of this could mean that criminal justice is

⁶¹¹ *Supra* Skitka n604.

⁶¹² *Supra* Skitka n607.

⁶¹³ Skitka and Wisneski "Moral Conviction and Emotion" (2011) 3 *Emotion Review* 328-330.

⁶¹⁴ Liberman "An Eye for an Eye: Public Support for War Against Evildoers" (2006) 60 *International Organization* 687-722, see also Roberts and Doob "News Media Influences on Public Views of Sentencing" (1990) 14 *Law and Human Behavior* 451-468.

⁶¹⁵ *Supra* Skitka and Houston n85.

brought into the political sphere and away from legal safeguards. This has been seen in the public attack of named sex offenders in the Paulsgrove estate and the subsequent enactment of Sarah's Law. Public outrage against crimes has already manifested into vigilante action against suspects. The easy access of social media and the online "evidence" that it makes available, has the capacity to compound this outrage, magnifying calls for justice and potentially rendering the criminal trial superfluous. The celebrations at bin Laden's death, for example, clearly illustrate how he had been widely judged as guilty without the need for a criminal trial. Similarly, the public vitriol against Adrian Bayley and Casey Anthony, discussed in the introduction of this thesis, illustrates how the verdict of the trial was regarded as insufficient for justice. As such, the legitimacy of the trial process, exacerbated by the moral mandate effect, can hinge upon the verdict of the courtroom matching the verdict of the public.

Section Three: How Does Crime News Impact Public Perceptions?

The capacity of crime news to further the commercialised needs of the press has ensured that it has remained a popular topic in today's media. Yet the resultant effect is crime news that is presented in an entertaining and engaging manner to attract consumers. This indicates that the purpose for reading crime news goes beyond ascertaining information about the crime. Indeed, the commentary that accompanies the base reporting of the crime suggests that there are a variety of reasons why individuals read crime news. Although the media's influence in public perception of crime is not disputed, an appreciation of why crime news is read is necessary to better understand the media's influence of public perceptions of the trial and how it may impact on the criminal justice process.

It would be wrong to describe the media as providing the only influence on public attitudes. Indeed, regarding serious crimes, public attitudes are formed through personal, moral and ideological beliefs.⁶¹⁷ Nevertheless, it is clearly possible for news to generate an extreme response to crimes and the alleged perpetrators. Yet the everyday media influence of public opinion is considerably more subtle. The reporting style of the media and the selectivity of news reporting, which will be considered later in this subsection, can have a substantial and long-term influence on public attitudes towards the defendant. This section will be divided into two parts. First we consider why crime news sells, specifically why people read crime news. This will help us to better

⁶¹⁶ Hermida "Trial by Tabloid" (1994) 7 *Saint Thomas Law Review* 197-216 p.202.

⁶¹⁷ *Supra* Ericson n564.

understand the second part of this section, what crimes are considered newsworthy and how this selectivity of crimes news can have a resultant influence on public opinions.

Why Read Crime News?

How crime news is consumed helps to explain why it is easy to make a value judgement against the defendant. Crime is not primarily read for information. Instead, the public access crime news to assess their own morality against the criminal⁶¹⁸ or, as Greer describes it, to “engage in a daily ritual moral workout”.⁶¹⁹ In this way, crime is used as a comparator to the individual lives of the public; the actions of the criminal serves to exculpate the actions of the reader by reaffirming their morality and reinforcing their own attitudes within society. It is this morality viewpoint that Katz argues is the reason why crime is readily consumed by the public. In his article, “What Makes Crime ‘News’?” Katz considers the role the media play in shaping public opinion of crime. He argues that individuals do not use media depictions to learn about crime, considering it implausible “to assume that the public takes cinematic, novelistic, and press depictions of crime as evidence”.⁶²⁰ This is compounded by the fact that crime is often presented in a moralistic manner in the news media, most notably in newspapers.⁶²¹ Thus, Katz’s thesis applies not only to individual assessments, but also to societal analysis of crime and the defendant. The moral reporting style of crime news encourages the individual to condemn the suspect based on gut feelings and intuition. This theory as to why crime news is readily consumed draws some interesting parallels with the moral mandate effect and suggests that the role of the defendant goes beyond the criminal trial, also playing an important role in the pre-trial phase. As with the system of ordeals, this theory as to why people read crime news suggests that the role of the pre-trial defendant is to strengthen community ties by reaffirming the moral standing of the law-abiding citizen within it. By establishing a sliding scale of morality, the audience can absolve themselves and reaffirm their place in society whilst simultaneously condemning the criminal.

Assessments of the defendant’s morality serve not only to reinforce an individual’s conscience but to also provide wider societal commentary on criminal activity. As Durkheim states, crime “offends certain collective feelings which are

⁶¹⁸ Katz “What Makes Crime ‘News’?” (1987) 9 *Media, Culture and Society* 47-75. See also *supra* Gewirtz n77, *ibid*.

⁶¹⁹ Greer “News Media Criminology” in Newburn and McLaughlin (eds) *The SAGE Handbook of Criminological Theory* (SAGE 2010) p.503.

⁶²⁰ *Supra* Katz n618 p.61.

especially strong and clear-cut”.⁶²² Thus, it is the shock felt as a result of certain acts that makes those acts crimes.⁶²³ Crime is strongly linked to the morality of a society, with the outrage directed at the criminal serving to provide the parameters of acceptable behaviour in society. Although Durkheim stresses that crime should not be considered as an evil and that the criminal should be seen as a necessary part of society,⁶²⁴ the link of crime to morality is something that is encouraged by crime news. Those accused of criminal offences that shock the conscience can thus be deemed inhuman and mentally ostracised from society.

Those deemed to be outsiders or ostracised by society are typically considered to be deviant.⁶²⁵ Deviancy is a label that is attributed to the wrong-doer by society,⁶²⁶ often facilitated by the media.⁶²⁷ Media created deviants are audience-driven, established as a need to sell news and are thus defined by social commentary. As a result, it is impossible to provide an objective and universally applicable definition of what constitutes deviancy.⁶²⁸ Thus, deviants are largely constructed in the negative: as “visible reminders of what we should not be”.⁶²⁹ Goode and Ben-Yehuda, describes deviants (or folk devils) as “engaged in wrongdoing; their actions undermine and subvert the moral order and harm the society ... [and who subsequently] must be stopped”.⁶³⁰ Moral outrage, then, becomes focused on eliminating the threat, increasing punitiveness and decreasing empathy. Moreover, deviancy is something that is regarded as inherent, or pathological⁶³¹ in the individual, reducing the opportunity for the accused to be sufficiently rehabilitated to rejoin society.⁶³² The marriage of Maxine Carr, jailed in 2002 for perverting the course of justice in the Soham Murder investigation, was deemed newsworthy precisely because of her criminal past. By quoting the fact that, “Holly and Jessica ... will never get to enjoy their big day. Why should she?”⁶³³ the *Daily Mail*, in their report of the event, clearly express the residual anger directed

⁶²¹ *Supra* Chibnall n71, Cohen n22 p.10.

⁶²² Durkheim *The Rules of Sociological Method and Selected Tests on Sociology and its Method* (The Free Press 2014) p.61.

⁶²³ *Ibid* p.61-62.

⁶²⁴ *Ibid* p.63.

⁶²⁵ Becker *Outsiders: Studies in the Sociology of Deviance* (The Free Press 1997) p.11-12.

⁶²⁶ *Ibid* p.8-9, Erikson *Wayward Puritans: A Study in the Sociology of Deviance* (Wiley 1966) p.6.

⁶²⁷ *Supra* Cohen n22 p.8-9.

⁶²⁸ *Supra* Erikson n626 p.5-19.

⁶²⁹ *Supra* Cohen n22 p.2, *ibid* p.5.

⁶³⁰ *Supra* Goode and Ben-Yehuda n599 p.28.

⁶³¹ *Supra* Becker n625 p.4-5.

⁶³² *Supra* Erikson n 626 p.16-17.

⁶³³ Glanfield “Maxine Carr Marries New Boyfriend - Who is ‘Absolutely Besotted with Her’ Despite Her Shameful Past” *The Daily Mail* (London 27/5/14).

against Carr,⁶³⁴ who is not considered entitled to enjoy normal societal activities, such as getting married. The modernisation of society, moving away from small, rural communities into large and impersonal towns and cities, has meant that deviant groups are able to form their own communities and become increasingly isolated from the rest of the population.⁶³⁵ With understanding of such sects of individuals derived from media analysis of deviant groups, the remoteness of these individuals, be it physical or mental, serves to limit the empathy felt towards them, further ostracising them from society.

Viewing crime news in this light explains why it is easy to make a value judgement against the defendant. Suspects of crimes that go beyond the spectrum of individual morality shock the collective conscience. If individuals encounter a crime that is incomprehensible to them, according to their own internal morality, then the focus of the “moral workout” is inevitably on the crime committed (how could the defendant have done this?) rather than on the defendant (how can we explain the defendant’s actions?). This can have further implications for those accused of the most serious crimes. In these scenarios, condemnation of the crime is widespread and the apparently automatic, visceral response against the defendant becomes closely intertwined with morality.

Assessing the defendant’s actions in light of the reader’s own morality means that the context surrounding the crime or the accused is rarely considered. Instead, the defendant is considered evil in comparison to the reader’s personal moral values.⁶³⁶ Public condemnation of the “Unabomber” in the US and the “nail-bomber” in the UK, for example, was absolute, ensuring that any discussion of the mental health of either defendant, who had both been diagnosed with paranoid schizophrenia, was minimal and over-simplified.⁶³⁷ Their mental state was not allowed to encroach on their pre-established media guilt.

Considered in this light, crime news takes on a more sinister dimension. If crime news is consumed in order to validate the morality of the reader, the impact that this subsequently has on the accused must be considered. The binary depictions of crime news by the media, considered above, necessarily results in the moral damnation of the

⁶³⁴ For further detail of media portrayals of Maxine Carr, see *supra* Jones and Wardle n47.

⁶³⁵ Wilkins “Information and the Definition of Deviance” in Cohen and Young (eds) *The Manufacture of News* (Constable 1981).

⁶³⁶ *Supra* Goode and Ben-Yehuda n599 p.27.

⁶³⁷ *Supra* Wardle n83.

criminal, thus providing absolution for the reader.⁶³⁸ Reading crime news seemingly highlights to the consumer the differences between the ordinary, moralistic, law-abiding citizen and the deviant criminal. Despite the fact that deviancy is dependent on a societal reaction⁶³⁹ and is a label that has been attached to the individual,⁶⁴⁰ it comes to represent the inherent nature and quality of the defendant accused of crimes that shock the public, who become “the personification of evil”.⁶⁴¹ The defendant is considered to be almost inhuman, outside of society’s moral frameworks, with those who are accused of crimes that cause widespread and moral condemnation, attracting the greatest media vitriol.

With the media influencing public opinion, commentary on the defendant, as part of news coverage on the crime story, can alter perceptions of the justice process.⁶⁴² The primary purpose for the court is to ultimately determine the guilt of the defendant. If guilt is established by the media prior to this, then the purpose of the trial can be questioned; the defendant is already considered to be guilty. As a result, the role of the defendant in the pre-trial phase is at odds with the role of the defendant in the criminal trial. The heated moralistic rhetoric directed at the defendant, facilitated by crime news in the pre-trial phase contradicts the dispassionate, rights-respecting rhetoric used in respect of the defendant by the court. The dichotomy between discussions of the defendant inside the courtroom and outside cannot be easily reconciled and could be exerting pressure on those defendants subject to particularly intense media scrutiny. It is also those defendants that are likely to trigger the moral mandate effect. As a result, it is possible that the role of the pre-trial defendant in these circumstances outside the courtroom is more significant than that within it.

The condemnation of the defendant in the pre-trial phase is undertaken with little consideration of the context of the crime or the accused’s legal guilt. Such a viewpoint is compounded by the selectivity of the media, as stories are ultimately chosen on the basis of what will sell. Driven by a commercial agenda, the media have a set of operational imperatives, or “news values”, through which news stories are filtered. Journalists are influenced by this set of values, crystallised in terms of newsworthiness for analytic purposes by academics.⁶⁴³ With the public reliant on the news in order to

⁶³⁸ *Supra* Jewkes n71.

⁶³⁹ *Supra* Becker n625 p.11-12.

⁶⁴⁰ *Supra* Cohen n22 p.5, *ibid* p.8-9.

⁶⁴¹ *Supra* Goode and Ben-Yehuda n599 p.27.

⁶⁴² *Supra* Surette n507.

⁶⁴³ Rock “News as Eternal Recurrence” in Cohen and Young (eds) *The Manufacture of News: Social Problems, Deviance and the Mass Media* (Constable 1973).

identify global events, media selectivity can influence public awareness and understanding.⁶⁴⁴ This is something that is particularly important in the context of crime, as most members of the public do not have first-hand knowledge of the criminal justice process and are reliant on the media to provide this context.⁶⁴⁵ Thus, the selectivity of the media can determine which defendants are subject to public condemnation. As such, it is necessary to devote some time to the concept of newsworthiness, in order to ascertain how and why the media can instigate the prejudgment of the defendant, which is more likely to trigger the moral mandate effect.

Newsworthiness

The implied purpose of the news media is to reflect the realities of life through the reporting of news events.⁶⁴⁶ However, the fact that the media are selective means that the reflection of reality is clearly distorted, which in turn can skew the portrayal of the crime and the depiction of the defendant. News coverage is hierarchical, affording greater attention and commentary to certain types of events, exacerbated by the fact that maintaining commercial viability is becoming more difficult. The fall in advertising revenue and the rise in media outlets have created an increasingly competitive market, whilst the relaxation of media regulation results in greater emphasis on enticing an audience.⁶⁴⁷ The concept of newsworthiness, therefore, is predominantly market driven. With the focus on selling news, crime is reported in such a way as to appeal to the reader. A simplified presentation, the over representation of spectacular or violent crime, and the personal angle in which crime is reported, means that public understanding of the criminal justice process and the subsequent judgement of the defendant is formed within this context.⁶⁴⁸ Defendants accused of serious and shocking crimes are considered to be the most newsworthy, receiving significant and disproportionate press attention.⁶⁴⁹ Such a focus helps to perpetuate the notion of the deviant defendant and facilitate the public “moral workout”.

⁶⁴⁴ Grochowski “The Tabloid Effect in the OJ Simpson Case: ‘The National Enquirer’ and the Production of Crime Knowledge” (2002) 5 *International Journal of Cultural Studies* 336-356, Williams and Delli Carpini “Unchained Reaction: The Collapse of Media Gatekeeping and the Clinton–Lewinsky Scandal” (2000) 1 *Journalism* 61-85, Lang and Lang “Polling on Watergate: The Battle for Public Opinion” (1980) 44 *Public Opinion Quarterly* 530-547, *supra* Greer and McLaughlin “Media Justice” n21.

⁶⁴⁵ *Supra* Moran n81.

⁶⁴⁶ *Supra* Jewkes n71.

⁶⁴⁷ *Supra* Barnett n72, Chermak n505.

⁶⁴⁸ For further detail, see *supra* Jewkes n71 p.39-63.

⁶⁴⁹ *Ibid* p.58-59.

Determining newsworthiness occurs immediately, consequently journalists play a pivotal role in the news selection process.⁶⁵⁰ Thus, news selection is inevitably shaped by a broader political and ideological attitude.⁶⁵¹ Intriguingly, research in this area suggests that this is largely done subconsciously, with many reporters operating under the premise that they know a news story when they see it, by utilising their so-called “news sense”.⁶⁵² Identifying what events to report on is often based on an assumption of what readers want and expect from their newspaper.⁶⁵³ Media selection, therefore, can become a self-fulfilling prophecy, with journalists reporting stories based on their pre-determined assumption of the news event.⁶⁵⁴ Thus, violence at Notting Hill Carnival will be reported in the press because it is expected. This is despite the fact that, as Jewkes asserts, in comparison to other, similar music events, the level of violence is relatively small.⁶⁵⁵ The media preserves, or even shapes, the status quo,⁶⁵⁶ replacing the traditional purpose for the criminal trial.

Several key studies, have broadly identified the criteria behind news selection. Galtung and Ruge, were the first academics to postulate the composition of newsworthiness and famously suggested twelve so-called “news factors”,⁶⁵⁷ which operate interdependently and characterise media selectivity. Shortly after, Chibnall, drawing on the groundwork laid down by the Norwegian academics, stipulated eight “professional news imperatives of journalism”⁶⁵⁸ and clearly highlighted media influence on public perceptions of the criminal justice process. The seminal studies, conducted in the 1960s have been subsequently updated and confirmed by Mawby,⁶⁵⁹ and Harcup and O’Neill.⁶⁶⁰ Moreover, work by Yvonne Jewkes has further added to academic understanding of the news values of criminal law in particular. Her twelve

⁶⁵⁰ Harcup and O’Neill “What Is News? Galtung and Ruge Revisited” (2001) 2 *Journalism Studies* 261-280, *supra* Cohen and Young n501, Reiner n502, Chibnall n42, Hall n74, Chermak n505.

⁶⁵¹ *Supra* Becker n625, Becker “Whose Side Are We On?” (1966) 14 *Social Problems* 239-247, *supra* Chibnall n71, Jewkes n71, Cohen and Young n501.

⁶⁵² *Supra* Roshier n69. See also Chibnall n71, Hall n74, Mawby n87, Chermak n505.

⁶⁵³ *Ibid* Chibnall, *supra* Jewkes n71, Hall n41.

⁶⁵⁴ *Supra* Hall n74, *ibid* Jewkes p.62-64.

⁶⁵⁵ *Ibid*.

⁶⁵⁶ *Supra* Cohen and Young n501. This is something that McFarlane and Hay state often occurs without “conscious awareness” McFarlane and Hay “The Battle for Seattle: Protest and Popular Geopolitics in ‘The Australian’ Newspaper” (2003) 22 *Political Geography* 211-232 p.216.

⁶⁵⁷ *Supra* Galtung and Ruge n71. These are (1) Frequency, (2) Threshold, (3) Absolute and Increased Intensity, (4) Meaningfulness (as qualified by cultural proximity and relevance), (5) Consonance (primarily with regards to demand and predictability), (6) Unexpectedness (particularly in relation to the scarify and unpredictability of the event), (7) Continuity, (8) Composition, (9) Reference to Elite Nations, (10) Reference to Elite People, (11) Reference to Elite Persons, (12) Reference to Something Negative.

⁶⁵⁸ *Supra* Chibnall n71. These are (1) Immediacy, (2) Dramatisation, (3) Personalisation, (4) Simplification, (5) Titillation, (6) Conventionalism, (7) Structured Access, (8) Novelty.

⁶⁵⁹ Analysing Chibnall’s work.

⁶⁶⁰ Considered the research of Galtung and Ruge (*supra* n71) and extrapolating it to criminal news.

news structures⁶⁶¹ specifically address the way in which the modern media interacts with crime, something that has developed exponentially since the initial qualifications of news values.

News values highlight a core selective framework that the media operates to, regardless of technological and societal developments. Stories that are sensational, or depict a scandal, can serve to increase drastically the readership of newspapers and, more recently, can also provide the impetus for journalistic accolades.⁶⁶² Furthermore, such news stories are more likely to be reported if they can be presented unambiguously, thus “stripping them from any analytic[al] framework”⁶⁶³, enabling the audience to easily consume the news. The media prioritises events with a personal angle that the audience can relate to,⁶⁶⁴ which is easier to do with unexpected and negative events.⁶⁶⁵ Certain crimes easily satisfy the stipulated media values and receive substantial media coverage as a result. News values help to explain why violent crimes against the person, committed by strangers, receive greater media attention,⁶⁶⁶ despite the fact that these crimes are comparatively rare.⁶⁶⁷ The rhetoric of crime news can also be influenced by a close working relationship with the police, which can lead to a prosecutorial bias in crime reporting subsequently inviting the public to judge and condemn the defendant.

By presenting it within a particular context or analysing a certain angle, crime is simplified and evaluated by the news media. Crime news is presented in an entertaining manner in order to attract as wide an audience as possible. However, this can impact upon news portrayals of the defendant, who is often analysed in this context, but under the guise of factual news reporting. As Chibnall cautions, “there is no easy way of separating ‘sacred’ facts from ‘free comment’”.⁶⁶⁸ With the public being “fed on a diet

⁶⁶¹ *Supra* Jewkes n71. These are (1) Threshold, (2) Predictability, (3) Simplification, (4) Individualism, (5) Risk, (6) Sex, (7) Celebrity, (8) Proximity, (9) Violence or Conflict, (10) Visual Spectacle or Graphic Imagery, (11) Children, (12) Conservative Ideology and Political Diversion.

⁶⁶² As Greer and McLaughlin note, *The Daily Telegraph*’s sales increased significantly during its brokerage of the expenses scandal in Parliament in 2010. A similar phenomenon was seen with *The Guardian* and *The New York Times* during their coverage of WikiLeaks in the same year. *Supra* n89 p.277.

⁶⁶³ *Supra* Reiner n502 p.327.

⁶⁶⁴ *Supra* Galtung and Ruge n71.

⁶⁶⁵ *Ibid, supra* Hall n41.

⁶⁶⁶ *Supra* Roshier n69. See also Reiner n502, Cavender and Mulcahy “Trial by Fire: Media Constructions of Corporate Deviance” (1998) 15 *Justice Quarterly* 697-717.

⁶⁶⁷ Innes, for example, states that approximately 10 per cent of all murders receive any degree of press coverage and between 1-2 per cent of these crimes have sustained and cross-medium news coverage. Innes “The Media as an Investigative Resource in Murder Enquiries” (1999) 39 *British Journal of Criminology* 269-286, *supra* Reiner n502, Chermak n505.

⁶⁶⁸ *Supra* Chibnall n71 p.ix.

of ‘infotainment’”,⁶⁶⁹ the need to entertain audiences in order to sell news can corrupt the public image of crime and criminal justice. Traditional media outlets disproportionately report interpersonal, serious and violent crimes, which have a greater entertainment value.⁶⁷⁰ As a result, public perceptions of these crimes, and the people who commit them, become distorted.⁶⁷¹

The Impact of Media Reporting Bias on Due Process: Trial by Media

The phrase trial by media describes a troubling phenomenon whereby judgement of the accused is exacted by the media outside of the due process frameworks of the legal system.⁶⁷² Through a process of “carnavalesque condemnation and ridicule” judgement is exacted upon those accused of crimes that fall foul of the moralistic and political agendas of the news media.⁶⁷³ Some of the most basic rights afforded to the defendant, such as the presumption of innocence, are eroded in order to satisfy the commercialised needs of the press. In this manner “due process and journalistic objectivity can give way to sensationalist, moralising speculation about the actions and motives of those who stand accused in the news media spotlight”.⁶⁷⁴ It is the need to sell news, creating a pressurised working environment for journalists, that provides the impetus for sensationalised stories that guarantee audience entertainment.⁶⁷⁵ Trial by media can be a tool to further the political aims and the commercial agendas of the news media.⁶⁷⁶

As the media invites its audience to “engage in immediate ‘red button’ judgement”, the division between fact and opinion becomes blurred.⁶⁷⁷ Hard evidence is intermingled with media speculation, hearsay and insinuation in order to establish a moralistic framework of reporting, where the accused stands guilty, convicted in the “court of public opinion”.⁶⁷⁸ The starkest examples of media trials are found in those rare but sensational cases that are able to transcend culturally specific news values and the media need for locality.⁶⁷⁹ As a result those events that receive international

⁶⁶⁹ *Supra* Jewkes n71 p.26.

⁶⁷⁰ *Supra* Chermak n505, Jewkes n71, Reiner n502.

⁶⁷¹ *Supra* Williams and Delli Carpini n644.

⁶⁷² The legislative safeguards designed to protect due process within the British court systems providing largely ineffective *supra* Mansfield n508, Langdon-Down n508.

⁶⁷³ *Supra* Greer and McLaughlin “Trial by Media” n21 p.27. See also Greer, Ferrell, *et al.* “Investigating the Crisis of the Present” (2008) 4 *Crime, Media, Culture* 5-8.

⁶⁷⁴ *Supra* Greer and McLaughlin “Trial by Media” n21 p.138.

⁶⁷⁵ *Supra* Barnett n72.

⁶⁷⁶ *Supra* Greer and McLaughlin “Media Justice” n21.

⁶⁷⁷ *Ibid* p.397.

⁶⁷⁸ *Supra* Greer and McLaughlin “Trial by Media” n21 p.27.

⁶⁷⁹ Something established by Galtung and Ruge *supra* n71.

coverage, such as the trial of O.J. Simpson and the attack of Rodney King by LA police officers, gain global notoriety.

Trial by media is exacerbated through the rise in new technologies that has enabled the real-time dissemination of news to a global populace.⁶⁸⁰ For example, portable video equipment and CCTV ensure that global awareness of the worst⁶⁸¹ crimes is growing, as they are increasingly being documented and broadcast in the news.⁶⁸² This eyewitness documentation can reinforce sentiments expressed against the defendant, which are increasingly being expressed online, discussed above.⁶⁸³ In increasingly urban and segregated societies, tolerance of criminal activities is often very low,⁶⁸⁴ compounding public outrage. As a result, “‘media justice’ is evolving as a parallel and, at times, competing and much more resonant justice paradigm than that represented by and administered through the criminal courts”.⁶⁸⁵ It appears, then, that media commentary and the subsequent public campaigns following certain, high-profile and serious crimes could have a negative impact on the trial itself. When the populist guilt of the accused has been pre-established as a result of online “evidence”, it is possible for members of the public to view the criminal justice system as superfluous.⁶⁸⁶ This is perhaps not surprising as individual first-hand experience of the courts is minimal and attendance of trials is declining.⁶⁸⁷ The emotive and sensationalised depiction in the news, supplemented with visual imagery of criminal events, is more easily accessible to the general public. As a result, the parameters of justice may be being gradually being reframed around media rhetoric and online commentary rather than courtroom procedures.

Section Four: Analysing Crime News

So far in this chapter we have considered how social media is serving to influence crime news and perceptions of the defendant. It has been noted in particular that social media can be exacerbating public condemnation of the defendant through eyewitness “evidence” and online means to express feelings of grief and shock at the crime. Recent news events such as the election of Donald Trump to the US Presidency has raised

⁶⁸⁰ *Supra* Reiner n502.

⁶⁸¹ I qualify such criminal events as “the worst” not because minor crimes largely go undocumented but because even crimes that are recorded by video footage must still satisfy the news values criteria such as seriousness, rarity and personality, discussed above.

⁶⁸² *Supra* Reiner n502.

⁶⁸³ *Supra* Greer n122.

⁶⁸⁴ *Supra* Cohen n22 p.11.

⁶⁸⁵ *Supra* Greer and McLaughlin “Media Justice” n21 p.413.

⁶⁸⁶ *Supra* Coffey and Woolworth n561.

concerns about the use of social media to perpetuate misinformation⁶⁸⁸ and there appears to be a growing trend of people using social media sites as sources of news.⁶⁸⁹ Nevertheless, it must be stressed that the influence of social media, whilst increasing, is still a marginal form of news gathering, with social media supplementing crime news.⁶⁹⁰ Thus, it is necessary to have regard for the reporting styles of crime news when considering portrayals for the defendant.

There remains a clear media over-reliance on a homogenous group of elite individuals and institutions, which frequently results in a biased portrayal of criminal events. This is exacerbated by the continued and more successful use of social media by police officers and politicians, over the courts, as a means of engaging with the public.⁶⁹¹ With the prosecuting evidence receiving greater news coverage and analysis than the defence, aggravating factors of the crime are prioritised, minimising the impact of exculpating evidence.⁶⁹² This reporting style will ultimately have a negative impact on attitudes towards the accused and could influence perceptions of the trial. Therefore, it is useful to have greater regard of the hierarchy of credibility and the inferential structures of crime news, as theoretical frameworks, and how they can facilitate analysis of media influence of public attitudes. The impact of these theories can be clearly seen in the media reporting of the G20 protests, during which crime news had a profound impact not only on public perceptions of the event but also on the subsequent criminal justice process as a result. After considering the hierarchy of credibility and inferential structures in more depth, we will consider the reporting of the G20 protests in the final part of this section in order to better illustrate the implications of two theories of crime news analysis.

⁶⁸⁷ *Supra* Moran n81.

⁶⁸⁸ Silverman “This Analysis Shows How Viral Fake Election News Stories Outperformed Real News on Facebook” (16/11/16) <<https://www.buzzfeed.com/craigsilverman/viral-fake-election-news-outperformed-real-news-on-facebook>> accessed 17/1/17, Rajan “Fake News: Too Important to Ignore” (*BBC* 16/1/17) <<http://www.bbc.co.uk/news/entertainment-arts-38636042>> accessed 17/1/17, Solon “Facebook’s Failure: Did Fake News and Polarised Politics get Trump Elected?” *The Guardian* (London 10/11/16).

⁶⁸⁹ The Pew Research Centre found that 6 in 10 American get at least some of their news from social media sites. Gottfried and Sherer “News Use Across Social Media Platforms 2016” (*Pew Research Centre* 26/5/16) <<http://www.journalism.org/2016/05/26/news-use-across-social-media-platforms-2016/>> accessed 17/1/17. Similarly the Reuters Institute for the Study of Journalism found that 50% of their sample used social media as a source of news. *Supra* Newman, *et al.* n24.

⁶⁹⁰ *Ibid* Newman, *et al.* p.86

⁶⁹¹ Johnston and McGovern “Communicating Justice: A Comparison of Courts and Police Use of Contemporary Media” (2013) 7 *International Journal of Communication* 1667-1687, *ibid.*

⁶⁹² See, for example, *supra* Wardle n83.

The Hierarchy of Credibility

News values are hierarchical; those working in the top echelons of credibility are granted greater authority to identify and comment upon events than those lower down, who are deemed to have incomplete information of what is actually occurring. This results in the reinforcing, rather than questioning, of social norms.⁶⁹³ The methods in which the media discover criminal events also has an important effect on how crime news is reported. Chibnall, in his book *Law and Order News*, found that the close working relationship between journalists and police officers had a fundamental influence on the construction of crime news.⁶⁹⁴ This research, conducted in the 1960s, has been subsequently updated by Mawby, who has confirmed the partnership between the modern news media and the police.⁶⁹⁵ In working together, there are mutual benefits for both groups, subsequently influencing reporting styles and facilitating a prosecutorial bias in crime news.

Failure to provide due regard for media reporting and opinion polls can have dire consequences for those, predominantly political, individuals and institutions who are reliant on a public mandate to establish operational legitimacy.⁶⁹⁶ There is a perceived need within these institutions to work with the media. This is mutually beneficial for journalists, who need to obtain the details of crimes,⁶⁹⁷ creating an over-reliance on information provided by a shrinking number of public officials who are linked to the societal power structure.⁶⁹⁸ Thus, the news operates within what Becker describes as the “hierarchy of credibility”.⁶⁹⁹ This has repercussions for the defendant, who is analysed and judged by information predominantly provided by the police. As such, the reporting styles of the media are an important influence in how the defendant is perceived.⁷⁰⁰

Social media has the potential to alter how traditional media outlets interact with news events. With most journalists having a Twitter account, often advertised as part of the byline, it is possible for individuals to contact journalists directly and form a dialogue. As part of this, news stories or further information about events, can come to the attention of journalists outside the traditional hierarchy of credibility. The rise in the

⁶⁹³ *Supra* Cohen and Young n501.

⁶⁹⁴ *Supra* Chibnall n42, n71.

⁶⁹⁵ *Supra* Mawby n87.

⁶⁹⁶ See, for example, Lang and Lang’s analysis on the impact this had on the tenure of President Nixon after the Watergate scandal *supra* n644. This can also be seen in Williams and Delli Carpini analysis of the Clinton-Lewinsky scandal *supra* n644.

⁶⁹⁷ *Supra* Ericson n564.

⁶⁹⁸ *Supra* Rock n643.

⁶⁹⁹ *Supra* Becker n651.

citizen journalist, as this phenomenon is now described, adds another dimension to crime reporting. This is particularly pronounced as eyewitnesses are now better able to document news events as they are occurring. As Zelizer notes, witnessing a news event is a crucial aspect of the work of journalists, whereupon “the crafting of a news story [is] draw[n] from an ability to see events unfold”.⁷⁰¹ Citizen journalism can extend the journalist’s ability to witness an event.⁷⁰² As part of this, social media and eyewitness commentary is increasingly providing a source of information of breaking news.⁷⁰³ The names of the two killers of Fusilier Drummer Lee Rigby, for example, were posted on Twitter and subsequently reported on by some media outlets, prior to either man being publicly identified by the police.⁷⁰⁴ Similarly, social media added greater depth to the reporting of the London riots in 2011 (as well as encouraging the violence), where journalists followed online postings by individuals providing details of events.⁷⁰⁵ Thus, the dynamism of social media has the potential to drastically alter journalistic practice. This is particularly noticeable in war-torn areas, where it can be difficult for journalists to access. Footage of what appeared to be the gassing of civilians by Syrian troops loyal to Assad, demonstrating a crime against humanity, came to light through YouTube and Facebook and was subsequently reported on by traditional news outlets.⁷⁰⁶ Thus, social media is proving a useful tool to express political dissent in areas of totalitarianism or violence.

Citizen journalism is often linked to political activism,⁷⁰⁷ with individuals motivated to document events out of a desire to instigate a change in the news rhetoric. This is seen in the news reporting of the G20 protests, discussed below, whereby eyewitness footage of police violence against Ian Tomlinson altered the rhetoric of the news media. This suggests that an individual actively seeks to become a citizen journalist, documenting what they witness in order to change the rhetoric of the news

⁷⁰⁰ See, for example, *supra* Chibnall n42, n71, Hall n41, Wardle n45.

⁷⁰¹ *Supra* Zelizer n38 p.410.

⁷⁰² *Ibid* p.425, Mast and Hanegreefs “When News Media Turn to Citizen-Generated Images of War” (2015) 3 *Digital Journalism* 594-614 p.595.

⁷⁰³ This can be in the form of film footage, photographs or live-tweeting events.

⁷⁰⁴ For further information, see Chapter Three.

⁷⁰⁵ Ball and Lewis “Twitter and the Riots: How the News Spread” (*The Guardian* 7/12/11) <<http://www.theguardian.com/uk/2011/dec/07/twitter-riots-how-news-spread>> accessed 21/1/14, Douglas “Social Media’s Role in the Riots” (*BBC* 9/8/11) <<http://www.bbc.co.uk/news/entertainment-arts-14457809>> accessed 21/1/14.

⁷⁰⁶ Nolan “Were These Sheep and Lambs Killed by Nerve Gas Attack in Syria? Photograph Emerges of Aftermath of Rocket Barrage ‘Fired by Rebels’” (*Dail Mail* 27/4/13) <<http://www.dailymail.co.uk/news/article-2315655/Syria-Were-sheep-lambs-killed-nerve-gas-attack-Photograph-emerges-aftermath-rocket-barrage-fired-rebels.html>> accessed 21/1/14, BBC “Syria Chemical Weapons Allegations” (*BBC* 31/10/13) <<http://www.bbc.co.uk/news/world-middle-east-22557347>> accessed 21/1/14.

event.⁷⁰⁸ This thesis suggests that citizen journalism for crime events, in particular, might instead be the result of an impulsive desire to document a spectacular or sensational event, rather than having a premeditated intention to change the media rhetoric. An impulse to document the crime, not change media rhetoric, was demonstrated in the case of Hollie Gazzard, discussed in the introduction of this thesis. As will be seen in our analysis of domestic case studies, considered in Chapter Three, eyewitness footage of the Boston Marathon bombings and the Woolwich killing, did not actually change the dominant rhetoric of the news media. Instead, it serves to supplement it by increasing the shock and horror felt by adding graphic imagery to the news event. Thus, the news media portrayals of the accused remains highly influential to public attitudes.

Inferential Structures

Bias in news reporting is compounded by the way journalists perceive their audience. Lang and Lang's empirical research clearly demonstrates that news reporting, even when apparently neutral, can have a profound impact on the public perceptions of the event.⁷⁰⁹ They use the phrase "inferential structures" to describe how "the same manifest content elements can be built together into a number of configurations".⁷¹⁰ Thus audiences are influenced by media bias, even when apparently neutral. Significantly Lang and Lang note that this bias is unwitting on behalf of the journalist, developed as a result of the presumed preferences of the target audience. Four "crucial variables" were identified for the development of an inferential structure. Firstly, how attention is focused by the interpretation (or lack of interpretation) of the news event coverage. Secondly, the timing that information is provided to the audience, which provides contextual information for the news event. Thirdly the crystallisation of this frame of reference tends to influence the interpretation of later incidents in the news event. This interpretation can be so strong that new information running counter to the frame of reference can be ignored outright. Finally, the attitude and tone of the news

⁷⁰⁷ Allan and Thorsen *Citizen Journalism: Global Perspectives*, vol 2 (Peter Lang 2009) p.11.

⁷⁰⁸ This is certainly suggested in the definition of a citizen journalist (which they call the "participatory journalist") provided by Bowman and Willis: "The act of a citizen, or group of citizens, playing an active role in the process of collecting, reporting, analyzing and disseminating news and information. The intent of this participation is to provide independent, reliable, accurate, wide-ranging and relevant information that a democracy requires". Bowman and Willis *We Media: How Audiences are Shaping the Future of News and Information* (The Media Center at The American Press Institute 2003) p.9. This definition has been subsequently used in academic commentary discussion of citizen journalism in the social media age. See, for example, Antony and Thomas *supra* n128.

⁷⁰⁹ *Supra* Lang and Lang n543. See also Jewkes n71.

⁷¹⁰ *Ibid* Lang and Lang p.170.

source influences interpretation and analysis of the news event, even if the audience is critical of the interpretation. When coupled with Becker's hierarchy of credibility, it is easy to see how the interpretation of news events can be influenced by the voices of a small number of elite individuals such as police officers, politicians and, critically for the role of the defendant, journalists and news editors, who are mindful of the need to sell stories when reporting on crime news.

In this way, crime news is not merely reported on, but is evaluated and interpreted. When accompanied by the news values considered above, news reporting's inferential structures can have considerable repercussions for the defendant and lead to the public condemnation of the mediatised defendant. The rhetoric surrounding the trial is established as a result of media commentary, which extensively use linguistically ambiguous terminology such as "fairness" to apply a contextual framework that furthers the underlying agenda of the news source.⁷¹¹ Greer and McLaughlin, in a series of articles, have illustrated how inferential structures can help evaluate the trial by media phenomenon.⁷¹² As a result of inferential structures, attitudes of the defendant can be subsequently shaped away from the due process protections of the trial, this is demonstrated by the case of PC Simon Harwood, who was accused of the manslaughter of Ian Tomlinson during the 2009 G20 protests, to which we will now turn.

Reporting Structures of the News Media and the Power of Social Media: A Case Study on the G20 Protests

Academics have analysed the G20 protests in London on the 1st April 2009, illustrating how inferential structures and the hierarchy of credibility can influence public attitudes and impact upon the political rhetoric.⁷¹³ Moreover, the subsequent inquests and the trial by media of PC Simon Haywood, demonstrates how the media-created inferential structures can alter the perception of justice. The reporting of the G20 protests and the subsequent death of Tomlinson also demonstrates the capacity of eyewitness footage to serve as "evidence" and magnify the condemnation of the defendant as guilty outside of the criminal justice process. Thus, it is worth briefly considering media reporting of the G20 protests as a case study to highlight the impact of media reporting and social media on public reactions to the defendant and the criminal trial.

⁷¹¹ *Supra* Chibnall n71.

⁷¹² Greer and McLaughlin "We Predict a Riot?: Public Order Policing, New Media Environments and the Rise of the Citizen Journalist" (2010) 50 *British Journal of Criminology* 1041-1059. *Supra* Greer and McLaughlin n21 (all sources), n89, Greer and McLaughlin "The Sir Jimmy Savile Scandal: Child Sexual Abuse and Institutional Denial at the BBC" (2013) 9 *Crime, Media, Culture* 243-263.

Drawing upon preconceived notions of the protestors, journalists reported on the potential for violence on the day of the G20 summit, with peaceful protests largely ignored.⁷¹⁴ Moreover, media coverage depicted the subversive tactics of the supposed violent protestor, suggesting that the violent anarchist could easily blend into the crowd.⁷¹⁵ Indeed, an analysis of newspaper content of the pre-protest coverage led Rosie and Gorringer to dryly comment, “one must feel some sympathy for front-line officers, nervous at what will face them in protest situations, and ‘reminded’ that the anarchist enemy need not *look* like an anarchist, but like a peaceful protestor, a curious onlooker, or an innocent bystander”.⁷¹⁶ Violent protest was reported as a foregone conclusion.⁷¹⁷

It was within this context that the death of Ian Tomlinson was reported.⁷¹⁸ The media, relying on the established media-police relationship, depicted Tomlinson as a rioter struck down by a police officer attempting to maintain the peace.⁷¹⁹ Although there were stories that questioned the proportionality of police tactics during the protests,⁷²⁰ the media were largely guided by official police reports.⁷²¹ Supported by the initial autopsy, which suggested Tomlinson died of natural causes, protestors were depicted as unnecessarily violent and destructive.⁷²²

Initial news stories accepted that Tomlinson’s death was unavoidable. Even the supposedly neutral BBC reported that he “died after collapsing”.⁷²³ The shift in rhetoric away from pre-established notions of the G20 demonstrations did not occur until several days after the protests.⁷²⁴ Criticisms of police tactics, particularly of the controversial practice of kettling were starting to develop,⁷²⁵ noticeably this was whilst Tomlinson’s

⁷¹³ *Supra* Rosie and Gorringer n74, Greer and McLaughlin n89.

⁷¹⁴ *Ibid* para 3.8.

⁷¹⁵ *Ibid* paras 3.10, para 4.3-4.7.

⁷¹⁶ *Ibid* para 3.11.

⁷¹⁷ *Ibid* para 3.1-3.11. See also *supra* McFarlane and Hay n656 for another example of “violent protests” being used as an inferential structure for an anti-capitalist demonstration, which McFarlane and Hay describe as a “protest paradigm” p.212.

⁷¹⁸ *Supra* Greer and McLaughlin n712.

⁷¹⁹ Turnbull and Gregory “Riot Mob Death; Obama Drama: Cops Pelted as they Try to Save Man” *The Mirror* (London 2/4/09), Parry “Man Found Dead Amid Massive G20 Protest” (CBC 1/4/09) <<http://www.cbc.ca/news/world/man-found-dead-amid-massive-g20-protest-1.789416>> accessed 15/6/14. *The Guardian* reported Tomlinson’s death within the context of the violent protests Meikle, Lewis, *et al.* “Man Dies During G20 Protests in London” *The Guardian* (London 2/4/09).

⁷²⁰ Townsend and Lewis “Police ‘Assaulted’ Bystander who Died During G20 Protests” *The Observer* (London 5/2/09), “G20: Police Lay on the Security as Protestors Say Tactics Too Heavy” (*Scotsman* 3/4/09).

⁷²¹ *Supra* Greer and McLaughlin n712 p.1048-1050.

⁷²² *Ibid* p.1048.

⁷²³ Quoted in Rosie and Gorringer *supra* n74. para 4.1.

⁷²⁴ *Ibid* para 5.1.

⁷²⁵ *Ibid* para 5.1-5.10.

death was seen as accidental.⁷²⁶ It was not the event of Tomlinson's death that created this shift in rhetoric. External factors did not change the established inferential structure of "violent protestors"; rather this was something that occurred as a result of obscure and internal mechanisms within the media.

Emerging video and photographic evidence that suggested that Tomlinson may not have been involved in the protests at all when he was struck down, was presented within the increasing critique of police tactics during the protests. *The Guardian* newspaper obtained footage and witness testimony that drastically changed the nature of the story, diverging from official reports.⁷²⁷ In early April the inferential structure changed from "violent protests" to "violent police officers".⁷²⁸ Greater credence was given to information obtained outside the hierarchy of credibility and that challenged official police reports. The video footage of Tomlinson being struck by a police officer ensured that his death became a primary news topic amongst the wider media outlets, not just those few newspapers that criticised police tactics.

The change in inferential structures resulted in an unusual dichotomy between the media and the police. Relying on official pathology reports the Metropolitan Police Force insisted that Tomlinson's death was accidental and unavoidable. News reports on events surrounding the death of Tomlinson used themes of justice and equity to highlight ongoing police misconduct and their failure to prosecute those accused of manslaughter. News reporting was no longer about the police-instigated death of a bystander during a violent protest, but was providing a wider commentary on institutional failure.⁷²⁹ With focus on the bereaved family and the problematic pathology reports, the inferential structure moved on from "police misconduct" to "an inability to exact justice".⁷³⁰ News reporting became increasingly moralistic in tone with "fury" and "outrage" the "dominant emotional register".⁷³¹ When an inquest found Tomlinson's death to be unlawful in 2011, media commentary and the wider public mood required the DPP to instigate the prosecution of the alleged police officer. Three weeks after the verdict, PC Simon Harwood was charged with manslaughter. After a persistent reiteration by the police management of accidental death, media outrage resulted in

⁷²⁶ *Ibid* para 5.6.

⁷²⁷ *Supra* Greer and McLaughlin n712 p.1050-1051.

⁷²⁸ *Ibid* p.1051-1053.

⁷²⁹ *Supra* Greer and McLaughlin n89 p.286, Rosie and Gorringer n74 paras 5.9, 6.1-6.3.

⁷³⁰ *Ibid* Greer and McLaughlin p.283.

⁷³¹ *Ibid* p.283.

reflections and critiques of the internal report by HM Chief Inspector of Constabulary in 2009, which called for changes in the methods used during violent protests.⁷³²

Coverage of the G20 aftermath had become a media “feeding frenzy”, where journalists competed to obtain the better story.⁷³³ The need to sell newspapers provided the impetus for the escalation of outrage. The DPP’s pronouncement that Harwood would not be prosecuted at a news conference in July 2010 resulted in a member of Tomlinson’s family challenging journalists to “name him and shame him”. The media’s response was to contextualise the statement of the DPP with footage of Tomlinson being struck down during the protests.⁷³⁴ *The Daily Telegraph* produced an editorial analysing wider police misconduct and directly named Harwood as the officer who struck Tomlinson. By the time of the criminal trial, the parallel media trial had established Harwood’s guilt as a foregone conclusion. This attitude was not allayed by Harwood’s acquittal in July 2010. The trial by media was starkly highlighted by the *Daily Mail*’s coverage of the court’s verdict. Calling Harwood the “thug in uniform” the *Mail*’s coverage of the “not guilty” verdict was contextualised by information that the jury was not told about, clearly suggesting Harwood’s culpability in the death.⁷³⁵

The reporting on the G20 protests demonstrates the dynamism new technologies can have infuse into the reporting of a news event. The eyewitness footage of PC Harwood pushing Ian Tomlinson created enormous pressure for the Metropolitan police force to investigate the actions of their officer. Without it, Tomlinson’s death would still be seen as accidental. However, it also demonstrates the pervasiveness of Lang and Lang’s inferential structures and Becker’s hierarchy of credibility, illustrating that the news media remains highly influential in setting the tone. By the time the footage was published, inferential structures were already starting to change. Thus, although the eyewitness “evidence” ensured that the G20 protests remained newsworthy for longer than it ordinarily would have done, it was a catalyst for a change in rhetoric, rather than the impetus for it. In similar protests during the G8 meeting at the Gleneagles Hotel in Scotland, for example, social media was used to publish eyewitness “evidence” of alleged police brutality.⁷³⁶ However, this was not subsequently reported by the news media.

⁷³² *Supra* Rosie and Gorringer n74 para 6.1-6.3.

⁷³³ *Supra* Greer and McLaughlin n89 p.289.

⁷³⁴ *Ibid* p.283.

⁷³⁵ Camber “Freed, the ‘Thug in Police Uniform’: What Jury Weren’t Told About the PC Cleared of G20 Killing” *Daily Mail* (London 19/7/12).

⁷³⁶ See, for example, kingrevereone “G8 Gleneagles - Repression at the Fence” (YouTube 27/12/07) <https://www.youtube.com/watch?v=aSX0ISb_YQI> accessed 15/6/14.

Moreover, the G20 case study demonstrates how pervasive and long-lasting inferential structures can be. The impact of the inferential structure of “police misconduct” meant that parallels to 2009 were drawn during the violence of the London demonstrations of the rise in university tuition fees at the end of 2010. As a result Greer and McLaughlin concluded that “contemporary scandals never die: they can be resurrected and recycled at the push of a button”.⁷³⁷ Drawing upon commentary established in 2009 the media was quick to raise concerns about police handling of demonstrators and criticise police tactics during the student protests.⁷³⁸

The case study also demonstrates the capacity of eyewitness “evidence” to condemn the defendant and call into question the criminal trial. The G20 footage also facilitated a prevailing presumption of guilt which, as per the moral mandate effect, resulted in the questioning of the criminal justice process. Harwood’s not guilty verdict was met with outrage by the public and the news media. As in the bin Laden case, the criminal court was considered an obstruction to justice. The footage of the G20 protests became the archetypal “evidence” needed for the media to condemn the actions of PC Harwood, whose guilt had become a foregone conclusion prior to the criminal trial. The formal procedures of the criminal justice system, designated with the task of establishing guilt, were rendered surplus to requirements by media commentary. Troublingly, guilt was established outside the due process frameworks of the criminal trial and the rhetoric did not change after the official not-guilty verdict.

Conclusion

The competing pressures on the modern-day defendant can have a profound impact on wider perceptions of criminal justice. With mass media serving to provide the primary source of information on the criminal justice process, it must be recognised that the underlying operational agenda of the press not only influences public opinion, but also has the potential to alter the role the defendant plays in the criminal trial. The previous chapter established that the defendant’s role in the courtroom has historically been fluid, being influenced by external sources, as much as internal ones. Moreover, the development of due process, currently considered to be entrenched in democratic criminal trials, occurred gradually and in the absence of a conscious policy to instigate procedural change. With this in mind, it is possible that the rise in online documentation of a crime, coupled with the news values of the media, which is often at direct odds

⁷³⁷ *Supra* Greer and McLaughlin n89 p.289.

⁷³⁸ *Ibid* p.288.

with the purpose of the criminal trial, could be starting to put pressure on the presumption of innocence.

It has been established that crime news does not portray events in an objective manner. Rather, criteria of newsworthiness distort the portrayal of crime, with crime news determined by an underlying commercial agenda. Only crimes that satisfy a set of news values criteria, which are ultimately designed to increase consumption, are reported. As we have seen, media depictions of crimes can be unrepresentative, simplistic and moralistic. An unambiguous reporting style is supplemented by images of the crime, or its aftermath, that invite readers to “see for themselves”⁷³⁹ and can establish a presumption of guilt without technically breaking the procedural safeguards of due process. The death of Ian Tomlinson demonstrates how eyewitness footage can help to change the rhetoric of the news media, however there is evidence to suggest that the news media were already changing the rhetoric. It should also be noted that for social media to alter the rhetoric of the news media, the event must still satisfy newsworthy criteria. Similar documentation of police violence against the G8 protestors at Gleneagles did not change the media coverage of the summit.

We should also be aware of the reasons the public read crime news as well as the agenda of the news media. If crimes are read by the public to perform a “moral workout”⁷⁴⁰ then, by extension, coverage of the criminal trial and its verdict become the epitome of this morality, with the criminal trial representing society’s abhorrence of the crime.⁷⁴¹ Such theories further demonstrate the potency of the moral mandate effect. Speaking of high-profile and mediatised trials, Gertz warns that public interest in the criminal justice process can serve to erode due process.⁷⁴² This is particularly true given the growing prevalence of social media commentary on crime news.

Social media can amplify feelings of grief and outrage, exacerbating the vitriol directed against the defendant. Furthermore, portable video-recording equipment and video-blogging sites, such as YouTube, allow criminal events to be recorded in real-time and uploaded online for widespread viewing. This, coupled with media rhetoric, can have the effect of pre-determining the guilt of the defendant. If “evidence” of the crime is documented and posted online for global dissemination, it can potentially have a significant impact on the public legitimacy of the courtroom. Skitka’s analysis of moral mandates demonstrates that public outrage at a particularly heinous crime can lead to a

⁷³⁹ *Supra* Wardle n45 p.265.

⁷⁴⁰ *Supra* Katz n618.

⁷⁴¹ *Supra* Gewirtz n77, Ericson n564 p.238-242.

⁷⁴² *Ibid* Gewirtz.

populist demand for a guilty verdict and can have long lasting repercussions for the legitimacy of the trial, which can hinge upon the verdict of the courtroom matching the verdict of the public. It is therefore possible that the parameters of justice and perceptions of the defendant are gradually being reframed around media rhetoric and online commentary rather than courtroom procedures.

Chapter Three

The Influence of Social Media on the Role of the Domestic Defendant

The impact of social media could profoundly transform the role of the defendant. However, there appears to be little attention given to this process. The fluid nature of defendant's position in the criminal trial and the way in which this role is influenced by external forces, such as crime news reporting, were considered in Chapters One and Two respectively. This chapter will look empirically at the ways in which online and media commentary may be eroding due process, specifically the presumption of innocence. It aims to add to academic understanding of trial by media, something that has received little academic attention within the United Kingdom,⁷⁴³ by considering the effect of media commentary on perceptions of the defendant. This chapter will also analyse the impact that social media is having on crime news and perceptions of the defendant. It will do this in two ways. Firstly, it will examine the way in which social media is altering crime news reporting. Secondly, it will analyse posts on two social media websites in order to assess the public attitudes of the defendant.

Two case studies will be considered, the Boston Marathon bombing and the Woolwich killing in London, both of which occurred in the spring of 2013. These crimes received substantial media attention, generating considerable commentary online, as well as in the press. Both are also characterised by substantial and graphic eyewitness documentation, adding to the horror of the crime and shaping perceptions of the event.

Section One will consider the news media reports on these crimes and how the defendant is portrayed, with particular regard to any potential erosion of the presumption of innocence. The content of four national newspapers from each country have been analysed using Lang and Lang's inferential structures as a theoretical framework. Section Two will evaluate the effect of social media with regard to these two case studies. The availability of smartphones and Internet access enables an eyewitness to film the commission of a crime and upload the video online for

⁷⁴³ There is substantial academic discourse on trial by media in the United States of America, in part due to a greater reliance on jury trials which can be adversely affected by the trial by media phenomenon and also due to several Supreme Court decisions on the matter. However, this body of analysis predominately focuses the meaning and applicability of these decisions rather than a broader consideration of the impact of media practice.

widespread access. As a result, crime news is increasingly breaking on social media sites, with eyewitnesses posting details about a crime before the more mainstream news media can report verified information of events.

Social media sites are relatively untapped resources for academic analysis when considering individual reaction to crime. Comments posted online provide a snapshot of the public conversation about the crime and the defendant. The second section of the chapter will also analyse online reactions to these crimes by looking at comments posted on the websites Twitter and YouTube.⁷⁴⁴ Following this, we will move on to consider the wider collateral impacts that were generated as a result of the reporting practices and public interest in the case studies. Before we move to this empirical analysis, it is necessary to have a detailed timeline of events in order to provide context to the empirical findings.

The Case Studies in Detail

The Boston Marathon Bombings

Dzhokhar and his elder brother Tamerlan Tsarnaev detonated two homemade bombs near the finish line of the 117th Boston Marathon, on the 15th April 2013. Their actions were motivated by online jihadist sermons and literature. The bombs exploded within 13 seconds of each other, at 2:49 in the afternoon, killing eight-year-old Martin Richard, 23-year-old student Li Lingzi, and 29-year-old Krystle Campbell. Approximately 264 people were injured,⁷⁴⁵ with sixteen people requiring amputations due to damage from shrapnel packed into the bombs. The identities of the suspects were not known until the 18th April, after the FBI released security footage of the pair in an attempt to identify them. This prompted the brothers to attempt to flee the Boston area, where they had returned to their normal routines after the bombing.

On the evening of the 18th April, the pair shot and killed a campus officer, Sean Collier, at the Massachusetts Institute of Technology (MIT) in a failed attempt to accumulate more weapons. They then hijacked a car, detaining its owner, Dun Meng, at gunpoint and stating plans to detonate more bombs in New York. These plans appear to be little more than bravado, as the brothers spent most of the night in the greater Boston

⁷⁴⁴ For greater detail on this process, see the methodology in the Appendix.

⁷⁴⁵ It is believed that there may have been other people who received minor injuries and did not seek medical help, thereby were not included in the statistics. Furthermore, this estimation only includes those physically injured by the bombs, there are no authoritative indications of the extent of the mental trauma

area, driving around the neighbourhood where they grew up. When the owner of the car escaped, notifying emergency services, police were able to use the car's built-in GPS system to determine that the brothers were in the small town of Watertown, on the outskirts of Boston. With the greater Boston area on lock down, officers cornered the brothers and a frenzied gunfight ensued, during which the brothers threw homemade explosive devices at the police. The chaotic events, which saw thousands of police officers converge on the small town,⁷⁴⁶ was live-tweeted by residents, resulting in the treading on Twitter of the #Watertown hashtag. Tamerlan Tsarnaev was shot several times by officers and eventually apprehended, but was subsequently run over by his younger brother, who apparently intended to hit officers as he fled the scene in the stolen car. Tamerlan later died in hospital. According to the pathology report cause of death was from multiple gunshot wounds and a blunt trauma to the torso and head.⁷⁴⁷ Dzhokhar evaded police for a further 18 hours, but was eventually found severely wounded in a boat, just outside of the cordoned police search area. His arrest was met with widespread and public jubilation, which saw Bostonians celebrating in the streets, waving American flags and chanting patriotic slogans.

Prosecuting Dzhokhar was a long and complex process, with initial interviews conducted at his hospital bed. Still unable to talk due to a gunshot wound to the side of his face, he provided non-verbal responses or written answers to police questions. Several Senators called for Tsarnaev to be detained as an enemy combatant, a term that became notorious during the Bush administration as a result of the war on terror and Guantanamo Bay detention centre. Such a status would have entitled the state to delay several key safeguards, such as the right to retain a lawyer. Although the US government refused to acquiesce to these demands, notification of his right to remain silent and to retain the services of a lawyer⁷⁴⁸ was delayed during this early interrogation. To legally do so stretched a 1984 ruling by the Supreme Court⁷⁴⁹ that authorised the delaying of Constitutional rights to obtain information necessary to secure the safety of the public. Tsarnaev apparently stopped communicating with

that resulted from the explosions. See Kotz "Many Could Suffer Hearing Issues from Blasts" *The Boston Globe* (Boston 18/4/13).

⁷⁴⁶ Editorial "Police Training Should Reflect Findings in Bombing Report" *The Boston Globe* (Boston 4/4/15).

⁷⁴⁷ Lowery and MacQuarrie "Funeral Home Searches for a Place to Bury Tsarnaev" *The Boston Globe* (Boston 4/5/13).

⁷⁴⁸ Part of a series of pre-trial due process protections known in America as a defendant's "Miranda rights".

⁷⁴⁹ *New York v. Quarles*, 467 U.S. 649 (1984).

investigators after he was informed of his right to remain silent.⁷⁵⁰ The delay of Tsarnaev's Miranda Rights was criticised by civil rights groups, who argued that it was unnecessary; the police having already established that the brothers were not members of a wider terrorist cell and that their actions were opportunistic and poorly planned.⁷⁵¹ Legal proceedings, which continued for over two years, generated substantial newspaper and online commentary of the crime, something compounded by the dramatic naming and apprehension of the brothers, several days after the bombings.

Dzhokhar, prosecuted in the federal courts, was charged with thirty crimes, to which he pleaded not guilty on the 10th July 2013. Attorney General, Eric Holder, confirmed in late January 2014 that the death penalty would be sought for the seventeen charges that carried a capital sanction.⁷⁵² The trial was held in Boston, contrary to several defence motions to move proceedings to Washington DC, due to the extensive and adverse commentary against the defendant from the local media. This was something that defence counsel noted, after several unsuccessful attempts to delay proceedings, citing the amount of prosecution evidence that they had to consider.⁷⁵³ Indeed, the dissenting First Circuit Appellate judge acknowledged the volume of evidence, in a judgment concerning the defence's appeal of the trial judge's refusal to delay proceedings. In his decision, he stated that, "I have found it impossible to read even a small part of this evidence, much less give it the careful consideration a case involving the death penalty deserves".⁷⁵⁴ The jury found Tsarnaev guilty of all charges on 8th April 2015 and sentenced him to death on the 15th May.

The Woolwich Killing

On the 22nd May 2013, as he crossed the street outside the barracks where he was stationed, Fusilier Drummer Lee Rigby was run over and repeatedly stabbed by Michael Adebolajo and Michael Adebowale, who attempted to decapitate the soldier. The men had been cruising the area looking for a member of the armed forces to kill, whom they viewed as representative of the state and, thus, as a result of Britain's foreign policy, an

⁷⁵⁰ Raasch and Alcindor "What Made These Two Tick? A Troubling Portrait is Emerging of Dzhokhar and Tamerlan Tsarnaev, the Brothers Suspected in the Boston Marathon Bombings, and it Contradicts What Others Close to Them Have Said" *USA Today* (Virginia 26/4/13).

⁷⁵¹ Brenner, Savage, *et al.* "Legal Questions Riddle Boston Case" *The New York Times* (New York 21/4/13), Schworm and Saltzman "Thorny Questions as US Prepares Case" *The Boston Globe* (Boston 22/4/13).

⁷⁵² The Federal government could have sought life imprisonment without parole for all thirty crimes instead.

⁷⁵³ Valencia "Judge Keeps Tsarnaev Trial in Boston, Delays the Stat" *The Boston Globe* (Boston 25/9/14).

⁷⁵⁴ Vennochi "The Judge Who Wants to Move the Tsarnaev Trial" *The Boston Globe* (Boston 24/2/15).

enemy of Islam. Whilst apparently waiting for police intervention, Adebolajo encouraged witnesses to film him as he provided justification for the murder, expressing extremist jihadist views to numerous bystanders. The pair were shot and wounded after charging at armed police when they arrived, around fourteen minutes after the initial attack. Adebowale and Adebolajo were charged with a number of offences including murder, possession of a firearm and the attempted murder of a police officer on the 28th May and the 1st June 2013, respectively, after they had sufficiently recovered from their injuries in hospital. Due to the nature of the injuries sustained after charging at armed police, Michael Adebowale and Michael Adebolajo initially appeared at Westminster magistrates' court on different days, with Adebowale appearing on the 30th May 2013, before Adebolajo was released from hospital and questioned by police.

The pair pleaded not guilty on the 27th September at the Old Bailey and were tried on the 29th November 2013. Adebowale and Adebolajo were found guilty of a wide range of offences, including of the murder of Lee Rigby and possession of a firearm on the 19th December 2013. They were exonerated of the attempted murder of a police officer by the jury, who took less than 90 minutes to decide the verdict. The defendants' guilt was determined at a time when the criminal justice system was reviewing its policies in relation to whole-life tariffs, as a result of a ruling by the European Court on Human Rights⁷⁵⁵ earlier that year. As such, sentencing was delayed until February 2014, after a Court of Appeal decision⁷⁵⁶ in relation to the whole-life sentence. This resulted in an unusually long wait between verdict and sentencing within which the media had the opportunity to further examine the crime. They were subsequently sentenced to life imprisonment on the 26th February 2014, with Adebolajo given a whole-life sentence and Adebowale required to serve a minimum of 45 years.

Section One: News Media Reporting of the Case Studies

As more mainstream news outlets, such as newspapers and television programmes, are still the primary means for accessing crime news,⁷⁵⁷ it is useful to begin with a consideration of this reporting of the Boston Marathon bombings and the Woolwich killing. Here, we will focus on the newspaper reporting of the case studies. Greer and McLaughlin, in their research on trial by media, have identified two key but under-used theories of press analysis that help to assess the impact media commentary has on

⁷⁵⁵ *Winter and Others v The United Kingdom* [2014] Crim. L.R 81.

⁷⁵⁶ *R v McLoughlin and Lee* [2014] EWCA Crim 188.

⁷⁵⁷ *Supra* Kwak, *et al.* n80.

public perceptions; the inferential structures posited by Lang and Lang, and Becker's hierarchy of credibility. These theories were described in detail in Chapter Two. However, for clarity of analysis it is worth recapping them before considering newspaper reporting of the two case studies. Inferential structures denote the unwitting bias in news reporting, describing how journalists are influenced by perceptions of their audience. The hierarchy of credibility describes the journalistic reliance on information from an elite group of individuals. These people are assumed to have a working knowledge of the crime, based on their professional interactions with the criminal justice system, and encompass politicians and police officers, who are best placed to know the facts of the news event. However, these individuals are driven by their own professional needs, such as maintaining political favour with the public. As such, they operate as gatekeepers, filtering information on high-profile crimes in line with their own professional agendas. These theories demonstrate how the reporting styles of crime news can have a substantial influence on the public perceptions of the event and the defendant.

Traditional reliance on a homogenised group of professionals has typically resulted in a prosecutorial bias in crime news, which influences the inferential structures of the press. Media engagement with individuals outside of the hierarchy of credibility, such as eyewitnesses, can alter the reporting tone of crime news and the way in which journalists interact with the gatekeepers of information. Details of crimes can now be accessed away from those professionals, namely the police and politicians, who have underlying agendas when engaging with reporters. Conversely, this possible shift in information gathering does not change the prosecutorial bias of crime news. Rather, the discourse of crime news can move away from the due process language such as "alleged" and "accused" that the police and politicians are required to maintain. Instead, reporters are able to focus on the shock and horror of the eyewitnesses, further fuelling the moralistic undertones of crime news reporting. Such a phenomenon can be clearly seen in the media reporting of the trial of PC Simon Harwood, accused of the manslaughter of Ian Tomlinson during the 2009 G20 protests.⁷⁵⁸

In order to consider media portrayal of the defendants in the two case studies, four newspapers with a wide readership and representing a broad range of political affiliations and genres, were selected for analysis. For the Boston Marathon bombings, *The New York Times*, *USA Today*, *The New York Post* and, for a more local perspective, *The Boston Globe* were analysed. For the Woolwich killing *The Daily Telegraph*, *The*

Guardian, the *Daily Mail* and *The Sun* and their respective Sunday counterparts⁷⁵⁹ were chosen. Relevant articles were identified using key words for each case study on the Nexis database.⁷⁶⁰ Greater detail of the search terms, the reasoning behind newspaper selection and the articles yielded and eliminated are outlined in the methodology, provided in the Appendix of this thesis. A total of 1,271 articles on the Boston Marathon bombing and 724 articles for the Woolwich killing were analysed.

This section will be split into two parts. Firstly, we begin by considering newspaper reporting of the crime more broadly. The inferential structures of crime news have can significantly impact how the public perceive, and ultimately judge, the defendants. Secondly, we will provide a more in-depth consideration of the way the media portray the defendants in these case studies, in particular looking at whether or not the defendants received a trial by media. A popular presumption of guilt in the media could influence the discourse of the defendant on social media. Because of the nature of the crimes in these case studies, such a presumption could fuel a popular expectation for a guilty verdict as per Skitka's moral mandate effect, something that will be considered in greater depth in our analysis of the social media commentary.

Media Portrayals of the Crimes

The prevailing inferential structure of all eight newspapers considered was that of a nation in shock, exposed to the inherently brutal nature of the crimes, which were committed in broad daylight. The crimes in the case studies are naturally shocking and evoke an emotive response, something that all newspapers highlighted. Newspapers described both crimes as attacks on the nation,⁷⁶¹ heightening the rhetoric of shock and horror. The Boston bombings were likened to a war zone⁷⁶² and drew parallels to the 9/11 terrorist attack, a crime that still resonates in American culture.⁷⁶³ The Woolwich

⁷⁵⁸ Discussed in Chapter Two.

⁷⁵⁹ None of the American newspapers run a separate Sunday edition of their publication.

⁷⁶⁰ Nexis does not have a database for *The Boston Globe*, thus relevant articles were identified using the archives found on the *Globe's* website.

⁷⁶¹ See, for example, "A Grotesque Attack on Britain's Values" *Daily Mail* (London 24/5/13), Whitehead "New Threat to Britain: Lone Wolves under the MI5 Radar" *The Daily Telegraph* (London 23/5/13), Longman "Where Finish Line Is a Crime Scene, No Talk of Defeat" *The New York Times* (New York 19/4/13), Hampson and Raasch "That Post-9/11 Quiet? It's Over; As Boston News Sweeps America, Nation's Worst Fears Are Reawakened" *The Boston Globe* (Boston 16/4/13).

⁷⁶² Rohan "War Zone at Mile 26: 'So Many People without Legs'" *The New York Times* (New York 16/4/13), Dorell "Runners Sprint Away from Scene; 'Like a Scene from 9/11' or War, Unthinkable Gore" *USA Today* (Virginia 16/4/13), Greene "'I Heard This Bang - Then Chaos. You Could See the Panic'" *The New York Post* (New York 16/4/13).

⁷⁶³ Friedman "Bring on the Next Marathon" *The New York Post* (New York 17/4/13), *supra* Hampson and Raasch n761, Greene n762.

killing was similarly described.⁷⁶⁴ Emotive headlines of both crimes, such as “Slaughtered Like a Piece of Meat” or “Running into a Nightmare” accompanying the news stories, added to the sense of national horror.⁷⁶⁵ This sense of horror was perpetuated in the American press, who published several interviews with individuals conjecturing on how they might have been affected by the blasts. “If I didn’t freeze up,” one runner stated to *The New York Times* “if I hadn’t been slow, I would have been right there”.⁷⁶⁶ Similarly *USA Today* interviewed a runner who had planned to stay at a hotel at the intersections of the bombings, implying that they had had a lucky escape.⁷⁶⁷ The message that, “it could happen to you” not only creates greater empathy with the victims but invites readers to place themselves in a similar situation.⁷⁶⁸

Readers were repeatedly invited to empathise with the victims of the crime, in particular grieving for those killed. Articles discussing the Woolwich attack were accompanied by pictures of the mass of flowers laid by individuals to express condolence.⁷⁶⁹ This sustained the feeling of a nation in shock and in mourning.⁷⁷⁰ The American media reported on the vigils in and around Boston held to commemorate the victims.⁷⁷¹ Newspapers also described the numerous displays of solidarity and grief by sports teams across the nation, including long-term rivals.⁷⁷² In response to a pervasive

⁷⁶⁴ Mason “Terror Attacks Will Only Make Us Stronger, says Cameron” *The Daily Telegraph* (London 24/5/13), *supra* “A Grotesque Attack” n761.

⁷⁶⁵ Laville, Malik, *et al.* “We Saw the Meat Cleaver. They Were Hacking at This Poor Guy” *The Guardian* (London 23/5/13), *supra* Rayner, *et al.* n130, Martin, Greenhill, *et al.* “Chilling Rant into Cameraphone” *The Guardian* (London 23/5/13), Reilly, Sabey, *et al.* “You and Your Kids Are Next: Chilling Video of Machete Killer; Bloodstained Nut’s Rant He Made Witnesses Film It” *The Sun* (London 23/5/13), *supra* Dorell n762, *supra* Rohan n762, “Running into a Nightmare” *The New York Post* (New York 16/4/13).

⁷⁶⁶ *Ibid* Rohan.

⁷⁶⁷ Moore “‘It Was Just Like a Cannon Went Off’; On Day of Chaos, People Scramble for Loved Ones” *USA Today* (Virginia 16/4/13).

⁷⁶⁸ *Supra* Wardle n562.

⁷⁶⁹ Sawyer “Flowers That Say We Won’t Give in to Hate” *The Sunday Telegraph* (London 26/5/13), Harding “Sympathy, Fear and a Citizenship Ceremony as Woolwich Wakes After a Day of Violence” *The Guardian* (London 24/5/13), “A Sea of Flowers and Flags Left in Woolwich” (*Mail on Sunday* 26/5/13) <<http://www.dailymail.co.uk/news/article-2331710/Every-faith-generation-joined-mourning-Sea-flowers-Woolwich-murder-scene-keeps-growing-hundreds-flock-support-Drummer-Rigby.html>> accessed 11/9/14, Morgan “Rest in Peace Baby; Thousands in Homage at Death Spot” (*The Sun* 26/5/13) <<http://www.thesun.co.uk/sol/homepage/news/4942677/Rest-in-peace-baby-Heartrending-note-by-girlfriend-of-Lee-Rigby.html>> accessed 26/5/13.

⁷⁷⁰ Editorial “They Sought Weakness, but Found Only Strength” *The Daily Telegraph* (London 24/5/13), *supra* Harding n769, Drury “Every Faith, Every Generation Joined in Mourning” *Daily Mail* (London 28/5/13), Editorial “Beyond Belief” *The Sun* (London 23/5/13).

⁷⁷¹ Elgin “Neighborhood Mourns Loss of 8-Year-Old-Boy Following Boston Blasts” *The New York Times* (New York 16/4/13), Bacon, Eversley, *et al.* “City Fights to Find Footing; Makeshift Memorial Appears as Security, Grief Tighten Grip” *USA Today* (Virginia 17/4/13), Mongelli “Vigil for 8-Year-Old Martin” *The New York Post* (New York 17/4/13).

⁷⁷² Zinger “At the Bruins Game, a Time to Rally” *The New York Times* (New York 19/4/13), Mihoces “Tributes Flow from Near, Far; Sporting World Unites to Honor City, Victims” *USA Today* (Virginia 17/4/13), King “All in League with Boston. Stadium Pays Tribute to Wounded City” *The New York Post* (New York 17/4/13).

sense of being under attack, all newspapers considered expressed sentiments of defiance; highlighting community strength against the evil perpetrators.⁷⁷³ This perpetuated the notion of “them” and “us” as the accused’s guilt is implied by the rhetoric of the news stories.

The use of binaries served to perpetuate the feeling of shock and horror at the crime, whilst simultaneously demonising and ostracising the killers. In the absence of official information on the Woolwich killing, newspapers focused on three women who intervened during the attack in an attempt to provide some “comfort and humanity” to Lee Rigby.⁷⁷⁴ Dubbing them the “Angels of Woolwich”,⁷⁷⁵ newspapers reported on their actions, which starkly contrasted with the “homicidal maniacs with a grievance”.⁷⁷⁶ Media depictions of the three women, most notably of Ingrid Loyau-Kennett, characterised their stoic and compassionate response to the tragedy as inherently British,⁷⁷⁷ and came to represent the impact of the crime on the nation.

The actions of the defendants were contrasted with these three women, with the media using classic binaries of “good” and “evil”.⁷⁷⁸ Headlines such as, “I Looked Him In the Eye. I Was Sure He Was Going to Kill Me”⁷⁷⁹, “‘You People Will Never Be Safe’...”⁷⁸⁰ and “You and Your Kids Are Next; Chilling Video of Machete Killer; Bloodstained Nut’s Rant He Made Witnesses Film It”⁷⁸¹, depicted the Woolwich killers as evil and savage. The three women were not the only eyewitnesses to the scene, nor

⁷⁷³ Jones “Do Not Fear the Loonies ... Support H4H with Pride; Terror on Our Streets Britain’s Celebs Praise Charity Says Jeremy Clarkson” *The Sun* (London 24/5/13), Earle “‘We Will Pick Ourselves Up. We Will Finish the Race’ Obama Pledges Comfort & Healing in Rousing Boston Speech” *The New York Post* (New York 19/4/13), *supra* Mason n764, Friedman n763.

⁷⁷⁴ Whitehead and Dixon “‘A Barbarous and Cowardly Killing’; Two Islamists Tried to Behead Fusilier in Street after Running Him over, Court Told Lee Rigby Murder Trial” *The Daily Telegraph* (London 30/11/13), Bakewell “Women Who Stepped into the Bloody and Rage, Talking” *The Guardian* (London 24/5/13).

⁷⁷⁵ Duffin “Mother Tells Terrorists to Drop Weapons” *The Daily Telegraph* (London 23/5/13), Hickman “‘I Thought, OK, Let’s Listen to What He Has to Say’: When Ingrid Loyau-Kennett’s Bus Was Halted at the Scene of the Woolwich Attack, She Leapt out to Offer Aid, but Ended up Engaging One of the Suspects in Conversation. Back Home in Cornwall, She Tells Leo Hickman Why She Did It, and What Should Happen to the Killers” *The Guardian* (London 28/5/13), Allen and Osborne “Angels of Woolwich” *Daily Mail* (London 24/5/13). This was a phrase that was widely referenced in all the newspapers, Sullivan, Reilly, *et al.* “As Woman Strokes a Beheaded Soldier, His Killer Cries for Jihad; Machete Maniacs Murder Squaddie” *The Sun* (London 23/5/13).

⁷⁷⁶ Littlejohn “Toytown Jihadists and a Lack of Political Power” *Daily Mail* (London 24/5/13).

⁷⁷⁷ Rainey “‘I Looked Him in the Eye. I Was Sure He Wasn’t Going to Kill Me’; Former Cub Scout Leader Tells of Moment She Came Face to Face with Suspects and Told Them to Drop Their Bloody Weapons” *The Daily Telegraph* (London 24/5/13), “‘Better Me Than a Child - So I Asked What Did He Want?’: Passerby Felt She Had to Distract Man to Save Others...” *The Guardian* (London 24/5/13), Johnson “My Generation is Soft? Tell That to a Cub Leader From Cornwall” *Mail on Sunday* (London 26/5/13), Prynn “Pluck of a Cub Leader; Brave Mum Tackles Bloodied Fanatic” *The Sun* (London 23/5/13).

⁷⁷⁸ See, for example *supra* Sullivan n775. This will be considered in greater depth below.

⁷⁷⁹ *Supra* Rainey n777.

⁷⁸⁰ Dodd, Malik, *et al.* “‘You People Will Never Be Safe’...” *The Guardian* (London 23/5/13).

were they the only ones who attempted to intervene. Indeed, initial media reports confirmed that there were several proactive male witnesses to the attack.⁷⁸² However, media focus on the women brought to mind the traditional imagery of nurture, selflessness and empathy that accompanies typical depictions of femininity, increasing the potency of their actions.⁷⁸³ These were women who nurtured and cared for the victim, something that was emphasised by media reports, which focused on the fact that the three women who intervened were mothers.⁷⁸⁴ The perpetrators, in contrast, were described as unemotional, violent and barbaric.

Such binary depictions were also seen in the American press, which provided substantial media consideration of the actions of the first responders to the bombings. *USA Today* reported on three soldiers who ran towards the explosions to help medics and those wounded. Their actions were described as heroic, contrasting with the “deadly act of cowardice” of the bombers.⁷⁸⁵ Newspapers compared the heroism displayed by police officers after the Tsarnaevs were apprehended and the inhumane actions of the brothers. For example, *The Boston Globe*, in a detailed report on the events of Watertown a year after the bombings, described how Police Chief Dan Linskey called an ambulance after Tamerlan was mortally wounded. The newspaper noted that, “in many places in the world, someone in Linskey’s position would have put a bullet in him. Instead, he called for an ambulance. ‘That’s the difference between us and them,’ Linskey said”.⁷⁸⁶ Similarly, there were several articles describing the actions of medical staff who treated the brothers.⁷⁸⁷ The compassion of the medical staff contrasted with the actions of the brothers who had fatally killed four people, instigated a furious gunfight with police and caused the lockdown of the greater Boston area.⁷⁸⁸ *The New York Times* finished a report on the bombings with a quote from Dr Schoenfeld, part of Tamerlan’s resuscitation team, who stated, “I worry about everybody in the city, that everyone’s going to be O.K.”.⁷⁸⁹ A month after the attacks, *The Boston Globe* published an article on the nurses who treated Dzhokhar and their subsequent trauma as a result.⁷⁹⁰

⁷⁸¹ *Supra* Reilly, *et al.* n765.

⁷⁸² Greenwood and Martin “Crazed Animals? How News of the Savage Attack Exploded on Twitter” *Daily Mail* (London 23/5/13), *supra* Reilly, *et al.* n765, Rayner, *et al.* n130, Laville, *et al.* n765.

⁷⁸³ See, for example, *supra* Sullivan n775.

⁷⁸⁴ *Ibid*, *supra* Pryne n777, Duffin n775.

⁷⁸⁵ “Terror in Beantown: Catch Those Cowards” *The New York Post* (New York 18/4/13).

⁷⁸⁶ Cullen “The Hub of Fairness” *The Boston Globe* (Boston 13/6/14).

⁷⁸⁷ Seelye, Rashbauu, *et al.* “2nd Bombing Suspect Is Captured, Wounded, After A Frenzied Manhunt Paralyzes Boston” *The New York Times* (New York 20/4/13), “Doc Tried to Save Bomber” *The New York Post* (New York 21/4/13), Kowalczyk “In ER, Ethos Takes Over” *The Boston Globe* (Boston 25/4/13).

⁷⁸⁸ Something that was described in detail in the same news article.

⁷⁸⁹ *Supra* Seelye, *et al.* n787.

⁷⁹⁰ Kowalczyk “For His Nurses, Angst Gave Way to Duty” *The Boston Globe* (Boston 19/3/13).

Tsarneav's friends, still trying to come to terms with the bombings, were disgusted with this publication, as one friend stated, "people just have blood in their eyes",⁷⁹¹ such was the media tone of revenge. These articles facilitated pre-established inferential structures and binary depictions of the defendant. So monstrous was Dzhokhar that he was underserving of a nurse's reflexive endearment of "hon".⁷⁹²

Newspaper articles also focused on the resilience of the victims, whose behaviour was compared with the monstrous actions of the two brothers. In the days after the bombings, the press reported details of the three victims killed in the blasts.⁷⁹³ The plight of the Richard family was well documented and, with only one member of the family of five physically unscathed from the bombs,⁷⁹⁴ the Richards came to represent the horror and human cost of the crime.⁷⁹⁵ *The Boston Globe* detailed their recovery in a particularly harrowing report a year after the bombings stating, "no family lost or suffered more that day".⁷⁹⁶ A picture of Martin Richard⁷⁹⁷ holding a poster he drew after the fatal shooting of Trayvon Martin with the words, "No more hurting people. Peace" became, "an international emblem of the day's horror" and was widely shared online.⁷⁹⁸

Similarly, there were numerous articles focussing on the mourning of Rigby's family and the Woolwich community coming to terms with the crime.⁷⁹⁹ Lee Rigby was portrayed as a kind-hearted family man and hero, who had served in Afghanistan and was passionate about his country.⁸⁰⁰ Rigby's profession within the armed forces

⁷⁹¹ Reitman "Jahar's World" *Rolling Stone* (New York 17/7/13).

⁷⁹² *Supra* Kowalczyk n790.

⁷⁹³ Applebaum and Eligon "Victims, Ages 8 and 29, Remembered for Kindness and Laughter" *The New York Times* (New York 17/4/13), Eversley and El Nasser "Tragedy Cuts 'Big Dreams' Short; Community Mourns 8-year-old Boy, Restaurant Worker" *USA Today* (Virginia 17/4/13), Kowsh and Fenton "Tragic Victim's 'Heart of Gold'" *The New York Post* (New York 17/4/13).

⁷⁹⁴ Martin's 7-year-old sister lost her leg, his mother was left blind in one eye and his father received shrapnel wounds that had to be operated on.

⁷⁹⁵ *Supra* Elgin n771, Eversley and El Nasser n793, Mongelli n771, Abel "Loss and Love" *The Boston Globe* (Boston 13/4/13).

⁷⁹⁶ *Ibid* Abel.

⁷⁹⁷ The youngest of the three fatalities of the bombing.

⁷⁹⁸ Mongelli and De-Falco "Boy Slain but Dream Lives Littlest Victim's Lasting Memory Will Be Precious Cry for Peace" *The New York Post* (New York 17/4/13).

⁷⁹⁹ Farmer "You're One in a Million: Soldier's Last Text to Mother; Victim's Family" *The Daily Telegraph* (London 25/5/13), Wintour, Taylor, *et al.* "Crackdown on the Preachers of Hate as Soldier's Family Grieves: Muslims Urge Creation of List of Banned Speakers: Government is Reluctant to Create New Laws" *The Guardian* (London 25/5/13), Drury, Narain, *et al.* "Lee Was a Loving Husband and Son, a Proud Dad ... and a True Warrior" *Daily Mail* (London 24/5/13), Willetts, Patrick, *et al.* "Riggers ... a True Warrior; Terror on Our Streets Drummer Lee was Dad of Boy Aged 2. Tributes to Beheaded Fusilier, 25" *The Sun* (London 24/5/13).

⁸⁰⁰ Swinford "He Would Do Anything for Anybody"; Family and Colleagues Pay Tribute to Loving Father and Talented Parade Drummer Who Served with Distinction in Afghanistan" *The Daily Telegraph* (London 24/5/13), Hopkins and Bunyan "Lee was Lovely. He Would Do Anyth-ng for Anybody": Proud

reinforced the inferential structures of a nation under attack,⁸⁰¹ with *The Daily Telegraph* and *The Sun* encouraging public support for the charity Help for Heroes,⁸⁰² whose hoodie Rigby was wearing at the time of his death.⁸⁰³ Indeed, the charity experienced a surge in donations in the days following the attack,⁸⁰⁴ with the suspension of a Morrisons employee reported on in the national press because he was attempting to wear a Help for Heroes badge that the supermarket chain had deemed “unhygienic”.⁸⁰⁵

The injuries caused by the explosions in Boston were discussed in graphic detail by all newspapers.⁸⁰⁶ This served to heighten feelings of shock and grief at the destruction during one of Boston’s “most cherished rites of spring”.⁸⁰⁷ All newspapers analysed described the celebratory atmosphere at the marathon prior to the blasts.⁸⁰⁸ *The New York Times* pointed out the construction of the bomb, in particular the shrapnel inside which, “sent metal tearing through skin and muscle”.⁸⁰⁹ The same newspaper, in a later article, noted that the timing of the bombings potentially increased the level of injuries, exploding at a time with the highest concentration of runners finishing the marathon.⁸¹⁰ There were similar graphic descriptions of Rigby’s injuries in the British press, with one eyewitness quoted in all newspapers analysed saying, “the attack on the soldier was so brutal that it appeared as if ‘they were trying to remove organs’”,⁸¹¹ another described the attack as “like a horror movie”.⁸¹²

to be A Fusilier - The Fallen Soldier” *The Guardian* (London 24/5/13), Greenwood and Slack “Betrayal of a Hero Father” *Daily Mail* (London 24/5/13), *ibid* Willetts.

⁸⁰¹ Dunn and Hughes “Sickening; Terror on Our Streets Community in Shock at Soldier Attack PM and Muslim Leaders Unite to Condemn Atrocity” *The Sun* (London 23/5/13).

⁸⁰² Which aims to help soldiers wounded in service.

⁸⁰³ “Back Victim by Buying T-shirt; Help for Heroes” *The Daily Telegraph* (London 23/5/13), *supra* Jones n773.

⁸⁰⁴ “£600,000 in Three Days for Heroes” *Daily Mail* (London 25/5/13).

⁸⁰⁵ Taylor “Badge Row” *The Guardian* (London 29/5/13), Bains “Fury as Workers at Morrisons is Sent Home for Wearing Poppy” *Daily Mail* (London 29/5/13), Reilly and Earlam “Fury at Ban on Poster for Lee” *The Sun* (London 30/5/13).

⁸⁰⁶ *Supra* Dorell n762.

⁸⁰⁷ Eligon and Cooper “Blasts at Boston Marathon Kill 3 and Injure 100” *The New York Times* (New York 16/4/13).

⁸⁰⁸ *Supra* Hampson and Raasch n761.

⁸⁰⁹ “Boston Bombs Were Loaded to Maim, Officials Say” *The New York Times* (New York 17/4/13).

⁸¹⁰ Stating that, “In last year’s Boston Marathon, for example,—more than 9,100 crossed the finish line - 42 percent of all finishers - in the 30 minutes before and after the time of the explosions”. *Supra* Rohan n762.

⁸¹¹ Quote from *supra* Rayner, *et al.* n130. See also, *supra* Laville, *et al.* n765, Martin, Greenhill, *et al.* ““You and Your Children Will Be Next”: Islamic Fanatics Wielding Meat Cleavers Butcher and Try to Behead a British Soldier, Taking Their War on the West to a Whole New Level of Horror” *Daily Mail* (London 23/5/12) <<http://www.dailymail.co.uk/news/article-2329089/Woolwich-attack-Two-men-hack-soldier-wearing-Help-Heroes-T-shirt-death-machetes-suspected-terror-attack.html>> accessed 11/9/14, Greenwood and Martin “Shopping for a Knife in Argos, Smiling as He Buys Petrol ... Then He Hacked Lee Rigby to Death” *Daily Mail* (London 4/12/13).

⁸¹² *Ibid* Rayner, Marsden, *et al.*, *supra* Greenwood and Martin n782, Reilly, *et al.* n765.

With crime news increasing public empathy with the victims of these case studies, the defendant becomes subsequently analysed within this context. The inferential structure of an attack against the nation, supplemented by harrowing accounts of the recovery of the victims or the impact of the attack on family members became the filter through which the defendant was seen. It was this inferential structure that provided the context through which to report the defendant's actions, condemning the perpetrators as inhuman and depraved. Thus, a secondary inferential structure developed which framed the media rhetoric around monstrous and inhuman defendants.

In both case studies the defendants became inextricably linked to their crimes. Newspapers used emotive descriptions to heighten sentiments of shock and horror and further condemn the defendants. This was compounded by media portrayals of the victims. Descriptions of Rigby as a family man and Martin Richards' poster advocating peace contrasted with the actions of the defendants whose violent crimes struck these victims down in their prime. Through this context the defendants were portrayed as evil and inhuman, different from normal members of society. This ostracising of the defendants was facilitated by binary depictions, contrasting the virtuous activities of the "Woolwich Angels" and the first responders and medical staff during the Boston bombing with the monstrous actions of the defendants. It is worth noting that these descriptions came during the aftermath of the crime, neither set of defendants had been convicted by the time these depictions had been published. It was established in Chapter Two that crime news influences public opinions and public perceptions of the crime. Skitka's moral mandate effect establishes that for certain crimes, perceptions of justice can be influenced not by the fairness of the procedure but by the verdict of the court matching a pre-judgement of the accused. If media portrayals of defendants, already accused of particularly violent and shocking crimes, contribute to a widespread presumption of guilt, this can increase the pressure to find the defendants guilty, at the expense of the due process safeguards. We have already seen this to some extent with the questionable withdrawal of Tsarnaev's Miranda Rights. Because it has been suggested in Chapter One that the role of the defendant could be altered as a result of pressures on the presumption of innocence, it is worth considering whether or not the media reporting of the defendants established a presumption of guilt in these case studies.

Media Portrayals of the Defendants; Was there a Presumption of Guilt?

A media established presumption of guilt can be summarised by the phrase trial by media, a phenomenon wherein media judgement condemns the accused outside the due process frameworks of courtroom procedures.⁸¹³ As such, guilt is presumed through a frenzied media attack against the individual. Prominent examples of trial by media overwhelmingly consider defendants who were ultimately found not guilty or not tried,⁸¹⁴ as the adverse effects of a media-led presumption of guilt on an innocent party are obvious. Yet at its base level the phrase denotes a situation in which a verdict of guilt is presumed by the media, prior to the trial. This has serious implications for due process rights *irrespective* of the subsequent verdict. Thus, although the process is subtle, it is possible to illustrate how the defendants in these case studies received a trial by media, despite all ultimately being found guilty.

Although they were not yet formally named as suspects, Adebolajo and Adebowale had both been publicly identified through social media and newspaper articles within twenty-four hours of the attack. Thus, the two men, their actions and background became immediately and inherently linked to Lee Rigby's murder. Described as "one of the most overwhelming cases of guilt in English criminal history",⁸¹⁵ maintaining the defendants' presumption of innocence was virtually impossible. Only *The Guardian* consistently used due process language such as "suspect" and "alleged", even going so far as to briefly explain the due process reasoning behind the need for the police to interview the suspects after they had been released from hospital.⁸¹⁶ There were clear difficulties in presenting the facts of the case as they occurred, whilst adhering to due process rights. *The Daily Telegraph*, for example, described Adebolajo as "the killer" as early as the 24th May.⁸¹⁷ The worst trial by media rhetoric, however, came from the two tabloid newspapers,⁸¹⁸ with the *Daily Mail* going so far as to describe the pair as "the two men we are obliged to call

⁸¹³ See *supra* Greer and McLaughlin "Trial by Media" n21, n89, n501.

⁸¹⁴ See, for example, Christopher Jefferies, accused of the murder of his tenant Joanne Yeates (*Supra* Cathcart n92). Similarly, Robert Murat and Madeline McCann's parents were falsely accused by the media of her murder during the initial months of the investigation (*Supra* Greer and McLaughlin "Trial by Media" n21, Machado and Santos "The Disappearance of Madeleine McCann: Public Drama and Trial by Media in the Portuguese Press" (2009) 5 *Crime, Media, Culture* 146-167).

⁸¹⁵ Dodd and Halliday "'They Have Taken Lee, but His Memory Will Live on in All of Us': Islamists Convicted of Soldier's Murder: Trial Leaves Questions Over MI5 Role" *The Guardian* (London 20/12/13).

⁸¹⁶ Dodd "Adebowale Charged" *The Guardian* (London 30/5/13), "Suspects to be Shown Woolwich Footage" *The Guardian* (London 30/5/13).

⁸¹⁷ "Suspect Led Away in Handcuffs at Fanatic's Trial" *The Daily Telegraph* (London 24/5/13).

⁸¹⁸ See, for example, Mensch "Death Penalty is Easy Way Out" *The Sun* (London 26/5/13).

suspects” in one column.⁸¹⁹ Such rhetoric suggests a lack of faith of the criminal justice process. Through their discourse surrounding the defendant the tabloid newspapers are encouraging their readers to not only condemn Adebolajo and Adebowale as guilty prior to trial but are also suggesting that the criminal trial and the accompanying rhetoric of due process are unnecessary in this instance.

In contrast, American newspapers were considerably more measured in their analysis of the defendants and their crime. This is perhaps due to the American justice process, which took two years to judge Tsarnaev guilty and sentence him, allowing for a greater period of time for analysis. Tabloid newspaper, *The New York Post* was the least consistent with its due process language, describing the Tsarnaevs as “the murderous brothers” in one article, posted a week after the bombings.⁸²⁰ There were similar demonstrations of a presumption of guilt in the other newspapers analysed, mainly in the opinion pieces. *The New York Times* wrote two days after the capture of Dzhokhar, “what no one who knew them could say was why the young men, immigrants of Chechnyan heritage, would set off bombs among innocent people”.⁸²¹ Less than a month after the bombings, and prior to any formal charge, *The Boston Globe* reported that, “Boston and US law enforcement officials have no doubt that the Tsarnaev brothers are responsible for the Marathon attacks”.⁸²²

Concerning erosions of due process language were seen in all newspapers analysed. One notable example was the endorsement by *USA Today* in the delaying of Dzhokhar’s Miranda Rights, describing it as one of a “string of things done right” during the apprehension of the suspects.⁸²³ According to *The New York Times* the delaying of Tsarnaev’s due process rights was widely approved by Bostonians that it interviewed. One notable quote came from Watertown resident DeAnna Finn who stated “civil rights? ... When you do something like this, you just signed a contract giving away your rights ... An eye for an eye. Stick him in a cell with a pressure cooker”.⁸²⁴ This statement not only demonstrates a clear perception of guilt, at least for some

⁸¹⁹ Littlejohn “When They Said Fight Them on the Beaches, Dave...” *Daily Mail* (London 28/5/13).

⁸²⁰ Bain and Shields “Seeds of Hate Planted in U.S. Dead Bomber Radicalized by Local Muslims: Uncle” *The New York Post* (New York 21/4/13).

⁸²¹ Goode and Kovalski “A Brother at Ease in the U.S., Influenced by One Who Wasn’t” *The New York Times* (New York 20/4/13).

⁸²² Lowery, Filipov, *et al.* “Second Autopsy Set as Conspiracists Gravitates to Cause” *The Boston Globe* (Boston 5/5/13).

⁸²³ “Boston Bombing Yields Heroic Responses, Troubling Questions” *USA Today* (Virginia 22/4/13). This statement was subsequently disputed in an opinion piece a day later, Wickham “Decision to ‘Mirandize’ Boston Suspect Was Wise; Initial Denial of Right Stokes Terrorists’ Belief” *USA Today* (Virginia 23/4/13).

⁸²⁴ Seelye and Schwartz “After Night of Terror in Boston Suburb, a Dawn of Doughnuts and Relief” *The New York Times* (New York 21/9/13).

Americans, but also illustrates how this can be established in the absence of a criminal trial, reiterating Skitka's moral mandate effect. Such sentiments were echoed in social media comments analysed below.

Media speculation on the defendants was largely negative. However, there was an attempt from some American media outlets to understand the brothers and their decision to bomb the marathon, describing the Tsarnaevs as three-dimensional and complex individuals. This positive speculation is just as troubling as the negative speculation, inviting the readers to draw particular conclusions in relation to the defendant. Nevertheless, this rhetoric is notable in that it challenged the dominant inferential structure of a nation under attack by humanising the two defendants, encouraging reader empathy and suggesting potential mitigating evidence, which reinforced the presumption of innocence. *The New York Times* reported how Tamerlan once sat down at a piano and played classical music before a boxing match, depicting a sensitive and contradictory individual.⁸²⁵ The most notable article was a well-researched, objective and powerful report by *The Boston Globe*. By tracing the steps of the brothers and interviewing many friends, family and neighbours both in America and their native Kyrgyzstan, the newspaper presented a detailed and nuanced portrait of the Tsarnaevs. Such details included the likelihood that both parents, who each sought counselling in America, suffered from Post-Traumatic Stress Syndrome after living in a war-torn and violent area. Indeed, the mental illness of the Tsarnaevs' father would later form a mitigating factor postulated by Dzhokhar's defence to try and dissuade the jury from imposing a capital sentence.⁸²⁶ The article discussed how Dzhokhar struggled to successfully transition into university life after a stable period in high school and at a time when his parents were divorcing and returned to Kyrgyzstan separately.⁸²⁷ Most illuminating, however, was the suggestion that Tamerlan might have suffered from schizophrenia, with several acquaintances noting that Tamerlan had said he heard aggressive voices, a possibility that his overbearing and fiercely proud mother would not entertain.⁸²⁸ The evidence of Tamerlan's mental state presented within the article was pure hearsay,⁸²⁹ yet the nuanced analysis of the article provides the greatest insight into the defendant's motivation and subsequently the greatest insight into the bombings.

⁸²⁵ Sontag, Kovaleski, *et al.* "Before Bombs, a Battered American Dream" *The New York Times* (New York 28/4/13).

⁸²⁶ Wen "Defense Unable to Generate Sympathy for a Terrorist" *The Boston Globe* (Boston 16/5/15).

⁸²⁷ This was confirmed by *supra* Reitman n791.

⁸²⁸ Jacobs, Filipov, *et al.* "Tamerlan's Dreams in Shards, the Voices Inside Grew Louder" *The Boston Globe* (Boston 15/12/13).

⁸²⁹ Although it was separately confirmed by the *Rolling Stone supra* Reitman n791.

Whilst there are potentially serious consequences in speculating about potential mental illness prior to a formal diagnosis, this article is one of the few analysed to humanise the suspects and attempt to explain them rather than depict them as monstrous.

Nevertheless, this article did not change the dominant newspaper rhetoric regarding the Tsarnaevs' guilt. Reinforcing Lang and Lang's third "crucial variable" whereby specific information is reinterpreted to fit into established themes of reporting or ignored. None of the other newspapers analysed reported on Tamerlan's possible mental illness. Nor did *The Boston Globe* later refer to the nuanced details contained within this article when discussing the defendants, perpetuating instead the dominant rhetoric of guilty and monstrous brothers. Indeed, in a later article, a *Boston Globe* columnist discussed these findings, stating "how this translates to somehow explaining why Dzhokhar Tsarnaev followed his brother down Boylston Street with a pressure-cooker bomb in his backpack is anyone's guess. How this might explain why he and his brother snuck up on Sean Collier and murdered him in cold blood is something I can't wait to hear".⁸³⁰ This sentiment was reflective of the wider reporting tone that accompanied the discussion of the Tsarnaev brothers, which served to reinforce the primary inferential structure of national horror.

That there was a widely held presumption of guilt for Tsarnaev was clearly demonstrated by the outrage caused after the publication of a *Rolling Stone* magazine article about the Tsarnaev brothers. The article was a considered and detailed attempt at understanding the radicalisation of the brothers. Nevertheless, it reinforced the dominant inferential structure by expressing its solidarity with the victims in a preamble stating, "our hearts go out to the victims of the Boston Marathon bombing, and our thoughts are always with them and their families".⁸³¹ There was a widespread and public backlash about its publication.⁸³² Of particular concern was the use of a self-taken photograph of Dzhokhar, already published by other media outlets, on its coveted front page which, some claimed, glamourized the bomber.⁸³³ Such was the public backlash that CVS Pharmacy and Walgreens refused to sell the copy of the magazines in their national stores.⁸³⁴ Incensed by the cover, Boston State Police's tactical photographer, Sergeant Sean Murphy, released photos of Tsarnaev's arrest a day later.

⁸³⁰ Cullen "Dysfunctional, Yes, but No Excuse for Tsarnaev" *The Boston Globe* (Boston 26/4/13).

⁸³¹ The article was accessed from the online archives of the *Rolling Stone* website. As such, it is unclear if this preamble was subsequently added in response to the widespread anger at its publication.

⁸³² Abel and Finucane "Disgust, Outrage Greet News of Cover in Boston" *The Boston Globe* (Boston 18/7/13).

⁸³³ Burr "Cover Selection an Act of Irresponsibility" *The Boston Globe* (Boston 18/7/13).

⁸³⁴ Cohen "CVS and Walgreens Ban An Issue of Rolling Stone" *The New York Times* (New York 18/7/13).

These photos, initially published by *Boston Magazine*⁸³⁵ but reported on by all newspapers analysed,⁸³⁶ showed Dzhokhar as tired and bloody, climbing out of a boat and surrounded by police officers as he surrendered. These pictures are stark and shocking and were used to further condemn Dzhokhar, who, according to populist sentiment, could only be depicted in ways that reinforced his criminality.

With the exception of the few articles, detailed above, that attempted to understand the Tsarnaevs, media analysis of the defendants largely fuelled existing media commentary and perpetuated their guilt. The primary focus on the ordinariness of each defendant had the resultant effect of highlighting their inherent monstrosity, by establishing notions of “otherness”.⁸³⁷ Although the Tsarnaevs had had an apparently difficult childhood,⁸³⁸ the media focused on Dzhokhar’s successful assimilation into the society of his adopted country. A boy who excelled in school, Dzhokhar had many friends and was co-captain of the wrestling team. Newspapers used these details to suggest a pathological evilness within Tsarnaev that was carefully hidden.⁸³⁹ Such sentiment was exemplified by *The Boston Globe*, who wrote of Dzhokhar Tsarnaev that he “came to seem recognizably human”.⁸⁴⁰ *The New York Post* described him as having, “the brains to make it through a tough major, as well as plenty of good looks and athleticism,” with a relaxed demeanour and a party lifestyle, that was pronounced as “bizarre behavior for a killer”.⁸⁴¹

Articles on Tamerlan, on the other hand, more explicitly stated his deviancy. Easier to condemn outright, there was substantially greater media attention on the elder brother, who was portrayed as overbearing the more normalised Dzhokhar.⁸⁴²

⁸³⁵ Wolfson “The Real Face of Terror: Behind the Scenes Photos of the Dzhokhar Tsarnaev Manhunt” (*Boston Magazine* 18/7/13) <<http://www.bostonmagazine.com/news/blog/2013/07/18/tsarnaev/>> accessed 13/7/15.

⁸³⁶ Somaiya “Graphic Photos of Tsarnaev Capture Released” *The New York Times* (London 20/7/13), Winter “New Photos of Tsarnaev Released; Photographer Angered by Rolling Stone Cover” *USA Today* (Virginia 19/7/13), Italiano “Mass. Brass Whacks Pix Cop but Public Furious over Badge Yank” *The New York Post* (New York 20/7/13), Andersen and Lalwani “Angry Sergeant Gives Another View of Tsarnaev” *The Boston Globe* (Boston 19/7/13).

⁸³⁷ For further detail, see the discussion in deviancy in Chapter Two.

⁸³⁸ They grew up in Chechnya, a war-torn area of the former Soviet Union, their parents successfully claimed asylum to America. There is also evidence that their parents suffered from post-traumatic stress, both of them regularly seeing a psychiatrist whilst there were residing within the US.

⁸³⁹ See, for example, Wines and Lovett “The Dark Side, Carefully Masked” *The New York Times* (New York 5/5/13).

⁸⁴⁰ Stockman “Tweets from a Teen Suspect” *The Boston Globe* (Boston 20/4/13).

⁸⁴¹ Nestel, Celona, *et al.* “He Partied with Pals after the Blast” *The New York Post* (New York 20/4/13).

⁸⁴² *Supra* Goode and Kovaleski n821, Fox “Tsarnaevs’ Deadly Brotherhood; Understanding Motivation Requires Examination of Human Need for Belonging” *USA Today* (Virginia 24/4/13), Bain and Sheehy “Fighter with a Hidden Hatred” *The New York Post* (New York 20/4/13), Arsenault “Second Marathon Bombing Suspect Captured After All-Day Hunt that Brought Boston Area to Standstill; Alleged Accomplice Dead” *The Boston Globe* (Boston 20/4/13).

Newspapers depicted the elder brother as odd and not being able to fit into American culture. An avid boxer, acquaintances commented that he had an unusual style and wore extravagant clothes, earning him the nickname “Eurotrash”.⁸⁴³ All of the American newspapers analysed repeated a statement in an earlier interview that he had not “a single American friend”;⁸⁴⁴ the fact that he married an American woman and had a two-year-old daughter was reported, but was not used to contradict the earlier quotation. Newspapers detailed Tamerlan’s violent past, noting that he had been arrested after an ex-girlfriend made a complaint against him.⁸⁴⁵ Despite the fact these charges were subsequently dropped, by indicating his capacity for violence such details helped to construct a presumption of guilt. Newspaper depictions of a violent Tamerlan increased after a friend implicated him in an unsolved triple murder, described as “one of the most gruesome killings in Greater Boston in many years”,⁸⁴⁶ which had occurred a year earlier and included a close friend of Tamerlan amongst the victims.

The British newspapers similarly focused on the ordinariness of Adebawale and Adebolajo, growing up in South London, providing little commentary on the reasoning behind the crime. Newspapers hinted that radicalisation transformed the two men,⁸⁴⁷ who lost their humanity in the process.⁸⁴⁸ Headlines such as “My Ex-Boyfriend, the Terror Suspect; ‘Lovely, Polite Boy’”⁸⁴⁹ and “Suspect’s Journey from Schoolboy Football to Phoning Jacking and Jihad...”⁸⁵⁰ intensified the public feeling of outrage and established a presumption of guilt. Described as “the most brutal murder

⁸⁴³ This nickname was reported in a very sensitive and detailed analysis by *The Boston Globe* of the Tsarnaev brothers, which is discussed in detail above.

⁸⁴⁴ Mackey “Photo Essay Offers Clues on Tamerlan Tsarnaev’s Life” *The New York Times* (New York 19/4/13) (as part of the newspaper’s live online coverage of the day after the apprehension of the brothers). *Supra* Raasch and Alcindor n750, Bain and Sheehy n842, “Two Brothers, Two Paths into Everlasting Infamy” *The Boston Globe* (Boston 20/4/13).

⁸⁴⁵ *Supra* Sontag n825, Fox n842, Bain and Sheehy n842, Cullen “Nothing Tough About This Boxer’s Character” *The Boston Globe* (Boston 20/4/13).

⁸⁴⁶ Rezendes and Hohler “Tie Sought Between Brother, 3 Killings” *The Boston Globe* (Boston 23/5/13). See also: Kovalski and Oppel. “Bombing Suspect Is Seen as Linked To 2011 Slayings” *The New York Times* (New York 11/7/13), Johnson “Man in Boston Probe Killed During Questioning; Was Being Grilled on Tsarnaev Brothers’ Ties to 2011 Slayings” *USA Today* (Virginia 23/5/13), Celona, Margolin, *et al.* “Siege of Terror Fiend Eyed in 2011 Murders Best Pal Among 3 Slain” *The New York Post* (New York 23/4/13).

⁸⁴⁷ Ensor, Malnick, *et al.* “They Are Brainwashing My Son; Mother of Murder Suspect Tells of Her Desperate but Futile Fight to Stop Her Son’s Descent into Islamist Extremism” *The Daily Telegraph* (London 25/5/13).

⁸⁴⁸ Of Adebawale: Allen and Wilkes “Probation Officer’s Son Who Chatted with His Neighbours About Jamie Oliver Recipes” *Daily Mail* (London 25/5/13), Wilkinson “Attacker a ‘Quiet Lad’” *The Sun* (London 24/5/13). Of Adebolajo: Greenhill and Gladdis “He Was Just Normal and Polite Says Beautician Who Dated a Terrorist” *Daily Mail* (London 25/5/13), Parker, Wells, *et al.* “Footie-Mad Class Joker Who Turned into Killer Extremist; Anti-Troop Madman ‘Wanted to be Cop’” *The Sun* (London 24/5/13).

⁸⁴⁹ “My Ex-Boyfriend, the Terror Suspect; ‘Lovely, Polite Boy’” *The Daily Telegraph* (London 24/5/13).

⁸⁵⁰ Walker, Malik, *et al.* “Suspect’s Journey from Schoolboy Football to Phoning Jacking and Jihad...” *The Guardian* (London 24/5/13).

imaginable”,⁸⁵¹ it was a crime that was widely condemned, including from the family of Michael Adebolajo.⁸⁵² Similarly, Facebook comments from friends of the killers, expressing their shock of the crime,⁸⁵³ were reported on, with the *Daily Mail* remarking on how they all had “traditional British names”.⁸⁵⁴ Adebowale and Adebolajo had directly attacked British society,⁸⁵⁵ and were not entitled to be considered as part of it.⁸⁵⁶

During the initial days, no attempt was made to justify the crime or analyse any potential exculpating factors.⁸⁵⁷ Rather than focusing on the madness of their actions, both killers were depicted as sane and in control, one of whom “spoke calmly into a witness’s video phone”⁸⁵⁸ whilst being filmed. One eyewitness, whose quote was included (in some variant) in every newspaper analysed, described one of the killers she talked to, stating that, “he was not high, he was not on drugs, he was not an alcoholic or drunk. He was just distressed, upset. He was in full control of his decisions and ready to do everything he wanted to do”.⁸⁵⁹ The apparent rationality of the killers heightened the horror of the crime, perpetuating the notion that, “it could happen to you”.⁸⁶⁰ These were killers who, despite committing “an act of barbaric lunacy”⁸⁶¹ were able to act rationally and, therefore, blend into society.

Media depictions of the defendants delegitimised any available exculpating evidence, which the *Daily Mail* described as “excuses”.⁸⁶² Although some news articles within *The Guardian* provided a more sympathetic analysis of the actions of the killers,⁸⁶³ these were part of a long-standing anti-war rhetoric from the newspaper and failed to redress the prevailing rhetoric establishing the defendants’ presumption of

⁸⁵¹ *Supra* Rayner, *et al.* n130.

⁸⁵² Whitehead “Suspect’s Family Pray for Dead Soldier Rigby” *The Guardian* (London 29/5/13), Greenwood, Fagee, *et al.* “Our Profound Shame Over Soldier’s Murder” *Daily Mail* (London 29/5/13), Morgan “Soldier Killer’s Family Shamed; ‘We Pray for Lee’” *The Sun* (London 29/5/13).

⁸⁵³ *Supra* Walker, *et al.* n850.

⁸⁵⁴ Greenhill, Gysin, *et al.* “Descent into Evil of Teenage from Devout Christian Family” *Daily Mail* (London 24/5/13).

⁸⁵⁵ Yates “Thirty Years Later and the Truth Remains: It is Communities That Defeat Terrorism” *The Daily Telegraph* (London 24/5/13), *supra* Dodd, *et al.* n780, “A Grotesque Attack” n761, Price “Lee is Now a Symbol of UK’s Unbreakable Spirit” *The Sun* (London 21/5/13).

⁸⁵⁶ Hastings “Enemy Within That Hates Our Tolerance” *Daily Mail* (London 24/5/13), Kelly “Teach Our Kids That the World Isn’t Full of Monsters” *The Sun* (London 25/5/13).

⁸⁵⁷ Nels-n “Woolwich Was – Case Study in Banality - and the Idiocy - of Evil: We Shouldn’t Bother Looking for Any Logic in Attacks Like These. There is None to be Found” *The Daily Telegraph* (London 24/5/13), “Ten Years of Missed Opportunities” *Daily Mail* (London 28/5/13).

⁸⁵⁸ Rayner and Swinford “An Eye for an Eye, a Tooth for a Tooth. We Won’t Stop Fighting Until You Leave Us Alone” *The Daily Telegraph* (London 23/5/13).

⁸⁵⁹ *Supra* Duffin n775, Urquhart “Eyewitness: ‘He Talked About War and Killing People’” *The Guardian* (London 23/5/13), *supra* Allen and Osborne n775, Prynn n817.

⁸⁶⁰ See Wardle *supra* n562.

⁸⁶¹ *Supra* Editorial “They Sought Weakness” n770.

⁸⁶² “Why Are We Paralysed in the Face of Our Enemy?” *Daily Mail* (London 27/5/13).

guilt. There were several mitigating circumstances for the defendants of the Woolwich killing that warranted more sensitive media analysis.⁸⁶⁴ Adebowale had been the victim of a knife attack and witnessed the death of a friend at the age of sixteen, after a neighbour, convinced that they were members of al-Qaeda, stormed into the flat they were in.⁸⁶⁵ It was later revealed that he had experienced psychotic episodes prior to his radicalisation, including hearing voices. Newspapers limited this analysis by reporting Adebowale's mental state worsened as a result of smoking Skunk, a heavy form of cannabis.⁸⁶⁶ Adebolajo had alleged that he had been tortured whilst being detained in Kenya and threatened with sexual assault.⁸⁶⁷ His brother-in-law, Abu Zuybyr, described this experience as being transformative on Adebolajo stating, "I would say he's always been different since then ... He was a lot quieter and bitter towards the fact that he wasn't getting help from anyone".⁸⁶⁸ This suggests that his radicalisation was a reaction to a need to regain control after a highly traumatising experience.

With guilt presumed, the media focused on details that confirmed the supposition that the defendants were guilty. All the British newspapers commented on the fact that Adebolajo and Adebowale, when entering their plea, appeared in court under heavy guard and handcuffed.⁸⁶⁹ Although it is to be expected that two men accused of committing a particularly brutal crime would be treated as such, reporting on these mundane facts reiterates the defendants' culpability. Similarly, Tsarnaev's behaviour was described as "smug" by some American journalists when he first

⁸⁶³ Lammy "Why Are Young British Men Drawn to Radicalisation? From the EDL to Extreme Islam, Angry Males Are Being Manipulated" *The Guardian* (London 25/5/13), *supra* Walker, *et al.* n850.

⁸⁶⁴ Other than *The Boston Globe* article described above, there is no indication of mitigating factors for Tsarnaev that might have limited his legal liability for the crime, there were several proffered by the defence in a bid to avoid the death sentence.

⁸⁶⁵ "Second Man Was the Victim of Knife Attack at Age of 16" *The Guardian* (London 25/5/13), Sullivan, Wells, *et al.* "Killer No.2 Was Knifed in Neck at a Crack Den Aged Just 16" *The Sun* (London 25/5/13).

⁸⁶⁶ Whitehead "From Quiet Christians to Islamist Murders; Lee Rigby Murder Troubled as Children, Radicalised in Adolescence, Killers Were Never Far from Sight of Authorities" *The Daily Telegraph* (London 20/12/13), Dodd and Howden "How Militant Ideology Drove Pair to Kill 'Enemy' in a London Street..." *The Guardian* (London 20/1/13).

⁸⁶⁷ Harding and Hatcher "MI5 Link: Arrest by Kenyan Police Raises Questions for Security Services in UK" *The Guardian* (London 27/5/13).

⁸⁶⁸ "UK 'Took Fears over Suspected Killer Lightly'" *The Daily Telegraph* (London 27/5/13), *ibid.*

⁸⁶⁹ Of Adebowale: Barrett and Marsden "Drummer Rigby Murder Suspect in Court" *The Daily Telegraph* (London 31/5/13), Malik and Dodd "Woolwich Murder Suspect Appears in Court" *The Guardian* (London 31/5/13), Ellicot "Woolwich Suspect Limps into Court" *Daily Mail* (London 31/5/13), Morgan and Ryan "In the Dock Bandaged and Cuffed; Shot Terror Accused in Court" *The Sun* (London 31/5/13). Of Adebolajo: Whitehead "I'm a Man, a Soldier: Court Outburst by Rigby Suspect" *The Daily Telegraph* (London 6/6/13), Malik "I Am a Soldier' Adebolajo Tells Old Bailey Hearing" *The Guardian* (London 6/6/13), Martin "Posing like Usain Bolt and Kissing the Koran, Woolwich Suspect Now Known as Abu Hamza" *Daily Mail* (London 4/6/13), Wells "Outburst of Soldier Murder Accused" *The Sun* (London 6/6/13).

appeared in court,⁸⁷⁰ something that was likely to have arisen as a result of a serious gunshot wound that he received in the face.⁸⁷¹ Such descriptions of both sets of defendants during their first court appearances reiterated the monstrous defendants depicted in media reporting during the immediate aftermath of the crimes. The horror of the defendant was reinforced by the reporting of some of the victims' reaction to Dzhokhar's appearance in court. *The New York Times* quoted one survivor of the bombings, who said, "I was actually just sick to my stomach [at seeing the defendant] ... I'm angry".⁸⁷²

Each trial was juxtaposed with the reaction of the victims of the attacks. With empathy towards the victims established at the pre-trial stage, it became possible for the newspapers to perpetuate feelings of outrage and horror,⁸⁷³ facilitated by the use of classic binaries of "innocence" and "evil".⁸⁷⁴ For the Woolwich killing in particular, this served to reiterate the horrific nature of the crime, which some had claimed was waning in the preceding months of the trial.⁸⁷⁵ Reporting of Tsarnaev's criminal trial was punctuated with details of the victims' testimonies and reactions.⁸⁷⁶ The lack of emotion from the man "whose guilt was never in doubt",⁸⁷⁷ perpetuated his vilification as "the

⁸⁷⁰ MacDonald "Tsarnaev Pleads Not Guilty to 30 Counts in Boston Bombings; Suspect Fidgets in First Public Appearance" *USA Today* (Virginia 11/7/13), Soltis "Dzhokhar 'Smug' in Courtroom" *The New York Post* (New York 11/7/13).

⁸⁷¹ Abel and Moskowitz "As Kin, Survivors Watch, Tsarnaev Pleads Not Guilty" *The Boston Globe* (Boston 11/7/13). It is, of course, possible that Tsarnaev was smug during his first courtroom appearance but such descriptions nevertheless reinforce the newspaper rhetoric of an inherently evil defendant who lacked remorse.

⁸⁷² Oppel and Bidgood "Marathon Bombing Suspect, in First Court Appearance, Pleads Not Guilty" *The New York Times* (New York 11/7/13).

⁸⁷³ "Soldier's Family Face Alleged Killers" *The Daily Telegraph* (London 29/6/13), Dodd and Halliday "Rigby Witness Said Attacker's Look was 'Pure Evil': Statements Reveal Trauma of People Who Watched Widow Leaves in Tears after Harrowing Evidence" *The Guardian* (London 3/12/13), Martin "Two Accused of Stabbing Soldier in the Street Deny Murder" *Daily Mail* (London 28/9/13), Phillips "Lee's Widow in Tears at Pleas" *The Sun* (London 28/9/13), Seelye "Prosecution in Boston Marathon Trial Closes with Raw Details of Killings" *The New York Times* (New York 31/3/15), MacDonald "'It was Him'; Tears and Trauma of Recollections Take Over Court" *USA Today* (Virginia 5/3/15), Fears "Boston Dad's Horror Knew Dying Boy 'Wouldn't Make It'" *The New York Post* (New York 6/3/15), Valencia and Wen "Jurors Hear Testimony on Lives Torn Apart" *The Boston Globe* (Boston 22/4/15).

⁸⁷⁴ Whitehead "I Saw Pure Evil in Eyes of Woolwich Killers, Old Bailey Told" *The Daily Telegraph* (London 3/12/13), France "I Didn't Think a Man Could Kill Another Man Like This; Soldier Horror Trial; Rigby Accused's 'Evil Look'" *The Sun* (London 3/12/13), *supra* Dodd and Halliday n815, Greenwood and Martin n811, Bodgood and Storey "Kinship Emerges from a Day of Horror" *The New York Times* (New York 11/5/15), *supra* MacDonald n873, Fredericks "Tsarnaev a Dead Man Mocking Bomber Grins & 'Guns' after Death Decision" *The New York Post* (New York 16/5/15), Cullen "Moments of Humanity Followed a Brutal Crime" *The Boston Globe* (Boston 24/4/13).

⁸⁷⁵ Moore "We Are Too Weak to Face up to the Extremism in Our Midst; Despite the Woolwich Outrage, David Cameron has Failed to Act Against Islamist Terrorism" *The Daily Telegraph* (London 15/6/13).

⁸⁷⁶ Sleeve and Bidgood "Accounts of Blood and Heartbreak in Boston Trial" *The New York Times* (New York 6/3/15), MacDonald "Tales of Horror Shared at Boston Bombing Trial; Tsarnaev Shows No Emotion as Survivors Tell Their Painful Stories" *USA Today* (Virginia 6/3/15), *supra* Fears n874, Cullen "Searing, Simple, Strong - Bill Richard Recounts Family's Tragedy" *The Boston Globe* (Boston 6/3/15).

⁸⁷⁷ Seelye "Striking Moments from Bombing Trial" *The New York Times* (New York 16/5/15).

monster who laid a bomb down by children”.⁸⁷⁸ Inherently shocking details about the Woolwich killing also supplemented courtroom reporting of prosecution evidence and witness testimony, which resulted in “gasps”⁸⁷⁹ from the court and members of Rigby’s family leaving the courtroom visibly upset.⁸⁸⁰ The reporting of the criminal trial reinforced old emotions of the attacks as, once again, the newspaper readership were invited to mourn the loss of innocent victims, killed in barbaric and brutal attacks by vicious and inherently evil defendants.

By providing a negative portrayal of the behaviour of the suspects in court, newspaper articles perpetuated inferential structures established in the pre-trial phase. Describing Adebowale as “glar[ing] at the chief magistrate”⁸⁸¹ and stating that Adebolajo repeatedly interrupted proceedings⁸⁸² and “posing like Usain Bolt”,⁸⁸³ the Woolwich defendants were depicted as abrasive and unrepentant. Similar descriptions were used for Tsarnaev, who was reported as being emotionless during court appearances and, in some instances, bored, highlighting his apparent remorselessness.⁸⁸⁴ *The New York Post* reported that he “flash[ed] a wry grin and point[ed] his fingers like a gunslinger” after the jury sentenced him to death.⁸⁸⁵ Several newspapers noted that the only emotional reaction from Dzhokhar came after an aunt dissolved into tears whilst providing a character witness, further emphasising his lack of emotion at victim testimony,⁸⁸⁶ as one columnist stated, “Dzhokhar Tsarnaev never cried for the families he ruined, until he cried for his own”.⁸⁸⁷

⁸⁷⁸ Abraham “We Are Better Than Tsarnaev” *The Boston Globe* (Boston 9/4/15).

⁸⁷⁹ *Supra* Whitehead and Dixon n774, Halliday, Taylor, *et al.* “‘A Horrific, Frenzied Attack’ - Jury Is Shown Lee Rigby’s Final Moments, Caught on Film: Court Hears Countdown to Killing in Woolwich Murder Weapons Cost Just £54.97, QC Tells Old Bailey” *The Guardian* (London 30/11/13), Greenwood and Evans “Horror of Lee’s Last Moments” *Daily Mail* (London 30/11/13), France “Butchers: CCTV Film of ‘Cowardly & Callous’ Fusilier Horror” *The Sun* (London 30/11/13).

⁸⁸⁰ *Supra* Malik n869, Dodd and Halliday n815, Martin and Greenwood “I Love Al Qaeda ... They Are My Brothers. I Am a Soldier and This Is War” *Daily Mail* (London 10/12/13), France “Soldier’s Death ‘A Barbaric Act’” *The Sun* (London 30/11/13).

⁸⁸¹ The *Daily Mail* reported Adebowale as “star[ing] blankly from the dock” implying that he lacked remorse for the crime *supra* Ellicot n869, Morgan and Ryan n869.

⁸⁸² *Supra* Whitehead n869, Malik and Walker “Second Man Appears in Court Charged With Soldier’s Murder” *The Guardian* (London 4/6/13), Wells “I Am a Man. I Am a Soldier. I Am a British Citizen. You Cannot See My Privates; Soldier Killing Accused’s Rant Silenced by Judge” *The Sun* (London 6/6/13).

⁸⁸³ *Supra* Martin n869.

⁸⁸⁴ Sleeveçaders Dissolve Boston Bomber’s Bored Facade as Relatives Try to Spare Him” *The New York Times* (New York 5/5/15), *supra* MacDonald n876, *Fredericks* “NO, F*#% YOU! - Boston Bomber Remorseless Jury Sees Dzhokhar ‘Flip’” *The New York Post* (New York 23/4/15), Farragher “Step by Step to Judgment” *The Boston Globe* (Boston 4/5/15).

⁸⁸⁵ *Supra* *Fredericks* n874.

⁸⁸⁶ *Supra* Sleeve n884, MacDonald “Emotion Packed Courtroom in Boston” *USA Today* (Virginia 18/5/15).

⁸⁸⁷ Cullen “More Than One Cause for Sorrow in Court” *The Boston Globe* (Boston 5/5/15).

A perceived lack of contrition for the crime adds to public condemnation of the perpetrator and increases feelings of retribution.⁸⁸⁸ By detailing this aspect of the defendants' behaviour, media reports reemphasised the horror of the crime. Perpetuating the notion of guilt, the British broadsheet newspapers also reiterated psychiatrists' assessments that Adebolajo was sane,⁸⁸⁹ something that was further discussed during the trial,⁸⁹⁰ implying that he was in control of his actions and limiting the validity of potential mitigating circumstances.

Intriguingly, the due process rhetoric increased in the British newspapers, which were not as consistent as their American counterparts, as the trial began. Reporting during the aftermath of the murder left little doubt about the culpability of the two men, with Adebolajo being described as an "assassin-to-be"⁸⁹¹ and Adebowale as a "terrorist".⁸⁹² Whilst due process language was used prior to the trial, it became more consistent across the newspapers once proceedings commenced.⁸⁹³ Thus, it appears, that the British newspapers resorted to traditional reporting practices when once again in the familiar environment of courtroom reporting. As such, by maintaining the rhetoric that perpetuated the guilt and inhumanity of the two defendants, newspapers, paradoxically, reported that the two men *accused* of killing Drummer Lee Rigby were *guilty* of the crime before having been found as such by the court.

All three defendants were inherently linked to the crimes by media reporting who, established guilt prior to any suspect being formally charged. Although the American newspapers were largely more consistent in their use of due process language, there was a widespread presumption of guilt in all newspapers analysed. Indeed, so pervasive was this presumption in America that it warranted some erosion of Tsarnaev's pre-trial due process Miranda rights. All eight newspapers described the defendants as monstrous and inhuman, with articles drawing upon analysis of the crimes and the actions of eyewitnesses and first responders, discussed in the previous section, to entrench a presumption of guilt. Despite being able to apparently blend into

⁸⁸⁸ Robinson, Smith-Lovin, *et al.* "Heinous Crime or Unfortunate Accident? The Effects of Remorse on Responses to Mock Criminal Confessions" (1994) 73 *Social Forces* 175-190.

⁸⁸⁹ Adebowale's mental health was not mentioned in the preliminary court hearings. *Supra* Wells n869, Malik n869.

⁸⁹⁰ Whitehead "Rigby Suspect: Blair Is Wicked and Corrupt" *The Daily Telegraph* (London 5/12/13), Dodd and Halliday "Jury Watches Tape of Adebolajo Interview: Rigby Trial Hears Accused Say 'May Allah Forgive Me': Soldier's Neck 'was Sawed ... Until Almost Detached'" *The Guardian* (London 5/12/13), Ellicot "How the Jihadists Stole My Only Son" *Daily Mail* (London 20/12/13).

⁸⁹¹ Doyle and Martin "Assassin-to-Be at the Side of a Ranting Cleric" *Daily Mail* (London 24/5/13).

⁸⁹² *Supra* Wilkinson n848.

⁸⁹³ "Call Me Abu Hamza, Says the Man Accused of Soldier's Murder" *The Daily Telegraph* (London 4/6/13), Wells "Soldier Killing Accused's Rant Silenced by Judge" *The Sun* (London 6/6/13), *supra* Malik and Dodd n869, Ellicot n869.

society, the defendants were described as abnormal or “other”, the implication of such portrayals is that all three suspects were pathologically evil, making them inherently guilty.

Media depictions of the defendants in both case studies are reminiscent of the reporting of the trials of the Unabomber in America and the Nail Bomber in Britain, who were vilified by the media and “known by caricature labels rather than by their actual names”.⁸⁹⁴ With overwhelming evidence against the perpetrators, guilt was assumed in the media,⁸⁹⁵ which failed to provide any substantive analysis behind the motive of the two bombers. The fact that both men suffered from paranoid schizophrenia, for example, received minimal attention by the newspapers analysed.⁸⁹⁶ The news discourse surrounding the two bombers was simplistic and moralistic,⁸⁹⁷ something which resonated with media portrayals of Adebolajo, Adebowale⁸⁹⁸ and Tsarnaev.⁸⁹⁹ Factors that warranted sensitive analysis were largely ignored by the press, if not outright dismissed, in both scenarios. The fact that the crime was committed was enough to ostracise all the defendants and subsequently deny them due process rights. Such descriptions entrenched the guilt of the defendants to such an extent that all potentially mitigating evidence was dismissed as irrelevant. Guilt had been clearly ascertained in media inferential structures. We will now consider whether such analysis is reflected by the public on social media.

Section Two: The Role of Social Media

Newspapers and bloggers in the aftermath of both attacks noted the impact of social media on the case studies.⁹⁰⁰ The content of social media comments during the Boston bombing and the Woolwich murder is now starting to receive academic consideration.⁹⁰¹

⁸⁹⁴ *Supra* Wardle n83.

⁸⁹⁵ *Ibid.*

⁸⁹⁶ *Ibid.*

⁸⁹⁷ *Ibid.*

⁸⁹⁸ *Supra* Littlejohn n776, Sullivan, *et al.* n775.

⁸⁹⁹ Levenson “Suspects’ Alleged Acts Betray City” *The Boston Globe* (Boston 20/4/13), Fredericks “Bomber’s Evil Hook Ex: He Tried to Brainwash Me to Hate US” *The New York Post* (New York 20/4/13).

⁹⁰⁰ See, for example, Fitzgerald “Boston Marathon Bombings: Making Sense of the Social Media Blitz” (*Time* 21/4/14) <<http://time.com/69726/social-media-boston-marathon-bombings/>>, Hern “4Chan Plays Racist Where’s Wally to Find the Boston Bomber” *New Statesman* (London 18/4/13), Bell “All the World’s an Outside Broadcast: Breaking News Is No Longer the Preserve of Established Broadcasters, Thanks to the Camera Phone and Social Media” *The Guardian* (London 24/5/13).

⁹⁰¹ *Supra* n23 (all sources), McEnery, McGlashan, *et al.* “Press and Social Media Reaction to Ideologically Inspired Murder: The Case of Lee Rigby” (2015) 9 *Discourse & Communication* 1-23, Tapia, LaLone, *et al.* “Run Amok: Group Crowd Participation in Identifying the Bomb and Bomber from the Boston Marathon Bombing” (2014) *Proceedings of the 11th ISCRAM* 265-274, Allan “Witnessing in Crisis: Photo-Reportage of Terror Attacks in Boston and London” (2014) 7 *Media, War & Conflict* 133-

However, these studies are predominately a quantitative assessment of the online conversation following the two terrorist attacks. It is also possible to qualitatively assess comments online to thematically consider the public reaction of the crime. We can then test these comments in light of the moral mandate effect and against our analysis of the newspaper reporting discussed above. Comments posted online provide a snapshot of the public conversation about the crime and the trial. As such, it is possible to test the impact of social media commentary on the criminal trial by empirically considering the virtual conversation.

This section will consider the influence of social media on crime news reporting techniques and the resultant public opinion about the defendant. It will try to achieve this in two stages. Stage One will consider the impact of social media on crime news and the way in which the public engaged with the attacks. Stage Two will analyse social media comments in order to identify public reactions to the crime and their attitudes toward the defendant. By analysing any potential erosion of the presumption of innocence and the public's perception of the defendant we can determine the perceived importance (or not) of the criminal justice process in determining guilt.

The Influence of Social Media

The Boston bombing and Woolwich killing are notable not only for their violence and brutality but also for the role that social media played in the aftermath. News of both crimes broke on social media, with information of the Boston bombs being tweeted minutes after the blasts.⁹⁰² With little official news, but a public demand to know more about the grisly crimes, individuals used the Internet to find out information. There was a spike in the search terms "Boston" and "Woolwich" on Google in the days the crimes occurred.⁹⁰³ It was found that a quarter of Americans used social network sites to keep up-to-date with information about the Boston Marathon bombings.⁹⁰⁴ Similarly, reports of an "incident" in Woolwich was tweeted within minutes of the killing.⁹⁰⁵ Thus, newspaper reporting of the case studies were characterised by the use of social media to supplement traditional reporting techniques.

151, Volpp "The Boston Bombers" (2014) 82 *Fordham Law Review* 2209-2220, Gupta, Lamba, *et al.* \$1.00 *Per RT #BostonMarathon #PrayforBoston: Analyzing Fake Content on Twitter* (IEEE 2013).

⁹⁰² For details of the first tweets on the bombings see, "Who Broke the News of the Boston Marathon Bombing?" (*Storify* 2013) <<https://storify.com/hqu/boston-marathon-breaking-news>> accessed 9/7/14.

⁹⁰³ For Boston see:

<<http://www.google.com/trends/explore#q=Boston&date=4%2F2013%201m&cmpt=q&tz=Etc%2FGMT-1>>. For Woolwich see: <<http://www.google.com/trends/explore#q=Woolwich&cmpt=q>>.

⁹⁰⁴ Petrecca "After Bombings, Social Media Informs (and Misinforms)" *USA Today* (Virginia 23/4/13).

⁹⁰⁵ *Supra* Bell n900.

Online comments provided a source of information about each incident during the immediate aftermath.⁹⁰⁶ Journalists not only interviewed eyewitnesses to gain information, but also quoted social media postings, which were providing details of the attack on the day, long before news sites could report verified information.⁹⁰⁷ The live blogs by *The Guardian*, *The Daily Telegraph* and *The New York Times* published their first posts around an hour and a half after the attacks. In contrast, reports of a serious incident were being tweeted within minutes of the crimes occurring.⁹⁰⁸ One widely cited example of the influence of social media on crime news was the media reliance on Boya Dee who live-tweeted his experience as he witnessed the Rigby killing. The South London rapper gained 20,000 followers and subsequently wrote a comment piece for *The Guardian*,⁹⁰⁹ as a result of his live commentary of the Woolwich attack.⁹¹⁰

Footage of both crimes, taken by eyewitnesses and uploaded online, were widely circulated and commented upon in the immediate aftermath. With the bombing suspects still not identified in the days following the bombings, these images became a key component in the investigation to identify the culprits, described by one journalist as a “form of social media forensics”.⁹¹¹ Within hours of the attacks, video footage, filmed by eyewitnesses, had been posted online for public scrutiny. Aware of the dynamism of social media, the Woolwich killers actively encouraged filming by eyewitnesses, who used it as an opportunity to justify their actions to a mass audience.

Social media proved to be a powerful resource during the Boston Marathon bombings, with *The New York Times* describing it as “America’s first fully interactive national tragedy of the social media age.”⁹¹² It was used by law enforcement agencies to disseminate information to the public and facilitate the investigation. The day after the bombings, the Superintendent of Massachusetts State Police Force made a plea for eyewitnesses to hand in any footage of the bombings to help speed up the identification

⁹⁰⁶ *Ibid, supra* Greenwood and Martin n782. Twitter was also used to gain information about the eyewitnesses who intervened in the attack (West and Syson “My Mum is a Real Badass!” *The Sun* (London 24/5/13)).

⁹⁰⁷ Collins “How Twitter’s Breaking the News” (*PC Pro* 8/1/14) <<http://www.pcpro.co.uk/features/386428/how-twitters-breaking-the-news>> accessed 24/3/15, Sabbagh “It is Not Always Attractive but We Must Aim for Openness” *The Guardian* (London 3/6/13), *supra* Greenwood and Martin n782.

⁹⁰⁸ *Supra* Bell n900.

⁹⁰⁹ Dee “My Faith in Humanity Is Strong after Woolwich...” *The Guardian* (London 29/5/13).

⁹¹⁰ “Live Tweets from Rapper Boya Dee Go Viral” (*The Week* 23/5/13) <<http://www.theweek.co.uk/uk-news/woolwich-attack/53191/woolwich-attack-boya-dee-tweets-viral-rapper>> accessed 24/3/15.

⁹¹¹ Quoted in a video interview for *The New York Times* by reporter Richard L. Berke. For footage see Cooper “Looking for Clues in Boston” (*New York Times* 16/4/13) <<http://www.nytimes.com/video/us/100000002174493/looking-for-clues-in-boston-bombings.html?playlistId=100000002173381>> accessed 5/7/15.

of potential suspects. Similarly, three days after the explosions, the FBI released surveillance footage of the two suspects online,⁹¹³ which directly contributed to the identification and capture of the Tsarnaevs.

Unlike the bombers in Boston, there was clear footage of the Woolwich killing and the perpetrators were arrested shortly afterwards. The policy not to reveal the names of suspects meant that the Metropolitan Police did not officially comment on the incident or name Adebawale and Adebolajo as suspects for ten days after the attack.⁹¹⁴ In light of social media coverage of the incident, this was a move that journalist Dan Sabbagh described as “pointless...”.⁹¹⁵ As a result of the video footage, Adebolajo was named by associates on Twitter the day of the murder.⁹¹⁶ Whilst police raids on Adebawale’s house the day after the crime ensured that he was widely regarded as a suspect in the media.⁹¹⁷ The prevailing image of the Woolwich attack was of Adebolajo covered in blood and holding a bloody meat cleaver in his hand. This footage became the backdrop from which to discuss the defendants, whose guilt had become “a foregone conclusion”.⁹¹⁸

Once the Tsarnaev brothers were named by officials, social media was similarly used by the media and the public to analyse the pair⁹¹⁹ and, in some instances, affirm their guilt.⁹²⁰ Dzhokhar’s Twitter account, which is still available online, was subject to intense scrutiny, with some of his tweets used by the prosecution during his trial to apparently establish intent. Many of these tweets were subsequently put into context by the defence, who illustrated that they were references from popular culture. One noted example was Tsarnaev’s post a few months before the bombings which stated, “September 10th baby, you know what tomorrow is. Party at my house! #thingsyou dont yell when you enter a room”. Reported on by *The New York Post*⁹²¹ and cited by the prosecution at his trial, this tweet, which apparently portrayed Tsarnaev as a

⁹¹² Kakutani “Unraveling Brothers’ Online Lives, Link by Link” *The New York Times* (New York 24/4/13).

⁹¹³ Seelye, Schmidt, *et al.* “F.B.I. Posts Images of Pair Suspected in Boston Attack” *The New York Times* (New York 19/4/13).

⁹¹⁴ Greenwood “Police Told: Name Celebrity Suspects to Stop Web Gossip” *Daily Mail* (London 5/6/13).

⁹¹⁵ *Supra* Sabbagh n907.

⁹¹⁶ *Ibid.*

⁹¹⁷ As quoted in *The Guardian* “The identity of the second suspect was not confirmed, but police yesterday raided a house in Greenwich where Michael Adebawale, 22, was registered as a voter.” Dodd, Hopkins, *et al.* “Services Knew of Soldier Murder Suspects...” *The Guardian* (London 24/5/13).

⁹¹⁸ Editorial “The Rigby Killers Show Why We Must Be Vigilant” *The Daily Telegraph* (London 20/12/13).

⁹¹⁹ *Supra* Kakutani n912, Johnson, Madhani, *et al.* “Suspect Opening Up to Police; Tsarnaev, Unable to Talk, Writes; Responses Said to be ‘Substantive’” *USA Today* (Virginia 22/4/13).

⁹²⁰ Blow “The Mind of a Terror Suspect” *The New York Times* (New York 20/4/13), Editorial “The Unfinished War” *The New York Post* (New York 20/4/13).

one-dimensional killer, was demonstrated to be a reference to a popular sketch show by the defence.⁹²² Dzhokhar's tweet on the evening of the bombing, "ain't no love in the heart of the city, stay safe people", was also later used by some newspapers to depict a duplicitous and insensitive individual, implying guilt.⁹²³ Tamerlan's YouTube channel and Amazon Wishlist were similarly scrutinised and commented upon by the news media.⁹²⁴ With several news outlets highlighting a YouTube playlist labelled "terrorist", which contained extremist sermons and ballads that supported Chechnyan rebels.⁹²⁵

One of the clearest repercussions of the two crimes was the extent of the anti-Islamic sentiment that emerged in the aftermath of the attacks. This was in part as a result of subtle inferential structures of the more mainstream news reports and online commentary. The motives of Adebolajo and Adebawale were known immediately and there was never any question that Rigby's murder was not the result of extremism. Social media became a means through which individuals could express outrage at the crime and, more troublingly, blame the wider Muslim community. Former Home Secretary David Blunkett warned that online commentary heightened feelings of anger and outrage, something that served to increase support for far-right groups such as the English Defence League (EDL) and the British Nationalist Party (BNP).⁹²⁶ A series of violent attacks and demonstrations against Muslims across Britain perpetuated on-going discussions of guilt and condemnation.⁹²⁷ Online forums documented the escalating tensions, as far-right groups blamed the wider Muslim community for the attack.⁹²⁸ *The Guardian*, for example, reported that individuals who "liked" the Facebook page of the EDL increased after the killing, noting that the organisation's Twitter account "went into overdrive".⁹²⁹

⁹²¹ *Supra* Nestel n841.

⁹²² Sleeve "Defense in Marathon Bombing Has Echo of Clarence Darrow" *The New York Times* (New York 14/3/15), Cullen "In Midst of Dense Technical Testimony, Defense Finds a Gap" *The Boston Globe* (Boston 11/3/15).

⁹²³ Seelye and Lovett "After Attack, Suspects Returned to Routines, Raising No Suspensions" *The New York Times* (New York 27/4/13), *supra* Nestel n841, "102 Hours in Pursuit" *The Boston Globe* (Boston 28/4/13).

⁹²⁴ *Supra* Bain and Sheehy n842.

⁹²⁵ Delfiner "'Bomb' Cleric Fanned Flames Posted YouTube Islam Hate Rant" *The New York Post* (New York 20/4/13).

⁹²⁶ Wintour and Watt "Act Not to Calm Public Mood, Warns Blunkett: Feelings Worse Than 2005, Says Ex-Home Secretary. Social Media Images Make it Harder to Contain Anger" *The Guardian* (London 24/5/13), Archer "Who Would Argue with the Mob When It Gets So Large and So Loud?" *The Daily Telegraph* (London 25/5/13).

⁹²⁷ Hsan "The Muslim Faith Does Not Turn Men to Terror: The Two Suspects in the Woolwich Killing Were Violating the Doctrine of Their Holy Book" *The Daily Telegraph* (London 24/5/13), *supra* Wintour, *et al.* n799, Dunn and Hughes n801.

⁹²⁸ Doyle "1,200 Extra Police on Streets as EDL Thugs Exploit Tragedy" *Daily Mail* (London 24/5/13).

⁹²⁹ "Spike in Islamophobic Incidents after Attack as Far-Right Exploits Public Fury..." *The Guardian* (London 24/5/13).

In contrast, the unknown identities of the bombers prompted media speculation about who was responsible and their motives. This led to a troubling discourse on race to develop within the American press. All newspapers analysed reported that the police were interested in a Saudi Arabian national who was being treated in hospital for wounds pertaining to the explosions.⁹³⁰ *The New York Times* noted that he came under suspicion because “he had been seen running away from the crime” noting uncritically how one official stated that he, “came under scrutiny because of his injuries, his proximity to the blasts and his nationality”.⁹³¹ Similarly, a bizarre *The New York Post* reported that suspicions were aroused because the man, “smelt of gunpowder”⁹³² a presumably natural phenomenon when anybody stands close enough to a bomb explosion to get injured. In fact, this man was never under any official investigation and had not been detained by police officers. At a time when the motives of the bombers were unknown, a Saudi Arabian national treated in hospital for blast wounds was deemed newsworthy based on nothing more than his nationality.

The focus on race in the American newspapers paralleled discussions on rolling news channels, which reported incorrect information a number of times and notoriously included a CNN report of a series of arrests being made two days after the bombings.⁹³³ Not only was this information false, but anchorman John King’s comments that one of the suspects was “a dark skinned male”⁹³⁴ was met with widespread media criticism, with both *The New York Times* and *USA Today* condemning the comments.⁹³⁵ Nevertheless, this reporting was part of a broader and troubling rhetoric which sees individuals of the Muslim faith being automatically considered as part of the act of terrorism.

Images of the Boston bombings were crowdsourced by users of the Reddit site in an unsolicited attempt to help find the culprit.⁹³⁶ The online forum has approximately 70 million unique users each month and around five billion page views. Reddit has been

⁹³⁰ Johnson “Authorities Seek Witnesses, Pore over Security Footage; Dozens of Federal Investigators Join Police on Case” *USA Today* (Virginia 16/4/13), *supra* “102 Hours in Pursuit” n923, Eligon and Cooper n807.

⁹³¹ *Ibid* Eligon and Cooper.

⁹³² Kowsh “FBI Grills Saudi Man ‘Smells of Gunpowder’” *The New York Post* (New York 16/4/13).

⁹³³ Carr “The Pressure to Be the TV News Leader Tarnishes a Big Brand” *The New York Times* (New York 21/4/13).

⁹³⁴ For video footage see “John King: Boston Bombing Suspect A ‘Dark-Skinned Male’” (*Huffington Post* 17/4/13) <http://www.huffingtonpost.com/2013/04/17/john-king-boston-bombing-dark-skinned-male-ifill_n_3102195.html> accessed 5/7/15.

⁹³⁵ Carter “The F.B.I. Criticizes the News Media after Several Mistaken Reports of an Arrest” *The New York Post* (New York 18/4/15), Rieder “Race to be First Becomes Race to be Wrong; Reports on an Arrest in Boston Bombing Prove Incorrect” *USA Today* (Virginia 18/4/13).

previously used by journalists as a source of information during breaking news events.⁹³⁷ After the Boston bombings, many users hoped to replicate the successes online commentary had during the shooting at a Colorado cinema in 2012, where, at a time of chaos and confusion, the website was able to collect and distribute information, enabling journalists and other interested individuals to follow events in real-time.⁹³⁸ A SubReddit forum, entitled “Find Boston’s Bombers”, amassed over 1,700 users in the first three days after the attack, with many pictures also being uploaded on to the social media site Imgur.⁹³⁹

Described by the *New Statesman* as a “racist Where’s Wally”,⁹⁴⁰ several people were misidentified on the social news site, including two students, 16-year-old Salaheddin Barhoum and 24-year-old Yassine Zaimi, photographed standing at the finish line of the marathon carrying large bags, who were identified as suspicious. Despite never being suspected by police, the same picture made the front page of the *New York Post* under the headline “Bag Men”; the accompanying article implying that the two men were wanted for police questioning. Both men eventually won damages from the newspaper for libel, negligent infliction of emotional distress and an invasion of privacy.⁹⁴¹

More worryingly, missing student Sunil Tripathi, who had disappeared a month before the bombings, on the 16th March 2013, was also falsely implicated. Accusations against Tripathi were made on Reddit and appeared on various social media sites, trending on Twitter and prompting several people to condemn him on a Facebook page created by his family to facilitate their search. In response to the online vitriol that the family was receiving, the page was taken down, which many saw as a confirmation of his guilt.⁹⁴² The family received 58 phone calls from journalists between 3 and 4 in the morning, with one journalist stating, “this is your one opportunity to save your brother’s life”, in order to try to encourage a statement from the family.⁹⁴³

Social media served to escalate the amount of misinformation that was circulated in the days after the bombings. For example, the prominent entertainment blogger, Perez Hilton tweeted to his six million followers that Sunil was still at large

⁹³⁶ Meikle “Citizen Journalism, Sharing, and the Ethics of Visability” in Allan and Thorsen (eds) *Citizen Journalism: Global Perspectives*, vol 2 (Peter Lang 2009).

⁹³⁷ Kang “Crowd-Sourcing A Smear” *The New York Times* (New York 28/7/13).

⁹³⁸ *Ibid.*

⁹³⁹ “Crime Solving by Crowdsourcing” *The Boston Globe* (Boston 18/4/13).

⁹⁴⁰ *Supra* Hern n900.

⁹⁴¹ “New York Post Hit with Libel Lawsuit over ‘Bag Men’ Boston Bombings Cover” *The Guardian* (London 6/6/13).

⁹⁴² *Supra* Kang n937.

and believed to be carrying explosives.⁹⁴⁴ One user also tweeted that he had heard Sunil named over the police scanner.⁹⁴⁵ At no point was Sunil Tripathi considered a suspect by police. The impact the adverse media commentary had on Sunil's family was acute, Tripathi's sister, Sangeeta, described the ordeal, stating that "the harm done to my family is profound and more profound than an apology letter [can fix]".⁹⁴⁶

With a public demand for news, it is not uncommon for misinformation to be reported in the aftermath of attacks such as these case studies.⁹⁴⁷ Nevertheless, social media served to amplify the effect of such reporting mistakes, "crank[ing] up rumours and speculation and, with them, anxiety".⁹⁴⁸ Individuals channelled their shock and horror at the Boston bombings online, and this magnified outrage had significant repercussions for the Tripathi family and for *The New York Post*'s so-called "bag men". Although social media became an important means of documenting the bombings, it was also an outlet of "vigilante journalism".⁹⁴⁹ The private missing persons organisation that was helping the Tripathis find Sunil told the family that his implication in the bombing and the resultant Internet traffic had ruined their business.⁹⁵⁰ The incident resulted in an apology from Reddit,⁹⁵¹ who later reviewed their policy with regard to speculative posting about crimes. Sunil Tripathi's body was discovered in water near India Point Park, Providence on the 23rd April 2013.⁹⁵²

Social Media's Influence on Reporting: A Comparison with Pavlo Lapshyn

The influence of social media in news reporting of the defendants can be starkly seen when compared with the media reporting of the crimes committed by the white supremacist Pavlo Lapshyn. Around the time of Rigby's funeral, Lapshyn detonated a series of nail bombs, targeting the Muslim community in the Birmingham area. Although no one was hurt, the timing of the bombing immediately linked it to the

⁹⁴³ Abraham "A Loss of Decency" *The Boston Globe* (Boston 25/4/13).

⁹⁴⁴ Vora "Meanwhile, Sunil Tripathi Is Still Missing" *The New York Times* (New York 20/4/13).

⁹⁴⁵ *Supra* Kang n937.

⁹⁴⁶ *Supra* Vora n944.

⁹⁴⁷ *Supra* Rieder n935.

⁹⁴⁸ Vennochi "Fears of a New Generation" *The Boston Globe* (Boston 21/4/13).

⁹⁴⁹ *Supra* Fitzgerald n900.

⁹⁵⁰ *Supra* Kang n937.

⁹⁵¹ "Reddit Apologises for Online Boston 'Witch Hunt'" (*BBC* 23/4/13).

<<http://www.bbc.co.uk/news/technology-22263020>> accessed 18/6/15.

⁹⁵² Bidgood "Body of Missing Student at Brown is Discovered" *The New York Times* (New York 26/4/13).

Woolwich killing, with some newspapers reporting it as a possible revenge attack.⁹⁵³ Police investigations connected Lapshyn to the bombings and the earlier murder of 82-year-old Mohammed Saleem. Lapshyn subsequently pleaded guilty on the 21st October and was sentenced four days later to life imprisonment, with a minimum of 45 years.

During both the Boston bombings and the Woolwich killing, social media supplemented journalist reporting of the defendants. Imagery of both crimes facilitated the inferential structures of a nation under attack and enhanced the horror of the crime. Websites such as Twitter and Facebook enabled journalists to access further information of the crimes and the bomber. Gathered outside of the hierarchy of credibility, such information facilitated a media-led presumption of guilt for the defendants. Lapshyn's crimes, in contrast, were committed without eyewitness documentation or substantial social media commentary. As a result, police, the sole gatekeepers of information for these crimes, were able to control what information was given to the media and when it was received. In contrast to the Boston bombings and the Woolwich killing, this made for a significantly less sensationalised crime news story.

The details of the West Midlands attacks satisfy traditional media news values for their violence, novelty and the apparent similarities to the recent murder of Rigby. As such, the news story easily fitted into the on-going inferential structures of national shock and the rhetoric of guilty extremists. Despite this, Lapshyn's crimes received substantially less coverage than the Rigby suspects and, indeed, the Boston bombers.⁹⁵⁴

The information provided on the West Midlands attacks was minimal and reported in a matter-of-fact tone, which substantially downplayed the effect of the crime.⁹⁵⁵ Whilst it is possible to determine the lesser coverage to be a consequence of systematic and institutional Islamophobia,⁹⁵⁶ of greater importance to this thesis is the difference in the number of eyewitnesses and, thus, the amount of unofficial information

⁹⁵³ Whitehead "Mosque Bombing 'Could Have Hit Hundreds'" *The Daily Telegraph* (London 13/7/13), Dodd "Bomb Attack on Mosque" *The Guardian* (London 13/7/13), "Nail Bomb at Mosque" *Daily Mail* (London 13/7/13), Mensch "Bombers Taint Lee's Memory" *The Sun* (London 14/7/13).

⁹⁵⁴ The same four newspapers were analysed between the 12th July and the 9th November 2013, two weeks after sentencing. Relevant articles identified using the search terms "Pavlo Lapshyn", "Mohammed Saleem" or "nail bomb". Articles on the Woolwich attack that mentioned the crimes of Lapshyn were also included, allowing analysis of the parallels in newspaper reporting of the two crimes. After eliminating duplicate and irrelevant articles, there were only thirty relevant news stories.

⁹⁵⁵ Whitehead "Ukrainian Accused over Bombings" *The Daily Telegraph* (London 24/7/13), Dodd "Two Held over Suspected Mosque Bombing Campaign" *The Guardian* (London 20/7/13), Wilkes and Greenwood "Killing of Grandfather Near Mosque was Act of Terrorism" *Daily Mail* (London 22/7/13), "'Bomber' Kill Arrest" *The Sun* (London 22/7/13).

⁹⁵⁶ Indeed, the head of the West Midlands counter-terrorism unit, Assistant Chief Constable Marcus Beale stated that "both the media and ourselves should reflect" on the underreporting of the case, implying that there was a lack of media coverage due to the attacks being against the Muslim community. Dodd "Student Killed 82-Year-Old in 'Race War'" *The Guardian* (London 22/10/13).

obtained. As has been noted, the two case studies were substantially documented. In contrast, Lapshyn's crimes were committed more covertly; Saleem's murder was opportunistic, he had been targeted not only because he was a Muslim but also because there were no eyewitnesses.⁹⁵⁷ As a result, the media had to rely entirely on police sources and the hierarchy of credibility for information of the West Midlands attacks. Thus, Lapshyn was not named in the press until he was formally charged, on the 22nd July 2013.⁹⁵⁸ Details of the crimes were also not made available until the court pleading on the 21st October.⁹⁵⁹ The lack of detail, it appears, prevented the rampant media speculation necessary for a trial by media.

By-and-large, the emotive language and media outrage came after Lapshyn's plea, when there was a marked change in tone in the coverage of proceedings. In a reporting style that was similar to that of the immediate aftermath of the two primary case studies, details of Lapshyn's crimes were juxtaposed with his personal life. His academic success and meeting with the British ambassador for Ukraine⁹⁶⁰ were reported alongside the detailing of his crime, including the fact that he carried explosives on a bus,⁹⁶¹ and linking his bomb materials to those used in the 7/7 bombings in London in 2005.⁹⁶² The victim and the suspect were similarly presented in binary opposites, with Saleem described as being "highly regarded" in the community,⁹⁶³ contrasting with the "evil and calculating"⁹⁶⁴ Lapshyn.

Whilst there are clear parallels in the language used by the media, which similarly vilified Lapshyn, the fundamental difference between media reporting in this instance and the speculation during the two case studies described above, appears to lie in the timings of media analysis. Denied substantive information on the attacks in the West Midlands, media commentary occurred after Lapshyn pleaded guilty to the crimes,

⁹⁵⁷ "Ukrainian Student in One Man Racist Reign of Terror Targeting Black Country Mosques" *Express & Star* (Wolverhampton 22/10/13).

⁹⁵⁸ "Grandad 'Killer' on Blast Rap" *The Sun* (London 24/7/13).

⁹⁵⁹ Parker and Mills "Bomb Nut: I Wanted Race War; Nazi Fan's Hate; Killer Took Bomb on Bus" *The Sun* (London 22/10/13).

⁹⁶⁰ Bentley "Posing with Our Man in Kiev, the Ukrainian Held over Killing of Muslim Grandfather" *Daily Mail* (London 23/7/13).

⁹⁶¹ *Supra* Parker and Mills n959.

⁹⁶² Bentley "Carrying a Bomb on the Bus, Ukrainian Who Murdered Muslim OAP Five Days after Arriving in UK" *Daily Mail* (London 22/10/13).

⁹⁶³ Whitehead "Mosque Bomb Suspect Held over OAP Murder" *The Daily Telegraph* (London 22/7/13), Dodd "Ukrainian Charged with Mohammed Saleem Murder: Police Describe Killing as Terrorist Related More Than 5,000 People Mourn Pensioner" *The Guardian* (London 23/7/13).

⁹⁶⁴ Bentley "Ukrainian Race Killer of Muslim Gets 40 Years in Jail? ...? But Not Life" *Daily Mail* (London 26/10/13). Both *The Daily Telegraph* and *The Guardian*, quoting interviewing police officers, described Lapshyn as "calm, calculated, committed". Whitehead, Prynn, *et al.* "Ukrainian Tried to Start UK Race War" *The Daily Telegraph* (London 22/10/13), Dodd "The Shy Student Who Turned Killer and

thus preserving his due process rights. The mass coverage of the Boston bombings and the Woolwich attack, on the other hand, ensured that media reporting could happen outside the traditional “hierarchy of credibility”, diluting the due process safeguards and entrenching the defendants’ guilt prior to their trial. The amount of information of crimes now available on social media is clearly altering media reporting practices.

With the defendants linked to the crimes as a result of newspaper inferential structures, the extra information of the crime, in particular eyewitness footage, clearly contribute to a popular presumption of guilt. Lapshyn was not presented as guilty until he had pleaded as such and newspapers were able to learn of his identity. In contrast, both the Woolwich killers and the Boston bombers were subject to lengthy adverse media commentary long before their courtroom appearance.

Public Responses to the Crimes on Social Media

Eyewitness footage can heighten the sensationalism of the crime; however, it can also alter the way in which the public view the defendant. Documenting the crime can not only provide a visual testimony of the event, but can also appear to clearly establish the defendant’s guilt. With Adebolajo and Adebowale filmed literally red-handed, then due process terminology can appear hollow. Skitka has established, in her analysis of the effect of moral mandates on perceptions of the trial, that a presumption of guilt can generate a popular expectation for a guilty verdict. Failure to achieve this can result in the questioning of the legitimacy of the courtroom. Individual engagement with crime news online offers insight into populist assessments of events and the defendant. As such, analysis of comments on social media can help facilitate understanding of individual engagement with crime news and their subsequent judgment of the defendant and the crimes that they are accused of committing. It is worth noting that, as established in Chapter One, the defendant’s role in the courtroom has historically been influenced by external factors and has drastically changed without a conscious policy to do so. This was particularly notable with the gradual introduction of due process protections in the Old Bailey, which created the concept of the rights-bearing defendant in the eighteenth century. It is possible that Skitka’s moral mandate effect, as influenced by eyewitness “evidence” of a defendant’s guilt may encourage the gradual altering of the role of the defendant in the courtroom and the erosion of due process. This section will analyse the content on two social media sites, Twitter and YouTube, throughout the

Bomber: 82-Year-Old Man Knifed in Street before Bomb Attacks: Ukrainian’s Lack of Links in UK Made Him Hard to Hunt” *The Guardian* (London 22/10/13).

Woolwich attack and Boston Marathon bombings and the subsequent trials of the defendants, highlighting instances of a presumption of guilt and any suggestion of a moral mandate effect.

It appears that social media is already altering the criminal justice process. With some individuals being convicted on the basis of what they post online. A notable example of this occurred during the hours after the Woolwich murder and resulted in the conviction of 21-year-old student Deyka Ayan Hassan. She pleaded guilty to the crime of sending a malicious electronic message after tweeting, “To be honest, if you wear a Help for Heroes T-shirt you deserve to be beheaded”, hours after Rigby’s death. She was subsequently sentenced to 250 hours of unpaid work. Although admitting to the crime, Hassan claimed not to know about the murder and the timing of the message illustrates the changing dynamics of social media forums, news media and the criminal law. The offensive tweet was published at around 4pm, and, Hassan claims, was written as a result of other people’s posts on the site. Crucially this was before official confirmation of the crime from more mainstream news sources.⁹⁶⁵ The timing of the tweet was before any early evening televised news bulletin and before predominant media coverage of the attack; both *The Guardian* and *The Daily Telegraph* started their rolling news commentary online at 4:48pm and 4:30pm respectively.⁹⁶⁶ What makes this crime extraordinary, therefore, is the fact that it was deemed offensive precisely because rumours about the incident were circulating on social media, implying that Hassan should have known about the context of her tweet because of social media commentary. Furthermore, Hassan’s crime became known to the police not as the result of the monitoring of these internet forums but as a result of her direct complaint to her local constabulary of the public vitriol she received as a result of her tweet. Indeed, a similar joke was made in the comment section of one of the YouTube videos analysed above,⁹⁶⁷ in Chapter Three, which received no press attention or public condemnation, even within the forum itself. Public response to the comment was extreme and included threats to rape and kill Hassan.⁹⁶⁸ Her conviction starkly highlights the changing

⁹⁶⁵ Quinn “Student Given Community Sentence Over Rigby Tweet” *The Guardian* (London 8/6/13).

⁹⁶⁶ “‘Soldier Beheaded’ in Woolwich Machete Attack: As It Happened” (*The Daily Telegraph* 22/5/13) <<http://www.telegraph.co.uk/news/uknews/crime/10074029/Shootings-and-machete-attack-in-south-east-London-live.html> > accessed 1/9/14, Owen and Urquhart “Aftermath and Reaction to Killing on London Street - As it Happened” (*The Guardian* 22/5/13). <<http://www.theguardian.com/uk/2013/may/22/woolwich-two-shot-in-police-incident-live-coverage>> accessed 1/9/14.

⁹⁶⁷ In the comments section of the Sky News Bulletin of the Woolwich attack, WhiteBritishWarrior said “What were those two black guys thinking of? They must have lost their heads” <https://www.youtube.com/watch?v=WAh7FEELpU>. Screenshot 1 of the Appendix.

⁹⁶⁸ *Supra* Quinn n965.

dynamics between the more traditional news outlets and social media, and illustrates how social media forums can escalate public fury.

In order to assess individual interactions with the crime, two publicly accessible social media sites were chosen for analysis, Twitter and YouTube. Twitter has proven to be a powerful platform for information dissemination after the attacks, used by police forces and journalists to relay details about the crime and the investigation. Similarly, eyewitness footage of crimes are frequently uploaded onto the popular video-blogging site YouTube. Footage of Adebolajo's filmed "confession" and the Boston explosions, filmed by a spectator at the finish line of the Marathon, initially posted onto YouTube, were subsequently widely published in the media. Such footage helped in establishing the guilt of the defendants, as they were clearly placed at the scene of the crime.

For this case study, two relevant videos of the Woolwich attack and three for the Boston Marathon bombings,⁹⁶⁹ uploaded onto YouTube and tweets posted during five key moments of the attacks were analysed and coded using a template analysis framework, in order to identify the key themes of discussion on social media.⁹⁷⁰ These were subsequently compared with the newspaper inferential structures in order to ascertain how social media and the news media interacted when disseminating and exploring the way in which this case was presented to the public. A more detailed analysis of the process of selecting relevant YouTube videos and collecting relevant Tweets, including search terms for both case studies can be found in the Appendix of this thesis.

Twitter

During the initial aftermath of the attacks, Twitter became a mechanism through which individuals could comment on and analyse events. Unlike the YouTube comments sections, which are tied to a particular video, Twitter's ethos as a platform for short conversational posts enabled the public dissection of all aspects of the crime. Twitter is a predominantly personal method in which individuals engage with virtual conversations with those known to them.⁹⁷¹ The power of Twitter, however, lies in the fact that this virtual conversation is, with the exception of private accounts, public, in which anybody can potentially discover and join in. Tweets can be linked to other posts

⁹⁶⁹ Three YouTube videos were included for the Boston bombings as the most viewed videos were of the crime more broadly and did not depict the defendant. Therefore, the most viewed and relevant video when searching for "Dzhokhar Tsarnaev" was also included in analysis. For further detail, see the methodology in the Appendix.

⁹⁷⁰ For a detailed analysis of the methodology, see the Appendix of this thesis.

on the same topic through the use of hashtags (#), giving them an important function in sorting topics and conversations and enabling individuals to connect with the discussions of interest to them. The system of short, bite-sized comments and the use of hashtags makes Twitter an ideal mechanism through which to distribute information about crimes, something that was demonstrated during the case studies. For example, Christy Turlington (@cturlington) posted, “Who has news on #bostonmarathon? True that bomb went off at finish line?” in the hour after the explosions,⁹⁷² highlighting the use of Twitter as a source of information during breaking news.

Twitter has proved to be a popular platform for active engagement with events as they occur; examples include sport matches (e.g. #WorldCup), television programmes (#bbcqt⁹⁷³) and question and answer sessions with celebrities (e.g. #AskThicke, which was negatively received by many users).⁹⁷⁴ It is through this capacity that Twitter has become an important tool in identifying, disseminating, engaging with and evaluating breaking news.⁹⁷⁵ Predominant hashtags emerged during the Woolwich killing (#Woolwich and #RIPLeeRigby) and the Boston bombings (#BostonStrong and #PrayForBoston, amongst others).

For the purposes of this current study, tweets were coded using a template analysis, with posts grouped into three categories; tweets about the defendant, about the victim, and miscellaneous tweets, such as those posted by the news media. Further division into a number of subcategories within each section has enabled a more detailed analysis. A full template for both case studies is available in the methodology section, found in the Appendix.⁹⁷⁶ All social media comments are quoted verbatim in this thesis. In order to facilitate understanding of the posts used here, screenshots have been taken and are found in the Appendix. Because this thesis considers the role of the defendant in crimes that have been documented by eyewitnesses and the role of social media in constructing and interpreting the culpability of those accused of such crimes, analysis in this section will predominantly focus on those tweets that discuss the accused. However, tweets about the defendant were not the most common theme when commenting about

⁹⁷¹ *Supra* Bruns and Burgess n118 p.803.

⁹⁷² Screenshot 2 in Appendix.

⁹⁷³ BBC Question Time.

⁹⁷⁴ Selby “Robin Thicke Trolled After #AskThicke Twitter Publicity Stunt Goes Horribly Wrong” *The Independent* (London 1/7/14), Parkinson “What Rhymes with Disaster? Robin Thicke Trolled Hard in Twitter Q&A” *The Guardian* (London 1/7/14).

⁹⁷⁵ *Supra* Bruns and Burgess n118 p.801-803.

⁹⁷⁶ It must be noted that the template analysis allows for tweets to be coded into more than one category. This better reflects the conversational and informal nature of the social media platforms. Percentages are provided within this chapter to provide a more meaningful comparison between the two case studies but it must be noted that these percentages are distorted by some tweets being placed in multiple categories,

the case studies online. Indeed, only 12.48 per cent and 22.1 per cent of all comments on the Boston bombings and the Woolwich killings respectively were coded as discussing the defendant.⁹⁷⁷

Overall, public engagement with the defendant was minimal in comparison to other topics. The majority of tweets for the Boston bombings and of those posted during the Woolwich killing were categorised as being from news media sources,⁹⁷⁸ or individuals posting information about events.⁹⁷⁹ This was particularly prominent during the criminal trials of the defendants.⁹⁸⁰ Such activity raises interesting prospects as, at a time when trial attendance is declining,⁹⁸¹ it affords greater public accessibility to a high-profile criminal trial, something reflected in the frequent reference to news media in individual tweets.⁹⁸² Although the character limitations on Twitter prevents journalists from providing a nuanced analysis of the trial, this activity could allow the public to gain a greater understanding of the criminal justice process.⁹⁸³ Indeed, the retweets of news sources by individuals indicate a degree of public engagement with the live-tweeting of the criminal trials in these case studies.

Tweets often proffered individual commentary or opinion on the crime,⁹⁸⁴ predominantly discussing its impact and expressing solidarity with the victims.⁹⁸⁵ This can be clearly seen in the manifestation of hashtags such as #RIPLeeRigby or #PrayForBoston, which demonstrate public solidarity with the victims of the attacks. Such conversation reflected the newspaper commentary of the crimes. For example,

⁹⁷⁷ The categories that discussed the defendant in some form were; Guilty*, Horror of the Crime*, Punishment*, Race*, Religion*, Due Process, Not Guilty, and Agreement with the Crime. *Denotes those categories expressing a presumption of guilt.

⁹⁷⁸ 32.61 per cent of all tweets coded for the Boston bombing was categorised as being from a more traditional news outlet (such as newspapers), this is in comparison with 12.18 per cent of Woolwich tweets. Similarly, 22.95 per cent of tweets on the bombing were categorised as containing information about the case, more than the 17.78 per cent of informative tweets on the Woolwich killing.

⁹⁷⁹ As part of online engagement with news outlets, there were several comments about the inefficiencies of the news media. @jrlind noted the slow speed of reporting in comparison to social media comments, posting “nothing up at globe or cnn yet. looks like twitter is your go to at the moment. #bostonmarathon”. (Screenshot 3 in Appendix). Whilst Gem Pinkney (@gempinkney) tweeted “Craziness coming from #Woolwich. Mental how fast twitter snowballs ahead of thenews feeds. No mention on any of the major news channels yet.” (Screenshot 4 in Appendix).

⁹⁸⁰ The majority of tweets that occurred during the trial of the defendants, including their pleas, were from more traditional news sources live-tweeting proceedings or individuals disseminating information about the trial.

⁹⁸¹ *Supra* Moran n81.

⁹⁸² 16.84 per cent for the Boston bombings and 23.43 per cent for the Woolwich killing of all tweets coded.

⁹⁸³ This was something that was recognised by Joshua Nadreau (@joshuanadreau) when he tweeted “Importance of @twitter highlighted today as #BostonBombing verdict is live tweeted on TV due to no cameras in federal court. #Tsarnaev”. (Screenshot 5 in Appendix).

⁹⁸⁴ As opposed to the fact-based news media/information tweets.

⁹⁸⁵ 18.5 per cent and 34.23 per cent of all tweets coded on the Boston bombing and the Woolwich killing respectively, were categorised as expressing solidarity with the victims.

with regard to the Boston Marathon bombing @sistertoldjah posted, “Prayers for #BostonMarathon runners, attendees, and organizers. What horrible news! God be with them”.⁹⁸⁶ Whilst Adam (@adztbh) tweeted of the Woolwich murder, “I find it sickening that a man who bravely defends our country is slaughtered like this...”.⁹⁸⁷ From the outset there were tweets of horror and condolences to the bombing victims.⁹⁸⁸ On the day the Woolwich victim was named as Lee Rigby, messages of condolence increased, with 172 tweets coded with this sentiment after his identification, in comparison to 24 prior tweets of sympathy to the then-anonymous victim. Twitter resembled a virtual, and global, condolence book through which individuals could connect with one another and come to terms with the crime,⁹⁸⁹ paralleling the primary newspaper inferential structure of a nation in shock.

It is within this context that the defendants are discussed online. Comments about the suspects had an overwhelming presumption of guilt, 97.76 per cent of all the Boston bombing tweets and 99.75 per cent of all the Woolwich tweets discussing the defendant expressed a presumption of guilt in some format.⁹⁹⁰ Reflecting newspaper depictions, tweets expressed disgust and dehumanised the defendants. For example, @missb62, after seeing the FBI pictures of the Boston bombing suspects, wrote, “What a coward. The bomber could see there were kids everywhere.#Boston”.⁹⁹¹ Whilst @johnny_boy1987 posted, “#ripleerigby thoughts are with his family and friends at this sad time hope they evil scumbags get what they deserve”.⁹⁹² Of all of the tweets that discussed the defendants,⁹⁹³ only one tweet analysed in relation to the Woolwich killing thought the defendant’s actions were justified.⁹⁹⁴ Comments with regard to the guilt of Tsarnaev were marginally more diverse, largely as a result of a greater culture of conspiracy theories within America⁹⁹⁵ and the emergence of a #FreeJahar campaign, consisting predominantly of teenage girls, convinced of Dzhokhar’s innocence.⁹⁹⁶

⁹⁸⁶ Screenshot 6 in Appendix.

⁹⁸⁷ Screenshot 7 in Appendix.

⁹⁸⁸ With 161 and 330 tweets expressing horror at the crime and condolences to the victims.

⁹⁸⁹ See *supra* Greer n122.

⁹⁹⁰ The categories that discussed the defendant in some form were; Guilty*, Horror of the Crime*, Punishment*, Race*, Religion*, Due Process, Not Guilty, and Agreement with the Crime. *Denotes those categories expressing a presumption of guilt.

⁹⁹¹ Screenshot 8 in Appendix.

⁹⁹² Screenshot 9 in Appendix.

⁹⁹³ 1,717 tweets were coded as referencing the defendant in some way.

⁹⁹⁴ @aiman1979 commented “and so are the Syrian children they are unarmed too what happened in Woolwich is not an action it’s a reaction it’s an eye for an eye #Woolwich”. (Screenshot 10 in Appendix).

⁹⁹⁵ See Goertzel “Belief in Conspiracy Theories” (1994) 15 *Political Psychology* 731-742.

⁹⁹⁶ Abel “Doubts and Disbeliefs” *The Boston Globe* (Boston 27/7/13).

Nevertheless, only ten of the 5,729 tweets analysed stated a belief that Tsarnaev was not guilty, or pointed out that he had not yet been convicted.

This popular presumption of guilt reflected analysis by the news media and became particularly apparent when the defendants pleaded not guilty. @gazwells tweeted, “How the hell have them two animals pleaded not guilty #RIPLeeRigby”.⁹⁹⁷ Similar sentiments were expressed, regarding the Boston bombing, with @charlie_o posting, “#Tsarnaev pleads not guilty. After all the Islamist ideological rhetoric, the little shit can’t even own what he did”.⁹⁹⁸

Because American prosecutors sought a capital sanction, Dzhokhar’s criminal trial was considerably more complicated than that of the Rigby killers. Questioning the need for a trial was minimal amongst the tweets about the Boston bombings. There appeared to be a recognition that the trial was necessary primarily to determine the sentence, (rather than legal guilt). Indeed, this was acknowledged by the defence counsel whose opening statement to the jury was the admission that, “it was him”.⁹⁹⁹ This acceptance of Tsarnaev’s factual guilt differed from the rhetoric of counsel of Adebolajo and Adebawale,¹⁰⁰⁰ and was recognition of a need to focus on the sentencing phase of trial.¹⁰⁰¹ Without the complication of a capital sanction, the not guilty plea from Adebolajo and Adebawale was more widely criticised. Indeed, excluding tweets from the news media, or those simply posting information,¹⁰⁰² the most coded topic on that day (42.25 per cent) expressed outrage at the plea of the then-alleged Woolwich killers, with many (40 per cent) linking their tweet about the defendants’ guilt to the hashtag #RIPLeeRigby.

A greater percentage of the total tweets analysed relating to the Woolwich killing were coded as expressing sentiments of the defendants’ guilt than that of the Boston bombings. This appears to be a result of the video footage and extensive eyewitness accounts, that placed Adebolajo and Adebawale at the scene of the crime from the day of the attack. Indeed, reference was made to the YouTube videos in several tweets on the criminal justice process. For example, @giraffebanners questioned why, “Police are investigating who done this barbaric murder in #Woolwich seems pretty

⁹⁹⁷ Screenshot 11 in Appendix.

⁹⁹⁸ Screenshot 12 in Appendix.

⁹⁹⁹ Sleeve and Oppel “Boston Suspect Viewed as Terrorist, and as Youth in Brother’s Spell” *The New York Times* (New York 5/3/13), *supra* MacDonald n873, Valencia ““It Was Him”” *The Boston Globe* (Boston 5/3/15).

¹⁰⁰⁰ Both pleaded not guilty arguing that they were at war with Britain and therefore Rigby’s murder was not under the Queen’s peace, a requirement of the crime.

¹⁰⁰¹ Seelye “Defense Rests in First Phase of Marathon Bombing Trial after Just Four Witnesses” *The New York Times* (New York 1/4/15).

evident from the video footage”.¹⁰⁰³ Similarly, @gyropitus criticised the news reporting of the events, tweeting, “liking how the BBC refer to them as ‘suspected’. At the scene of the crime, covered in blood, holding a knife, and then confessing. #Woolwich”.¹⁰⁰⁴ Sentiments such as these demonstrate how a popular presumption of guilt can call into question the criminal justice process and the criminal trial. Moreover, these tweets also reflect how Skitka’s moral mandates could impact the legitimacy of the trial, whereby the guilt of the accused was considered to be so obvious that there was no need for a courtroom conviction.

During the verdict and the sentencing period, the tweets commenting on the defendants also expressed condolence to the victims. @d_dvb’s tweet was typical of those posted about the Woolwich defendants; “#RIPLeeRigby hope your family cn find some peace now. And them evil creatures can rot in prison”.¹⁰⁰⁵ Similar sentiments were expressed during the verdict and sentencing phase of Tsarnaev’s trial. For example, @deanrcollins wrote, “When you lay a bomb at the foot of an 8-year-old child, you don’t deserve to live. #Tsarnaev”.¹⁰⁰⁶ Although there were considerably more tweets expressing satisfaction at the death sentence for Dzhokhar Tsarnaev, it is important to note that the sentence was not universally celebrated.¹⁰⁰⁷ Indeed, there were several tweets that disapproved of the sentence, sometimes because life in prison was viewed as a harsher punishment,¹⁰⁰⁸ but mainly as the result of an ideological abhorrence against capital punishment.¹⁰⁰⁹ The debate about the capital sanction for Tsarnaev was complicated by the fact that the majority of those in Massachusetts, a state that had not performed an execution since 1947, overwhelmingly objected to the death penalty.¹⁰¹⁰ Such sentiments were reflected in a tweet by @caulkthewagon who expressed, “I’m sad to be a Bostonian right now. #Tsarnaev put us through hell. Despite that, this verdict is not in our character. We don’t want this.”¹⁰¹¹ Indeed, the Richard family, shortly before

¹⁰⁰² Which do not come with commentary that facilitated analysis of perceptions of the defendant.

¹⁰⁰³ Screenshot 13 in Appendix.

¹⁰⁰⁴ Screenshot 14 in Appendix.

¹⁰⁰⁵ Screenshot 15 in Appendix.

¹⁰⁰⁶ Screenshot 16 in Appendix.

¹⁰⁰⁷ Of the 896 tweets coded during the day of Dzhokhar Tsarnaev’s sentence, 113 expressed anti-death penalty sentiments or the need to forgive rather than seek revenge.

¹⁰⁰⁸ For example, Kelsey Smith (@14smith15) tweeted “Sentencing #Tsarnaev to death isn’t gonna do anything. It’s just killing someone else. Let him sit in jail forever. Death is too easy”. Screenshot 17 in Appendix.

¹⁰⁰⁹ For example, @chrisdstdman tweeted “‘To take a life when a life has been lost is revenge, not justice.’ - Desmond Tutu #Tsarnaev”. Screenshot 18 in Appendix.

¹⁰¹⁰ MacQuarrie “Most Want Life Term for Tsarnaev” *The Boston Globe* (Boston 16/9/13).

¹⁰¹¹ Screenshot 19 in Appendix.

the start of the sentencing phase of trial, wrote an open letter in *The Boston Globe* asking for the prosecution to stop seeking the death sentence.¹⁰¹²

Interestingly, there were some tweets that ran contrary to the primary theme of the guilty defendant and slain victim. For example, a fraction of postings commented on the mental state of Michael Adebowale following the guilty verdict, with the search results yielding five such tweets, all of which were retweets from @MFrancisCerrah who posted, “Not entirely surprised to read that Adebolajo had been suffering from mental health problems since 11, including voices in his head #woolwich”.¹⁰¹³ Although @MFrancisCerrah tweeted some commentary on the trial during this period,¹⁰¹⁴ there was no supplementary analysis about Adebowale’s mental state, nor was there any recognition from any of the tweets about how this may negate his culpability for the crime. Similarly, *The Boston Globe* journalist Yvonne Abraham (@globeabraham) speculated about Tsarnaev’s mental state, tweeting, “If #tsarnaev shows no emotion even re this own death, there might be something more complicated here than lack of remorse.”¹⁰¹⁵

A significant minority of tweets for both case studies appear to follow Skitka’s analysis of the moral mandate effect on perceptions of justice, with some questioning the need for a criminal trial. For example, @chris_etc_rich tweeted of Adebolajo and Adebowale, “Why is there even a trial for them two murdering twats? They are clearly guilty. They need to be dead. #Woolwich”.¹⁰¹⁶ Although the greater complication of Tsarnaev’s trial limited these questions, this sentiment can still be seen in tweets in relation to the Boston bombings. Indeed, this was clearly expressed by Zack Moore (@zackmoorenfl) who posted, “It’s great we have an innocent until proven guilty system, but we can’t waste money on sub-humans like #Tsarnaev. There’s no rehabilitation.”¹⁰¹⁷ The overwhelming presumption of guilt on Twitter was aptly described by Peyton Sweatman (@pblaine654) whose tweet was coded as one of six that expressed due process sentiments for the Boston bomber, “You know, there are times when I feel like no one is actually expecting a fair trial.... Like #Tsarnaev for instance.”¹⁰¹⁸

¹⁰¹² Richard and Richard “To End the Anguish, Drop the Death Penalty” *The Boston Globe* (Boston 17/4/15).

¹⁰¹³ Screenshot 20 in Appendix.

¹⁰¹⁴ See <http://topsy.com/s?q=from%3A%40MFrancisCerrah&offset=70&mintime=1387065622&maxtime=1387713634> for all tweets during the week commencing the trial verdict (accessed 30/10/14).

¹⁰¹⁵ Screenshot 21 in Appendix.

¹⁰¹⁶ Screenshot 22 in Appendix.

¹⁰¹⁷ Screenshot 23 in Appendix.

¹⁰¹⁸ Screenshot 24 in Appendix.

The effects of moral mandates can be more clearly seen in postings that suggest methods of punishment for the defendants. Such comments are erratic in nature and represented a significant minority of comments coded. Nevertheless, their punitive and often violent nature clearly demonstrate a small, but noteworthy, number of individuals who view the domestic criminal trial as superfluous to requirements. @barry_j retweeted a post by @TheToffees1878,¹⁰¹⁹ “RT @TheToffees1878: Them 2 bastards don’t deserve a trial. They should be slowly, painfully, tortured to death and left to rot in hell #Ripleerigby”,¹⁰²⁰ whilst @racheljones999 tweeted, perhaps flippantly, “put concrete in their wellies and throw them in a river, #ripleerigby”.¹⁰²¹ Similar sentiments were expressed during the Boston bombing trial, with @mctweets420 posting of Tsarnaev’s guilty verdict, “Guilty good. Now strap a bomb to his back and make him feel what those victims felt #BostonBombing #BostonStrong”.¹⁰²² This sentiment is heightened by the timings of the posts, which increased as the criminal justice process progressed, with such tweets increasing during the guilt and sentence phases of trial.

Thus, the guilt of the defendants had been clearly established on Twitter, with details of the crime and the horror felt as a consequence became linked to the actions of the defendants’ and the trial process. Tweets that express a presumption of guilt obliquely question the due process frameworks that the courts operate under. One intriguing Twitter conversation of the Woolwich killing provided a more implicit discussion of the due process rights afforded to the defendants, in response to a tweet by @nixey55 who posted, “I am a Christian & I’m sorry to say that I hope the life’s of Michael Adebolajo and Michael Adebowlr end as violently as #LeeRigby did”,¹⁰²³ @warrenfinn posted “@nixey55 don’t be sorry. The judicial system in the UK is way lenient though. They have a freaking lawyer. Shocking #Ripleerigby”.¹⁰²⁴ In this way, @warrenfinn’s comment goes beyond expressions of the defendants’ guilt by questioning their due process rights further; their guilt so apparent that they were undeserving of a lawyer. This comment was stand-alone in the search results yielded, nevertheless, when considered in conjunction with the wider comments on the defendants’ guilt for both case studies and speculation about the punishment that they

¹⁰¹⁹ This tweet was not contained within the search results and was identified through a Twitter conversation that was contained in the results.

¹⁰²⁰ Screenshot 25 in Appendix.

¹⁰²¹ Screenshot 26 in Appendix.

¹⁰²² Screenshot 27 in Appendix.

¹⁰²³ This tweet was not provided in the search results.

¹⁰²⁴ Screenshot 28 in Appendix.

should receive, it becomes apparent that there is an underlying theme, one that questions due process and the legitimacy of the court.

YouTube

YouTube's primary purpose is as a platform through which individuals can upload video content. Featured as part of the webpage where each video is situated, a comment section provides a secondary service, whereby viewers can comment upon and discuss the footage. Comments are presented on a timeline and can be sorted according to date posted or popularity,¹⁰²⁵ with all posted comments readily available to anyone watching the video. The comments section on all YouTube videos analysed was primarily conversational in nature, with users posting on a wide range of topics, some of which were directly replied to.

The comments on YouTube were considerably more extreme in content than those analysed on Twitter, which more closely resembled the rhetoric of the newspapers analysed. This is likely as a result of the different ways in which the two forums are used. Commenters may post on the YouTube site without making personal details accessible to the reader. This is in contrast to Twitter, where it is substantially easier to identify personal information by clicking on the personal profile linked to each tweet. The layout of Twitter's micro-blogging site means that every post forms part of an individual user's timeline. In this way, Twitter is highly personalised. In contrast, comments on YouTube are stand-alone, account-holders are not required to provide any personal information to post comments. Thus, YouTube users benefit from greater anonymity, something that scholars have noted results in a more extreme and inflammatory conversational style.¹⁰²⁶ Furthermore, tweets are more conspicuous as they feature in Internet search engines, which is not the case with YouTube comments. Thus, the relative anonymity of YouTube means that individuals can comment without fear of repercussion.

Whilst Twitter provided a means through which to access crime news for both case studies, the video-blogging site fulfilled a different and more obscure role. The most common topics coded for the footage of each case study were tangential to the crime. Of the three videos on the Boston bombings, the most coded topic espoused conspiracy theories,¹⁰²⁷ the most common of which was that the explosions were faked

¹⁰²⁵ Users are able to click thumbs up or thumbs down icons in order to rate the comment. The more thumbs up pressed, the greater the popularity of the comment.

¹⁰²⁶ *Supra* Coffey and Woolworth n561.

¹⁰²⁷ Comprising of 15.86 per cent of all comments coded for all three videos.

by the government to enact martial law. YouTube has many prominent conspiracy theorist video-bloggers, as such it is perhaps unsurprising to find such comments on the site. Nevertheless, such a theme was not as prominent with footage of the Woolwich killing. Whilst there were some comments on conspiracy theories with the British videos, they were in the minority, comprising of just 4.1 per cent of all comments coded. Instead, the overwhelming theme within the comments section of the Woolwich footage was that of wider blame for the actions of the defendants. As such, the majority of comments were prejudicial, either Islamophobic in content or racist, with the blame for the crime being attributed to the wider Muslim or black population, a topic that also featured in many posts within the Boston videos.

Prejudicial comments on social media, particularly against Muslims, appear to be a fairly common occurrence and are consistent with the increase in Islamophobic abuse in the wake of the attack, in particular online. After the Boston bombings there were reports of physical and verbal abuse being directed at those perceived as Muslim.¹⁰²⁸ Of the Woolwich killing, Tell MAMA, which measures and monitors anti-Muslim attacks, reported almost 200 instances of abuse in first week after the murder,¹⁰²⁹ most of which occurred online and was linked to far-right groups such as the English Defence League (EDL) and British Nationalist Party (BNP).¹⁰³⁰

Far-right sentiment can be clearly seen in the comments for both Woolwich videos. One commenter, for example, posted that it was, “About time edl make a stand to Muslims extremist in this country, they are the new vermin in ourm society”.¹⁰³¹ Similarly, another poster stated, “f*** islam and it’s child molesting ‘prophet’”.¹⁰³² There were similar comments for the videos of the Boston bombings, with Charlie Rios commenting on the GlobalLeaksNews video, “I fucking hate Muslims and they always do stupid terrorist shit America needs too kill every Muslim I fucking hate them all of them are terrorist”.¹⁰³³ As part of this dominant theme of prejudicial comments were a number of posts that attempted to engage with the bigotry on the YouTube video sites.¹⁰³⁴ These posts pointed out the fallacy of blaming a sect of people for the actions

¹⁰²⁸ Schram, Babcock, *et al.* “Idiots Beat up ‘Arab’ in Revenge” *The New York Post* (New York 18/4/13).

¹⁰²⁹ TellMAMA “200 Islamophobic Incidents since Lee Rigby’s Killing” (29/5/13) <<http://tellmamauk.org/woolwich-murder-200-islamophobic-incidents-since-lee-rigbys-killing/>> accessed 22/10/14.

¹⁰³⁰ Copsey, Dack, *et al.* *Anti-Muslim Hate Crime and the Far Right* (Centre for Fascist, Anti-Fascist and Post-Fascist Studies, June 2013) p.21.

¹⁰³¹ Screenshot 29 in Appendix.

¹⁰³² Screenshot 30 in Appendix.

¹⁰³³ Screenshot 31 in Appendix

¹⁰³⁴ 26.17 per cent of all comments coded.

of two extremists, with many pro-Muslim statements arguing that much of the Quran had been misquoted.

Comments regarding the religion and race of the defendants were part of the broader theme of guilty defendants. The analysis of the wider culpability of the religion or race of the two suspects, requires the poster to have already concluded that both suspects were guilty of the murder. In the three Boston bombing videos, comments on the guilt of the defendant amounted to 35.71 per cent, with 66.2 per cent of the Woolwich YouTube comments also expressing a presumption of guilt. Echoing the comments on Twitter and the rhetoric of the news media, very few posts considered the defendants to be not guilty or not yet convicted. Out of a total of 1,926 comments coded for the Woolwich killing, only fifteen were identified as containing “not guilty” sentiments. Of these, most (twelve) sympathised with the defendants’ cause. Only three pointed out that neither defendant had been convicted or discussed the nature of due process. There were considerably more comments expressing the innocence of the Boston bombings, primarily facilitated by conspiracy theories, with 99 such comments within those coded. Nevertheless, this amounted to just 4 per cent of all analysed.

The nature of the comments established YouTube as a forum for expressing opinions and instinctive reactions, rather than gathering and responding to information about the crime. Many comments expressed visceral and often violent comments about the defendants and other users. For example, Dave Lefmer posted of either the Tsarnaev verdict or sentencing, “Thank god there was justice today. Dzhokhar Tsarnaev.....burn in hell you sick bastard. I pray to God that when you leave this earth.....your place in hell will be being blown up over and over by a bomb”.¹⁰³⁵ Similarly, tanboora posted, in response to a moderate comment about the prejudice on the forums “am gonna take a pig dick and shove it in your prophet mohammad’s ass”.¹⁰³⁶

Unsurprisingly, the presumption of guilt for the defendants increased when footage clearly placing the suspects at the scene of the crime is posted. Comments analysed on Twitter have already established how the filming of Adebolajo, covered in blood and holding a meat cleaver, contributed to widespread public condemnation. Similar sentiments can also be seen regarding the Boston bombers, with most comments expressing a belief in Tsarnaev’s guilt being found in the footage posted by Mashable. This video was a montage of CCTV footage clearly showing Dzhokhar at the site of the

¹⁰³⁵ Screenshot 32 in Appendix.

¹⁰³⁶ Screenshot 33 in Appendix.

bombings, apparently leaving a backpack, moments before the explosions and was used by the prosecution during his trial. Comments not only expressed outrage at the crime but questioned the need for a trial. For example, Angel A. Acevedo posted “When you have evidence like this, what else is there left to see? What’s next? deciding whether he gets the death penalty or 500 years in prison or what?”¹⁰³⁷ These comments echo those who tweeted outrage at Adebolajo’s and Adebowale’s not guilty plea and subsequent criminal trial. As crimes are increasingly being documented by eyewitnesses, it appears that Skitka’s moral mandates effect on the criminal trial is likely to increase. This could ultimately have a long-lasting and highly troubling effect on the role of the defendant, as their position in the criminal trial as central and rights-bearing is eroded in order to maintain popular legitimacy of the criminal justice process.

As part of the virtual condolence book, there were a significant number of comments that expressed horror at the crime and sympathy for the victims. Intriguingly, there were also a number of comments in relation to the Boston bombings that expressed some link to the attacks, either by professing a relationship with a victim or the location of the bombings. One notable example was from Roy Alex, who professed to be a close family friend of Krystle Campbell, one of the three to die from the blasts, however the misspelling of the name on the post suggests that this statement is untrue.¹⁰³⁸ Nevertheless, it demonstrates an apparent need to connect to the crime, also illustrated by the amateur investigators who trawled through social media for clues in the days after the bombings. As part of a converse “it’ll happen to you” sentiment, such postings demonstrate an increased connectedness and empathy to the crime. This parallels media rhetoric, which invited the reader to place themselves in the shoes of the victims by interviewing and reporting on those who were nearly affected by the bombs.

Analysis of the comments on YouTube establishes the site to be a forum to express extreme and controversial viewpoints. This is likely to be due in large part to the anonymity afforded to users.¹⁰³⁹ The use of YouTube to portray controversial views is reflected in the fact that most comments about the Woolwich videos expressed prejudicial opinions, whilst the most coded topics for the Boston footage discussed, and responded to, conspiracy theories. It was within this context that the defendants were

¹⁰³⁷ Screenshot 34 in Appendix.

¹⁰³⁸ Roy Alex (TwistedColors): “Krystal Campbell was a good family friend of ours, she was at the finish line when the first bomb went off, I wonder how this delusional lunatic can explain why me and my family saw her in a casket at such a young age, I wonder if he can explain why she isn’t around any more.... But I am not mad at this guy, he is obviously suffering from a mental illness such as schizophrenia, or he is manic when he thought of this theory because anyone with a brain knows better. He is clearly completely separated from reality.” Screenshot 35 in Appendix.

discussed. Although a minority of posts were coded as discussing the suspects directly, the overwhelming majority of those posts expressed a presumption of guilt. Such a presumption was compounded by the instinctive and visceral response regarding the crime, within which numerous posts suggested violent forms of punishment deemed to be sufficiently retributive enough for such horrific crimes. These comments demonstrate the impact of moral mandates, with the defendants perceived as culpable by simple virtue of the crimes that they have been accused of committing. With guilt clearly established for those users commenting about the defendants, there was no apparent need for a courtroom verdict.

Conclusion

How the defendants were portrayed by the media and online in both case studies was perhaps unsurprising. Analysis of the news media reporting confirmed previous academic commentary on crime news. The primary inferential structure of the news media when discussing both crimes, depicting each nation as being under attack, was an understandable reflection of two shocking, brutal, and violent crimes. It was a pervasive theme and became the predominant context within which the defendants were discussed.

Our study in this chapter highlights the potential for a trial by media, something that has received little academic commentary in Britain. Newspaper articles heightened natural feelings of shock and outrage, for example, by graphically detailing the injuries of the victims. Media portrayals of the victims as innocent, loving and undeserving, also condemned the defendants as monstrous and inhuman in contrast. These binary depictions of the victims and the suspects became a trial by media for each defendant. The presumption of guilt delegitimised mitigating factors in the press and prevented a nuanced consideration of the defendants. Adebowale's psychosis or Adebolajo's trauma whilst detained and possibly tortured in Kenya were dismissed outright by the British media. There were some instances within the American press of a more detailed and nuanced consideration of the lives of the Tsarnaev brothers and their motives for planting the bombings. However, these articles were few in number and were overshadowed by those which characterised the suspects as pathologically evil and established a pervasive presumption of guilt.

Social media has the potential to exacerbate the defendant's trial by media. Not only was the news media theme of guilty defendants and horror at the crime continued

¹⁰³⁹ *Supra* Coffey and Woolworth n561.

online, but those posts that discussed the defendants overwhelmingly expressed a presumption of guilt. This presumption manifested itself in violent and punitive comments against those accused of the crimes. Worryingly, there were echoes of Skitka's research in the online posts, some of which openly questioned the need for a criminal trial and stated a preference for violent forms of punishment for the defendant, prior to any of them being convicted. As of yet such comments are in the minority of online posts, with the majority interacting with the online presence of the news media or expressing condolence for the victim(s). Nevertheless, as we have seen in Chapter One, the emergence of due process was a gradual development and one which directly contradicted long-established criminal justice traditions. It is possible that the news media portrayals of the defendants, supplemented with social media "evidence" and commentary, in the two case studies could be changing the parameters of justice. If this is the case, Skitka's moral mandate effect could serve to alter the criminal justice procedure once again. The concept of the defendant could be changing from one that is rights-bearing to one that is more focussed on factual guilt and exacting revenge.

Chapter Four

The Influence of Social Media on the Role of the International Criminal Defendant

The International Criminal Court (ICC), along with other international criminal tribunals,¹⁰⁴⁰ is the manifestation of a global commitment to fair trial.¹⁰⁴¹ Indeed, it has been argued that the “yardstick” for measuring the legitimacy of these courts is based not on “whether there are convictions or ... acquittals [but] ... on the fairness of the proceedings”.¹⁰⁴² However, Skitka’s moral mandates effect, and our findings in the previous chapter, establishes that the public scrutiny of a criminal trial focuses not on whether there has been a fair procedure, but on whether there has been a guilty verdict. The legitimacy of the ICC is far from established, with less than half of the world’s population under the jurisdiction of the Court.¹⁰⁴³ Moreover, as a result of a perceived bias against the continent, the African Union has urged member states not to cooperate with the Court, even if they are signatories to it.¹⁰⁴⁴ A lack of cooperation can be seen with the movements of the Sudanese President al-Bashir. The ICC issued a warrant for his arrest in 2009, which creates an obligation for the signatories to the ICC to arrest and extradite Bashir where possible.¹⁰⁴⁵ Despite this, he has been able to travel freely to countries that are party to the ICC to attend, for example, African Union summits.¹⁰⁴⁶ If Skitka’s moral mandates effect applies to the ICC, and by proxy other international tribunals, this can have lasting repercussions for their ability to operate effectively. Moreover, the remoteness and complexity of international criminal law means that there

¹⁰⁴⁰ Examples are the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the Special Court of Sierra Leone (SCSL).

¹⁰⁴¹ This was explicitly recognised in the Rome Statute, Article 64(2).

¹⁰⁴² Richard Goldstone, quoted in Ellis “Achieving Justice Before the International War Crimes Tribunal: Challenges for the Defense Counsel” (1996) 7 *Duke Journal of Comparative & International Law* 519-537. See also, Cogan “International Criminal Courts and Fair Trials: Difficulties and Prospects” (2002) 27 *Yale Journal of International Law* 111-140.

¹⁰⁴³ The United States of America, China and India are amongst those states that are not party to the Court’s founding treaty. For a list of signatories see <https://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx#I> accessed 4/4/16.

¹⁰⁴⁴ Taylor “Why so Many African Leaders Hate the International Criminal Court” *The Washington Post* (Washington D.C. 15/6/15).

¹⁰⁴⁵ Rome Statute, Article 58.

¹⁰⁴⁶ For academic discussion on this issue, see Barnes “The International Criminal Court’s Ineffective Enforcement Mechanisms: The Indictment of President Omar Al Bashir” (2010) 34 *Fordham International Law Journal* 1584-1619, Oette “Peace and Justice, or Neither? The Repercussions of the al-Bashir Case for International Criminal Justice in Africa and Beyond” (2010) 8 *Journal of International Criminal Justice* 345-364, Mills “‘Bashir is Dividing Us’: Africa and the International Criminal Court” (2012) 34 *Human Rights Quarterly* 404-447.

is likely to be greater reliance by the public on the news media for information.¹⁰⁴⁷ Thus, media portrayals of the defendant could prove to be more influential for public assessments of an international criminal defendant and the trial process, than that for the domestic defendant. As a result, social media and online “evidence” could also have a greater impact on perceptions of guilt regarding an international defendant.

The ICC was established in 2002, following the ratification of the Rome Statute by the requisite sixty states.¹⁰⁴⁸ Mandated to investigate and prosecute crimes against humanity, war crimes, genocide,¹⁰⁴⁹ and crimes of aggression,¹⁰⁵⁰ the Court was the culmination of a prolonged academic and political debate throughout the twentieth century.¹⁰⁵¹ Inspired by the Nuremberg Tribunal,¹⁰⁵² which tried high-ranking Nazi officials at the end of the Second World War,¹⁰⁵³ and two *ad hoc* tribunals established in the 1990s in Yugoslavia and Rwanda,¹⁰⁵⁴ the ICC also has another, perhaps more oblique aim. By committing to try in a court of law those accused of what are widely accepted to be the worst crimes, the ICC also represents an international commitment to due process.¹⁰⁵⁵

The ICC is mandated to prosecute “the most serious crimes of concern to the international community”, which have been described in the Court’s founding treaty as “unimaginable atrocities that deeply shock the conscience of humanity”.¹⁰⁵⁶ Such a description resonates with Skitka’s definition of moral mandates. Social media could

¹⁰⁴⁷ Mast and Hanegreets have considered the impact of eyewitness footage on media commentary of war, concluding that “citizen-generated imagery has proved to be an invaluable source for traditional news media as a way of coping with the severe limitations imposed on-the-ground newsgathering and reporting”. *Supra* n702 p.611.

¹⁰⁴⁸ Rome Statute, Article 126.

¹⁰⁴⁹ Defined in Articles 6-8. The ICC can also refer to the Elements of Crime (International Criminal Court 2011) <<https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>>.

¹⁰⁵⁰ The crime of aggression has yet to be added to the list of crimes under the jurisdiction of the Court. After the Review Conference of the Rome Statute (held in Kampala, Uganda between the 31st May and the 11th June 2010), agreed on a definition of aggression, this crime will come under the jurisdiction of the Court in 2017.

¹⁰⁵¹ See, for example, Brierly “Do We Need an International Criminal Court” (1927) 8 *British Year Book of International Law* 81-88, Pella “Towards an International Criminal Court” (1950) 44 *American Journal of International Law* 37-68, Bassiouni and Blakesley “The Need for an International Criminal Court in the New International World Order” (1992) 25 *Vanderbilt Journal of Transnational Law* 151-182.

¹⁰⁵² King Jr “Without Nuremberg – What” (2007) 6 *Washington University Global Studies Law Review* 653-661, Morrison “The Significance of Nuremberg for Modern International Law” (1995) 149 *Military Law Review* 207-215.

¹⁰⁵³ For more detail, see Heller *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (Oxford University Press 2011).

¹⁰⁵⁴ Goldstone “International Criminal Court and Ad Hoc Tribunals” *The Oxford Handbook on the United Nations*, (Oxford University Press 2007) 463-478. See also Bassiouni “The International Criminal Court in Historical Context” (1999) *St Louis-Warsaw Transatlantic Law Journal* 55-67.

¹⁰⁵⁵ See ICC Rules of Procedure and Evidence. In particular, Chapter 4 (Section I, II) Chapter 5 (Section I, II), Chapter 6, Chapter 7 (Rule 145).

exacerbate the moral condemnation of these crimes. Cottle notes that the reporting of activities on social media “not only helped to focus world attention on these momentous events but also helped grant them a human face”.¹⁰⁵⁷ Thus, social media, which is increasingly being used to document these crimes, can heighten their emotive impact, facilitating greater condemnation of those accused. It is possible that the ICC’s commitment to due process could be at odds with the public’s expectation of a guilty verdict.

This chapter will assess the influence of social media on the Court’s legitimacy by considering newspaper and online commentary for one of the cases investigated by the ICC, that of Muammar Gaddafi. Allegations of government violence against pro-democracy demonstrations in early 2011 were filmed by protestors and posted online. Such footage has since been used as evidence to indict Gaddafi for crimes against humanity. Furthermore, his capture and death at the hands of rebel forces eight months later was filmed and widely viewed on YouTube. Although Gaddafi was killed before he could be brought to trial, the circumstances surrounding the Libyan civil war remain pertinent to the considerations of this thesis. Gaddafi’s death is reminiscent of a lynching and was criticised by human rights organisations such as Amnesty International.¹⁰⁵⁸ Nevertheless, if his killing is presented as a form of justice in the news media and online this can illustrate how eyewitness “evidence” may be impacting upon perceptions of the criminal trial. As such, this case study provides useful material with which to assess the potential impact of social media on perceptions of guilt within the context of international law.

We will consider the impact apparent “evidence” of international crimes has on the news media and online conversation about Gaddafi. Through this we can draw broad comparisons with the findings in Chapter Three, assessing whether a popular presumption of Gaddafi’s guilt was established during the Libyan conflict. Furthermore, the footage of Gaddafi’s death enables us to consider the role of the ICC more broadly. If justice is perceived to have occurred as a result, this would provide a clear instance of Skitka’s moral mandates, rendering a criminal trial surplus to requirements.

In order to analyse perceptions of Gaddafi, this chapter will loosely follow the structure of Chapter Three and be divided into two sections. Section One will consider

¹⁰⁵⁶ Preamble, Rome Statute 1998.

¹⁰⁵⁷ Cottle “Media and the Arab Uprisings of 2011: Research Notes” (2011) 12 *Journalism* 647-659 p.648.

¹⁰⁵⁸ “Amnesty International Urges Libya to Investigate Whether al-Gaddafi Death was a War Crime” (Amnesty International 2011) <<http://www.amnestyusa.org/news/press-releases/amnesty-international-urges-libya-to-investigate-whether-al-gaddafi-death-was-a-war-crime>> accessed 7/1/16.

newspaper reporting of the Libyan protests and the civil war, using Lang and Lang's inferential structures.¹⁰⁵⁹ Within this section we will consider newspaper portrayals of the defendant and whether or not there are indications of a presumption of guilt. We will also analyse newspaper reporting of the ICC as an institution. In so doing we hope to gain a better understanding about the perceived legitimacy of the ICC and its role in achieving justice.

Section Two will go on to consider social media commentary on the Libyan conflict. Tweets posted on three key dates during the civil war and the YouTube comments for three videos¹⁰⁶⁰ will be analysed. In a similar vein to our analysis in Chapter Three, consideration of the conversation on social media will provide a better understanding of the impact eyewitness footage. Before this, it is necessary to consider the role of social media in the Libyan conflict to provide the context that will enable us to better understand this case study.

Libya

A series of pro-democracy protests in neighbouring Tunisia and Egypt inspired similar demonstrations in Libya, scheduled to take place on the 17th February 2011. In the preceding days, the Libyan government detained several prominent activists, triggering demonstrations on the 15th February in Benghazi, Libya's second largest city. Protests intensified and there were demonstrations in major cities across Libya on the 16th, including in the capital city of Tripoli. In response, the Libyan government fired at protestors with what several organisations have alleged to be live ammunition.¹⁰⁶¹ February the 17th, the original date for the protests, was dubbed a "Day of Rage", and violence between protestors and government forces escalated.¹⁰⁶²

Footage of government officials firing indiscriminately at protestors, described as a crime against humanity,¹⁰⁶³ were posted online and received international

¹⁰⁵⁹ Given the initial media blackout and the overall difficulty of verifying information in a complex conflict such as the Libyan civil war, Becker's hierarchy of credibility was not appropriate for this case study.

¹⁰⁶⁰ Two providing eyewitness accounts of the Libyan protests and the most watched video of Gaddafi's capture and subsequent death.

¹⁰⁶¹ Office of the United Nations High Commissioner for Human Rights *Report of the International Commission of Inquiry on Libya* (A/HRA/19/68 2/3/12) para 76 (hereafter HRC). See also "Libya: Benghazi Clashes Deadly – Witnesses" (BBC 2011) <<http://www.bbc.co.uk/news/world-africa-12506787>> accessed 26/8/15, Black "Libya on Brink as Protests Hit Tripoli" *The Guardian* (London 21/2/11).

¹⁰⁶² "'Day of Rage' Kicks Off in Libya" (*Al Jazeera* 17/2/11).

<<http://www.aljazeera.com/news/africa/2011/02/201121755057219793.html>> accessed 17/2/11.

¹⁰⁶³ *The Prosecutor v. Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi* (ICC-01/11-T-1) Pre-Trial Chamber 1 27/06/11 (hereafter ICC-01/11).

condemnation. As *The New York Times* noted, the prevalence of eyewitness footage of apparent governmental attacks on Libyan civilians heightened the emotional impact; “the amateurish quality of these [videos] has given them an added psychological strength and impact in contradicting the clean and professional pictures on Libyan television”.¹⁰⁶⁴ Some prominent Libyan activists detailed the extent of government brutality on Twitter and used social media to rally support. Twitter became a powerful tool to contradict the narrative of the Libyan government, which blamed the uprisings on hallucinogenic drugs, on “mercenaries” who were fighting for foreign states, and corporations intent on overturning the regime.¹⁰⁶⁵ Gaddafi threatened that he would commit several international crimes on state television, citing an intention to use extreme force and even genocide¹⁰⁶⁶ in order to quash the uprising.

In the initial four days of protests, Human Rights Watch estimated that at least 233 had died as a result of government violence against demonstrators across the country.¹⁰⁶⁷ A rising death toll led the Arab League to suspend Libya’s membership from the organisation on the 23rd February. Many protestors responded to the violence in kind and revolted against the Gaddafi regime. Within a week of the initial demonstrations, the situation in Libya had escalated into civil war. Rebel forces, uniting on the 2nd March to form the National Transitional Council (NTC), gained significant territorial control during the initial weeks of the civil war.¹⁰⁶⁸ As Gaddafi’s authority in Libya weakened, several foreign politicians expressed concerns over the escalating violence and the potential violations of international criminal law.¹⁰⁶⁹ By the end of February it was reported that Gaddafi controlled “just a few pockets” of Libya, including parts of Tripoli and the town of Sabha in the southwest of the country.¹⁰⁷⁰

In response to the escalating violence, the United Nations Security Council (UNSC), expressed “grave concern” about the potential commission of crimes against humanity. Resolution 1970, passed on the 26th February 2011, imposed an arms embargo on the Libyan government, froze the offshore assets of the Gaddafi regime and

¹⁰⁶⁴ Mekay “One Libyan Battle is Fought in Social and News Media” *The New York Times* (New York 23/2/11).

¹⁰⁶⁵ “Gaddafi Strikes Defiant Note” (*Al Jazeera* 22/2/11).

<<http://www.aljazeera.com/video/africa/2011/02/20112221852864320.html>> accessed 27/8/15.

¹⁰⁶⁶ Glover “Why Gaddafi’s British Apologists Should Hang Their Heads in Shame” *Daily Mail* (London 1/3/11).

¹⁰⁶⁷ Human Rights Watch *Government Should Demand End to Unlawful Killings* (2011).

¹⁰⁶⁸ “Libya Protests: Pressure Mounts on Isolated Gaddafi” (*BBC* 23/2/11) <<http://www.bbc.co.uk/news/world-middle-east-12550719>> accessed 27/8/15.

¹⁰⁶⁹ “Gaddafi Defiant as State Teeters” (*Al Jazeera* 23/2/11).

<<http://www.aljazeera.com/news/africa/2011/02/20112235434767487.html>> accessed 27/8/15.

¹⁰⁷⁰ *Supra* n1069.

authorised the ICC to investigate the commission of potential crimes in Libya. US President, Barack Obama, and his Secretary of State, Hilary Clinton, both urged Gaddafi to stand down, declaring that he had lost his legitimacy to rule.¹⁰⁷¹ Gaddafi remained defiant amid global pressure to resign, calling the rebel fighters “rats” whose Nescafé had been spiked with hallucinogenic drugs by Islamic extremists.¹⁰⁷² Government troops began to regain territorial control in early March.

As concerns grew that Gaddafi was indiscriminately attacking rebel strongholds, potentially amounting to war crimes, the UNSC passed a further resolution, 1973, on the 17th March. Member states were authorised “to take all necessary measures ... to protect civilians ... under threat of attack”. Although this did not include military occupation, a no-flight zone, policed by members of the North Atlantic Peace Organisation (NATO) was imposed. This arguably helped the rebels, who were struggling to retaliate against the superior fire power of government forces. Indeed, NATO intervention prevented Gaddafi troops from recapturing Benghazi.¹⁰⁷³

The ICC’s prosecutor opened formal investigations on the 3rd March, concluding that it was reasonable to believe that international crimes had been committed in Libya. On the 16th May, the prosecutor submitted a request to the Pre-trial Chamber to issue warrants for arrest for three main figures in the Libyan government. On the 27th June, the Pre-trial Chamber found that there were reasonable grounds to believe the accusations¹⁰⁷⁴ and issued warrants of arrest for Muammar Gaddafi, his eldest son Saif al-Islam Gaddafi, whom the Court regarded as Gaddafi’s “unspoken successor”,¹⁰⁷⁵ and Abdullah Al-Senussi, the country’s intelligence chief. All three were suspected of perpetrating crimes against humanity, by encouraging security forces under their control to kill civilians and persecute the protestors, contrary to Articles 7(1)(a) and (h) of the Rome Statute. The evidence submitted in support of the Prosecutor’s request for arrest warrants has been redacted by the Court to protect eyewitnesses. Nevertheless, it is reasonable to believe that eyewitness footage posted online contributed to the Court’s decision to issue warrants of arrest. Indeed, the Office of the United Nations High

¹⁰⁷¹ Obama: Gaddafi Must Leave Libya Now” (*Al Jazeera* 27/2/11).

<<http://www.aljazeera.com/news/americas/2011/02/2011226232530835912.html>> accessed 27/8/15.

¹⁰⁷² Chulov “Libya Rebels Isolate Gaddafi, Seizing Cities and Oilfields” *The Guardian* (London 24/2/11), Williams and Greenhill “Gaddafi Rants as Rebels Close on His Bunker” *Daily Mail* (London 25/2/11), Slackman “Dislike for Qaddafi Gives Arabs a Point of Unity” *The New York Times* (New York 22/3/11), Soltis “Khadafy Qaeda-Crazy - Scared Madman’s Blame Game Amid Mutiny and Murder” *The New York Post* (New York 25/2/11).

¹⁰⁷³ *Supra* HRC n1061 para 85.

¹⁰⁷⁴ An evidentiary burden for warrants of arrest found in Article 58 Rome Statute.

¹⁰⁷⁵ *Supra* ICC-01/11 n1063 p.5.

Commissioner for Human Rights (HRC)¹⁰⁷⁶ relied on such footage to corroborate their findings that international crimes may have been perpetrated in Libya.¹⁰⁷⁷

By August 2011, after many military defections, rebel fighters had gained significant territorial control.¹⁰⁷⁸ Opposition forces took control of the strategically important town of Al Zawiyah on the 19th August, cutting Tripoli off from the coastal road to Tunisia, the only supply route for the capital. Tripoli came under rebel control on the 22nd August, after rebels entered the central “Green Square”, a historical symbol of Gaddafi’s power. In the chaos both Gaddafi and his son escaped the capital separately to their home town of Sirte, which remained the only governmental stronghold.

Following a long and violent battle in Sirte throughout September and much of October, Muammar Gaddafi was found alive by rebel forces on the 20th October. He appeared confused and had been hiding in a sewer pipe outside the town. Gaddafi’s capture was filmed by jubilant rebel fighters, who were clearly seen hitting the deposed Libyan leader, stabbing him in the buttocks with a bayonet. He was filmed being put in an ambulance, bleeding from his head and pleading for fair treatment from the rebels. Hours later, Gaddafi was confirmed dead.

There are differing explanations of Gaddafi’s death. The NTC stated that he had been shot in the crossfire between rebel forces and loyalist fighters.¹⁰⁷⁹ However, Human Rights Watch have since cited compelling evidence that Muammar Gaddafi had been summarily executed in an act of “bloody vengeance”.¹⁰⁸⁰ Gaddafi’s death was not met with the widespread and global celebrations seen after the Navy SEAL operation that killed bin Laden. It is possible that the nature of the footage prevented such celebrations. The film showed Gaddafi as an elderly, injured and confused man at the mercy of increasingly jubilant and violent rebel fighters. This could have created public sympathy that would otherwise not have been felt for a man accused of committing atrocities against the people he governed over. Whether such a reaction occurred will be considered in Section Two of this chapter, when analysing YouTube commentary of footage of Gaddafi’s capture. First, it is necessary to consider media portrayals of the Libyan leader. As we have seen in Chapter Three, media commentary of a crime can

¹⁰⁷⁶ Abbreviated to Human Rights Commission.

¹⁰⁷⁷ *Supra* HRC n1061 paras 25, 31.

¹⁰⁷⁸ *Supra* n1068.

¹⁰⁷⁹ May “Gaddafi Killers to Face Trial in Libya” *The Sun* (London 28/10/11), Cumming-Bruce and Marlise “U.N. Panel Calls for Inquiry Into Qaddafi’s Death” *The New York Times* (London 22/10/11), Soltis “Wanted: Khadafy Killer” *The New York Post* (New York 28/10/11).

¹⁰⁸⁰ Human Rights Watch *Death of a Dictator: Bloody Vengeance in Sirte* (2012).

have a subsequent impact on the online conversation about the defendant and have the potential to influence perceptions of justice.

Section One: Newspaper Reporting of the Libyan Conflict

It was noted in Chapter Two that crime news influences public perceptions of crime, as most news consumers do not have first-hand experience of criminal law or justice.¹⁰⁸¹ With this in mind, news reporting is likely to be highly influential in relation to perceptions of international conflicts. Thus, the way in which the defendant and the International Criminal Court are presented in the newspapers is likely to influence public perceptions of the Court and potentially establish a popular presumption of guilt that challenges the need for a criminal trial.

This section will consider coverage in six newspapers,¹⁰⁸² representing a broad range of genres and political allegiances from both the United Kingdom and the United States. All six of these newspapers were also analysed in the domestic case studies in Chapter Three. Thus, *The Guardian*, the *Daily Mail*, *The Sun*, along with their Sunday counterparts, *The New York Times*, *USA Today* and *The New York Post* were analysed for their discussion of the Libyan conflict and Gaddafi. Analysing newspapers considered in Chapter Three will enable us to better compare the different styles between domestic crime reporting and newspaper discourse of international criminal law in the context of the Libyan conflict. Selecting relevant articles followed the methodology for Chapter Three and is detailed in the Appendix of this thesis. Relevant articles were identified using “Gaddafi” as a search term. Because the translation of the Arabic name has a number of possible spellings, “Qaddafi”, “Gaddafi” and “Khadafi” were also searched, as these represented the various spellings used in the newspapers considered. A total of 1,144 newspaper articles were analysed.

Examination of newspaper articles in this section will focus on two topics, the reporting of Muammar Gaddafi and the ICC. This section will be divided into two parts, differing slightly from the structure of Chapter Three. Firstly, mirroring analysis of the domestic case studies, we will consider media portrayals of defendants. We will once again draw upon Lang and Lang’s inferential structures to facilitate our understanding of newspaper bias and whether or not there was an established presumption of guilt.¹⁰⁸³

¹⁰⁸¹ *Supra* Moran n81.

¹⁰⁸² *The Guardian*, the *Daily Mail*, *The Sun*, *The New York Times*, *USA Today* and *The New York Post*.

¹⁰⁸³ Because of the chaotic nature of news reporting of the Libyan civil war, there was no authority so-to-speak that journalists could rely on for information of the conflict. Thus, Becker’s hierarchy of credibility is not relevant for this chapter.

Secondly, because the legitimacy of the ICC is not firmly established, as highlighted in the introduction, we will analyse media portrayals of the International Criminal Court. This will form part of our consideration of the moral mandate effect on international criminal defendants.

Newspaper Portrayals of Gaddafi and International Crimes During the Libyan Conflict

Facilitated by eyewitness footage of state forces apparently firing on protestors, from the outset Gaddafi was portrayed as a mad and evil tyrant who was “busy slaughtering his own people”.¹⁰⁸⁴ Newspapers described Gaddafi as “murderous”,¹⁰⁸⁵ a “butcher”,¹⁰⁸⁶ and a perpetrator of “massacres”,¹⁰⁸⁷ as a result of “his desperation to hang on to power”.¹⁰⁸⁸ Depictions of a monstrous Gaddafi were heightened through newspaper comparisons of the Libyan leader with other, violent and notorious dictators. For example, the *Daily Mail*, quoting one member of Benghazi’s interim council, wrote that Gaddafi “has done things here that no other tyrant, even Saddam Hussein, would dare”.¹⁰⁸⁹ Echoing media portrayals of the defendants accused of domestic crimes, considered in Chapter Three, newspapers established notions of “them” and “us”, ostracising Gaddafi early on and maintaining a pro-rebel bias throughout the Libyan conflict.

Condemnation of Gaddafi as “evil”,¹⁰⁹⁰ a “nut job”,¹⁰⁹¹ and a “monster”,¹⁰⁹² contrasted with newspaper reports of rebel forces. Media described the anti-government fighters as a “ragtag army of democracy campaigners”,¹⁰⁹³ comprised of “former

¹⁰⁸⁴ “Counter Gadhafi’s Butchery with Coordinated Response” *USA Today* (Virginia 24/2/11).

¹⁰⁸⁵ Harvey and Charity “Mad Max v Mad Dog; Men Meet the Rebels Fighting Gaddafi” *The Sun* (London 9/3/11).

¹⁰⁸⁶ Fahim and Worth “Rebels Repel Qaddafi’s Forces in a Key Oil City” *The New York Times* (New York 3/3/11).

¹⁰⁸⁷ Black and Bowcott “Protestors Report Massacres as Gaddafi Regime Imposes News Blackout” *The Guardian* (London 19/2/11).

¹⁰⁸⁸ Editorial “Stopping Qaddafi” *The New York Times* (New York 25/2/11). See also *supra* n1084, Newton-Dunn and Syson “Stop the Mad Dog Genocide; U.S. in Air Strikes Bid Crisis in Libya but Gaddafi Threatens Blitz” *The Sun* (London 18/3/11).

¹⁰⁸⁹ Pendlebury “Outgunned! Rebels with Rocket Grenades Take on Gaddafi’s Artillery” *Daily Mail* (London 10/3/11). See also Oliver “Inside Filthy Tunnel Lair of Tyrant; Sun Man Visits Scene of Gaddafi’s Final Hours” *The Sun* (London 22/10/11), Burns “Parallels between Qaddafi and Hussein Raise Anxiety for Western Leaders” *The New York Times* (New York 23/10/11), Michaels “Libya’s Gadhafi, Rebels in Power Standoff; Analysts Don’t See Huge Gains on Either Side” *USA Today* (Virginia 9/3/11).

¹⁰⁹⁰ Wells and Grant “I’ll Cleanse Nation of These Greasy Rats House by House; Gaddafi Vows Bloody Revenge for Protests” *The Sun* (London 23/2/11).

¹⁰⁹¹ Miller and Fredericks “Delusion in Libya - Khadafy: I Don’t See Dead People” *The New York Post* (New York 28/2/11).

¹⁰⁹² Jones and McIlgorm “If Your Country Doesn’t Stop Gaddafi Today He Will Kill All of Us and He Will Kill You Too” *Mail on Sunday* (London 20/3/11).

¹⁰⁹³ Wheeler and Willetts “Blast Days of Gaddafi; As World Leaders Meet to Plan Libya’s Future” *The Sun* (London 29/3/11).

doctors, engineers, students, taxi drivers and teachers, in need of training and weapons”¹⁰⁹⁴ but who derive “great pride from their status as [a] homegrown”¹⁰⁹⁵ rebel army. Journalist bias in favour of the rebels was sometimes explicitly discussed. As one *Daily Mail* reporter wrote, “I am not being dewy-eyed when I say that the effort of the Libyan people to utterly resist the tyrant is noble to behold”.¹⁰⁹⁶ Thus, Gaddafi’s alleged crimes were presented as attacking a whole nation, all of whom want “to bring down this regime”.¹⁰⁹⁷ Such binary descriptions not only demonstrated journalistic bias in favour of the rebel fighters, but also instilled Gaddafi’s guilt; allegations of his violence against his citizens stood in stark contrast to their simple demands for freedom. This inferential structure continued throughout the civil war, not only encouraging the reader to sympathise with the anti-Gaddafi movement, but limiting critical analysis of the actions of anti-government fighters.

The complexities of the civil war were largely ignored in the press. Rather, the predominant inferential structure focused on the condemnation of an “inhumane leader”¹⁰⁹⁸ against “extraordinarily brave men and women”.¹⁰⁹⁹ Presenting the rebel army in this way, made with reference to binary comparisons to the Gaddafi regime, is simplistic and inaccurate. As the length of the conflict attests, it is erroneous to report Libya as wholly against Gaddafi. Furthermore, as noted by *The New York Times*, the rebels were not a united force made up of pro-democracy fighters, but rather a disparate collection of anti-government fighters with widely differing agendas.¹¹⁰⁰

Newspaper bias against Gaddafi was facilitated by easier access to anti-government protestors and rebel fighters, who benefited from having their message broadcast to a global audience.¹¹⁰¹ A media blackout imposed by the Gaddafi regime during the initial protests, facilitated media over-reliance on anti-government sources. This was in spite of the fact that several human rights organisations, such as Human Rights Watch, were already working in the region and were reporting information on the

¹⁰⁹⁴ Qawalish “‘We’re Not Scared. We Get Used to It. It’s the Gaddafi Army Who’s Afraid’: War in Libya: Gains by Ragtag Rebel Forces after Fierce Fighting Raise Hopes of Breakthrough” *The Guardian* (London 13/7/11).

¹⁰⁹⁵ Fahim and Kirkpatrick “Libyan Rebels Said to Debate Seeking U.N. Airstrikes against Qaddafi” *The New York Times* (New York 2/3/11).

¹⁰⁹⁶ *Supra* Pendlebury n1089.

¹⁰⁹⁷ *Supra* Black and Bowcott n1087.

¹⁰⁹⁸ Malek “We Can No Longer Live Under Gaddafi’s Evil Subjugation” *The Guardian* (London 22/2/11).

¹⁰⁹⁹ Kawczynski “Muammar Gaddafi’s Cult of Personality has Finally Crumbled” *The Guardian* (London 23/2/11).

¹¹⁰⁰ MacFarquhar, Schmitt, *et al.* “The Vacuum After Qaddafi” *The New York Times* (New York 27/2/11).

Libyan protests.¹¹⁰² Although these human rights organisations were more likely to be objective in their reports, the anger that emanated from prominent dissenters against the Gaddafi regime, and their expressed excitement at the anti-government protests, more easily satisfied the newsworthiness criteria and made for a more sensationalised story. All the newspapers analysed referenced the opinions of prominent anti-government Libyans. Although some were exiled from the country, the opinions of these dissidents were portrayed as eyewitness testimony. For example, *The Guardian* quoted Ali Zeidan, a senior member of the Libyan League of Human Rights and who resides in Munich. “Piecing together” the events in Tripoli, Zeidan stated that, “everybody knows somebody who has been killed or injured, everyone is very angry”.¹¹⁰³ This facilitated the inferential structure that the whole country was against the Libyan leader. The obvious problems with relying on sources not present at the protests was not addressed by any of the six newspapers.

Newspapers reported on rumours and hearsay evidence of government brutality against demonstrators, despite being unable to verify this information.¹¹⁰⁴ One such example is demonstrated early on in *The Guardian*, which reported that Libyan troops were releasing convicted criminals in order to attack the demonstrators.¹¹⁰⁵ Such an allegation was impossible to substantiate during a chaotic period of increasingly militant anti-government protestors and a state-imposed media blackout.¹¹⁰⁶ Nevertheless, the newspaper reported this rumour unquestioningly, adding to the horror of events and the condemnation of Gaddafi.

¹¹⁰¹ This was recognised by *The Guardian*, Chrisafis “‘We Used to Be Afraid. But Now We’ve Seen the Blood Our Fears Have Gone’: Libyans Tell of Bloodshed Despite the News Blackout Mercenary Attacks Fail to Deter Anti-Gaddafi Protests” *The Guardian* (London 22/2/11).

¹¹⁰² “Libya: Security Forces Fire on ‘Day of Anger’ Demonstrations” (*HRW* 2011).

<<https://www.hrw.org/news/2011/02/17/libya-security-forces-fire-day-anger-demonstrations>> accessed 5/12/15, “Libya: Security Forces Kill 84 Over Three Days” (*HRW* 2011).

<<https://www.hrw.org/news/2011/02/18/libya-security-forces-kill-84-over-three-days>> accessed 5/12/15, “Commanders Should Face Justice for Killings” (*HRW* 2011) <<https://www.hrw.org/news/2011/02/22/libya-commanders-should-face-justice-killings>> accessed 5/12/15.

¹¹⁰³ *Supra* Chrisafis n1101.

¹¹⁰⁴ One example of this was demonstrated in *The Guardian*, who quoted Umm Mohammed, a Libyan political activist, who claimed that Gaddafi was “releasing the prisoners from the jails to attack the demonstrators”. Black “Libya: Protests Met by Regime’s Bullets and Loyalists” *The Guardian* (London 18/2/11).

¹¹⁰⁵ *Supra* Black and Bowcott n1087. This allegation was later made by the ICC’s Office for the Prosecutor when applying to the Pre-Trial Chamber for warrants of arrest. See *supra* ICC-01/11 n1063 para. 9.

¹¹⁰⁶ Something acknowledged by *The New York Times*; Kirkpatrick and Mona “Son of Qaddafi Says Libya Faces Civil War Peril” *The New York Times* (New York 21/2/11).

The criminal allegations against pro-Gaddafi forces were numerous and grew as the conflict escalated. Alongside the reckless endangerment of civilians,¹¹⁰⁷ Gaddafi was also accused of planting landmines,¹¹⁰⁸ stockpiling chemical weapons¹¹⁰⁹ and encouraging troops to rape women in rebel-controlled areas.¹¹¹⁰ The latter allegation was repeated by the then-ICC prosecutor, who condemned such actions as contrary to international criminal law.¹¹¹¹ Despite this, human rights groups have found no evidence to suggest a widespread and systematic policy of using rape as a weapon.¹¹¹² This led the *Independent on Sunday*, published in parts in *The Guardian*,¹¹¹³ to state “don’t believe everything you see and read about Gaddafi”.¹¹¹⁴ Similarly, although Gaddafi threatened to use chemical weapons against rebel fighters during a televised speech, there is no evidence to suggest that he actually used such weapons. Thus, Gaddafi was summarily convicted by news reporting of rumours that facilitated the depiction of a monstrous tyrant determined to maintain his control in Libya at all costs.

A more detailed consideration of the way in which newspapers reported certain events during the Libyan conflict demonstrates the problems with a simplified reporting style and a pro-rebel bias. By uncritically reporting on the actions of the rebel forces, newspapers failed to acknowledge evidence that the anti-government fighters were similarly committing the crimes that Gaddafi has been condemned for. The media’s simplistic reporting of the Libyan conflict was starkly illustrated in the newspapers’ discussion of Gaddafi’s alleged use of mercenaries. Despite providing little evidence to substantiate the claims, all the newspapers reported that Gaddafi was hiring fighters

¹¹⁰⁷ Black “After the Air Raids, Gaddafi’s Death Squad Keep Blood on Tripoli’s Streets” *The Guardian* (London 22/2/11), “Rebels Hold Off Gaddafi Forces in His Own Back Yard” *Daily Mail* (London 8/3/11), Wells and Soodin “Air Blitz on Demo; Gaddafi Bombs His People as Mid East Teeters Libya” *The Sun* (London 22/2/11), Fahim and Kirkpatrick “Libyan Rebels Repel Qaddafi Forces Near Tripoli” *The New York Times* (New York 25/2/11), Soltis “Madman Khadafy Trumped by Aces - 2 Defy Airstrike Order and Fly Coop” *The New York Post* (New York 22/2/11), *supra* n1084.

¹¹⁰⁸ “Gaddafi is Routed” *The Sun* (London 19/7/11).

¹¹⁰⁹ “Gaddafi Has Got Chemical Weapons and He’s Ready to Use Them” *Daily Mail* (London 2/3/11), “Gaddafi ‘Will Gas Freedom Fighters’” *The Sun* (London 2/3/11).

¹¹¹⁰ Drury “Revealed, Atrocities That Could Put Gaddafi on Trial for War Crimes” *Daily Mail* (London 17/3/11), Pollard “Gaddafi Gives Troops Viagra for Mass Rapes” *The Sun* (London 9/6/11), Sayare and Kirkpatrick “Berber Rebels in Libya’s West Face Long Odds against Qaddafi” *The New York Times* (New York 25/4/11).

¹¹¹¹ Pilkington, Rice, *et al.* “Gaddafi Faces New ICC Charges of Using Rape as Weapon in Conflict” *The Guardian* (London 9/6/11), Chapman “Blair Ditches Gaddafi as He Backs Battle to Oust Tyrant” *Daily Mail* (London 9/6/11).

¹¹¹² *Supra* Amnesty International n1058, HRC n1061 para 64.

¹¹¹³ Greenslade “Is Gaddafi Guilty of All We Have Been Told by Journalists?” *The Guardian* (London 26/6/11).

¹¹¹⁴ Cockburn “Don’t Believe Everything You See and Read About Gaddafi” *Independent on Sunday* (London 25/6/11).

from central and western Africa to participate in the civil war.¹¹¹⁵ These claims were repeated by the ICC's Pre-Trial Chamber, although as the evidence has been redacted, it is impossible to substantiate this.¹¹¹⁶ Reporting on such activities reinforced the notion that Gaddafi was fighting the entire Libyan populace, unable to find enough citizens prepared to fight for his cause. It also perpetuated media depictions of the monstrous Libyan leader (*The Guardian* described Gaddafi's mercenaries as "death squads")¹¹¹⁷, with soldiers reported as being so horrified at what they were being asked to do that they defected to the rebel cause or sought asylum in neighbouring countries.¹¹¹⁸

Despite the widespread reporting on the use of mercenaries, and accusations by the ICC, human rights organisations found little evidence of their presence in the Libyan army. The HRC found that although Gaddafi had recruited fighters from Sudan, there was no evidence to suggest these recruits had been paid substantially more than local loyalist soldiers. This is a central requirement for the definition of "mercenary" under the United Nations Convention Against Mercenaries¹¹¹⁹ and the regional Organisation of African Unity's Convention on Mercenaries.¹¹²⁰ Whilst the Commission found that there were soldiers "of foreign descent" fighting for Gaddafi, the report concluded that these fighters were either Libyan citizens or residents.¹¹²¹ It is possible that the presence of such fighters might have contributed to the rumours of Gaddafi's use of mercenaries.

It appears that the extensive rumours of mercenary fighters perpetuated pre-established racist attitudes directed against black Libyans and immigrant workers. In 2000, widespread xenophobic attacks throughout the country resulted in the killing of several black migrant workers. There is evidence that such racism was still present in 2011, as demonstrated by one rebel commander who stated to a journalist that mercenary fighters "cause me to hate all black people".¹¹²² Despite some articles

¹¹¹⁵ *Supra* Black n1107, Pendlebury n1189, Kirkpatrick and Mona "Qaddafi's Forces Strike with Fury as Unrest Grows" *The New York Times* (New York 22/2/11), Soltis "Khadafi's Hired Guns - 2G-Per-Day Mercenaries Battle Rebels" *The New York Post* (New York 4/3/11), *supra* n1123, Wells and Grant n1109.

¹¹¹⁶ Referenced in *supra* ICC-01/11 n1063.

¹¹¹⁷ *Supra* Black n1107.

¹¹¹⁸ Hooper-Rome and Black "Libya: Defections: Pilots Were 'Told to Bomb Protestors'" *The Guardian* (London 22/2/11), Greenhill "Get Our People out of Libya" *Daily Mail* (London 23/2/11), Michael "Resurgent Libyan Rebels Move Toward Tripoli; Gadhafi Aide Defects and Flees Country" *USA Today* (Virginia 14/6/11), *supra* Soltis n1107, Wells and Soodin n107, Kirkpatrick and Mona n1151.

¹¹¹⁹ Article 1(1)(b) International Convention Against the Recruitment, Use, Financing and Training of Mercenaries.

¹¹²⁰ Article 1 OAU Convention for the Elimination of Mercenarism in Africa.

¹¹²¹ *Supra* HRC n1061 para 91. This was also noted in a *New York Times* article Gettleman "Libyan Oil Buys Loyal African Allies for Qaddafi" *The New York Times* (New York 16/3/11).

¹¹²² Walker "Towns Empty as Gadhafi Loyalists Flee; Thousands Scatter Fearing Rebel Reprisals" *USA Today* (Virginia 28/9/11).

alluding to the fraught racial tensions in the country between Arab and black Libyans,¹¹²³ the treatment of alleged mercenaries by rebel troops went largely unquestioned in the six newspapers. For example, during the anti-government demonstrations, *The Guardian* reported that protestors had extra-judicially executed fifty “mercenaries” and a number of conspirators in various locations in Libya.¹¹²⁴ Similarly, *The New York Times* reported that mobile phone footage was “being passed around among friends, showing black men, dead or being beaten”.¹¹²⁵ Despite the fact that allegations of such activities could amount to serious war crimes, neither newspaper critiqued the actions of the rebel fighters in their reports. Instead, *The New York Times* blamed Colonel Gaddafi for the actions of the rebel forces, who “focused their anger on the leader’s effigy”.¹¹²⁶ Similarly, newspapers unquestioningly reported on the rebel treatment of captured government fighters, accused of being mercenaries. For example, the *Daily Mail*, reporting on a makeshift trial for alleged mercenaries, repeated claims from three detainees that they were decorators and noting their paint-stained trousers.¹¹²⁷ Although acknowledging that “it was hard to judge their guilt” the newspaper had already condemned the defendants as “savage” in its headline, with the reporter stating that he “did not quite believe” one suspect’s claim that he had been coerced into fighting for Gaddafi.¹¹²⁸

Contrasting newspaper inferential structures, both the UN Human Rights Commission (HRC) and Human Rights Watch (HRW) found that black men were arbitrarily detained without trial by rebel fighters.¹¹²⁹ Echoing pre-war racial tensions, it appears that the colour of skin was enough to arouse suspicions. There is also evidence to suggest that those detained by rebel forces were tortured both to extract information and as a form of punishment.¹¹³⁰ Despite concerns raised by human rights organisations during the Libyan civil war, newspapers focused their criticism on the arbitrary detentions and executions of suspected rebel fighters by Gaddafi forces, reinforcing

¹¹²³ Chulov and Smith “After the Battle, the Backlash for Gaddafi’s Army of Mercenaries: Soldiers of Fortune in Pay of Dictator Fear Retribution: We Were Press-Ganged by Regime, Say Black Africans” *The Guardian* (London 3/9/11), Adekeye “Gaddafi: The Man Who Would Be King of Africa” *The Guardian* (London 26/8/11).

¹¹²⁴ *Supra* Black and Bowcott n1087. See also *supra* Pendlebury n1089.

¹¹²⁵ Fahim “Rebels in Libya Hope for Qaddafi’s Fall but Remain of an Onslaught” *The New York Times* (New York 24/2/11).

¹¹²⁶ *Ibid.*

¹¹²⁷ *Supra* Pendlebury n1089.

¹¹²⁸ *Ibid.*

¹¹²⁹ *Supra* HRC n1061 para 91, Human Rights Watch *Libya: Stop Arbitrary Arrests of Black Africans* (2011). See also, *supra* Chulov and Smith n1123.

¹¹³⁰ Human Rights Watch *Libya: Cease Arbitrary Arrests, Abuse of Detainees* (2011), *supra* HRC n1061 paras 31, 49-51.

established inferential structures that condemned the Libyan leader and exhibiting double standards.¹¹³¹

Media bias also prevented any meaningful discussion of potential international crimes committed by anti-Gaddafi forces. Evidence collected by HRW and HRC suggest that rebel forces also committed serious violations of international criminal law, including unlawful killing,¹¹³² the arbitrary detention of suspected government fighters,¹¹³³ and indiscriminate attacks against government fighters, endangering civilian lives.¹¹³⁴ Whilst rebel fighters have been accused of other offences, these three are particularly notable as Gaddafi troops were similarly accused of such crimes.¹¹³⁵ Despite this, there is a marked difference in media reporting of the alleged crimes committed by both sides.

In line with inferential structures favouring the rebel forces, the newspapers analysed had greater condemnation for alleged violations by Gaddafi troops than similar offences committed by opposition fighters. One notable example occurred in the final hours of the fighting in Sirte at the Mahari Hotel. A week after the cessation of violence, HRW investigators found fifty-three decomposing bodies, some of whom had their hands tied behind their back, and the spent cartridges of AK-47 and FN-1 rifles scattered in the hotel grounds.¹¹³⁶ The evidence at the site led the organisation to suggest that rebel fighters had summarily executed opposition forces, perhaps minutes before they would have been liberated. Such treatment of prisoners of war constitutes a war crime.¹¹³⁷

Despite being described as “one of the worst massacres of the eight-month conflict”,¹¹³⁸ it received very little attention in the newspapers analysed.¹¹³⁹ The bias in

¹¹³¹ Beaumont “Hospital: ‘There Have Been No Deaths, Only Some Bullet Wounds’: Peter Beaumont Finds Gaddafi’s Men Claiming Attacks by Al-Qaida” *The Guardian* (London 2/3/11), “Gaddafi Cash Haul” *The Sun* (London 5/3/11), Elkton “In Benghazi, Brutal Memories Fuel Opposition; Anti-Gadhafi Forces Ready to Stand Fast” *USA Today* (Virginia 4/3/11).

¹¹³² Human Rights Watch *Libya: All Sides Obligated to Protect Civilians* (2011), Human Rights Watch *Libya: Opposition Forces Should Protect Civilians and Hospitals* (2011).

¹¹³³ Human Rights Watch *Libya: Opposition Arbitrarily Detaining Suspected Gaddafi Loyalists* (2011).

¹¹³⁴ *Supra* HRC n1061 paras 72-73, 79, 80.

¹¹³⁵ *Supra* n1123, “Rebels Hold Off Gaddafi Forces” n1107, Soltis n1107, Wells and Soodin n1107, Black n1107, Fahim and Kirkpatrick n1107.

¹¹³⁶ Human Rights Watch *Libya: Apparent Execution of 53 Gaddafi Supporters* (2011), *supra* HRC n1061 para 31.

¹¹³⁷ Article 8(b)(vi).

¹¹³⁸ Fahim and Nossiter “In Libya, Massacre Site Is Cleaned Up, Not Investigated” *The New York Times* (New York 25/10/11).

¹¹³⁹ It was recognised that relevant articles reporting on the Mahari Hotel killings may not have been discovered through the initial search of the Nexis database, which focused on Gaddafi, because it did not explicitly relate to the defendant. As such, a second search was conducted using the terms “Mahari Hotel” OR “execution” OR “massacre”. This search only yielded a further two articles, one from *The Guardian* and one from *The New York Times*, both of which were included in the analysis.

favour of the rebel fighters was evident in the newspapers that did report on the incident. For example, although the *Daily Mail* described the scene as one “from hell”, acknowledging that such activity constituted a war crime, it was reported under the headline “Gaddafi Thugs Gunned Down in Cold Blood”. The use of the word “thugs” reinforced primary inferential structures that condemned pro-government fighters.¹¹⁴⁰ Both *The Guardian* and *The New York Times* criticised the NTC for not investigating the allegations made in the HRW report.¹¹⁴¹ Nevertheless, the Council’s inactivity was excused by the American newspaper because they “may simply have their hands full with the responsibilities that come with running a state”.¹¹⁴² *The Guardian* was the most objective newspaper reporting on these events, nevertheless it reported on similar allegations that pro-Gaddafi forces were being summarily executed, describing rebel’s actions as a “headache” for the National Transitional Council.¹¹⁴³ Established inferential structures in favour of the rebel forces prevented an objective and nuanced consideration of the alleged violations of international criminal law violations made against them.

Newspaper reporting of the Mahari Hotel stands in stark contrast to the condemnatory tones, exemplified in the tabloid newspapers, of the alleged summary executions, conducted by pro-Gaddafi troops. *The Sun*, for example, described one such event as a “massacre by mad dog Muammar Gaddafi”.¹¹⁴⁴ Similarly, after photographic and video evidence emerged of Gaddafi’s troops apparently “brutalis[ing] and kill[ing]” civilians and rebel fighters, the *Daily Mail* highlighted the illegality of such actions by citing the Geneva Convention. The newspapers analysed rarely provided such legal context, by doing so in this instance the actions of the loyalist forces were condemned as an international crime. Further heightening the emotional impact of this particular crime, the newspaper also identified one of the men terrorised in the video, naming him as Ahmed Gheriani. Providing interviews with the man’s family and detailing his life encouraged greater reader empathy for the man described by his brother as selfless, caring, and “a hero”.¹¹⁴⁵ In contrast, newspapers that reported on the Mahari massacre,

¹¹⁴⁰ Greenhill “Gaddafi Thugs Gunned Down in Cold Blood” *Daily Mail* (London 25/10/11). See also Harvey “Dead Dog; Sun Man’s Chilling Visit to Gaddafi’s Grisly Corpse” *The Sun* (London 24/10/11).

¹¹⁴¹ Black “NTC Agrees to Investigate the Killing of Gaddafi” *The Guardian* (London 25/10/11), *supra* Fahim and Nossiter n1138.

¹¹⁴² *Ibid* Fahim and Nossiter.

¹¹⁴³ Harding “Libya: How Gaddafi’s Men Took Bloody Revenge in Final Hours of War: Evidence of Executions as Rebels Poured in - to Tripoli Caputred Loyalist Fighters Prove a Headache for NTC” *The Guardian* (London 29/8/11).

¹¹⁴⁴ Hayes “Massacred by Gaddafi’s Men; Mad Dog’s Troops Kill Hundreds” *The Sun* (London 29/8/11).

¹¹⁴⁵ Jones “Shocking Pictures that Show Gaddafi’s Brutality Against His Own People” *Mail on Sunday* (London 10/4/11).

did not name the victims.¹¹⁴⁶ Indeed, none of the newspapers reported on allegations of war crimes committed by rebel troops with the same detail as those crimes allegedly committed by Gaddafi. This is despite reports by human rights organisations suggesting that allegations of war crimes by rebel troops were similar to those allegedly committed by Gaddafi's forces.¹¹⁴⁷

By presenting the rebel forces as morally blameless, Gaddafi, in contrast was presented as more culpable. Rather than depicting the actions of pro-Gaddafi troops within the context of a complex and increasingly brutal civil war, allegations of international crimes were reported in a vacuum, with little contextual detail. This can be seen in the media reporting during the siege of Misrata, a city that experienced some of the heaviest bombardment in the Libyan civil war, and the subsequent acts of revenge committed by residents against neighbouring loyalist areas.

The battle for Misrata, a strategically important city on the Libyan coast, lasted for several months after rebel forces took control of the city. During this time the city was heavily shelled by pro-Gaddafi forces and, during blockades of the port, residents were trapped inside the city. Gaddafi's troops were accused of planting land mines,¹¹⁴⁸ using human shields against NATO airstrikes¹¹⁴⁹ and recklessly killing civilians in a "merciless attack"¹¹⁵⁰ on the port city. *The New York Times*, quoting one resident, condemned the Libyan leader as a "war criminal",¹¹⁵¹ prior to any ICC investigations. The *Daily Mail* also made their allegiances very clear, when a journalist entrenched with rebel fighters in the area reported that Gaddafi "hasn't even been able to take Ajdabiya from us". The use of the pronoun "us", the expressions of triumph, and scorn at Gaddafi's failings clearly established the journalist's and, by proxy, the newspaper's allegiance to the rebel forces. The actions of loyalist forces were contrasted with those of the rebels, who were forced, against their consciences, to use heavy weapons against

¹¹⁴⁶ *Supra* Black n1141, Greenhill n1140, Fahim and Gladstone "Qaddafi, Son and Former Defense Aide Buried in Secret Place" *The New York Times* (New York 26/10/11).

¹¹⁴⁷ *Supra* HRW n1133, HRC n1061.

¹¹⁴⁸ Chivers "Land Mines Descend on Misrata's Port, Endangering Libyan City's Supply Route" *The New York Times* (New York 7/5/11).

¹¹⁴⁹ McGreal, MacAskill, *et al.* "Libya: After Five Days of 'Hell', Allied Bombs Lift Siege of Misrata: Air Strikes Repel Gaddafi's Forces from Key Rebel Town Residents Say Nearly 100 Died in Bloody Onslaught" *The Guardian* (London 24/3/11), Soltis "Humans Shield Coward Khadafy - Forces Civilians into Target City" *The New York Post* (New York 22/3/11).

¹¹⁵⁰ "Libyan City Mercilessly Attacked; Gadhafi Loyalist Forces Step Up Shelling as France Vows Defense" *USA Today* (Virginia 21/4/11). See also "16 Die in Gaddafi Blitz on Besieged City" *Daily Mail* (London 16/4/11).

¹¹⁵¹ Kirkpatrick and Fahim "Rebels Claim Small Gains Against Qaddafi Forces" *The New York Times* (New York 17/3/11).

their attackers.¹¹⁵² Such rhetoric reinforced newspaper inferential structures that favoured the rebel fighters.

Entrenched inferential structures supporting the rebels, depicting them as committed to democracy and the rule of law, prevented an objective and nuanced critique of rebel activity. This became particularly apparent in the aftermath of the Libyan civil war. For example, *The New York Times*, quoting one former government worker, reported that “there [were] very few instances of revenge”¹¹⁵³ by the rebel fighters against Gaddafi supporters in the immediate aftermath of the civil war. In contrast to newspaper descriptions of rebel behaviour, several independent reports from human rights organisations found systemic acts of violence and revenge directed not only at those believed to be Gaddafi supporters, but also in towns and provinces that had historically been favoured by the Libyan leader.¹¹⁵⁴ Indeed, HRW found that residents in Misrata were particularly vengeful against neighbouring areas, that were predominately pro-Gaddafi and who were deemed complicit in the violence against the city. The acts of revenge were widespread and included the looting of homes,¹¹⁵⁵ arbitrary detentions,¹¹⁵⁶ and summary executions of suspected Gaddafi supporters.¹¹⁵⁷

Such activity was particularly notable in the town of Tawergha, located thirty kilometres from Misrata. Revenge attacks here resulted in the forced displacement of 40,000 residents, some of whom were told by rebels that they could never return to their homes.¹¹⁵⁸ A town with a large immigrant population, HRC also found evidence of racist attacks, with Misratan fighters describing Tawerghans as “blacks”, “slaves” and “animals”.¹¹⁵⁹ Such racist language, whilst not an international crime, further illustrates the prevalence of prejudicial attitudes in the country, which, as was noted above, had worrying implications for those accused of being a mercenary fighter. These attacks were noted by the newly appointed ICC prosecutor in her report to the UNSC, reiterating that she was continuing to collect evidence of international criminal law

¹¹⁵² Pendlebury “Ceasefire? All the World Knows That Gaddafi is a Liar” *Daily Mail* (London 19/3/11).

¹¹⁵³ Kirkpatrick “In a New Libya, Racing to Shed Ties to Qaddafi” *The New York Times* (New York 8/9/11). See also, Worth “Qaddafi’s Never-Neverland” *The New York Times* (New York 25/9/11).

¹¹⁵⁴ Human Rights Watch *Letter to the ICC Prosecutor Regarding Accountability for Serious Crimes in Libya* (2014), Human Rights Watch *Libya: Stop Revenge Crimes Against Displaced Persons* (2013), *supra* HRC n1061 paras 47, 204, 720, 810.

¹¹⁵⁵ *Supra* HRW “All Sides Obligated to Protect Civilians” n1132.

¹¹⁵⁶ *Supra* HRW n1130, n1133.

¹¹⁵⁷ *Supra* HRW n1136.

¹¹⁵⁸ *Supra* HRC n1061 para 59. See also *supra* HRW n1154 (all sources).

¹¹⁵⁹ *Ibid* HRC para 59.

violations committed by rebels during the civil war.¹¹⁶⁰ Despite these potential violations of international criminal law, the actions of rebel fighters in Tawergha, contradicting newspaper claims that no revenge attacks were being committed, received little attention in the newspapers analysed.¹¹⁶¹

Several newspapers reported the footage of Gaddafi's capture, with jubilant rebels desecrating his body shortly after his death. Newspapers also expressed concern at the behaviour exhibited in these videos.¹¹⁶² Such sentiments were expressed by one columnist in *The Sun* who reported unease at the "blood lust and desire for revenge over justice". Despite the nature of these graphic videos, which provides evidence of war crimes against Gaddafi by rebel fighters, such unease did little to alter a newspaper inferential structure that reported justice as being served, despite the lack of a courtroom verdict. Indeed, the same columnist preceded her unease with the statement that Gaddafi "was an evil tyrant who got no more than the same brutality he subjected his own people to".¹¹⁶³ Although such feelings were mirrored in several of the newspapers analysed, the violence of Gaddafi's death was largely portrayed as a product of the instability of the country¹¹⁶⁴ and the brutality of Gaddafi's regime.¹¹⁶⁵ Thus, although these actions run contrary to the rule of law, newspaper depictions of the rebel forces as committed to peace and justice prevailed.

Both the broadsheets published obituaries for the Libyan leader. *The Guardian* was particularly negative in its description of Gaddafi. Describing him as "narcissistic" in the headline, the article described an erratic and violent dictator who showed little concern for the needs of his citizens. Similar sentiments were also found in the obituary by *The New York Times*, which reiterated the negative nicknames given to Gaddafi by international leaders, writing that "he embraced a string of titles: 'the brother leader', ... 'the king of kings of Africa' ... but the labels pinned on him by others tended to stick

¹¹⁶⁰ UN Press Release "International Criminal Court Prosecutor Calls on Libyan Authorities to Ensure No Impunity" (UN 27/11/12) <<http://www.un.org/apps/news/story.asp?NewsID=43435#.VnCqzYTVXzK>> accessed 16/12/15.

¹¹⁶¹ Only two articles analysed, one published by *USA Today* and another by *The New York Times* mentioned the issue.

¹¹⁶² Netto, Black, *et al.* "Death of Gaddafi: On Show in a Meat Locker: The Body of the Dead Dictator: Further Evidence Emerges of Former Leader's Last Moments" *The Guardian* (London 22/10/11), Hastings "A Tryant Falls, but I Fear What Will Come Next" *Daily Mail* (London 21/10/11), Shereen "Don't Let Gaddafi's Crimes Die with Him" *The Sun* (London 24/10/11).

¹¹⁶³ *Ibid* Shereen.

¹¹⁶⁴ Fahim, Shadid, *et al.* "Qaddafi Seized by Foes, Meet a Violent End" *The New York Times* (New York 21/10/11).

¹¹⁶⁵ Black "Death of Gaddafi: View From Tripoli: Exhaustion, Elation, and Hopes That Syria Will be Next" *The Guardian* (London 22/10/11), Pendlebury "To the Very End, His Mere Mention Made Even the Toughest Rebel Flinch" *Daily Mail* (London 21/10/11), MacFarquhar "Muammar el-Qaddafi, 69, an Erratic, Brutal and Defiant Leader" *The New York Times* (New York 21/10/11).

the most, [such as] ‘the mad dog of the Middle East’ and ‘the crazy Libyan’.”¹¹⁶⁶ These labels depicting a crazed dictator were used by some newspapers throughout the civil war in order to criticise, mock and condemn the Libyan leader.¹¹⁶⁷ Thus, the prevailing image of Gaddafi from all newspapers analysed was that of a deranged leader who brutalised his nation and, by implication, deserved his violent death.

News of Gaddafi’s death was largely celebrated in the newspapers analysed,¹¹⁶⁸ clearly illustrating a long-established presumption of guilt. *USA Today* claimed that, “Libyans surely deserve to toast the death of a despot”.¹¹⁶⁹ *The Guardian* reported similar sentiments, stating that the NTC was now afforded an opportunity to build a “just and democratic system of governance ... no wonder there are such scenes of jubilation throughout the country”.¹¹⁷⁰ Such rhetoric reiterates newspaper inferential structures established during the initial anti-government protests and sidelines the ICC and the rule of law, which are portrayed as immaterial to justice. These sentiments were aptly illustrated in an editorial published in *The Sun*, which wrote,

“How much spare time must the human rights brigade have on their hands to spend the day fretting over the moral niceties of Gaddafi’s sudden death? Sure, he could have been tried. It might have given victims’ relatives some closure. But he wasn’t. He was shot. We don’t know who did it. It doesn’t matter. Get over it.”¹¹⁷¹

The tone of this passage reaffirms the moral mandate effect. The crimes alleged against Gaddafi were so atrocious and his guilt so entrenched that justice could be seen to be done through his death alone, outside of the due process protections of the criminal courtroom. This has clear implications for the ICC, sidelined in newspaper discussions of justice, something that we shall now turn to.

Newspaper Portrayal of the ICC During the Libyan Conflict

Despite extensive articles on the Libyan civil war, the International Criminal Court received comparatively little attention in the newspapers considered. Out of a total of

¹¹⁶⁶ *Ibid* MacFarquhar.

¹¹⁶⁷ Chancellor “History Should Come Down Hard on Tony Blair for Embracing Gaddafi When He Knew What a Murderous ‘Mad Dog’ He Was” *The Guardian* (London 25/2/11), Harvey and Charity n1085, Soltis n1107.

¹¹⁶⁸ See, for example, *supra* Black n1141, Comment “Brutal End for Tyrant Who Exported Terror” *Daily Mail* (London 21/10/11), Murphy “Mad Dog Put Down: Gaddafi Shot in Head” *The Sun* (London 21/10/11), Ross “Qaddafi’s End and Libya’s Future” *The New York Times* (New York 20/10/11), “Too Soon to Revel in Gadhafi’s Death?” *USA Today* (Virginia 21/10/11) “Khadafy Killed by Yankee Fan - Gunman Had More Hits Than A-Rod” *The New York Post* (New York 21/10/11).

¹¹⁶⁹ *Ibid*.

¹¹⁷⁰ Atwan “Libya’s Bloody Victory over Gaddafi Is Just the Beginning: Deep Tribalism and a Lack of Leadership Will Plague a Country That Is Nation-Building from Scratch” *The Guardian* (London 21/10/11), Chrisafis and Meikle “Death of Gaddafi: Libyan Reaction: ‘The Tyranny Is Gone. We’re Free’” *The Guardian* (London 21/10/11).

¹¹⁷¹ Editorial “Gaddafi’s Rights” *The Sun* (London 22/10/11).

1,359 articles analysed, the Court was mentioned in only 158 of them. Furthermore, there were very few in-depth articles, instead mentions of the ICC and its indictment against Gaddafi were largely used to confirm his guilt.¹¹⁷² For example, the ICC's warrant for arrest against Gaddafi was often mentioned as an aside in newspaper reporting of the actions of the Libyan leader and pro-government forces, ensuring that the reader was reminded of the arrest warrant issued and the crimes that he was accused of committing.

Newspapers misnamed the ICC in their reports of the Court. For example, the *Daily Mail* described the ICC as the, "International Criminal Court for War Crimes",¹¹⁷³ whilst *The Guardian* erroneously named the Court as the "international war crimes tribunal". Whilst such descriptions are technically correct, it implies that the ICC is only responsible for prosecuting war crimes. This has the paradoxical effect of not only narrowing the jurisdiction of the court, which is also responsible for prosecuting genocide, crimes against humanity and crimes of aggression, but also broadening Gaddafi's culpability to include all allegations of international criminal violations committed during the Libyan civil war.¹¹⁷⁴ Accuracy of the Court and the crimes that it was investigating became clearer as the Libyan conflict progressed, nevertheless such vague descriptions of the Court suggest a lack of expertise amongst journalists about the activities of the ICC. The lack of detailed commentary sidelines the activities of the Court and makes public awareness and scrutiny of the International Criminal Court difficult.

Whilst allegations of war crimes have been made against Gaddafi's troops (and the rebel forces), discussed above, these have not yet been subject to an investigation by the ICC, which only issued an arrest warrant for crimes against humanity committed against protestors between the 15th and "at least" the 28th February 2011.¹¹⁷⁵ Although the investigation remains open, to date there have been no indictments relating to alleged crimes committed during the Libyan civil war. Nevertheless, newspapers' simplistic reporting of the conflict largely failed to make this distinction when reporting on the ICC's arrest warrants.

¹¹⁷² *Supra* Pilkington, *et al.* n1111, Dury n1151, Soltis n1115, Conlon "Mad Dog Hunted for 'War Crimes'; International Court Slaps Warrant on Gaddafi" *The Sun* (London 28/6/11), Simons, Burns, *et al.* "Hague Prosecutor Seeks Warrant for Qaddafi in Attacks on Civilians" *The New York Times* (New York 17/5/11), "War-Crimes Prosecutor Seeks Gadhafi Arrest; Cites Proof of Regime Targeting Libyans on Hit List, Wholesale" *USA Today* (Virginia 17/5/11).

¹¹⁷³ *Supra* "Rebels Hold Off Gaddafi Forces" n1107.

¹¹⁷⁴ *Supra* Conlon n1172, Klein and Perone "Time to Go, Mo - Prez Calls on Khadafy to Step Down" *The New York Post* (New York 27/2/11).

¹¹⁷⁵ *Supra* ICC-01/11 n1063.

The simplistic reporting of international criminal law can have lasting repercussions, not only for the presumption of guilt of the defendant, but also for the legitimacy of the ICC. Of particular note are the accusations made by the country's deputy UN ambassador, Ibrahim al-Dabashi, shortly before he stepped down from this position, who described Gaddafi as committing a genocide against the Libyan people. Allegations of what is widely considered to be the worst crime¹¹⁷⁶ illustrates the difficulties in reporting complex international crimes. Newspapers merely quoted al-Dabashi without providing any further commentary or evidence that Gaddafi was perpetrating genocide.¹¹⁷⁷ As such, it is difficult to ascertain exactly why the accusation of genocide was made. From the context of the articles that quoted al-Dabashi, it is possible to deduce that the word genocide was used to imply substantial loss of civilian life, heightening Gaddafi's culpability.¹¹⁷⁸ However, such activities by loyalist troops, whilst horrific in itself, does not constitute a genocide, which has a narrow definition in international criminal law.¹¹⁷⁹ The use of the term, which carries international legal obligations to intervene to stop a genocide, and powerful imagery of human brutality, heightens the emotional impact of Gaddafi's crimes. Indeed, two newspapers freely used the term genocide to describe events that could not be legally described as such, adding to the horror of Gaddafi's alleged crimes.¹¹⁸⁰

Newspaper reaction to Gaddafi's death provides an interesting insight into perceptions of the ICC and how this may impact upon its legitimacy. Commentary on the Court prior to Gaddafi's death was frequently framed around the peace versus justice debate. Newspapers presented the Court as potentially preventing a ceasefire agreement by "complicat[ing] any plans for [Gaddafi] to go into exile".¹¹⁸¹ Many articles stated that the ICC's warrant for the arrest of the Libyan leader could jeopardise the chances for peace in the country. As *The Guardian* reported, in a front page article, "Gaddafi's sudden, final departure must be vastly preferable to the prospect of a

¹¹⁷⁶ Akhavan *Reducing Genocide to Law Definition, Meaning, and the Ultimate Crime* (Cambridge University Press 2012) p.10-11.

¹¹⁷⁷ Black "Desperate Gaddafi Appears on TV as Libya's Revolution Gathers Pace: Tells Nation: 'I Am Not in Venezuela': Officials Quit Over Bloody Backlash" *The Guardian* (London 22/2/11), Moynihan "Libya's U.N. Diplomats Break with Qaddafi" *The New York Times* (New York 22/2/11).

¹¹⁷⁸ *Supra* Kirkpatrick and Mona n1106. See also *ibid* Black, *supra* Soltis n1107.

¹¹⁷⁹ The Rome Statute, for example, defines genocide as killing, among other activities, "with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group" (Article 6). Although Gaddafi threatened to use genocide against the anti-government protests (see the contextual discussion on the Libyan conflict above), there is no evidence that Gaddafi was targeting specific groups of people in such a manner.

¹¹⁸⁰ *Supra* Glover n1066, Newton, *et al.* n1128.

¹¹⁸¹ See, for example, Clark "Peace, Justice and the International Criminal Court: Limitations and Possibilities" (2011) 9 *Journal of International Criminal Justice* 521-545, *supra* Oette n1046.

prolonged desert guerrilla war, ... continuing instability, ... [or] a lengthy high-profile trial, wrangling over the jurisdiction of the international criminal court".¹¹⁸² *USA Today* echoed this sentiment, writing that, "Gadhafi, who many people think is delusional, would have to be out of his mind to accept an exile offer that leaves open the possibility that he, too, will be hauled before an international tribunal".¹¹⁸³ Such comments not only present the ICC as an obstacle to the main goal of achieving peace in the region, but also suggest that an international criminal trial is optional.

Viewing ICC proceedings as optional presents another threat to the legitimacy of the Court; that justice may be served outside the courtroom and away from due process safeguards. This was demonstrated in newspaper reporting of Gaddafi's death. As has been noted above, the main inferential structure when reporting on Gaddafi's death was one of jubilation that a tyrant had been ousted from power and had received what he deserved.¹¹⁸⁴ It has already been noted that footage of Gaddafi's capture suggests the commission of a war crime. Examination of his body by Human Rights Watch corroborates the accusation that Gaddafi had been summarily executed.¹¹⁸⁵ The graphic footage, which showed that Gaddafi had been captured alive, resulted in international calls to investigate events and prosecute those responsible for killing the former Libyan leader.¹¹⁸⁶ Although the NTC agreed to do just that, to date no one has been prosecuted for the death of Muammar Gaddafi.

Newspaper celebration of Gaddafi's death was at the expense of the rule of law and the international efforts to establish due process rights for defendants accused of the worst crimes. Justice was regarded to have been served outside the courtroom. Such rhetoric is not only reminiscent of bin Laden's death but also, as we see from Skitka's moral mandate theory, has some troubling implications for the legitimacy of the fledgling International Criminal Court. Having already been established in the newspapers analysed, the issuing of arrest warrants by the Court merely served to

¹¹⁸² Tisdall "The Wheel of History Turned Yesterday: It Won't Turn Back: Gaddafi was a Liar, Murderer and Cheat. But He Said He'd Fight to the Death, and for Once, He Stuck to His Word" *The Guardian* (London 21/10/11), Harding "Death of Gaddafi: Legal Process: Few Libyans Will Mourn Lost Opportunity to See Dictator Face Court" *The Guardian* (London 21/10/11).

¹¹⁸³ Wickham "Would Gadhafi Accept Exile That Leaves Him Open to Future Prosecution?" *USA Today* (Virginia 5/4/11). See also Drury "We Must Bomb Gaddafi More, Says UK General" *Daily Mail* (London 16/5/11), Newton-Dunn, *et al.* "Arm Us ... We'll Defeat Gaddafi in Days: Rebels Appeal for Weapons. They Want Dictator on Trial" *The Sun* (London 30/3/11), Sanger "U.S. and Allies Seek a Refuge for Qaddafi" *The New York Times* (New York 17/4/11).

¹¹⁸⁴ Wheeler "What Did I Ever Do to You? The Humiliation He Richly Deserved. Gaddafi's Plea to Raging Mob" *The Sun* (London 21/10/11).

¹¹⁸⁵ *Supra* HRW n1080. See also *supra* Netto n1162.

further confirm a presumption of guilt. With newspapers describing him as “indefensible”¹¹⁸⁷ and “the worst man left in the world”,¹¹⁸⁸ newspapers perceived little need for a criminal trial. Instead, Gaddafi’s death was celebrated in the newspapers considered. *USA Today* stated that, “it’s hard to recall a time when so many tyrants and terrorists met such fitting ends”.¹¹⁸⁹ *The New York Times* echoed these sentiments, writing that “the lawless manner of Muammar el-Qaddafi’s death ... is well fitted to the lawless way he ruled his country”.¹¹⁹⁰ It is clear from such statements regarding Gaddafi’s death that a criminal trial was deemed unnecessary for justice. With Gaddafi’s guilt established away from due process protections in the newspapers analysed, it is worth now considering attitudes against him on social media to better determine the moral mandate effect on the International Criminal Court in this case study.

Section Two: The Libyan Conflict on Social Media

The role of social media in initiating the Libyan civil war has already been noted. This section will consider the way in which Gaddafi and the ICC has been portrayed both on Twitter and selected YouTube videos. Paralleling our analysis in Chapter Three, we will be looking for the existence of a presumption of guilt and indications that moral mandates may be encouraging further condemnation of Gaddafi. Such an analysis will enable us to make broader considerations about the way in which social media may be impacting on the legitimacy of the ICC by subtly changing the role of the defendant and the perceived need for due process. Mirroring the discussion in Chapter Three, this section will be divided into two parts. First we will consider the discussion of the Libyan civil war on Twitter. Three key dates during the conflict were chosen for analysis; the 18th February, the day after the scheduled “Day of Rage”, the 27th June, when the ICC announced that it was issuing arrest warrants for Gaddafi and two other members of his regime and the 20th October, the day of Gaddafi’s death. Further information about these dates and identifying relevant tweets is contained in the methodology in the Appendix. Although most of the online conversation about the revolution occurred in Arabic, Libya’s official language, analysis here will focus only

¹¹⁸⁶ Walker “Gaddafi’s Death Still Shrouded in Confusion” *The Guardian* (London 21/10/11), Fahim and Gladstone “U.S. and U.N. Demand Details from Libyan Leaders on How Qaddafi Died” *The New York Times* (New York 22/10/11).

¹¹⁸⁷ Hitchens “We’re Cheering on a Football Crowd with AK-47s Who Could be Worse Than Gaddafi” *Mail on Sunday* (London 30/8/11).

¹¹⁸⁸ Robertson “Gaddafi to The Hague: David Cameron is Wrong. Justice Can’t Be Left to the Libyans. It’s Time to Start Putting Tyrants on Trial” *The Guardian* (London 29/8/11).

¹¹⁸⁹ Editorial “Post-Gadhafi Libya Teeters Between Democracy and Tribal Tinderbox” *USA Today* (Virginia 21/10/11).

on tweets posted in English. This enables us to make better comparisons between newspaper reporting analysed above and the conversation online, particularly as research by Kwak, *et al.* suggests that newspaper commentary influences the online conversation.¹¹⁹¹

Our analysis of tweets relating to Gaddafi will be followed by a consideration of three YouTube videos, two taken during the anti-government protests and the most watched video of Gaddafi's death. The content of these videos is detailed in the methodology in the Appendix. Videos purportedly showing international crimes committed by both sides fighting in the Libyan civil war received comparatively low view counts to other films relating to the conflict. For example, one of the most watched is the Zenga Zenga song, a remix of a bizarre speech of Gaddafi's in which he vows to hunt down protestors "inch by inch, house by house, home by home, alleyway by alleyway, person by person". The phrase "alleyway by alleyway", pronounced in Libyan dialect as "zenga zenga", was remixed with "Hey Baby" (a song by American rapper Pitbull) by Noy Alooshe, an Israeli journalist who thought Gaddafi's gesticulations during this speech and the robes he wore as reminiscent of a trance party.¹¹⁹² To date the video has received over five million views. This is in comparison with the video categorised as "most relevant" when searching "Libya war crimes", which has received just over five thousand views.¹¹⁹³

It appears that despite their seriousness, and in contrast with domestic crimes, relatively few people access YouTube for footage of international crimes. There are a number of explanations for this. The most obvious one is that individuals are still relying on newspapers or television programmes for information about the Libyan conflict. Not only was the violence of the Arab Spring extensively reported on, the verification process conducted by more mainstream news sources is likely to make their reports appear more credible than those presented on YouTube.¹¹⁹⁴ Indeed, in one raw footage of a boy being treated in hospital for wounds allegedly as a result of torture by rebel forces,¹¹⁹⁵ one commentator (@Lady Stoneheart) points out that this footage relates to an incident several years prior to the Libyan conflict in which a boy had been impaled after falling on a gate. It is impossible to verify whether the injuries were a

¹¹⁹⁰ *Supra* Ross n1168.

¹¹⁹¹ *Supra* Kwak, *et al.* n80.

¹¹⁹² Kershner "Qaddafi YouTube Spoof by Israeli Gets Arab Fan" *The New York Times* (New York 27/2/11) <http://www.nytimes.com/2011/02/28/world/middleeast/28youtube.html?_r=1>.

¹¹⁹³ <<https://www.youtube.com/watch?v=AgXdFP4zCWU>> accessed 6/1/16.

¹¹⁹⁴ Something noted by Mast and Hanegreefs *supra* n702 p.611.

¹¹⁹⁵ <<https://www.youtube.com/watch?v=n-izacz2Fk>> 18/9/15.

result of torture or a terrible accident, illustrating the difficulty in ascertaining the truth of events through raw footage on YouTube alone. Similar difficulties with verification occurred during the immediate aftermath of the Boston bombing and Woolwich killing. Discussed in Chapter Three, the reporting of misinformation and wrongful accusations did little to alter the prominent conversations about the defendants. Verifications issues aside, the online conversation of the Libyan conflict and the accompanying commentary of such videos purporting to show evidence of international crimes provides a useful insight into the way social media can impact public perceptions of the defendant and the fledgling ICC. As with the social media posts quoted in Chapter Three, all provided here are quoted verbatim. Screenshots of all tweets and YouTube comments referenced in this chapter are provided in the Appendix of this thesis. Mirroring the structure of Chapter Three, we will first consider commentary of the Libyan conflict on Twitter.

Twitter

The Twitter conversation of the Libyan conflict demonstrates similarities to the online discussion of the domestic crimes in Chapter Three. For all three case studies, posts about the defendant were in the minority. Tweets discussing Gaddafi only amounted to 8.55 per cent of those coded. Despite this, tweets about Gaddafi were overwhelmingly coded as expressing a presumption of guilt (91.15 per cent).

Reinforcing our findings in the domestic case studies and research from other academics,¹¹⁹⁶ the majority (68.75 per cent) of tweets analysed were either from the media or referenced such sources. Reflecting the Twitter conversation for the domestic crimes, tweets relating to the Libyan conflict were predominantly used to disseminate and receive information about events in the country. These tweets were largely factual, the 140-character constraint on Twitter limiting the amount of commentary that could accompany these posts. Nevertheless, there was some overlap between the newspaper inferential structures discussed above and the posts on Twitter analysed here.

It was suggested in Chapter Three that the online engagement with media sources for domestic crimes could enable greater public engagement with the criminal justice process. We found in that chapter that online discussion of the trial process increased during key moments in the criminal trial of the three defendants considered. This engagement could facilitate better understanding of the criminal justice process, particularly at a time when public courtroom attendance is declining. This trend, however, was not reflected in the Twitter discussion of the International Criminal Court.

Although there were some tweets that discussed the ICC and international criminal law, they represented just 0.81 per cent of all coded posts. Furthermore, many of these posts incorrectly described Gaddafi's crimes. For example, @libyanfsl posted "We are witnessing wide scale Genocide in Libya!! #Feb17 #Libya",¹¹⁹⁷ similarly @beaonchavez retweeted "RT@PantelisMichael: GENOCIDE IN LIBYA PROOF BREAKING NEWS - YouTube bit.ly/nxShZn via @addthis".¹¹⁹⁸ Tweets such as these reflect newspaper discussion of Gaddafi's alleged crimes, incorrectly using the term genocide by suggesting that it was a crime related to the number of deaths committed, rather than the intention of the defendant. Whilst it is expected that lay people may not understand the nuances of criminal law, such discussion serves to heighten Gaddafi's culpability and erode his presumption of innocence.

A reliance on media sources is perhaps reflected in the number of tweets that referenced Gaddafi's apparent use of mercenaries in the conflict. The repetition of such rumours reflects newspaper reporting, with the apparent presence of mercenary forces used to further condemn Gaddafi. This was illustrated by @nasseribnhamad's post, which stated, "The world should make sure what is going on in Libya is reported. Innocent People are killed by the dozens by regime's thugs and mercenaries".¹¹⁹⁹ As part of this theme, there are indications that the posting of these rumours fuelled prejudicial or stereotypical attitudes. For example, @mar3e posted, in response to another user, that "Qaddafi allow to the Africans who stay in #Libya to attack the peaceful protesters ,24 person have been killed".¹²⁰⁰ Similarly, @nadarustomakis wrote, "The world is sleeping - this isnt fair, Gaddafi is massacring #BenGhazi - he paid Africans \$10,000 to kill us".¹²⁰¹ Whilst not overtly racist, these attitudes reinforce the notion that all "Africans" (i.e. black immigrants) in Libya are willing to fight for Gaddafi and commit crimes in his name. Indeed, some social media users both on Twitter and YouTube expressed concern about the welfare of black Libyans during the conflict. For example, siliyemoodislam posted on YouTube "I worry about minorities in Libya, are they safe? I am sure they are in danger!"¹²⁰²

As with the domestic case studies, the focus on more traditional news outlets suggests that Twitter was being used as a source of information on the Libyan conflict.

¹¹⁹⁶ See, for example, *supra* McEnery n901.

¹¹⁹⁷ Screenshot 36 in Appendix.

¹¹⁹⁸ Screenshot 37 in Appendix.

¹¹⁹⁹ Screenshot 38 in Appendix.

¹²⁰⁰ Screenshot 39 in Appendix.

¹²⁰¹ Screenshot 40 in Appendix.

¹²⁰² Screenshot 41 in Appendix.

During a government-imposed media blackout, at the time of the demonstrations, Twitter provided an important mechanism through which to broadcast a message that contradicted the official statement.

There was a notable presence of anti-regime organisations online, particularly on the 18th February, the height of Libya's pro-democracy protests. One prominent tweeter throughout the period analysed was the Libyan Youth Movement (@ShababLibya) which created a Twitter account with the express purpose of providing information about the Arab Spring. There were also numerous tweets in English from individuals with Arabic usernames, suggesting that native Arabic speakers were tweeting in English to disseminate information about the Libyan protests to as wide an audience as possible. Indeed, some users criticised the news media for failing to adequately report on the Libyan protests, exemplified by one post from @sultanalqassemi who wrote, "I am disgusted by how the news channels are ignoring Libya. There is absolutely no excuse. The next one to excuse it to me will be blocked".¹²⁰³ Such sentiments reflect the online discussion during the Watertown shootout between the police and the Tsarnaev brothers, where eyewitnesses used the hashtag #Watertown to circulate information about events. This suggests that Twitter is perceived, at least by its users, as a method to distribute and extract information. The speed of information posted during these events cannot be matched by more traditional news organisations which must verify information before reporting on it. It is worth remembering that the pressure to report on information during the domestic case studies, in particular the Boston bombings, resulted in the publishing of misinformation and several individuals being wrongly accused of carrying out the bombings.

Tweets broadcasting information about the pro-democracy protests served to establish a bias online in its favour throughout the 18th February. This was the only day in which tweets by, or referencing, traditional news sources (the two highest ranking categories for the other days analysed) were outnumbered by those categorised as individuals providing information on and support for the protestors. This pro-rebel bias continued throughout the period analysed. Such support resonated with the public reaction about the victims in the domestic case studies, albeit with one crucial difference. As there were no identifiable victims that public grief could be directed at in relation to the Libyan conflict, Twitter did not resemble a virtual condolence book in this case study. Rather, public reaction in support of the rebels paralleled the newspaper

¹²⁰³ Screenshot 42 in Appendix.

inferential structures and provided the context through which the defendant, Muammar Gaddafi, was discussed.

Many of the tweets that supported the rebels had the resultant effect of also condemning Gaddafi. For example, @jeejia tweeted “Libya its your day to move to topple Gaddafi and stand for nothing less than being represented as a people #Libya #Feb17 God is Great”.¹²⁰⁴ As part of a broad condemnation of Gaddafi, there were several tweets that provided information about alleged brutality against protestors, with some posting links to other sites, such as YouTube, directing users to see proof of these crimes. For example, @idrobinhood wrote, “#Libya #Feb17 Protesters in Libya running from gunmen youtube.com/watch?v=gN9CBz... via @youtube”.¹²⁰⁵ Such “proof” not only allows interested individuals to “see for themselves”,¹²⁰⁶ a phrase used to connote the power of imagery in crime news, but also allowed anyone with Internet access to judge for themselves.

Intriguingly, several posts attempted to harness the global reach of Twitter to spread information about Gaddafi’s alleged crimes. For example, @maboulazm wrote, “Gaddafi used live ammunition to disperse a peaceful demonstrations , please world help our brothers in #Libya”.¹²⁰⁷ Similarly, @brit_newsman posted, “#Libya Gaddafi is a criminal #gaddaficrimes Please RT and let’s get #gaddaficrimes trending”.¹²⁰⁸ Indeed, a number of other users also used the hashtag #gaddaficrimes in order to condemn the Libyan leader. Tweets such as these raise several interesting points that reflect broader themes in the online conversation about the Libyan conflict. Firstly, such posts illustrate a clear presumption of guilt, indicating that a trial is not considered necessary to establish criminal culpability. Secondly, such a tweet highlights Twitter as a platform for social movement, by campaigning to get the hashtag #gaddaficrimes trending, @brit_newsman appears to recognise the potential of social media to spread awareness for international crimes. Although more research in this area is needed, there is evidence to suggest that social media platforms such as Twitter and YouTube are useful tools to raise awareness for international crimes. For example, the organisation Invisible Children successfully used social media to raise awareness for their campaign a year

¹²⁰⁴ Screenshot 43 in Appendix.

¹²⁰⁵ Screenshot 44 in Appendix.

¹²⁰⁶ *Supra* Wardle n45 p.265.

¹²⁰⁷ Screenshot 45 in Appendix.

¹²⁰⁸ Screenshot 46 in Appendix.

later. Their Kony2012 campaign to “Make Kony Famous” went viral, receiving over 50 million views on YouTube in the first five days that it was uploaded.¹²⁰⁹

Despite the use of #gaddaficrimes on Twitter, discussion of the ICC and international criminal law was minimal, comprising just 0.81 per cent of all tweets coded. Unsurprisingly, individual comments about the ICC increased on the day that the Court issued the arrest warrants, reflecting the news media commentary of that day. On the 27th June, comments about the ICC increased to thirty five of those coded, compared with just two and three coded on the 18th February and the 20th October respectively. Despite this increase in online discussion about international criminal law, this only represented 2.49 per cent of tweets coded on the day of the arrest warrants. This, coupled with the widespread belief in Gaddafi’s guilt, suggests that the ICC largely does not factor in the public discussion of justice.

A widely held presumption of guilt was apparent on the 20th October, when news of Gaddafi’s death broke. On this day, the largest number of tweets were either from or referenced media sources, comprising of 80.41 per cent of all the tweets coded. However, after eliminating such posts, 70.12 per cent of the tweets that provided individual commentary on events were coded as expressing some form of celebration at Gaddafi’s death.¹²¹⁰ Such tweets are exemplified by posts like, “Good riddance, Gaddafi. May #Libya now find peace, may all those whose lives u ruined find strength 2 build the great country they deserve” posted by @monaeltahawy¹²¹¹ and @justamira, who retweeted “WISDOM RT@weddad: Gaddafi provoked a bloodbath, gambled and lost. He is responsible for his fate, no one else.”¹²¹² The jubilation at Gaddafi’s death not only reflects the celebratory tone found in the newspapers analysed, but also indicated that a criminal trial was not necessary in order to establish Gaddafi’s guilt. For example, @ChangelnLibya wrote that, “Gaddafi is hated more than Mubarak was. He’s vermin that needs cleaning. I hope they string him up (hang him) #libya”.¹²¹³ Perhaps unsurprisingly, these sentiments increased after news of Gaddafi’s death, as many people celebrated the leader’s demise. For example, @ghonim tweeted “I pray for thousands of Libyans who sacrificed their lives for a free #Libya. Qaddafi’s end was

¹²⁰⁹ McCarthy “Kony 2012: How the Video Spread Across the Internet” (*The Guardian* 9/3/11) <<http://www.theguardian.com/world/us-news-blog/2012/mar/09/kony-2012-how-video-spread>> accessed 7/1/16, Bal, Archer-Brown, *et al.* “Do Good, Goes Bad, Gets Ugly: Kony 2012” (2013) 13 *Journal of Public Affairs* 202-208.

¹²¹⁰ The three categories that were deemed celebratory were “guilty”, “giving information or support to the rebels” and “jokes”. See the template at the end of the Appendix for greater detail about the other categories in this Twitter analysis.

¹²¹¹ Screenshot 47 in Appendix.

¹²¹² Screenshot 48 in Appendix.

expected. I hope all other Qaddafis get it!”¹²¹⁴ This tweet reflects newspaper inferential structures in presenting Gaddafi as fighting against the whole of Libya, whose citizens were innocent victims of his crimes. As with the domestic defendants, Gaddafi’s vilification in the news media was also seen online. Furthermore, reflecting the public reaction to bin Laden, justice was seen to be done through his death. The fact that he was killed extra-judicially apparently had little bearing on perceptions of justice.

Reinforcing Skitka’s moral mandate effect, only two tweets that day expressed feelings that justice had not been served due to a lack of a criminal trial. @chasing_dragons posted “Mixed feelings on Gaddafi death as no trial means the opportunity to learn depth of foreign complicity with regime & its practices now gone”,¹²¹⁵ whilst @economicsnz wrote, “I’m sad that Gaddafi has been murdered. It’s wrong. But in addition the oligarchs who’ve used him worldwide have not been held to account”.¹²¹⁶ It is worth noting that neither of these posts expressed due process language, such as innocent until proven guilty. Rather, they both expressed a belief that a trial was necessary to ascertain the extent foreign governments helped support Gaddafi’s power.

Many of the tweets on the 20th October mentioned the footage of Gaddafi’s death, indicating that it was widely known and watched as part of the process of finding information about this breaking news event. We will now consider whether such online footage as well as “evidence” of Gaddafi’s crimes had any bearing on his presumption of guilt.

YouTube

It has been noted previously that social media is informal in nature and this was reflected in the tone of the comments on both Twitter and YouTube. However, YouTube could be described as more conversational in nature, with many users posting multiple times and in response to the comments of others. The comments on the YouTube videos were considerably more varied and extreme than those found on Twitter. For example, the anonymity granted on the YouTube site seemed to encourage greater profanity and extreme comments.¹²¹⁷ A small but disturbing number of comments expressed racial or religious prejudice, amounting to 5.6 per cent and 7.44 per cent of comments coded

¹²¹³ This was retweeted by @angrymofo. Screenshot 49 in Appendix.

¹²¹⁴ Screenshot 50 in Appendix.

¹²¹⁵ Screenshot 51 in Appendix.

¹²¹⁶ Screenshot 52 in Appendix.

respectively. There was also a remarkable number of comments that expressed a belief in conspiracy theories, with many users blaming the United States' government and other members of NATO for instigating the conflict in Libya. The level of extreme comments, profanity and belief in conspiracy theories has greater similarities with the YouTube comments for the domestic case studies than the tweets posted about Gaddafi or the Libyan conflict. These similarities were particularly pronounced when compared with the Boston Marathon bombings videos, where a suspicion about the US government's involvement in the crime was also seen.

The difference in tone between Twitter and YouTube suggests that each social media site is being used for very different purposes. Although further research needs to be conducted in this regard, this suggests that reactions to a crime or a defendant can depend on the nature of the social media site itself. Whilst tweets discussing the Libyan conflict largely reflected newspaper inferential structures, comments on YouTube did not. This is despite the fact that all three videos analysed for this case study were posted by news outlets. Indeed, it appears from the comments that users did not use YouTube as a source of information regarding the Libyan conflict. Although two users criticised the news outlets for showing graphic footage of Gaddafi's capture, interaction with the more mainstream news media was minimal. There were no requests for information coded nor were there any posts by journalists or reference to the news media,¹²¹⁸ the most commonly coded categories on Twitter.

One clear difference between the inferential structures of the newspapers analysed and the comments on YouTube can be seen in the small but significant minority of comments coded as expressing support for Gaddafi. None of the newspapers analysed published articles that overtly supported the Libyan leader and there were only ten tweets (0.2 per cent of all coded) with such sentiments. In contrast, comments expressing support for Gaddafi were more frequent on YouTube, comprising of 10.13 per cent of all comments coded. For example, Colonski posted that Gaddafi "... WAS THE LAST ARAB LEADER THAT COULD MAKE A CHANGE ..."¹²¹⁹ and PyroPredator "From what I hear Libya was one of the most forward thinking places in the arab world. A lot more equality, better education and health care".¹²²⁰ Such comments contradict the inferential structures of the newspapers and the topics of

¹²¹⁷ For further discussion of the impact of anonymity on online forums see, *supra* Coffey and Woolworth n561.

¹²¹⁸ Only one individual posted a critique of the news media, echoing the frustrations of Twitter users over the lack of media coverage of the protests in Libya.

¹²¹⁹ Screenshot 53 in Appendix.

conversations on other social media sites, indicating that YouTube is a forum for espousing unorthodox viewpoints. The prevalence of conspiracy theories surrounding YouTube footage of the domestic crimes also suggests this.

Despite comments expressing support for Gaddafi, the prevailing sentiment in all the videos analysed was one that expressed a belief in his guilt. With 28.86 per cent, it was the most coded topic for the most watched video considered, which showed Gaddafi's capture. Expressions of Gaddafi's guilt was also a dominant theme, albeit not the most common topic coded,¹²²¹ during commentary of footage on the Libyan protests. In comparison to the discussions of the defendants in the domestic case studies, footage of apparent government violence against the Libyan protests does not seem to influence perceptions of Gaddafi's guilt. Comments such as that posted by ZarahLean, who wrote, "Lets hope this hated murderous government and the wacko heading it soon fall into the dust. Best wishes to the long suffering people of Libya"¹²²² and SirWinstonChurchill's post that, "Ronald Reagan tried to kill this asshole and you people complained..."¹²²³ indicate that Gaddafi's guilt and condemnation had been established prior to the Libyan demonstrations. Such sentiments raises potential difficulties for the ICC and the due process rhetoric that must accompany any discussion of alleged international criminals.

Unlike Gaddafi, who was well known globally as Libya's eccentric head of state prior to allegations of war crimes, Tsarnaev and the Woolwich killers gained notoriety precisely because of their criminal activities. The presumption of guilt found online in the domestic case studies was created as a result of eyewitness footage. In contrast, Gaddafi's alleged crimes in 2011 were part of a wide range of apparent international criminal law infractions of the previous two decades. Indeed, the label of "mad dog" used in the tabloid newspapers to ridicule and condemn Gaddafi was first used by

¹²²⁰ Screenshot 54 in Appendix.

¹²²¹ For RT's compilation of footage of the Libyan protests, comments coded as giving support to the protestors surpassed those coded as expressing a belief in Gaddafi's guilt, amounting to 16.97 per cent and 12.38 per cent respectively. However, the most commonly coded topic for this footage was that expressing prejudice towards religion, in particular Islam. This was in large part due to the prolific commenting of one user, Gore M. These Islamophobic comments were responded to by another user, Akagami Shanks who engaged in an increasingly extreme and profane conversation with Gore M. His comments, largely coded as expressing a response to prejudice was the third largest category coded for this video, amounting to 15.6 per cent of all comments coded. Thus, this conversation distorted the results, placing comments about Gaddafi's guilt into the fourth most common category coded. Removing all comments by these two users from analysis makes comments expressing a presumption of guilt the second most common category for this video. Regarding RT's video of soldiers defecting to the anti-government side, comments expressing a belief in Gaddafi's guilt was only surpassed by those comments coded as showing support for the protestors, which amounted to 30.3 per cent of the total coded, compared with 21.21 per cent.

¹²²² Screenshot 55 in Appendix.

Ronald Reagan during his presidency in the 1980s. Thus, rhetoric of Gaddafi's guilt had been established long before the ICC's arrest warrant, over the course of three decades. Against such entrenched discourse, insistence on the presumption of innocence could appear hollow, potentially marking the rhetoric of the Court at odds with the political narrative against the defendant.

A widespread presumption of guilt in the YouTube comments ensured a tone of jubilation in the comments that accompanied footage of Gaddafi's capture on the 20th October. Such sentiment was exemplified in posts such as "Yeah The fucker is dead!!!!!! He's in the hell now and burning like i pig!!! hahahahha" by Alie 23¹²²⁴ or TalalVersalStudios' post "He's dead after raping and killing thousandths, justice is preserved!"¹²²⁵ For some commenters the fact that Gaddafi was killed was insufficient for justice. For example, Legendshane78 wrote "Head on a pole please the dirty cunt needs humiliating even after death!!! STRING HIM UP!!!"¹²²⁶ and Derail07 who posted "Find a Pig to fuck his bullet hole and ass".¹²²⁷ This tone indicates a belief that a criminal trial in this instance was superfluous to justice.

Attitudes that justice had been served was reflected in the minimal commentary of the ICC, with only 31 comments out of a total 3,642 coded discussing the Court or international criminal law more broadly. Furthermore, only 4.45 per cent of comments coded expressed concern that Gaddafi did not receive a criminal trial and stated that justice had not been served as a result. Indeed, the number of extreme comments such as those expressing racism (5.6 per cent), prejudice against religion (7.44 per cent) and espousing conspiracy theories (15.73 per cent) was greater than the number stating a need for a criminal trial. Reflecting the sentiments regarding Gaddafi on Twitter and despite the graphic footage of Gaddafi's capture from which the majority of comments analysed were sourced, justice was clearly seen to be exacted outside of the International Criminal Court, which remained as invisible online as it did during newspaper commentary of the Libyan conflict.

The graphic nature of the video clearly affected some users, with 16.64 per cent of all comments coded expressed horror at its content. However, within such comments there is an interesting juxtaposition on opinions of the defendant. Comments in this category ranged from shock at the treatment of a man who is shown to be bewildered

¹²²³ Screenshot 56 in Appendix.

¹²²⁴ Screenshot 57 in Appendix.

¹²²⁵ Screenshot 58 in Appendix.

¹²²⁶ Screenshot 59 in Appendix.

¹²²⁷ Screenshot 60 in Appendix.

and frail in the video, to overall satisfaction of the outcome but with some concern about the violence of the rebel forces. Many comments on YouTube such as “this is barbaric” posted by Bleu Viruz,¹²²⁸ or sprang12’s comment, “Inhumane. To rejoice I’m someone’s murder. What next?”¹²²⁹ provide instances of compassion and concern at the treatment of another human being. Despite this, a substantial amount of those comments coded as expressing horror at the video were also coded as expressing a presumption of guilt, as exemplified by a post from Impaired Dracula, who wrote, “A simple hanging or execution would’ve been enough but this is just plain brutal”.¹²³⁰ Similarly reflecting a presumption of guilt, a number of YouTubers criticised the compassion in some of the comments, with one such post from george washington who wrote “... if your family members got slaughter by such dictator, you will do the same.. gaddafi deserved this! :)”.¹²³¹ The belief that justice had been served was more prevalent in the videos analysed than any expression of horror at the footage of Gaddafi’s capture.

The comments on Twitter and YouTube in relation to Gaddafi, suggest two things about the way individuals engage with social media and eyewitness footage of apparent international crimes and how this might impact on the defendant. Firstly, newspaper reporting clearly influenced public attitudes of the Libyan conflict and Gaddafi. Not only was there a prominent anti-Gaddafi bias online, reflecting newspaper inferential structures, but the rumours and hearsay published by the press were also found on Twitter and YouTube. For example, several users online commented on Gaddafi’s alleged use of mercenaries. Because human rights organisations were unable to find evidence to support these rumours, it is logical that these comments were either from native Libyans repeating the rumours on the ground or that they were formed on the basis of newspaper reporting of this subject. Secondly, the social media posts demonstrate the moral mandate effect and how this might impact upon the International Criminal Court. Very few comments both on Twitter and YouTube expressed concern that Gaddafi’s death appeared to be an extra-judicial execution and that his guilt had not yet been established in a court of law. Rather, concern about the nature of Gaddafi’s death was directed at the graphic content of the footage. The moral mandate effect was further suggested at the lack of punitive comments. As was noted in Chapter Three many posts on social media expressed a presumption of guilt often by expressing a

¹²²⁸ Screenshot 61 in Appendix.

¹²²⁹ Screenshot 62 in Appendix.

¹²³⁰ Screenshot 63 in Appendix.

¹²³¹ Screenshot 64 in Appendix.

violent desire for revenge. Such comments were less frequent in this case study. Nevertheless, there was still a prominent presumption of guilt expressed for the suspected international criminal as was expressed for the domestic criminal defendants. Thus, the lack of punitive comments suggest that justice had occurred as a result of Gaddafi's violent death.

Conclusion

Lang and Lang used the phrase “inferential structures” to describe the “unwitting bias” of journalists writing up news stories.¹²³² However, in Gaddafi's case there were several instances, such as the use of the pronoun “we”, or describing the activities of the rebel fighters as “noble to behold”¹²³³ that clearly delineated the allegiances of the journalists reporting on the Libyan civil war. The bias in favour of the anti-government fighters could hardly be described as “unwitting” and prevented a nuanced analysis of the Libyan civil war. Furthermore, newspapers reported allegations of criminal violations by Gaddafi's troops as fact, whilst largely ignoring similar allegations made against the rebel fighters. By not providing this key contextual information, this had the effect of condemning Gaddafi further. A newspaper-held presumption of guilt was clearly demonstrated in the reporting of Gaddafi's guilt.

This bias condemned Gaddafi from the outset. He was vilified in the media and portrayed in caricature as the evil mad dog, willing to viciously attack his citizens. This was contrasted with the virtuous rebel forces, prepared to die in their fight for freedom and the rule of law. Such a simplistic reporting style cannot accurately reflect the nature of the conflict. Far from a unified force, the rebel fighters were comprised of numerous and disparate factions, some of which are still fighting, four years after Gaddafi's death. The absence of contextual analysis about the potential violations of international criminal law committed by the rebels reinforced a sense of condemnation of Gaddafi whose actions were deemed all the more monstrous for being presented in a vacuum.

Although there were marked differences between the two social media sites analysed, there was also an overwhelming presumption of guilt for those comments that discussed Gaddafi both on Twitter and on YouTube. This presumption was illustrated by the number of comments that celebrated Gaddafi's death. Although there was a widely held presumption of guilt in the social media commentary accompanying all three case studies analysed, the discourse surrounding Gaddafi was differed to the domestic

¹²³² *Supra* Lang and Lang n543.

¹²³³ *Supra* Pendlebury n1089.

defendants. Whilst YouTube discussions of the Tsarnaev and the Woolwich killers focused on a desire for punishment and revenge, such sentiments were absent in the YouTube videos of the Libyan conflict. This is perhaps a reflection in the differing outcomes for Gaddafi and the domestic defendants. Unlike Tsarnaev, Adebolajo and Adebowale, Gaddafi did not receive a criminal trial. Furthermore, an overwhelming majority of comments analysed accompanied footage of Gaddafi's capture. Thus, unlike the domestic defendants whereby relevant footage related to the crime rather than the fate of the accused, "punishment" for Gaddafi's presumed crimes was available online for widespread viewing. Despite the graphic nature of the Al Jazeera video, the comments that accompanied it indicate that justice had occurred as a result of Gaddafi's death. Thus, extending Skitka's concept of moral mandates, the verdict of the courtroom was not required to match the populist verdict on the defendant. Rather, Gaddafi was considered to be so guilty that a criminal trial was not needed and that his punishment, no matter how violent, was something to be celebrated.

The online discussion of Gaddafi and the ICC raises some highly troubling questions about the future of international criminal justice. It was noted in the introduction of this chapter that the legitimacy of the International Criminal Court is far from established. It is possible that a widely held presumption of guilt could be impacting on this. Not only was Gaddafi's guilt overwhelmingly presumed by those users who discussed the defendant, but such a presumption manifested itself in widespread celebrations at the death of the former Libyan leader. Moreover, discussion of the International Criminal Court was minimal and comments about the defendant's due process rights were virtually non-existent. Such sentiment not only reflects moral mandate theory but suggests that justice for international criminals can bypass the Court altogether. Thus, at least for international crimes, a guilty verdict in court appears not to be required for justice to be seen to be done.

In many ways, the results of the empirical work in this chapter have mirrored those of the previous chapter. In each case the media reporting of criminal events was sensationalised and biased in its focus, and in each case the discussion of those crimes on social media seemed to share or even exacerbate those biases. However, social media is likely to impact the domestic and international courts in different ways. Within the domestic sphere, I have raised concerns (drawing upon my historical analysis) that community rejection of due process rights can threaten the future of those rights. However, the impacts of that threat are largely hypothetical at this stage. In contrast, those same pressures can be seen to have a demonstrable impact within the international

law context. There are several implications of this, both in terms of the future of international law, as well as the further evidence this provides towards the potential for due process alteration at a domestic level. These themes will be explored in the conclusion chapter to follow.

Conclusion

Is Social Media Changing the Role of the Defendant?

Due process is in a precarious position. Our historical analysis of the changing concept of the defendant in Chapter One discussed how due process was developed in direct contravention of long-established criminal procedure. The introduction of defence counsel into the criminal trial in the eighteenth century had a profound impact on the accused speaks trial, effectively silencing the accused whilst simultaneously championing defensive safeguards. However, the evolution of criminal procedure and the development of the rights-bearing defendant occurred gradually. Due process was facilitated by defence counsel vociferously advocating for their clients. Exactly why they were allowed into the criminal trial, in violation of the long-established accused speaks procedure, has been disputed by academics.¹²³⁴ Nevertheless, it appears that they were introduced in the absence of a clear policy to change criminal procedure. Indeed, by the time Parliament legislated on the presence of defence counsel in the Prisoner's Counsel Act in 1836, they were already "familiar figures" in court.¹²³⁵ As a result, the instigation of the adversarial criminal procedure was gradual and the drastic transformation for the role of the criminal defendant went largely unnoticed by contemporary commentators and courtroom personnel.

Throughout this thesis we have considered whether or not social media and eyewitness "evidence" of a criminal act could be serving to once again change criminal procedure by eroding the presumption of innocence. As part of this threat, we considered the potential impact of moral mandates on the public legitimacy of the criminal trial. It was noted that crimes that evoke a moral mandate within an individual could result in that individual deeming justice to be served as a result of a particular verdict, rather than on the basis of a fair trial. This thesis sought to assess whether a media-led presumption of guilt, facilitated by the rise in new methods for documenting and commenting on a criminal act, could be exacerbating the moral mandate phenomenon. If the defendant is captured red-handed on a smartphone, is the purpose of the criminal trial to establish the legal guilt of the accused at odds with public expectations of justice?

¹²³⁴ *Supra* Vogler n147 p.141, Langbein n147, p.171, Beattie n147 p.224.

¹²³⁵ *Ibid* Beattie p.226.

Numerous academic studies have highlighted how crime news influences public attitudes towards the defendant. The defendants in these case studies were described as monstrous, compared in binaries to the virtuous and valiant actions of eyewitnesses, first responders, and rebel fighters. Echoing Cohen's work on deviancy, such descriptions served to dehumanise the defendants and ostracise them from society. As part of newspapers' trial by media, the defendants were considered to have perpetrated atrocities, their guilt having been established without the need for a criminal verdict. Thus, considerations of potential mitigating factors for Adebowale and Adebolajo, including the fact that the former suffered from a severe form of psychosis that resulted in him hearing voices and at times rendered him unable to attend his trial, were dismissed as "excuses" by the media. Similarly, newspaper discussion of Tsarnaev largely approved of the denial of his Miranda rights during preliminary police questioning. The implication in the news reports analysed was that the defendants did not need a criminal trial and were considered undeserving of human rights niceties such as due process. This has echoes with media commentary of bin Laden, discussed in the introduction of this thesis and was starkly highlighted in the jubilation at Gaddafi's death. Despite the fact that the former Libyan leader had never been convicted in a court of law and that the actions of the rebel fighters in killing him appeared to constitute a war crime, Gaddafi's presumption of guilt was apparently so conclusive that a criminal trial appeared to be considered unnecessary.

There are parallels between the trial by media and the Anglo-Norman trial by ordeal, something that Simon Jenkins noted in 2006. Discussing a series of media condemnations of leading politicians, Jenkins suggests that resolution to an ordeal of trial by media requires contrition and, like its Medieval counterpart, some act of penance.¹²³⁶ Such a description provides an interesting comparison. Like the unilateral ordeal, a trial by media subjects those decided as guilty by the media, to a series of painful ordeals. Whilst the trial by media's prosecution has a mental effect, as opposed to the unilateral ordeal's physical trial, this does not make the experience any less traumatic. Christopher Jefferies, condemned by the media after being suspected of killing his tenant Joanna Yeates, discussed in the Introduction, powerfully described the torment he experienced after learning of the media commentary against him during the months he remained a police suspect. He stated that, "the impact [of media reporting]

¹²³⁶ Jenkins "Trial by Media is a Servicable Variant of the Medieval Ordeal" *The Guardian* (London 17/3/06).

was so intense as to be almost physical in its effect”.¹²³⁷ Such a description also draws parallels to the unilateral ordeal. Jefferies’ experience of media commentary raises some troubling questions about the role the media plays in the criminal justice process. For an innocent man to experience the level of vitriol that Jefferies did in the first months of 2011 is deeply worrying.

The defendants in the three case studies considered in this thesis could also be said to have undergone a modern form of ordeal. For example, media focus on the lack of contrition of the defendants in the domestic case studies suggest that some act of penance was required of them. Certainly, the studies in Chapters Three and Four have illustrated that all three defendants were subjected to a trial by media. Gaddafi’s “guilt” was confirmed early on as a result of a pro-rebel bias in all the newspapers analysed. This bias prevented objective reporting of the Libyan conflict, thus allegations of Gaddafi’s crimes were presented outside of the context of an increasingly violent civil war. Although the Boston bomber and the Woolwich killers were subsequently found guilty of the crimes reported on in the media, their media ordeal was no less problematic. It must be reiterated that a trial by media, which describes the phenomenon whereby the media establish a popular presumption of guilt against a particular individual, can occur irrespective of the defendant’s factual guilt. This is because due process, which requires a presumption of innocence amongst other defensive safeguards, extends beyond the criminal trial to the pre-trial discussion of the accused. Newspaper inferential structures for the defendants for both domestic case studies paradoxically presented them as guilty suspects, whereby guilt had been established, in part due to highly emotive, online footage of the crimes, outside of the due process frameworks of the criminal trial.

Throughout this thesis the presumption of innocence was used as a litmus test to assess whether or not the defendant’s due process rights in the three case studies had been eroded as a result of media and online commentary. It was noted in the introduction that the presumption of innocence must be maintained up until the courtroom verdict. Thus, adverse media commentary against the defendant in the pre-trial phase as well as during the trial can serve to erode the presumption of innocence. Our analysis in Chapters Three and Four established how media commentary of the three case studies precipitated a trial by media for all of the defendants accused.

The presumption of guilt in the three case studies continued in the online conversation of the crimes and the suspects. Although social media comments largely

¹²³⁷ *Supra* BBC n97.

did not discuss the defendants, those posts that did were overwhelmingly coded as expressing a presumption of guilt. Out of a total of 22,977 social media posts analysed in this thesis, only 64 comments were coded as expressing due process sentiments such as innocent until proven guilty or qualifying their statements with words such as “alleged”. This presumption of guilt was particularly apparent in the comments expressing a retributive desire for violent punishment in the domestic case studies, even when they had not yet been convicted, and the online celebration that accompanied news of Gaddafi’s death. It appears, then, that the crimes of some defendants are so atrocious and their guilt so certain that a criminal conviction, and the due process protections that go with it, is not a prerequisite for justice.

Skitka’s theory of moral mandates suggests that such a presumption of guilt can have a negative effect on the criminal trial. If the verdict of the courtroom does not match the assessment of the public against a defendant accused of a crime that evokes a moral mandate, this can have repercussions for the legitimacy of the criminal trial. Thus, if a popular presumption of guilt is established for the most serious crimes, which are most likely to satisfy news values, justice can only be seen to be done through a guilty verdict. This raises troubling implications for the fledgling International Criminal Court, which has yet to establish global legitimacy and, as analysis of commentary on Gaddafi illustrates, is virtually invisible in newspaper and online discussions of international crimes. Moreover, the pressure to produce a particular verdict could result in the role of the defendant changing once again, moving away from due process protections to accommodate apparent “evidence” of guilt that is increasingly being documented by eyewitnesses and posted online.

Social media has the potential to exacerbate the moral mandate effect by heightening the emotional impact of the crime. Not only can graphic eyewitness footage of the crime increase feelings of shock and horror, but social media can provide a forum through which these feelings can be magnified. In this way, social media is reminiscent of the hue and cry discussed in Chapter One. Under this doctrine an individual who finds someone in the commission of a crime is obliged to raise awareness of the act by making a lot of noise. If the accused escapes, his or her life was considered forfeit and could be lawfully killed; there was no requirement of a courtroom verdict of guilt.¹²³⁸ In the small and inter-dependent communities of the Anglo-Norman era, the doctrine of the hue and cry created a legal obligation on an individual to raise awareness of a crime when discovered and to name the individual. Failure to do so could result in criminal

proceedings being brought against them. The hue and cry served as an important tool in crime detection, it also facilitated the notion that the crime personally affronted the community. As English society developed into larger and more disparate communities and developed the instructional jury the doctrine of the hue and cry became less important. Nevertheless, it still survives in some inquisitorial jurisdictions through the doctrine of *flagrant délit*, which sets a precedent for eroding due process safeguards for those defendants caught in the commission of the crime.

It is possible that social media could be establishing a modern version of the hue and cry. Analysis of social media commentary in all three case studies clearly demonstrates a viewpoint that the crimes were an affront to the community. For example, a dominant theme both online and in the newspapers analysed was that these crimes were against whole nations. Furthermore, it has been previously noted how social media can act as a tool to bring disparate communities together. Thus, it can also be a place where individuals can express an emotional reaction to the crime.¹²³⁹ Indeed, all three case studies exhibited a virtual condolence book. This phenomenon was particularly apparent in the domestic case studies where it was easier to identify specific victims of the crimes. The virtual condolence book for the domestic crimes was highlighted in the trending hashtags, such as #RIPLeeRigby and #PrayForBoston, in the aftermath of the two terrorist attacks. This sentiment of horror and outrage can have implications for the defendant. Amongst the comments coded there was a troubling theme of violent and retributive comments against the defendants in all three case studies. These comments were reminiscent of a lynch mob. For Gaddafi the lynch mob became a reality. Although he was executed extra-judicially, and the fact that the alleged executioner was named (and celebrated) in the media, there have, to date, been no prosecutions for his killing. This is despite the fact that the Libyan National Transitional Council publicly stated that they would investigate the matter. Rather, Gaddafi's death was celebrated both in the newspapers analysed and the online comments.

The role the media plays in criminal justice reflects the public forms of punishment that came before it. In this way, criminal justice rhetoric appears to have come full circle. The media clearly influences overall perceptions of the defendant, serving to exacerbate the moral outrage of the public against defendants accused of the worst crimes. It is possible that, as a result of media commentary, the role of the defendant in their criminal trial is once again being transformed. Although this process

¹²³⁸ *Supra* Hostettler n174 p.19.

¹²³⁹ *Supra* Greer n122.

is a subtle one, it must be remembered that the move towards due process was also indistinct and slow. As such, it may be the case that trial by an increasingly pervasive media marks the first step down a slippery slope, away from due process and the defendant's presumption of innocence. The impact of social media on the domestic criminal trial may be a subtle one and may not have a long-term effect on criminal procedure. However, our analysis of the two domestic case studies demonstrates some worrying indications that the presumption of innocence may be being eroded. In international criminal law, on the other hand, the impact of social media and eyewitness "evidence" of guilt on the criminal trial is more apparent. The International Criminal Court is more vulnerable, having not yet established a global legitimacy, nevertheless the same push factors that contributed to the erosion of Gaddafi's due process were present in the domestic trials. This gives cause for concern about the potential erosion of due process at the domestic level. History has demonstrated, through the introduction of defence counsel in a small handful of cases,¹²⁴⁰ that the slightest alteration to criminal procedure could end up being significant. It is vital that current discussions of the potential impact of social media on the presumption of innocence is mindful of this.

Areas for Future Research

As social media develops, it may become clearer that the role of the defendant is changing through an erosion of due process rights. This thesis aims to provide an insight into the potential impact of social media, in particular eyewitness footage of a crime, on the defendant's presumption of innocence. Although its primary aim was to consider the theoretical implications of this, by looking, for example, at the potential presence of the moral mandate effect in social media comments of the case studies analysed, this research has unearthed several areas for further analysis.

Since embarking on the research of this thesis, there have been numerous potential case studies which could be analysed further to test our hypothesis. Thus, the recent attacks in Paris and Brussels, the shootings by US police officers that gave rise to the #blacklivesmatter campaign and the allegations of war crimes by the Syrian regime can further our understanding of the relationship between social media, due process and the presumption of innocence. As technology advances, resulting in better video

¹²⁴⁰ 0.5 per cent in 1740. See Table 1 in Chapter One.

recording facilities, faster internet speeds and more accessible gadgets such as GoogleGlass,¹²⁴¹ the number of potential case studies will increase.

Because the presumption of innocence must be maintained in the pre-trial stage, the news media are obligated to use due process words such as “alleged” when reporting about a criminal defendant prior to a courtroom verdict. The case studies analysed in this thesis established that journalists do not always adhere to the presumption of innocence. However, much of the message of the newspapers, particularly in relation to crime news, is provided through the visual representations of the story.¹²⁴² Thus, layout, imagery and headlines can alter the tone of the bare text. Whilst an analysis of the written text was sufficient for our analysis here,¹²⁴³ further consideration of the potential erosion of due process as a result of social media could be enhanced by analysis of this contextual information.

A criminological analysis of social media is limited by the accessibility of the online websites. The marketization of Twitter and other social media sites means that it can be very difficult to access historical tweets and hashtags. This thesis used the archiving website Topsy.com in order to gather relevant tweets for the three case studies. However, as Topsy was a third-party source it had several limitations, which are discussed in more detail in the methodology of this thesis, contained in the Appendix. Perhaps attesting to the rapidity of the field, academics are starting to develop tools to facilitate this analysis, embarking on what Williams and Delli Carpini describe as “computational criminology”.¹²⁴⁴ Tools such as the Collaborative Online Social Media Observatory (COSMOS)¹²⁴⁵ are designed to help academics researching on social media and can facilitate the mining of tweets for analysis. This will allow for more thorough qualitative analysis of crime-related social media posts.

The rise in new technologies and social media operate to work against traditional defences. This can be demonstrated in the public response to eyewitness footage. Analysis of the three case studies has established that the presence of video “evidence” seemingly establishing factual guilt is preventing a meaningful discussion of mitigating factors or even the difference between factual guilt and legal culpability. There is a chance that the dismissal of mitigating evidence will only increase as other pressures also impact on the criminal trial, such as the drastic cutting of legal aid or the

¹²⁴¹ For technical specifications, see Google “Google Glass Tech Specs” <<https://support.google.com/glass/answer/3064128?hl=en-GB>> accessed 27/4/16.

¹²⁴² *Supra* Greer, *et al.* n76 p.5.

¹²⁴³ See the methodology in the Appendix for a more detailed discussion of this.

¹²⁴⁴ *Supra* Williams and Burnap n23 p.2.

increase in police body cameras. Further research, testing the hypothesis regarding the fluid role of the defendant in this thesis on other case studies will help us to see if the presumption of innocence is being irrevocably eroded. Whilst we may have recourse in the domestic courts to prevent a drastic change in the role of the defendant, the impact of social media on the international criminal defendant and on the legitimacy of the international criminal tribunals could be much more stark.

¹²⁴⁵ See <http://www.cosmosproject.net> [accessed 27/4/16].

Appendix Methodology

There is ample research on the influence of media on public attitudes of crime,¹²⁴⁶ however this research has yet to be extensively applied to the influence of social media on public perceptions of crime news. As such, there is no established methodology for analysing the content of social media and its relationship with the more mainstream news media. It must be noted that there are key differences between the news media and social media that make a direct comparison of the content between the two difficult. As has been discussed in Chapter Two of this thesis, the traditional media, in particular newspapers, have entrenched market-driven news values that journalists operate under in order to sell stories. This is largely absent in social media, where the majority of users are there on a personal basis.¹²⁴⁷ Although a degree of self-censorship occurs as a result of an awareness of the potential audience,¹²⁴⁸ comments on social media generally do not go through the strict redrafting and editorial process of a newspaper article. In order to encompass these differences into the study whilst ascertaining answers for the above research questions, a two-stage analysis, used in Chapters Three and Four has been conducted.

Stage One: Newspaper Analysis

Relevant newspapers encompassing both broadsheets and tabloids from across the political spectrum have been selected for analysis for each case study. Because of the geographical size of the United States of America, the proximity of the newspapers to the Boston Marathon bombings, and the size of their readership at the time of the bombings was also considered.¹²⁴⁹ Thus, *The Boston Globe* and *The New York Times* were selected as broadsheets suitable for analysis. *The Boston Globe* is the most read newspaper in Massachusetts, whilst *The New York Times* is the second most widely read national newspaper within the United States. *The Wall Street Journal*, the newspaper with the largest circulation in America, places a particular emphasis on business and financial news and was thus eliminated from consideration. The third most read newspaper in the country, *USA Today*, comprising a middle-range national newspaper

¹²⁴⁶ See Chapter Two of this thesis.

¹²⁴⁷ Humphreys, Gill, *et al.* "Historicizing New Media: A Content Analysis of Twitter" (2013) 63 *Journal of Communication* 413-431.

¹²⁴⁸ Marwick "I Tweet Honestly, I Tweet Passionately: Twitter Users, Context Collapse, and the Imagined Audience" (2011) 13 *New Media & Society* 114-133 p.124.

was also analysed. Finally, *The New York Post*, the most widely read tabloid, was also analysed. For the murder in Woolwich, *The Daily Telegraph* and *The Guardian* broadsheets with right and left leaning perspectives respectively, were considered. These were analysed alongside the middle-range *Daily Mail* and *The Sun* tabloid newspaper.

In contrast to the domestic case studies, six newspapers were analysed for the Libyan conflict, considered in Chapter Four. This enabled selection from a broad spectrum of styles and genres. Newspapers analysed for the domestic case studies were also considered in Chapter Four, as this made for easier comparison between reporting of a domestic and international crime. Thus, two broadsheets, *The New York Times* and *The Guardian*, two middle-range newspapers, *USA Today* and the *Daily Mail* and two tabloid newspapers *The New York Post* and *The Sun* were analysed for their coverage of the Libyan conflict.

Newspaper inferential structures¹²⁵⁰ identified in stage one, have then formed the basis of categorisation of social media commentary, in the second stage of analysis. Dominant, secondary and competing inferential structures were identified for each case study. Relevant newspaper articles were read initially in order to identify relevance, content, tone. These factors were then used to summarise the articles into the primary message (or “unwitting bias”) of the news report. These summaries were then categorised into overarching themes. Because the news reporting of the G20 protests establish that the inferential structures could change as a result of changing developments in the news event, these groups were mindful of the timeline of events such as when the defendants were officially named, charged and courtroom appearances. Particular attention was paid to articles with primary messages that competed with the identified inferential structures, as these challenged the identified themes of reporting and could serve to reinforce Lang and Lang’s third crucial variable,¹²⁵¹ whereby the inferential structures could become entrenched to the point that new information is interpreted to fit in with the overarching message of the news report, with competing information is reinterpreted or ignored.

Inferential structures not only allow us to identify unwitting bias in news stories and its subsequent influencing factors,¹²⁵² but they also illustrate key moments in the timeline of the case study concerned. This provides a framework from which to cross-

¹²⁴⁹ Alliance for Audited Media Top 25 U.S. Newspapers for March 2013 (2013).

¹²⁵⁰ See Chapter Two of the thesis.

¹²⁵¹ See discussion in the inferential structures section of Chapter Two.

¹²⁵² *Supra* Lang and Lang n543, Greer and McLaughlin n89.

reference data from the mainstream newspapers and social media commentary, whilst recognising that both mediums operate in very different ways. Analysis of the inferential structures of newspaper articles enabled identification of key media messages in relation to the defendant that were used as a comparison to the analysis of social media.

Articles were obtained using the database Nexis by searching for the names of the defendants, the victims and any identifying feature of the crime in each case study, discussed in more detail below. As researchers have previously noted,¹²⁵³ Nexis provides an imperfect means of accessing newspaper articles, as only the bare text is stored on the database. This results in contextual materials such as pictures and layout being excluded from analysis. Such information helps to cement the primary message of the article and can further influence the reader.¹²⁵⁴ It is problematic that this information is not contained within Nexis, preventing a complete analysis of crime news through this database. Nevertheless, primary messages and themes can be identified from the body of the article and this is sufficient for the purposes of this study on the impact of social media footage and commentary on the presumption of innocence. Search results of potentially relevant content were limited by date published, with articles printed before the commission of the offence excluded. In order to ensure that relevant articles on the trial, such as comment pieces, were not excluded, the database search was extended for two weeks after the trial process. One newspaper, *The Boston Globe*, was not available through the Nexis database, as a result, relevant newspaper articles were found by searching through the online archives available through the newspaper website. Unfortunately, these archives were also limited to the base text of the articles, with imagery and layout excluded. Duplicate articles in all the newspapers analysed, and those not directly relevant to the crimes were eliminated from consideration.

Search Terms and Articles Collected for the Boston Marathon Bombings

Relevant articles were searched for the Boston bombings, within a search range of the 15th April 2013 (the day of the attack) until the 29th May 2015 (two weeks after the jury's decision on the sentence). Because of the length of Tsarnaev's criminal justice process there was substantially more media commentary than for the Woolwich killing, with many articles only providing a passing reference to the bombing. In order to

¹²⁵³ *Supra* Jones and Wardle n47, Greer and McLaughlin "Trial by Media" n21 p.28, Greer and McLaughlin n89 footnote 1.

¹²⁵⁴ See, for example, *ibid* Jones and Wardle.

maintain the focus of the research in this thesis in the role of the defendant, it was necessary to alter the search terms to ensure that only articles that depicted the defendant were included. Relevant articles from the four newspapers analysed were found using the search term “Tsarnaev”. Because the suspects were not named for several days after the bombing, until the 18th April, these results were also supplemented with a smaller search about the crime. Thus, the phrase “Boston Marathon bombing” was searched between the 15th April 2013 and the 20th April 2013. This ensured that media commentary of the attack in the immediate aftermath of the bombings and before the defendants were named was also analysed. A total of 1,271 articles were analysed for this case study.

Table 1: Breakdown of newspaper search results for the Boston Marathon bombing

Newspaper	Results for “Boston Marathon bombing”	Results for “Tsarnaev”	Total Results Yielded	Articles Eliminated	Articles Analysed
<i>The New York Times</i>	108	315	423	133	290
<i>USA Today</i>	70	114	184	53	131
<i>The New York Post</i>	73	125	198	66	132
<i>The Boston Globe</i>	38	1017	1,055	337	718

Search Terms and Articles Collected for the Woolwich Killing

Newspaper articles published from the day of the incident, 22nd May 2013 until 12th March 2014, two weeks after the date of sentencing, were analysed in order to establish the predominant inferential structures. Articles were found using the search terms “Lee Rigby”, “Michael Adebolajo” or “Michael Adebawale”. Because neither the victim, nor the suspects, were initially named, the term “Woolwich”, the location of the murder, was also included in the search, as this became a primary tag line for the offence. Duplicate and irrelevant articles, and articles with only a cursory mention of the

crime,¹²⁵⁵ were eliminated from analysis. In all, a total of 724 articles were analysed from the four newspapers and their Sunday counterparts, the breakdown of which is summarised in Table 2, below. *The Sun on Sunday*, which replaced *The News of the World* in 2011, is considered by Nexis to be the same newspaper as *The Sun* and, thus, there is only one set of data for the newspaper. Similarly, Nexis provides the *Daily Mail* and the *Mail on Sunday* within the same category and, thus, there is only one result number available for this newspaper franchise.

Table 2: Breakdown of newspaper search results for the Woolwich killing

Newspaper	Nexis Results	Articles Eliminated	Articles Analysed
<i>The Guardian</i>	254	111	143
<i>The Observer</i>	61	42	19
<i>The Daily Telegraph</i>	460	288	172
<i>The Sunday Telegraph</i>	52	31	21
<i>Daily Mail and Mail on Sunday</i>	266	118	121
<i>The Sun and The Sun on Sunday</i>	715	467	248

Search Terms and Articles Collected for the Libyan Conflict

The chaotic nature of warfare makes identifying exact dates when crimes may have been committed during the Libyan conflict difficult. For this reason, newspapers were searched for relevant articles throughout the whole of 2011, between 1st January and 31st December. Relevant articles were found using the search term “Gaddafi”, the Libyan leader who presided over the conflict. Because Gaddafi is a translation from Arabic, it has a number of different English spellings. In order to accommodate the different spellings used in the newspapers chosen for analysis, the terms “Gaddafi”, “Qaddafi”, “Gadhafi” and “Khadafi” were searched on the Nexis database. It is recognised that by limiting the search to just the name of the defendant, some articles on the Libyan conflict that do not explicitly discuss Gaddafi will be excluded from the search results. However, as this thesis is focusing on portrayals of the defendant, it is not believed that such an exclusion hindered the outcome of this analysis.

¹²⁵⁵ For example, the *Daily Mail*’s article on the increase in prune sales “Prune Power” had the first sentence “Amid all the rotten things happening at present, from Syria to Woolwich to our so-called

Table 3: Breakdown of newspaper search results for “Gaddafi” during the Libyan conflict

Newspaper	Nexis Results	Articles Eliminated	Articles Analysed
<i>The Guardian</i>	566	89	477
<i>The Observer</i>	115	49	66
<i>Daily Mail and Mail on Sunday</i>	118	4	110
<i>The Sun and The Sun on Sunday</i>	359	170	189
<i>The New York Times</i>	211	6	205
<i>USA Today</i>	54	5	49
<i>New York Post</i>	55	7	48

Stage Two: Social Media Analysis

The purpose of this research is to identify the way in which the defendant is represented in the media and social media in order to provide a greater understanding of the implications for due process and the role of the defendant. As such, the primary emphasis of this analysis is not to produce statistical data that can be counted and categorised, but rather to gain meaning from discussions of the defendant. The practice of pre-established coding categories necessary for the content analysis methodology narrows the scope of the potential categories and would not adequately reflect the diverse range of comments available online. Furthermore, the pre-established categories do not represent the conversational nature of social media. For these reasons, the template analysis method¹²⁵⁶ was considered more appropriate for this study. The open-coding system found in template analysis allows the flexibility necessary to analyse the unregulated, impulsive and, therefore, potentially diverse comments on social media sites. Under this methodology an initial, broad template was established prior to data analysis, which is subject to updating and revision during the reading of the data. This fluid coding system enables the inferential structures for each case study, as identified by the reading of relevant newspaper articles, to form the basis of the preliminary template. Template analysis allows for a comparison between more mainstream news and social media, whilst remaining sympathetic to the differences between the two

summer weather, there was one cheery morsel of news yesterday”. Letts, (London 29/5/13).

¹²⁵⁶ For a more detailed methodological approach see King “Template Analysis” in Symon and Cassell (eds) *Qualitative Methods and Analysis in Organizational Research* (SAGE 1998). For an example of

mediums. Furthermore, the hierarchical coding structure of template analysis enables cross-comparison between comments of differing opinions, as well as a more nuanced analysis of comments expressing similar viewpoints.

Consideration of social media comments during the second stage of analysis illuminated the means through which the public engages with crime news and how this impacts on attitudes towards the defendant. Two prolific social media sites, Twitter and YouTube, were mined for comments relating to the case studies and coded. Comments were initially divided into those discussing the victim and those discussing the defendant. As the purpose of this research is to assess attitudes towards the defendant, comments discussing both the victim and the defendant were included in the defendant category. Another miscellaneous category was also included in order to encompass other types of comments that may provide a more nuanced understanding of the online conversation for each case study.

Using the template analysis coding structure, social media comments relating to the defendant for each case study were initially divided into three primary categories: those that see the defendant as “guilty”, “not guilty” and those comments that are “not applicable”. In so doing, it has been possible to identify the “guilty” to “not guilty” ratio and provide a broad overview of how social media users fundamentally view the defendant. Percentages for the “not guilty” and “guilty” categories were calculated to provide a crude overview of public sentiment towards the defendant. The inferential structures identified within the newspaper articles then formed the basis from which to develop the initial templates of the “not guilty” and “guilty” categories.

Twitter.com

Twitter is a predominately public, micro-blogging website of around 255 million worldwide users¹²⁵⁷ who post “tweets” of 140 characters or less.¹²⁵⁸ The 140 characters limitation likens the platform to SMS messaging on mobile devices; Twitter has been designed to be an open and mobile platform for users to engage in a virtual dialogue.¹²⁵⁹ Tweets can be viewed by anyone, even those that do not have an account on Twitter. However, direct engagement can only occur between those who have signed up for a

template analysis of newspaper articles, see Andriotis “Brits Behaving Badly: Template Analysis of Newspaper Content” (2010) 1 *International Journal of Tourism Anthropology* 15-34.

¹²⁵⁷ <<https://about.twitter.com/company>> accessed 15/7/14.

¹²⁵⁸ It is possible to use Twitter in a more private capacity by limiting the audience or direct messaging another user. However the primary purpose is to establish a public platform for virtual communication.

¹²⁵⁹ Dijck “Tracing Twitter: The Rise of a Microblogging Platform” (2011) 7 *International Journal of Media & Cultural Politics* 333-348 p.334-336.

free account. Individuals with an account can follow another account holder, where they will receive the tweets of that individual, direct to their news feed.¹²⁶⁰ Tweets can also be replied to, “liked” as a sign of endorsement or retweeted, either with or without amendments. In this manner, Twitter users are able to directly engage with one another in a virtual conversation that is accessible to anyone with Internet access. This conversation is facilitated by the use of hashtags (#), which operates as a way of filtering tweets by topic.¹²⁶¹ Hashtags often emerge organically, after an event, blending fact and opinion¹²⁶² and subtly dictating the nature of the online conversation.¹²⁶³

It must be noted that the use of hashtags is an imperfect means of researching the Twitter conversation, as it requires the tweeter to actively tag their tweet with the appropriate hashtag to link it to the wider conversation. As a result, it is possible for Twitter conversations to occur either in the absence of a hashtag or through several different ones.¹²⁶⁴ Moreover, hashtags, particularly with breaking news, develop organically as the conversation progresses.¹²⁶⁵ It is difficult to identify all potentially relevant hashtags used as part of the virtual conversation on the case study. The trending feature of Twitter, which alerts the user of the most popular hashtags at any given moment, helps to uniform the hashtag feature.¹²⁶⁶ Unfortunately, Twitter does not archive its trending feature and it was therefore not possible to use this tool in order to analyse the historical tweets relevant for the two case studies presented in this chapter. As such, the prominent hashtags were identified manually during the first reading of the data and implemented into subsequent readings.

Participant engagement through Twitter is altering the way in which individuals and journalists engage with news events.¹²⁶⁷ The unusual business models for social media sites means that user data is highly commercial providing a useful outlet for businesses seeking to develop online promotion strategies.¹²⁶⁸ As such, the archiving features on Twitter, targeting larger corporations, are only available after payment of

¹²⁶⁰ A rolling stream of tweets issued from the individuals and organisations that are actively followed by a user.

¹²⁶¹ *Supra* Bruns and Burgess n118 p.804.

¹²⁶² *Supra* Papacharissi and de Fatima Oliveria n112 p.267.

¹²⁶³ *Supra* Meraz and Papacharissi n114 p144.

¹²⁶⁴ *Supra* Bruns and Burgess n118 p.804, Potts, *et al.* n111.

¹²⁶⁵ *Ibid* Potts, *et al.*

¹²⁶⁶ Unfortunately, Twitter does not archive its trending feature and it was therefore not possible to use this tool in order to analyse the historical tweets relevant for the two case studies presented in this chapter. As such the prominent hashtags were identified manually during the first reading of the data and implemented into subsequent readings.

¹²⁶⁷ See Chapter Two for further discussion of this.

¹²⁶⁸ *Supra* Dijck n12562 p.341-344.

substantial licensing fee, limiting academic access to the data.¹²⁶⁹ This makes the search function on Twitter a limited resource for mining historical tweets.¹²⁷⁰ Relevant tweets, therefore, have been sourced using the third-party website Topsy.com, which has aimed to archive tweets since 2006.¹²⁷¹ It must be noted that Topsy is not affiliated with Twitter and it is impossible to identify whether all the relevant tweets have been archived through the website. This clearly limits analysis nevertheless Topsy is able to yield a sufficient sample size through which to make conclusions about the online discourse for the three case studies. Relevant tweets for the two case studies have been identified by looking up the name of the defendants and the name of the victims using the advanced search feature on Topsy. The default search filter on Topsy is “Sort by Relevance”,¹²⁷² which was used when mining tweets in order to provide some indication of what tweets individuals were engaging with the most during that time.¹²⁷³ Any relevant hashtags identified from an initial reading was subsequently searched and included in subsequent analysis of the data.

The nature of Topsy.com and the fact that Twitter does not enable widespread searching of historical tweets, substantially limits the number of tweets available for analysis. Whilst obtaining all relevant tweets on the topic is not necessary for a thematic analysis such as this, these limitations necessitated the identification of key dates in relation to this attack, from which it would be possible to analyse the tweets posted within these pivotal moments in the case studies. As a result, only those tweets posted on these dates were considered and coded. Tweets that were not relevant to the topic were not coded and duplicate posts, or those not in the English language were eliminated. Consideration of the facts alongside the traditional media reporting of events, five moments for the domestic case studies, and three moments for the international case study, were identified as pivotal moments and had the potential to alter perceptions of the defendant.

¹²⁶⁹ *Supra* Bruns and Burgess n118 p.804-805.

¹²⁷⁰ *Ibid* p.805.

¹²⁷¹ Topsy has since ceased to offer this service.

¹²⁷² It was also possible to sort by “Newest” and “Oldest”.

¹²⁷³ According to a Topsy employee, when contacted about the contents of the “most relevant” filter, “It [is] based on a weighted score that combines various factors. The factors include the influence of the authors of all the citations, the extent to which each citation matches the query terms, and the time distribution of the citations matching the query term. Citations are tweets that have been retweeted or tweets that have links.”

Using Twitter for Analysis of the Boston Marathon Bombings

The Boston Marathon bombings were a considerably more complex and lengthy crime than the Woolwich attacks. As such, multiple hashtags related to the attack emerged. Only those hashtags deemed relevant to analysis of perceptions of the defendant were considered in this study. Relevant tweets were identified on Topsy using the search terms “#BostonMarathon OR #BostonStrong OR #Boston OR #PrayForBoston”. Once the Tsarnaev brothers were named as the prime suspects in the attack the term “#Tsarnaev” was also added. The unfolding events in Watertown during the apprehension of Dzhokhar and Tamerlan Tsarnaev caused the hashtag #Watertown to trend on Twitter, as eyewitness posted details of police activity and the public responded to events. As events in Watertown were considered one of the five key moments in the criminal justice process for the Boston bombings, “#Watertown” was included in the search term for this period.

Relevant tweets from the time of the bombings at 3pm, American, Eastern Time Zone until midnight of that day were included. Because a substantial amount of information about the bombings and the bombers was released on the 18th April, prompting events at Watertown, tweets were collected each hour from 5pm, the hour in which the FBI released official images of the suspects until midnight on the 19th April, Dzhokhar Tsarnaev having been taken into custody at 8:42pm. By extending analysis of tweets for several hours after the capture of Dzhokhar, it was possible to also analyse some of the online celebrations of the suspect’s apprehension. The other relevant dates analysed, relating to the judicial process, were the day that Tsarnaev pleaded not guilty to all charges (10th July 2013) and the jury’s guilty verdict and death penalty sentencing, being issued on the 8th April and the 15th May 2015, respectively. These dates relate to the trial proceedings and therefore analysis of tweets started at 9am, the start of the working day of the courtroom. In order to encompass individual commentary after the televised news bulletins analysis finished at midnight. Duplicate tweets were eliminated from analysis and information not directly relevant to the bombings, such as tweets about visiting Boston using the hashtag #boston, were not coded.

Table 4: Breakdown of the tweets analysed or eliminated for the Boston Marathon bombing.

	Total	Not Coded	Eliminated	Total Analysed
15 th April 2013	1,099	175	100	924
18 th & 19 th April 2013	3,195	671	391	2,524
10 th July 2013	1,497	975	161	522
8 th April 2015	1,492	629	136	863
15 th May 2015	1,500	604	130	896
			Total Tweets Analysed	5,729

Using Twitter for Analysis of the Woolwich Killing

Relevant tweets were found by searching “#RIPLeeRigby OR #Woolwich”, the most prominent hashtags for this case study. Tweets occurring during the first 34 hours after the attack (encompassing 2pm British Standard Time, the 22nd May through to midnight, the 23rd May 2013) were analysed. During this period most of the details of the murder emerged and both defendants and the victim were named. All tweets relating to courtroom proceedings were, as with the Boston Marathon bombing, searched between nine in the morning and midnight of the same day. In this manner, the defendants pleading not guilty (27th September), the first day of the trial (29th November), the jury’s verdict (19th December) and the sentencing (26th February 2014) were all mined for tweets and analysed. Out of the search results yielded, tweets were read and coded into the appropriate categories within the template analysis. Tweets that did not aid in the answering of the research questions, such as those proffering opinions on peripheral information in relation to the Woolwich murders, such as the alleged involvement of radical cleric Anjem Choudary were not coded. Duplicate tweets were eliminated. The table below illustrated the number of tweets identified in the search results and the subsequent tweets coded and analysed for this thesis.

Table 5: Breakdown of the tweets analysed or eliminated for the Woolwich killing

	Total	Not Coded	Eliminated	Total Analysed
22 nd -23 rd May	3,358	375	1,147	1,836
27 th Sept	189	38	9	142
29 th Nov	688	56	53	579
19 th Dec	1,312	68	309	935
26 th Feb	1,029	188	47	794
			Total Tweets Analysed	4,286

Using Twitter for Analysis of the Libyan Conflict

Although the Libyan conflict was a long and complex event, three periods stand out as particularly relevant for our analysis of the social media commentary of the defendant. Dates were selected to encompass the anti-government protests during February, the proceedings of the International Criminal Court (ICC) against Gaddafi and two other prominent members of the regime, and the capture and the subsequent death of Gaddafi. Inspired by successful demonstrations in Tunisia and Egypt, anti-government protests were scheduled for the 17th February. However, government retaliation for such planned activity against several prominent human rights advocates inspired spontaneous protests to start several days earlier. Tweets posted on the 18th February were analysed, as this date was believed likely to include commentary from the previous protests, as well as on the escalation of violence within Libya. Tweets on the day that the ICC issued arrest warrants, the 27th June, and the day that Gaddafi was captured on the 20th October were also analysed in order to ascertain public attitudes to the defendant and, more broadly, the Court. Although some hashtags, such as #Feb17 and #gaddaficrimes, were used to link discussions about the Libyan protests, no prominent hashtags emerged to link discussion throughout the civil war. Thus, relevant tweets were searched for using the name of the defendant. As with the search on Nexis, the Twitter search on Topsy.com accommodated a variety of spellings of the defendant's name. Thus, the terms "Gaddafi", "Qaddafi", "Gadhafi" and "Khadafy" were searched online.

Table 5: Breakdown of the tweets analysed or eliminated for the Libyan conflict.

	Total	Uncoded	Eliminated	Total Analysed
18 th Feb	2,376	259	363	1,754
27 th June	2,275	258	612	1,405
20 th Oct	2,378	299	303	1,776
			Total Tweets Analysed	4,935

Twitter has added a new dimension to the way in which the public can engage with and process crime news. However, there is one aspect of news engagement that is not covered by the social media site, the uploading of video “evidence”. Footage taken as the crime occurs is increasingly being uploaded onto the Internet, the most prominent site being YouTube.¹²⁷⁴ This represents a troubling but growing phenomenon where apparent evidence of the defendant’s guilt is being accessed by the public, away from judicial safeguards and due process. As such, it is necessary to engage with the comments on the video-blogging website as well as the relevant tweets.

YouTube.com

With over 1 billion users,¹²⁷⁵ YouTube is the most prolific video-blogging website and “has come to represent what video on the web looks like”.¹²⁷⁶ Through the website, users can upload homemade videos for global viewing, commenting and review. Videos posted on YouTube are predominantly personal in nature, however, there is an increasing presence of commercialised content on the website.¹²⁷⁷ The power of YouTube rests in its diverse content and widespread usage. YouTube provides an ideal forum through which to post footage of criminal activities, allowing viewers to interact with uploaded videos. Anyone with a free user account can post comments, or reply to comments below a video, creating a virtual dialogue about the film. Consideration of such comments allows researchers to assess the relatively spontaneous online dialogue

¹²⁷⁴ It must be noted that, it is possible to tweet a link to the video but it is not currently possible to embed a video into a tweet.

¹²⁷⁵ “YouTube: Statistics” <<https://www.youtube.com/yt/press/en-GB/statistics.html>> accessed 23/7/14

¹²⁷⁶ Kim “The Institutionalization of YouTube: From User-Generated Content to Professionally Generated Content” (2012) 34 *Media, Culture & Society* 53-67 p.54.

¹²⁷⁷ For a more detailed breakdown of the commercialisation of YouTube, see *ibid.*

relating to the video.¹²⁷⁸ In this way, it is possible to obtain insight into wider public attitudes of footage of the crime and, subsequently, of the defendant. Comments are authored via usernames, offering a degree of anonymity to each post. Studies have shown that such anonymity with comments can be profane,¹²⁷⁹ extreme and subversive.¹²⁸⁰ However, YouTube comments of online video “evidence” of crimes also provide an invaluable insight into the public reaction to the content of these videos and their subsequent attitudes towards the defendant.

YouTube’s practice of date-stamping comments in relation to the current day, rather than providing specific dates, makes it difficult to identify an appropriate date spectrum from which to source relevant comments. As such, all comments for the analysed videos were considered. Comments that were not relevant to the topic were not coded and duplicate posts, or those not in the English language, were eliminated from analysis.

Footage of the Boston Marathon Bombings

Relevant footage for this analysis was identified using YouTube’s suggested search function, as its predictive text displays popular searches on the topics and, thus, indicates the footfall of users of the site. Footage for the Boston bombings were found using the search term “Boston Marathon bombing”. Because of the nature of this research “Dzhokhar Tsarnaev” was also searched. Several of the most viewed YouTube videos were breaking news bulletins and accompanied by rolling commentary by journalists. Due to the chaotic nature of breaking news and the pressure to document the aftermath of the crime, there is an increased likelihood that misinformation will be provided. As such, these videos were eliminated to avoid any gossip or hearsay evidence prejudicing the comments. Search results were then filtered according to the most viewed.

The most viewed footage of the bombing was posted by *The Boston Globe*, documented by an eyewitness at the finish line, which clearly shows the first of the explosions and the immediate aftermath. This footage went viral within hours and *The Boston Globe* video amassed over 24 million views and nearly 94,000 comments. Unfortunately, the way YouTube presents comments posted on the website, made it very difficult to view all the comments in this feed. Only a limited number of comments are

¹²⁷⁸ *Supra* Antony and Thomas n128.

¹²⁷⁹ *Supra* Lindgren n545 p.133.

¹²⁸⁰ *Supra* Antony and Thomas n128 p.1292 (Note: this study focused on an online news forum however the discussion regarding the negative side effects of anonymity are applicable for YouTube).

available for immediate viewing. In order to access further comments, a “show more” button had to be repeatedly clicked. This made for an increasingly unresponsive website, making it very difficult to access the earliest comments. A preliminary reading of the comments opened on this site showed that the overwhelming majority of posts were not commenting on the crime but, rather, discussing the merits of Islam, regarded as culpable for the attack, often with very abusive language. As such, it was decided that this forum would not yield sufficient data for the purposes of this thesis. Whilst this unfortunately limits analysis, it is not anticipated to have a significant impact on the outcome of the research as the focus is on the themes of the comments in the forums and the ways in which the defendant and the crime is being discussed online. It is not a quantitative consideration of what is discussed online. The aims of this research can be achieved without analysing the comments of the most viewed YouTube footage of the Boston Marathon bombings.

Instead, a YouTube video posted by the GlobalLeaks news, which depicted the same footage as that posted by *The Boston Globe* was analysed. As this video was the first video that came up when filtering searches for the Boston Marathon bombings under the “most relevant” criteria (the default setting for YouTube settings) it is believed that this video generated sufficient footfall to mitigate the elimination of the most viewed footage.

This was compared with comments accompanying an uploaded video posted by NekoAngel3Wolf, the second most viewed raw footage of the explosions. This film is taken by a marathon runner, presumably wearing film recording equipment (such as a GoPro). Footage of the first explosion is clearly visible however the video was very short and, thus, only a few seconds of the immediate reaction can be seen with screams from the public clearly heard.

As the central focus of this thesis is on the potential impact of social media on perceptions of the defendant, the above videos were supplemented with a video that clearly shows Dzhokhar Tsarnaev at the marathon, identified through the search term “Tsarnaev”. The most viewed footage was an interview with the Tsarnaev brothers’ mother, in the days following the blasts, insisting that her sons are innocent. As such, it was eliminated from consideration. The second video is a montage of surveillance footage of the crime, released by the FBI during Dzhokhar’s trial. Although the timing of the release of this footage is somewhat distanced from the emotional reaction of the public during the immediate aftermath of the crime, comments from this posting were

included for analysis, as they illustrate public reaction to an individual on trial for a violent and deeply shocking crime.

Table 6: Breakdown of the YouTube comments analysed or eliminated for the Boston Marathon bombing

	Amount Viewed¹²⁸¹	Total Comments	Eliminated	Not Coded	Total Analysed
Mashable	548,141	789	1	508	280
NekoAngel3 Wolf	3,086,900	2,666	141	1,597	928
GlobalLeaks News	1,607,145	5,731	90	4,390	1,251
Boston Bombing					2,459

Footage of the Woolwich Killing

Eyewitness documentation of Lee Rigby’s murder is markedly different from that of the Boston Marathon bombings, primarily because the defendants actively encouraged filming as they justified their attack. As such, footage of Michael Adebolajo and Michael Adebowale were widely available on the day of the attack. Videos that clearly show the defendants at the scene of the crime were considered for analysis. Both the phrases “Woolwich Attack” and “Woolwich Killing” were searched. The two most watched videos identified from these search terms proved unsuitable to analyse online commentary of the defendant and were eliminated. The most viewed film was a topical video blog by American Philip De Franco who provides a summary of the top news items of the week.¹²⁸² Although this footage received over 1.5 million views, the nature of the video, which discussed a variety of American-centric news items alongside the Woolwich killing, meant footage of the crime was brief and accompanied by the subjective analysis of the blogger.

The second most viewed footage was the BBC’s 6-O’Clock news bulletin on the day of the attack, uploaded by YouHotNews.¹²⁸³ Whilst this footage contained images of the crime scene, taken from a news helicopter, there were no images of the perpetrators and it was thus unsuitable for an analysis on perceptions of the defendants. As a result,

¹²⁸¹ Data correct as of the 28th April 2016.

¹²⁸² <<https://www.youtube.com/watch?v=PsJg4F7CDIQ>>.

the most relevant footage for the purposes of this thesis were from the third and fourth most viewed videos, created by the news broadcaster Sky News, who uploads each individual bulletin broadcast on its YouTube Channel, and the YouTube user, woolwichfinest, who appears to have created a YouTube account for the express purpose of uploading content.

Table 7: Breakdown of the YouTube comments analysed or eliminated for the Woolwich killing

	Amount Viewed 1284	Total Comments	Eliminated	Not Coded	Total Analysed
woolwichfinest	814, 432	1,751	0	1,127	624
Sky News	622,609	2,685	2	1,381	1,302
Woolwich Killing					1,926

Footage of the Libyan Conflict

Despite the length of the Libyan conflict and the use of social media in order to disseminate information, it was difficult to find relevant footage for analysis. Although there were plenty of online videos about Gaddafi, many purported to mock him, like the Zenga Zenga song discussed in Chapter Four. There were also a number of widely watched video blogs that provided personal opinions about the Libyan leader. Neither of these types of videos were suitable for this analysis as they did not provide unbiased commentary of the Libyan conflict or the alleged crimes committed during this time and were eliminated from consideration. Furthermore, any video that provided commentary on its contents by a news agent was also eliminated as it was difficult to verify the information provided. Due to the complexity of the conflict and the crimes Gaddafi has been accused of committing, only raw footage was considered for analysis, as this enabled the viewer to formulate their own opinions about the content of the video and Gaddafi's guilt.

Relevant footage was found using the search terms "Gaddafi" and "Libya protests" and search results were sorted by the "view count" filter. The most viewed video in the "Gaddafi" category was footage of his capture, published by the news network Al Jazeera and posted onto YouTube by user xciter79. Other search results in this category were either duplicate imagery of Gaddafi's capture, or their content made

¹²⁸³ <<https://www.youtube.com/watch?v=oCw3ewJOHes>>.

¹²⁸⁴ Data correct as of the 28th April 2016.

them unsuitable for analysis for reasons given above. Thus, this video was supplemented by two videos identified using the search term “Libya protests”. During the anti-government demonstrations, social media was used as a means to disseminate footage of the government’s allegedly violent response against peaceful protestors.¹²⁸⁵ This search term was designed to find such videos to analyse alongside Al Jazeera’s, as such footage could provide apparent “evidence” of Gaddafi’s guilt, reflecting the use of YouTube for the domestic case studies.

Unlike images of Gaddafi’s capture, videos of the Libyan protests were not widely viewed or commented upon. Those videos that had the highest view count were clippings from news reports containing commentary by journalists and were not suitable for analysis. Thus, it was necessary to be more selective in identifying relevant videos that had sufficient comments to analyse. Two videos of raw footage of the Libyan protests was chosen for analysis. Both published by the news agency RT and apparently filmed on a smartphone, one of these videos showed men in military uniform apparently defecting from Gaddafi’s army to join the Libyan rebels. The second film was a montage of footage taken during the protests.

Table 8: Breakdown of the YouTube comments analysed or eliminated for the Libyan conflict

	Amount Viewed¹²⁸⁶	Total Comments	Eliminated	Not Coded	Total Analysed
Al-Jazeera	6,063,925	9,355	381	5,616	3,358
Army Defectors	113,448	278	7	205	66
Libyan Protests	162,170	504	11	275	218
Total for Libyan Conflict					3,642

¹²⁸⁵ Bruns, Highfield, *et al.* “The Arab Spring and Social Media Audiences: English and Arabic Twitter Users and Their Networks” (2013) 57 *American Behavioral Scientist* 871-898, Comunello and Anzera “Will the Revolution Be Tweeted? A Conceptual Framework for Understanding the Social Media and the Arab Spring” (2012) 23 *Islam and Christian-Muslim Relations* 453-470.

¹²⁸⁶ Data correct as of the 28th April 2016.

Content of the YouTube Footage

The content of the videos analysed provides important context for the assessment of the YouTube comments. As such, they are detailed below in order to supplement the analysis in the second section of Chapter Three.

The Boston Marathon Bombings

GlobalLeaks News¹²⁸⁷

This video was the most watched footage of the Boston Marathon bombings when filed under the default “Most Relevant” sorting of YouTube searches. The footage replaced the most watched video, posted by *The Boston Globe* newspaper, which is exactly the same in content. It is possible to see the aftermath of the first bomb within two seconds of the two-minute-and-forty-eight-second video. Taken by an anonymous individual standing right at the finish line of the Marathon, the film shows smoke from the first bomb, to the right of the frame. The reaction of the runners, some of whom fall down, can be clearly seen and the screams from spectators can be heard. The explosion of the second bombing can be heard sixteen seconds into the video. The camera starts moving towards the site of the explosion, filming the dismantling of the spectator barriers by first responders. Footage is jerky, nevertheless it is possible to see individuals lying on the ground, clearly hurt by the blasts. First responders can be heard saying, “there’s gotta be people hurt out there” and “we need help”. The cries of shock from the cameraman with a repeated “Oh my God” are also clearly audible.

NekoAngel3Wolf¹²⁸⁸

This is a very short video, just thirteen seconds, from the perspective of a runner, who is apparently wearing a video camera. The runner’s daughter posted the footage onto YouTube, confirming in the description of the video that it was her mother who ran the race. The video initially shows runners in the marathon. The explosions of the first bomb clearly visible to the left of the frame, albeit at a distance, within eight seconds of the footage. The aftermath of the bomb cannot be seen as the camera is immediately dropped to the floor. Nevertheless, it is possible to clearly hear the screams from spectators. The video finishes before the second explosion can be heard.

¹²⁸⁷ Available from <<https://www.youtube.com/watch?v=-xiXroQp8t4>>.

¹²⁸⁸ Available from <<https://www.youtube.com/watch?v=WIAfyYQzZaM>>.

Mashable¹²⁸⁹

The final video considered for the Boston Marathon bombings is a soundless montage of FBI surveillance videos of Dzhokhar Tsarnaev used by the prosecution during his trial. Posted by Mashable, the video was the second most viewed video under the search term “Dzhokhar Tsarnaev”. The surveillance montage has not been edited beyond shortening footage to the relevant sections and informative captions, detailing where the surveillance was taken and the timings of the footage have been added to the film in appropriate places.

The film shows CCTV footage from several angles of the two brothers walking along Boylston Street, Boston, where the bombs exploded. Both men are carrying large black rucksacks, such as the ones that were identified as containing the bombs. Tamerlan Tsarnaev is in front and circled in black, in reference to the black cap that he is wearing, which became a key identifying item of clothing for investigators. Dzhokhar is shown a few steps behind, depicted in a white circle, to match his identifying white cap. Forty seconds into the video, surveillance from a local business shows the front of the restaurant and the pavement both of which are packed with spectators and customers. Dzhokhar Tsarnaev, identified with a white circle, can be seen approaching and then waiting by a tree in the top left of frame. The footage then cuts to still photos one minute and four seconds into the video, clearly showing Dzhokhar Tsarnaev behind a group of spectators as well as 8-year-old Martin Richard, standing on the railing with his sister. One minute and eight seconds into the video, the restaurant surveillance footage is once again shown. Public reaction to the first blast (indicated only by the shuddering of the camera and a small caption added to the right of the frame) is shown. Dzhokhar can then be seen leaving the area one minute and fifteen seconds into the video. At one minute and twenty-two seconds the explosion of the second bomb is clearly seen, with the light initially obscuring the images from the CCTV camera. The film then cuts to footage of people running away from the scene, with Dzhokhar’s feet (the rest of him just out of shot) highlighted. Tsarnaev can then be seen twenty-five minutes after the explosions buying milk from a Whole Foods store’s surveillance camera at one minute and forty-two seconds, with the video ending with footage of Dzhokhar Tsarnaev driving away from the store’s carpark.

¹²⁸⁹ Available from <<https://www.youtube.com/watch?v=xIJSw3Mhyd8>>, this video has since been made private.

The Woolwich Killing

Sky News¹²⁹⁰

The three-minute-twenty-second bulletin, broadcast on the 22nd May and posted on YouTube a day later, provides an overview of the attack and has received just under 920,000 views. In contrast to the raw footage uploaded by woolwichfinest, which will be discussed in greater detail below, the Sky News video, named “Woolwich Soldier Murder: Attackers ‘Urged Passersby to Film Incident’”, is expertly edited and commented upon.

A montage of the day’s events is analysed by Sky News reporter Nick Martin, who provides a voice-over commentary of the footage. The matter-of-fact tone is accompanied by images taken by Sky News film crews, photographs and video of the attack captured by bystanders, alongside eyewitness accounts of the incident. Included in the video was a photograph clearly showing Adebowale talking to Ingrid Loyau-Kennett, holding a bloody knife.¹²⁹¹ This was followed by a still image from a video where Adebolajo, covered in blood and brandishing a meat cleaver, justified the attack.¹²⁹² Footage of police officers shooting the suspects was also shown, which was accompanied by a voice-over of a telephone interview with an eyewitness, describing the killing. In providing an overview of the day’s events, the Sky News bulletin includes description of the aftermath of the killing, such as the EDL-led demonstrations in Woolwich on the night of the 22nd and the condemnation of the attack by the Muslim Council of Britain.

woolwichfinest¹²⁹³

Uploaded on the day of the incident, this video contains raw footage of the arrest of the two suspects. Filmed by an eyewitness, from a distance, editing is minimal, with footage simply being shortened into the key events. The initial part of the video shows witnesses standing over a body lying on the road. Later, Adebolajo, in a distinctive beige overcoat, is filmed talking to Ingrid Loyau-Kennett, notable in a blue Gillet. The video then shows Adebowale, who is less identifiable, talking to two women whose identities cannot be confirmed from the distance filmed, the body of Lee Rigby is clearly seen on the road. The picture then cuts to a chaotic scene during the arrival of armed police officers. The camera goes past a body, presumably that of Lee Rigby, on

¹²⁹⁰ Available from <<https://www.youtube.com/watch?v=WAh7FEESLpU>>.

¹²⁹¹ From 0:39.

¹²⁹² From 1:01.

¹²⁹³ Available from <<https://www.youtube.com/watch?v=-ggX9nyUfZI>>.

the floor and focuses on activity on a street corner next to a police car. Armed police can be clearly seen standing over two men, one sitting up but passive and the other apparently unconscious, on the road. The footage ends with a shot of a mass of police cars and ambulances at the scene of the crime.

The Libyan Conflict

Al Jazeera¹²⁹⁴

This graphic video comes with a warning from YouTube that it is potentially offensive or graphic. The footage has been taken by a rebel fighter, presumably with a smartphone. It clearly shows Gaddafi's body on the floor, covered in blood and surrounded by rebel fighters. The video does not make it clear the manner of Gaddafi's death or who killed him

RT - Protest Violence¹²⁹⁵

This footage contains a montage of images that appear to show the aftermath of violence. A scene of a street in night time, strewn with debris and a car on fire is followed by what appears to be a pool of blood on a metal window shutter, lying on the ground. A smoke-damaged building is shown, which cuts into footage of various crowds chanting vociferously but peacefully. In one shot, two men are carrying a man, who appears to be injured, away from the protests. The video ends, bizarrely, with Gaddafi sitting in what appears to be a golf cart, carrying a grey umbrella.

RT - Army Defectors¹²⁹⁶

This footage, presumably taken by a smartphone shows jubilant crowds cheering on the streets of an unnamed city and firing bullets in the air. It depicts a series of 4x4 vehicles containing men in army fatigues. The crowds chant "Libya! Libya!" as they welcome what appears to be defecting soldiers from Gaddafi's army.

¹²⁹⁴ Available from <<https://www.youtube.com/watch?v=g07otrwI4j4&bpctr=1452199855>>.

¹²⁹⁵ Available from <<https://www.youtube.com/watch?v=Vovl6h4Qmuw>>.

¹²⁹⁶ Available from <<https://www.youtube.com/watch?v=zRdBkbbVkoQ>>.

Social Media Template Data

The Boston Marathon Bombing

Twitter 15th April 2013 – Time analysed: 13:00-24:00

Key: 12:00-13:00, 13:00-14:00, 14:00-15:00, 15:00-16:00, 16:00-17:00, 17:00-18:00, 18:00-19:00, 19:00-20:00, 20:00-21:00, 21:00-22:00, 22:00-23:00, 23:00-24:00.

DEFENDANT

Guilty 2, 2, 2, 1

Horror of the Crime 25, 11, 6, 12, 13, 19, 18, 12, 13, 18, 14

State Failures

Punishment 1, 3, 2, 1

Racial Prejudice

Religious Prejudice

Response to Prejudice 1, 1, 1

Not Guilty

Sympathy for the Crime

Not Yet Convicted

Innocent

Due Process

Explanation of the Process/Investigation

VICTIM

Sympathies 26, 17, 20, 27, 37, 35, 32, 43, 45, 48

Congratulations/Thankful to State Services 1, 1, 1, 2, 4, 1, 3

Connection to the Victim/Bombing 2, 2, 1, 1, 1

MEDIA

Providing Information 11, 14, 14, 21, 12, 9, 11, 15, 12, 13, 15

Reference to News Media 2, 3, 1, 2, 1, 2, 3, 2

Tweet by News Media 2, 37, 46, 40, 48, 31, 33, 15, 16, 18, 17

Criticism of News Reporting 1, 1

EYEWITNESS

Eyewitness Account 9, 2

Reference to an Eyewitness Account 2, 2, 2, 1

Twitter 18th April 2013 – 20th April 2013 – Time analysed: 16:00 (on 18th) – 24:00 (on the 19th)

Key: 16:00-17:00, 17:00-18:00, 18:00-19:00, 19:00-20:00, 20:00-21:00, 21:00-22:00, 22:00-23:00, 23:00-24:00 ||¹²⁹⁷ 24:00-1:00, 1:00-2:00, 2:00-3:00, 3:00-4:00, 4:00-5:00, 5:00-6:00, 6:00-7:00, 7:00-8:00, 8:00-9:00, 9:00-10:00, 10:00-11:00, 11:00-12:00 || 12:00-13:00, 13:00-14:00, 14:00-15:00, 15:00-16:00, 16:00-17:00, 17:00-18:00, 18:00-19:00, 19:00-20:00, 20:00-21:00, 21:00-22:00, 22:00-23:00, 23:00-24:00.

DEFENDANT

Guilty 2, 4, 4, 3, 1, 4, || 1, 2, 1, 3 || 1, 1, 2, 5, 3, 8, 2, 3, 3, 3

Horror of the Crime 1, 2, 14, 12 || 6, 5, 2, 6, 5, 6, 8, 5, 2, 9, 4, 4 || 8, 2, 9, 9, 5, 1, 1, 3

State Failures || 1, 1 || 1, 5, 4, 2, 1, 1, 2, 4

Punishment 1 || 1 || 1

Racial Prejudice 1 || 1, 1, 1 || 1, 1

Religious Prejudice 1 || 1 || 2, 1, 2, 1

Response to Prejudice 2, 5, 4, 4, 1 || 2, 2, 1, 1, 1 || 1, 1, 1, 1, 5, 1, 4

Not Guilty

Sympathy for the Crime

Not Yet Convicted

Innocent

Due Process

Explanation of the Process/Investigation 1 || 1 || 1

VICTIM

Sympathies 3, 12, 15, 18, 17, 17, 12, 13 || 2, 2, 2, 2, 2, 1, 3, 3, 13, 3, 10, 8 || 9, 7, 12, 5, 7, 19, 14, 30, 32, 38, 43

Congratulations/Thankful to State Services 2, 1, 1, 2 || 2, 1, 1, 1, 1, 2, 1 || 1, 2, 2, 3, 3, 4, 7, 18, 11, 23, 8

Connection to the Victim/Bombing || 1, 1, 1, 1 || 1, 2

MEDIA

Providing Information 25, 41, 33, 34, 22, 29, 26, 27 || 38, 35, 26, 17, 26, 31, 23, 14, 13, 14, 15, 7 || 18, 24, 15, 9, 16, 19, 14, 28, 1, 4, 2

Reference to News Media 3, 6, 2, 6, 3, 3, 1, 2 || 5, 1, 8, 1, 1, 3, 2, 2, 2, 1, 4 || 3, 2, 1, 1, 6, 7, 7, 4, 2, 3, 3

Tweet by News Media 59, 20, 14, 8, 15, 9, 13, 16 || 19, 36, 43, 56, 55, 49, 36, 48, 39, 43, 56, 52 || 24, 23, 34, 34, 42, 35, 37, 12, 33, 35, 12, 9

¹²⁹⁷ For ease of reference the data here is divided into twelve-hour day chunks. || denotes midday and midnight.

Criticism of News Reporting 2, 2, 4, 3, 1, 13 || 11, 5, 1, 1, 1, 1, 2, 1, 1 || 6, 2, 1, 2

EYEWITNESS

Eyewitness Account || || 1

Reference to an Eyewitness Account 1, 1, 1 || 1 || 1

OTHER

Conspiracy 2, 2, 1, 2, 2, 1 || || 1, 2

Response to Conspiracy || 1 ||

Comment on Filming (e.g. Quality)

Comparison with Other Situations/America's Asking for It 1 || ||

Twitter 10th July 2013 – Time analysed: 9:00-24:00

Key: 9:00-10:00, 10:00-11:00, 11:00-12:00 || 12:00-13:00, 13:00-14:00, 14:00-15:00, 15:00-16:00, 16:00-17:00, 17:00-18:00, 18:00-19:00, 19:00-20:00, 20:00-21:00, 21:00-22:00, 22:00-23:00, 23:00-24:00.

DEFENDANT

Guilty 2, 3, 5 || 1, 3, 3, 8, 3, 9, 5, 5, 3, 7, 4, 2

Horror of the Crime 1 ||

State Failures

Punishment

Racial Prejudice

Religious Prejudice || 1, 1

Response to Prejudice 1 ||

Not Guilty 1 || 1, 1, 3, 2, 1, 1

Sympathy for the Crime

Not Yet Convicted

Innocent

Due Process || 1, 1, 1

Explanation of the Process/Investigation

VICTIM

Sympathies 1, 4, 2 || 7, 3, 5, 1, 1, 2, 3, 9, 7, 2

Congratulations/Thankful to State Services 1

Connection to the Victim/Bombing

MEDIA

Providing Information 2, 9, 3 || 1, 11, 41, 13, 1, 8, 4, 5, 7, 6, 5, 2

Reference to News Media 3, 1, 8 || 1, 9, 3, 7, 6, 11, 10, 11, 8, 5, 7, 5

Tweet by News Media 11, 12, 8 || 11, 9, 33, 32, 17, 7, 7, 5, 8, 1, 4

Criticism of News Reporting || 2, 3

EYEWITNESS

Eyewitness Account

Reference to an Eyewitness Account

OTHER

Conspiracy 2, 2, 3, 1, 2, 1, 2

Response to Conspiracy

Comment on Filming (e.g. Quality)

Comparison with Other Situations/America's Asking for It

Twitter 8th April 2015 – Time analysed: 9:00-24:00

Key: 9:00-10:00, 10:00-11:00, 11:00-12:00 || 12:00-13:00, 13:00-14:00, 14:00-15:00, 15:00-16:00, 16:00-17:00, 17:00-18:00, 18:00-19:00, 19:00-20:00, 20:00-21:00, 21:00-22:00, 22:00-23:00, 23:00-24:00.

DEFENDANT

Guilty 3, 3, 1 || 3, 1, 8, 9, 14, 17, 8, 7, 6, 6, 6, 16

Horror of the Crime 1 ||

State Failures 1 ||

Punishment || 2, 2, 4, 8, 1, 2, 1

Racial Prejudice 1, 1 ||

Religious Prejudice

Response to Prejudice

Not Guilty

Sympathy for the Crime

Not Yet Convicted

Innocent

Due Process

Explanation of the Process/Investigation

VICTIM

Sympathies 1 || 10, 7, 27, 32, 32, 27, 10, 5, 15, 15, 22, 25

Congratulations/Thankful to State Services

Connection to the Victim/Bombing

MEDIA

Providing Information 20, 19, 6 || 48, 38, 22, 10, 5, 6, 6, 1, 1, 2

Reference to News Media 7, 9, 6 || 4, 11, 8, 7, 10, 9, 8, 11, 16, 8, 8

Tweet by News Media 4, 13, 3 || 27, 38, 14, 17, 12, 15, 6, 15, 7, 15, 9, 3

Criticism of News Reporting || 1, 2, 2, 1, 2, 3, 2, 2

EYEWITNESS

Eyewitness Account

Reference to an Eyewitness Account

OTHER

Conspiracy 1 || 1, 2, 1, 1, 1

Response to Conspiracy

Comment on Filming (e.g. Quality)

Comparison with Other Situations/America's Asking for It

Twitter 15th May 2015 – Time analysed: 9:00-24:00

Key: 9:00-10:00, 10:00-11:00, 11:00-12:00 || 12:00-13:00, 13:00-14:00, 14:00-15:00, 15:00-16:00, 16:00-17:00, 17:00-18:00, 18:00-19:00, 19:00-20:00, 20:00-21:00, 21:00-22:00, 22:00-23:00, 23:00-24:00.

DEFENDANT

Guilty 3, 1 || 6, 7, 11, 17, 12, 8, 13, 11, 10, 10

Horror of the Crime

State Failures

Punishment || 1, 6, 1, 2, 2, 1

Racial Prejudice

Religious Prejudice || 1, 2

Response to Prejudice

Not Guilty

Sympathy for the Crime

Forgiving Tsarnaev 1 || 1, 1, 8, 10, 16, 18, 20, 11, 11, 8, 8

Due Process

Explanation of the Process/Investigation

VICTIM

Sympathies 1 || 4, 5, 11, 10, 8, 7, 7, 10, 5, 10, 3

Congratulations/Thankful to State Services

Connection to the Victim/Bombing

MEDIA

Providing Information 26, 9, 22 || 19, 40, 40, 18, 10, 3, 4, 10, 2, 7, 7, 8

Reference to News Media 4, 5, 8 || 5, 7, 2, 7, 9, 12, 8, 6, 6, 11, 14, 9

Tweet by News Media 5, 3, 5 || 2, 41, 36, 23, 19, 9, 13, 9, 8, 7, 5, 7

Criticism of News Reporting || 2, 3, 3, 2, 4, 3, 1, 1

EYEWITNESS

Eyewitness Account

Reference to an Eyewitness Account

OTHER

Conspiracy 3

Response to Conspiracy

Comment on Filming (e.g. Quality)

Comparison with Other Situations/America's Asking for It

YouTube

Key: [GlobalLeaksNews](#), [NekoAngel3Wolf](#), [FBI Mashable](#)

DEFENDANT

- Guilty [116](#), [50](#), [90](#)
 - Horror of the Crime [137](#), [75](#), [1](#)
 - State Failures [8](#), [1](#)
 - Punishment [84](#), [23](#), [19](#)
 - Racial Prejudice [22](#), [9](#), [1](#)
 - Religious Prejudice [147](#), [93](#), [10](#)
 - Response to Prejudice [64](#), [95](#), [3](#)
- Not Guilty [25](#), [2](#), [16](#)
 - Sympathy for the Crime [40](#), [15](#), [1](#)
 - Not Yet Convicted
- Due Process [4](#), [2](#), [17](#)
 - Explanation of the Process/Investigation

VICTIM

- Sympathy for the Victims [162](#), [108](#), [5](#)
- Thankful to State Services [18](#), [3](#)
- Connection to the Victim/Bombing [80](#), [9](#), [4](#)

MEDIA

- Providing Information
- Reference to News Media
- Tweet by News Media
- Criticism of News Reporting

EYEWITNESS

- Eyewitness Account
- Reference to an Eyewitness Account

OTHER

- Conspiracy [274](#), [48](#), [68](#)
- Response to Conspiracy [166](#), [10](#), [28](#)
- Comment on Filming (e.g. Quality)
- Comparison with Other Situations/America's Asking for It [52](#), [29](#), [1](#)

The Woolwich Killing

Twitter 22nd May 2013 – Time analysed: 14:00-24:00

Key: 14:00-15:00, 15:00-16:00, 16:00-17:00, 17:00-18:00, 18:00-19:00, 19:00-20:00, 20:00-21:00, 21:00-22:00, 22:00-23:00, 23:00-24:00.

DEFENDANT

Guilty 1, 1, 9, 10, 9, 6, 9

Horror of the Crime 26, 7, 9, 10, 7, 10, 7, 1, 3, 3

State Failure 1, 1, 3, 2, 2, 1, 4, 2

Punishment 1

Racial Prejudice 1

Religious Prejudice 2, 1

Response to Racial/Religious Prejudice 1, 2, 7, 12, 29, 27, 10, 16, 14

Not Guilty

Sympathy for the Crime

Not Yet Convicted

Due Process

Explanation of the Process/Investigation 2

VICTIM

Lee Rigby 1, 3, 6, 8, 3, 2, 7, 5

Hero (Including Reference to Help 4 Heroes) 1, 3, 4, 1, 1, 2

Helpless

Attack on State/“Our Boys” 3, 3, 1

Angels of Woolwich 1, 3, 12, 2, 4

Rigby’s Family 1, 3, 5, 6, 6, 2, 1, 3

MEDIA

Reference to News Media 8, 5, 4, 5, 3, 1, 5, 1

Journalists Looking for Information 5, 1

Tweet by News Media 7, 20, 27, 17, 18, 2, 8, 4, 4

Criticism of News Media 4, 3, 4, 6, 2, 2, 1, 3, 1

Facts of Crime 26, 15, 19, 16, 13, 11, 7, 3, 2

EYEWITNESS

Eyewitness Account 2

Reference to an Eyewitness Account 17, 21, 4, 1, 1, 2, 2

OTHER

Reference to Nazis/Hitler

Pro-EDL

Anti-EDL 1, 16, 12, 13

Twitter 23rd May 2013 – Time analysed: 24:00 (on 23rd) – 24:00 (on the 24th)

Key: 24:00-1:00, 1:00-2:00, 2:00-3:00, 3:00-4:00, 4:00-5:00, 5:00-6:00, 6:00-7:00, 7:00-8:00, 8:00-9:00, 9:00-10:00, 10:00-11:00, 11:00-12:00 || 12:00-13:00, 13:00-14:00, 14:00-15:00, 15:00-16:00, 16:00-17:00, 17:00-18:00, 18:00-19:00, 19:00-20:00, 20:00-21:00, 21:00-22:00, 22:00-23:00, 23:00-24:00.

DEFENDANT

Guilty 1, 1, 6, 2, 2, 4, 5, 7, 1, 3, 5 || 3, 3, 2, 1, 1, 3, 1, 2, 4, 4, 1
 Horror of the Crime 10, 3, 2, 4, 11, 5, 1, 3, 5, 1, 2 || 1, 1, 1, 1, 1, 1
 State Failure 3, 1, 5, 4, 2, 5, 1, 1, 2, 3, 1, 3 || 3, 2, 1, 1, 2, 1, 3
 Punishment 1, 1, 1, 2, 1, || 1, 1
 Racial Prejudice 1, 1 ||
 Religious Prejudice 4, 4, 5, 4, 6, 2, 2, 1, 2 || 1, 1, 1, 1, 1, 2, 1
 Response to Racial/Religious Prejudice 13, 17, 16, 9, 12, 13, 4, 9, 6, 7, 6
 || 5, 7, 5, 5, 2, 3, 4, 2, 5
 Not Guilty
 Sympathy for the Crime 1 ||
 Not Yet Convicted
 Due Process
 Explanation of the Process/Investigation 1 ||

VICTIM

Lee Rigby 2, 1, 2, 1, 1, 2, 1, 2, 2, 1 || 2, 1, 13, 23, 20, 17, 15, 7, 5, 6
 Hero (Including Reference to Help 4 Heroes) 1, 1, 1 || 1, 3, 4, 2, 2, 1, 3
 Helpless
 Attack on State/“Our Boys” 1, 1, 1 || 1, 1, 1, 1
 Angels of Woolwich 6, 3, 9, 5, 3, 3, 6, 8, 4, 1, 2 || 3, 1, 3, 1, 1, 2, 1
 Rigby’s Family 5, 3, 2, 2, 5, 1, 3, 2, 2 || 1, 2, 1, 1, 1, 3, 1, 1, 2

MEDIA

Reference to News Media 1, 6, 1, 3 || 3, 2, 4, 1, 1, 3, 1, 2, 8
 Journalists Looking for Information
 Tweet by News Media 1, 1, 16, 10, 9, 24, 22, 40, 12 || 16, 13, 11, 9, 37, 18, 9, 1,
 3, 2, 4, 7
 Criticism of News Media 1, 1, 8, 2, 3, 4, 1 || 2, 1, 1, 1, 1, 2, 4
 Facts of Crime 4, 4, 6, 5, 6, 24, 10 || 17, 19, 3, 2, 20, 21, 2, 2

EYEWITNESS

Eyewitness Account
 Reference to an Eyewitness Account

OTHER

Reference to Nazis/Hitler
 Pro-EDL 1, 1 || 1
 Anti-EDL 7, 3, 2, 4, 6, 2, 5, 1, 2, 1, 5 || 4, 4, 4, 4, 3, 1, 1, 1, 1
 Conspiracy 1, 1, 2, 1 || 1, 1, 1
 Response to Conspiracy

Twitter 27th September 2013 – Time analysed: 9:00 – 24:00

Key: 9:00-10:00, 10:00-11:00, 11:00-12:00 || 12:00-13:00, 13:00-14:00, 14:00-15:00, 15:00-16:00, 16:00-17:00, 17:00-18:00, 18:00-19:00, 19:00-20:00, 20:00-21:00, 21:00-22:00, 22:00-23:00, 23:00-24:00.

DEFENDANT

Guilty 11, 13, 6 || 8, 3, 2, 1, 2, 5, 2, 1, 3, 2, 1
 Horror of the Crime
 State Failure
 Punishment 1, 3, 1 || 2, 1 1
 Racial Prejudice 1, 1
 Religious Prejudice
 Response to Racial/Religious Prejudice 3, 1
 Not Guilty
 Sympathy for the Crime
 Not Yet Convicted
 Due Process
 Explanation of the Process/Investigation

VICTIM

Lee Rigby 5, 6, 5 || 1, 1, 2, 4, 1, 1, 3, 2, 1
 Hero (Including Reference to Help 4 Heroes)
 Helpless
 Attack on State/“Our Boys”
 Angels of Woolwich
 Rigby’s Family 1

MEDIA

Reference to News Media 5, 10, 3 || 5, 1, 1
 Journalists Looking for Information
 Tweet by News Media 12, 2 || 1
 Criticism of News Media
 Facts of Crime 10, 3, 2 || 1, 3, 1, 1

EYEWITNESS

Eyewitness Account
 Reference to an Eyewitness Account

OTHER

Reference to Nazis/Hitler
 Pro-EDL
 Anti-EDL
 Conspiracy 3
 Response to Conspiracy

Twitter 29th November 2013 – Time analysed: 9:00 – 24:00

Key: 9:00-10:00, 10:00-11:00, 11:00-12:00 || 12:00-13:00, 13:00-14:00, 14:00-15:00, 15:00-16:00, 16:00-17:00, 17:00-18:00, 18:00-19:00, 19:00-20:00, 20:00-21:00, 21:00-22:00, 22:00-23:00, 23:00-24:00.

DEFENDANT

Guilty 4 || 8, 7, 4, 4, 3, 7, 10, 4, 3, 1, 6, 1
 Horror of the Crime || 4, 2, 1
 State Failure
 Punishment 1 || 1, 1, 2, 5, 2, 7, 2
 Racial Prejudice
 Religious Prejudice || 1, 1
 Response to Racial/Religious Prejudice
 Not Guilty
 Sympathy for the Crime
 Not Yet Convicted
 Due Process
 Explanation of the Process/Investigation 1

VICTIM

Lee Rigby 6 || 6, 4, 5, 4, 3, 8, 11, 9, 3, 4, 19, 7
 Hero (Including Reference to Help 4 Heroes) 1, 1
 Helpless
 Attack on State/“Our Boys”
 Angels of Woolwich 1 ||
 Rigby’s Family 5 || 3, 1, 1, 1, 1

MEDIA

Reference to News Media 1, 29, 13 || 14, 23, 12, 28, 15, 8, 5, 7, 2, 1
 Journalists Looking for Information
 Tweet by News Media 2, 7 || 3, 5, 8, 1, 2, 1
 Criticism of News Media 2, 1 || 1, 2
 Facts of Crime 6, 13, 57 || 56, 14, 46, 21, 6, 3, 14

EYEWITNESS

Eyewitness Account
 Reference to an Eyewitness Account

OTHER

Reference to Nazis/Hitler
 Pro-EDL
 Anti-EDL
 Conspiracy 1 || 1
 Response to Conspiracy

Twitter 19th December 2013 – Time analysed: 9:00 – 24:00

Key: 9:00-10:00, 10:00-11:00, 11:00-12:00 || 12:00-13:00, 13:00-14:00, 14:00-15:00, 15:00-16:00, 16:00-17:00, 17:00-18:00, 18:00-19:00, 19:00-20:00, 20:00-21:00, 21:00-22:00, 22:00-23:00, 23:00-24:00.

DEFENDANT

Guilty 17 || 8, 11, 11, 11, 8, 6, 16, 21, 3, 4, 19, 10
 Horror of the Crime || 3, 2, 1, 17, 8
 State Failure || 2, 6
 Punishment || 1, 3, 10, 2, 2, 14, 17, 2, 13, 1
 Racial Prejudice || 1, 1
 Religious Prejudice || 5
 Response to Racial/Religious Prejudice || 1, 1, 1, 1, 1
 Not Guilty
 Sympathy for the Crime
 Not Yet Convicted
 Due Process
 Explanation of the Process/Investigation

VICTIM

Lee Rigby 1 || 2, 12, 29, 34, 43, 58, 72, 39, 19, 15, 54, 40
 Hero (Including Reference to Help 4 Heroes) || 3
 Helpless
 Attack on State/“Our Boys”
 Angels of Woolwich || 1, 1
 Rigby’s Family || 3, 5, 3, 2, 4, 9, 6, 3, 3, 2, 4

MEDIA

Reference to News Media 24, 44 || 43, 25, 21, 6, 10, 2, 4, 13, 9, 4
 Journalists Looking for Information
 Tweet by News Media 1, 2, 8 || 12, 23, 7, 1, 1
 Criticism of News Media || 2
 Facts of Crime 6, 15, 23 || 31, 9, 8, 6, 1, 1

EYEWITNESS

Eyewitness Account
 Reference to an Eyewitness Account

OTHER

Reference to Nazis/Hitler
 Pro EDL || 1, 1
 Anti EDL
 Conspiracy
 Response to Conspiracy

Twitter 26th February 2013 – Time analysed: 9:00 – 24:00

Key: 9:00-10:00, 10:00-11:00, 11:00-12:00 || 12:00-13:00, 13:00-14:00, 14:00-15:00, 15:00-16:00, 16:00-17:00, 17:00-18:00, 18:00-19:00, 19:00-20:00, 20:00-21:00, 21:00-22:00, 22:00-23:00, 23:00-24:00.

DEFENDANT

Guilty 1, 2, 6 || 2, 16, 10, 26, 8, 20, 12, 7, 2, 5
 Horror of the Crime || 3
 State Failure || 2
 Punishment 1 || 2, 1, 11, 18, 26, 17, 14, 15, 27, 21
 Racial Prejudice
 Religious Prejudice || 1
 Response to Racial/Religious Prejudice 1, 1, 1
 Not Guilty
 Sympathy for the Crime
 Not Yet Convicted
 Due Process
 Explanation of the Process/Investigation

VICTIM

Lee Rigby 2 || 8, 3, 23, 24, 48, 43, 44, 33, 65, 30
 Hero (Including Reference to Help 4 Heroes) || 3, 4, 2
 Helpless
 Attack on State/“Our Boys”
 Angels of Woolwich
 Rigby’s Family || 7, 2, 4, 1, 5, 5, 3, 13, 4

MEDIA

Reference to News Media 1 || 1, 21, 20, 22, 14, 7, 3, 15, 9, 3, 43
 Journalists Looking for Information
 Tweet by News Media 1 || 1, 6, 16, 6, 22, 6, 1, 1, 3
 Criticism of News Media
 Facts of Crime 3, 2 || 3, 2, 29, 31, 18, 11, 5, 5, 7, 1, 4

EYEWITNESS

Eyewitness Account
 Reference to an Eyewitness Account

OTHER

Reference to Nazis/Hitler
 Pro-EDL 1 || 1
 Anti-EDL || 1
 Conspiracy
 Response to Conspiracy

YouTube**Key:** [Raw Arrest](#), [Sky News](#)

DEFENDANT

Guilty [41](#), [74](#)Horror of the Crime [17](#), [50](#)State Failure [58](#), [118](#)Punishment [27](#), [89](#)Racial Prejudice [50](#), [64](#)Religious Prejudice [309](#), [554](#)Response to Racial/Religious Prejudice [119](#), [386](#)Not Guilty [1](#)Sympathy for the Crime [6](#), [6](#)

Not Yet Convicted

Due Process [1](#), [2](#)Explanation of the Process/Investigation [12](#), [51](#)

VICTIM

Lee Rigby [12](#), [51](#)Hero (Including Reference to Help 4 Heroes) [1](#), [4](#)

Helpless

Attack on State/“Our Boys” [1](#)Angels of Woolwich [1](#)Rigby’s Family [2](#), [21](#)

MEDIA

Reference to News Media

Journalists Looking for Information

Tweet by News Media

Criticism of News Media

Facts of Crime

EYEWITNESS

Eyewitness Account

Reference to an Eyewitness Account

OTHER

Reference to Nazis/Hitler [32](#), [23](#)

Pro-EDL

Anti-EDL

Conspiracy [20](#), [59](#)

Response to Conspiracy

Comments on Filming [2](#)

The Libyan Conflict

Twitter 18th February 2011 – Time analysed: 24-hour day

Key: 24:00-1:00, 1:00-2:00, 2:00-3:00, 3:00-4:00, 4:00-5:00, 5:00-6:00, 6:00-7:00, 7:00-8:00, 8:00-9:00, 9:00-10:00, 10:00-11:00, 11:00-12:00 || 12:00-13:00, 13:00-14:00, 14:00-15:00, 15:00-16:00, 16:00-17:00, 17:00-18:00, 18:00-19:00, 19:00-20:00, 20:00-21:00, 21:00-22:00, 22:00-23:00, 23:00-24:00.

DEFENDANT

Guilty 17, 15, 6, 6, 19, 9, 6, 3, 3, 3, 2, 4 || 6, 6, 6, 5, 5, 5, 4, 3, 7, 4, 5

Use of Mercenaries 4, 1, 2, 4, 1, 1, 1, 2, 2, 1 || 3, 1, 2, 2, 4, 4, 5, 4, 1, 2

People Against Gaddafi 8, 1, 5, 2, 2, 1 || 1, 5, 2, 1, 2, 2, 2, 1

Not Guilty

Supporting Gaddafi 2

Due Process

Qualifying Statements (e.g. “Alleged”) 1 || 1, 1, 2, 1, 4, 3

VICTIMS

Sympathy

PROTESTORS

Giving Information/Support 15, 6, 17, 30, 17, 12, 14, 31, 25, 19, 15, 14 || 12, 25, 19, 33, 25, 30, 48, 50, 64, 30, 37, 26

Death Toll 4, 10, 2, 4, 4, 1, 3, 1, 6, 3 || 3, 4, 5, 4, 5, 4, 3, 3, 3, 6, 2, 10

Reference to Protestors (e.g. Bloggers)

Seeking Information 1, 2 || 2, 1, 1, 1

Against the Rebels/Protestors

PREJUDICE¹²⁹⁸

Race

Religion

Response to Prejudice

NEWS MEDIA

Request for Information

Tweet/Comment by Journalist/Blogger 11, 7, 15, 17, 4, 15, 20, 15, 25, 26, 19, 27 || 28, 18, 12, 11, 15, 18, 11, 10, 6, 7, 17, 22

Reference to News Media 16, 26, 12, 9, 12, 4, 4, 10, 14, 14, 32, 22 || 21, 13, 24, 19, 17, 24, 13, 19, 14, 43, 21, 16

Criticism of News Media 1, 1, 1, 2, 2, 2 || 5, 5, 2, 1, 1

OTHER

Comments About the International Criminal Court || 2

Jokes 1, 1, 3, 2 || 2

¹²⁹⁸ Unlike the domestic case studies, this was considered in a separate category because there were Islamophobic comments directed at both Gaddafi and the dissidents.

Twitter 27th June 2011 – Time analysed: 24-hour day

Key: 24:00-1:00, 1:00-2:00, 2:00-3:00, 3:00-4:00, 4:00-5:00, 5:00-6:00, 6:00-7:00, 7:00-8:00, 8:00-9:00, 9:00-10:00, 10:00-11:00, 11:00-12:00 || 12:00-13:00, 13:00-14:00, 14:00-15:00, 15:00-16:00, 16:00-17:00, 17:00-18:00, 18:00-19:00, 19:00-20:00, 20:00-21:00, 21:00-22:00, 22:00-23:00, 23:00-24:00.

DEFENDANT

Guilty 1, 3, 5, 2, 3, 5, 2, 2, 4 || 4, 6, 5, 10, 13, 4, 2, 1

Use of Mercenaries

People Against Gaddafi 1, 1, 1 || 1

Not Guilty

Supporting Gaddafi 3, 1, 1 ||

Due Process

VICTIMS

Sympathy

PROTESTORS

Giving Information/Support 5, 1, 9, 2, 2, 5, 2, 1, 9 || 5, 1, 7, 2

Death Toll 1, 2, 1 ||

Reference to Protestors (e.g. Bloggers)

Seeking Information 1 ||

Against the Rebels/Protestors 3, 1, 1, 3 ||

PREJUDICE¹²⁹⁹

Race

Religion

Response to Prejudice

NEWS MEDIA

Tweet/Comment by Journalist/Blogger 24, 13, 20, 34, 18, 28, 17, 25, 29, 29, 57, 53 || 45, 34, 29, 12, 12, 18, 16, 19, 19, 14, 14

Reference to News Media 14, 34, 22, 23, 36, 24, 29, 35, 22, 37, 26, 19 || 31, 17, 23, 24, 29, 22, 17, 19, 20, 25, 27

Criticism of News Media 1, 3, 1, 1 || 1, 4, 1

OTHER

Comments About the International Criminal Court 1, 3, 1, 4, 1, 2 || 4, 2, 2, 3, 4, 2, 2, 3, 1

Comments Criticising NATO 5, 3, 3, 7, 3, 1, 1, 1 || 7, 1, 3, 3, 1

Jokes 3, 6, 2, 2 ||

¹²⁹⁹ Unlike the domestic case studies, this was considered in a separate category because there were Islamophobic comments directed at both Gaddafi and the dissidents.

Twitter 20th October 2011 – Time analysed: 24-hour day

Key: 24:00-1:00, 1:00-2:00, 2:00-3:00, 3:00-4:00, 4:00-5:00, 5:00-6:00, 6:00-7:00, 7:00-8:00, 8:00-9:00, 9:00-10:00, 10:00-11:00, 11:00-12:00 || 12:00-13:00, 13:00-14:00, 14:00-15:00, 15:00-16:00, 16:00-17:00, 17:00-18:00, 18:00-19:00, 19:00-20:00, 20:00-21:00, 21:00-22:00, 22:00-23:00, 23:00-24:00.

DEFENDANT

Guilty 3, 1, 1, 2, 3, 1, 3, 4, 1, 2 || 2, 3, 6, 5, 8, 6, 8, 7, 3, 3, 3

Use of Mercenaries 1, 1, 6, 2, 22, 1, 1 ||

People Against Gaddafi

Not Guilty

Supporting Gaddafi 1, 2 ||

Due Process

Qualifying Statements (e.g. “Alleged”) 3, 5 || 7, 1, 1

VICTIMS

Sympathy

PROTESTORS

Giving Information/Support 6, 5, 2, 2, 5, 3, 2, 1, 1, 6, 7 || 1, 1, 4, 6, 2

Death Toll

Reference to Protestors (e.g. Bloggers)

Seeking Information 1 ||

Against the Rebels/Protestors 1 ||

Horror of the Death || 2, 1, 2

PREJUDICE

Race

Religion

Response to Prejudice

NEWS MEDIA

Request for Information

Tweet/Comment by Journalist/Blogger 3, 6, 5, 6, 10, 6, 5, 14, 12, 26, 27, 56 || 48, 52, 63, 36, 50, 51, 56, 50, 43, 32, 43, 30

Reference to News Media 34, 41, 28, 43, 25, 20, 34, 18, 55, 42, 57, 26 || 34, 27, 20, 38, 27, 21, 17, 13, 27, 25, 18, 28

Criticism of News Media || 1, 1, 2

OTHER

Comments About the International Criminal Court 1 || 1, 1

Comments Criticising NATO 2, 3, 1, 6, 2, 2, 4, || 1, 1, 1, 1, 2

Jokes 1 || 4, 8, 6, 13, 9, 7, 11, 10, 7, 13, 7, 15

Justice Not Served || 2

YouTube

Key: [Al Jazeera](#), [RT – Protest Violence](#), [RT – Army Defectors](#)

DEFENDANT

Guilty [1305](#), [27](#), [14](#)
 Use of Mercenaries [2](#), [1](#), [1](#)
 People Against Gaddafi [7](#), [1](#), [1](#)
 Not Guilty [9](#)
 Supporting Gaddafi [357](#), [6](#), [6](#)
 Due Process
 Qualifying Statements (e.g. “Alleged”) [3](#)

VICTIMS

Sympathy

PROTESTORS

Giving Information/Support [248](#), [37](#), [20](#)
 Death Toll
 Reference to Protestors (e.g. Bloggers)
 Seeking Information
 Against the Rebels/Protestors [101](#), [7](#), [2](#)
 Horror of the Video [605](#), [1](#)

PREJUDICE

Race [204](#), [2](#)
 Religion [271](#), [55](#), [4](#)
 Response to Prejudice [61](#), [34](#), [3](#)

NEWS MEDIA

Request for Information
 Tweet/Comment by Journalist/Blogger
 Reference to News Media
 Criticism of News Media [1](#)

OTHER

Horror of the Video
 Comments About the International Criminal Court [28](#), [3](#)
 Comments Criticising NATO [375](#), [16](#), [7](#)
 Comments on Video (e.g. Blurry) [20](#)
 Conspiracy Theory [573](#), [23](#), [8](#)
 Response to Conspiracy Theory [36](#), [13](#), [2](#)
 Jokes [122](#), [6](#), [4](#)
 Justice Not Served [162](#)

Screenshots of the Tweets and YouTube Comments Quoted in Chapter Three

Screenshot 1.

On the Woolwich killing. Posted in the Youtube video by Sky News.

WhiteBritishWarrior 1 year ago
What were those two black guys thinking of? They must have lost their heads.

Screenshot 2.

Posted between 13-14EDT on the 15th April 2013, the day of the Boston bombings.

Christy Turlington @cturlington
Who has news on [#bostonmarathon](#)? True that bomb went off at finish line?
2 years ago Reply Retweet Favorite 14 more

Screenshot 3.

Posted between 13-14 on the 15th April 2013, the day of the Boston bombings.

J.R. Lind @jrlind
nothing up at globe or cnn yet. looks like twitter is your go to at the moment. [#bostonmarathon](#)
2 years ago Reply Retweet Favorite 7 more

Screenshot 4.

Posted between 14-15BST on the 22nd May 2013, the day of the Woolwich killing.

Gem Pinkney @gempinkney
Craziness coming from [#Woolwich](#). Mental how fast twitter snowballs ahead of the news feeds. No mention on any of the major news channels yet.
a year ago Reply Retweet Favorite 1 more

Screenshot 5.

Posted between 13-14EDT on the 8th April 2015, the day that Tsarnaev was found guilty.

Joshua Nadreau @joshuanadreau
Importance of @twitter highlighted today as [#BostonBombing](#) verdict is live tweeted on TV due to no cameras in federal court. [#Tsarnaev](#)
2 months ago Reply Retweet Favorite 21 more

Screenshot 6.

Posted between 13-14EDT on the 15th April 2013, the day of the Boston bombings.

Sister Toldjah @sistertoldjah
Prayers for [#BostonMarathon](#) runners, attendees, and organizers. What horrible news! God be with them.
2 years ago Reply Retweet Favorite 12 more

Screenshot 7.

Posted between 17-18BST on the 22nd May 2013, the day of the Woolwich killing.

Adam @adztbh
I find it sickening that a man who bravely defends our country is slaughtered like this. Extremism is the problem, not my religion [#woolwich](#)
a year ago Reply Retweet Favorite 71 more

Screenshot 8.

Posted between 22-23EDT on the 19th April, after the FBI released photos of the bombing suspects.

Betty @missb62
What a coward. The bomber could see there were kids everywhere. [#Boston pic.twitter.com/tN0HvyHnoh](#)
2 years ago Reply Retweet Favorite 103 more

Screenshot 9.

Posted between 19-20BST on the 23rd May 2013, the day after the Woolwich killing.

John 50 Shades Gray @johnny_boy1987
#ripleerigby thoughts are with his family and friends at this sad time hope they evil scumbags get what they deserve
a year ago Reply Retweet Favorite

Screenshot 10.

Posted between 22-23BST on the 23rd May, the day after the Woolwich killing.

Alman Ayan @alman1979
and so are the Syrian children they are unarmed too what happened in Woolwich is not an action it's a reaction it's an eye for eye #Woolwich
a year ago Reply Retweet Favorite 2 more

Screenshot 11.

Posted between 12-13BST on the 27th September 2013, the day the Woolwich suspects pleaded not guilty.

Gaz Wells @gazwells
How the hell have them two animals pleaded not guilty #RipLeeRigby
a year ago Reply Retweet Favorite 1 more

Screenshot 12.

Posted between 22-23EDT on the 11th November 2013, the day Tsarnaev pleaded not guilty.

Charlie O @charlie_o
#Tsarnaev pleads not guilty. After all the Islamist ideological rhetoric, the little shit can't even own what he did.
2 years ago Reply Retweet Favorite 1 more

Screenshot 13.

Posted between 7-8BST on the 23rd May 2013, the day after the Woolwich killing.

Jason Giraffe @giraffebanners
Police are investigating who done this barbaric murder in #Woolwich seems pretty evident from the video footage
a year ago Reply Retweet Favorite

Screenshot 14.

Posted between 19-20BST on the 23rd May 2013, the day after the Woolwich killing.

Marcus Woolcott @gyropitus
liking how the BBC refer to them as "suspected". At the scene of the crime, covered in blood, holding a knife, and confessing. #Woolwich
a year ago Reply Retweet Favorite

Screenshot 15.

Posted between 18-19BST on the 19th December 2013, the day of the verdict on the Woolwich killing.

Dyb @d_dyb
#RIPLeeRigby hope your family cn find some peace now. And them evil creatures can rot in prison
10 months ago Reply Retweet Favorite 1 more

Screenshot 16.

Posted between 23-24EDT on the 16th May 2015, the day of the sentencing of Tsarnaev for the Boston bombings.

Dean Collins @deanrcollins
When you lay a bomb at the foot of an 8-year-old child, you don't deserve to live. #Tsarnaev
a month ago Reply Retweet Favorite 39 more

Screenshot 17.

Posted between 21-22EDT on the 15th May 2015, the day of the sentencing of Tsarnaev for the Boston bombings.

Kelsey Smith @14smith15
Sentencing #Tsarnaev to death isn't gonna do anything. It's just killing someone else. Let him sit in jail forever. Death is too easy
a month ago Reply Retweet Favorite 118 more

Screenshot 18.

Posted between 15-16EDT on the 15th May 2015, the day of the sentencing of Tsarnaev for the Boston bombings.

Chris Stedman @chrilstedman
"To take a life when a life has been lost is revenge, not justice." —Desmond Tutu #Tsarnaev
a month ago Reply Retweet Favorite 226 more

Screenshot 19.

Posted between 15-16EDT on the 15th May, the day of the sentencing of Tsarnaev for the Boston bombings.

Robin @caulkthewagon
I'm sad to be a Bostonian right now. #Tsarnaev put us through hell. Despite that, this verdict is not in our character. We don't want this.
a month ago Reply Retweet Favorite 54 more

Screenshot 20.

Posted between 21-22BST on the 26th February, the day of the sentencing of Adebolajo and Adebawale for the Woolwich attack.

Amara @amarasnowshy2
RT @MFrancisCerrah: Not entirely surprised to read that Adebolajo had been suffering from mental health problems since 11, including voices ...
10 months ago Reply Retweet Favorite

Screenshot 21.

Posted between 15-16EDT on the 15th May 2015, the day of the sentencing of Tsarnaev for the Boston bombings

Yvonne Abraham @globeabraham
If #tsarnaev shows no emotion even re this own death, there might be something more complicated here than lack of remorse.
a month ago Reply Retweet Favorite 14 more

Screenshot 22.

Posted between 19-20BST on the 29th November 2013, the first day of the Woolwich trial.

Chris @chris_etc_rich
Why is there even a trial for them two murdering twats? They are clearly guilty. They need to be dead. #Woolwich
11 months ago Reply Retweet Favorite 2 more

Screenshot 23.

Posted between 18-19EDT on the 18th April 2015, the day of the verdict on the Boston bombing.

Zack Moore @zackmoorenfl
It's great we have an innocent until proven guilty system, but we can't waste money on sub-humans like #Tsarnaev. There's no rehabilitation.
2 months ago Reply Retweet Favorite

Screenshot 24.

Posted between 22-23BST on the 19th April 2013, after Tsarnaev's capture.

Peyton Sweatman @pbaine654
You know, there are times when I feel like no one is actually expecting a fair trial.... Like [#Tsarnaev](#) for instance.
🐦 2 years ago 🗨 Reply 🔄 Retweet ☆ Favorite

Screenshot 25.

Posted between 17-18BST on the 29th November 2013, the first day of the Woolwich trial.

Barry Jenkins @barry_j
RT @TheToffees1878: Them 2 bastards don't deserve a trial. They should be slowly, painfully, tortured to death and left to rot in hell [#Rip...](#)
🐦 11 months ago 🗨 Reply 🔄 Retweet ☆ Favorite

Screenshot 26.

Posted between 13-14BST on the 29th November 2013, the first day of the Woolwich trial.

Rach @racheljones999
put concrete in their wellies and throw them in a river, [#ripleerigby](#)
🐦 11 months ago 🗨 Reply 🔄 Retweet ☆ Favorite 🗨 2 more

Screenshot 27.

Posted between 16-17EDT on the 18th April 2015, the day of the verdict on the Boston bombing.

MCTWEETS420 @mctweets420
Guilty good. Now strap a bomb to his back and make him feel what those victims felt [#BostonBombing](#)
[#BostonStrong](#)
🐦 2 months ago 🗨 Reply 🔄 Retweet ☆ Favorite 🗨 1 more

Screenshot 28.

Posted between 9-10BST on the 29th November, the first day of the Woolwich trial.

Warren @warrenfinn
[@nixey55](#) don't be sorry. The judicial system in the UK is way lenient though. They have a freaking lawyer. Shocking. [#Ripleerigby](#)
🐦 11 months ago 🗨 Reply 🔄 Retweet ☆ Favorite

Screenshot 29.

Regarding the Woolwich Attack. Posted in the YouTube video by Sky News

john sam 1 year ago
About time edl make a stand to Muslims extremist in this country, they are the new vermin in ourm society.

Screenshot 30.

Regarding the Woolwich attack. Posted in the YouTube video by Sky News

endofdays444 1 year ago
f*** islam and it's child molesting "prophet"

Screenshot 31.

Regarding the Boston Marathon bombings. Posted in the YouTube video by GlobalLeaksNews

Charlie Rios (Gaming and more) 5 days ago
I fucking hate Muslims and they always do stupid terrorist shit America needs too kill every Muslim I fucking hate them all of them are terrorist
Reply .

Screenshot 32.

Regarding the Boston Marathon bombings. Posted in the YouTube video by GlobalLeaksNews

Dave Leffler 3 weeks ago

Thank god there was justice today. Dzhokhar Tsarnaev.....burn in hell you sick bastard. I pray to God that when you leave this earth.....your place in hell will be being blown up over and over by a bomb.

Reply ·

Screenshot 33.

Regarding the Woolwich killing. Posted in the Youtube video by woolwichfinest.

tanboora 1 year ago · in reply to AUAhmed33

am gonna take a pig dick and shove it in your prophet mohammad's ass

Screenshot 34.

Regarding the Boston bombing. Posted in the YouTube video by Mashable.

Angel A. Acevedo 3 months ago

When you have evidence like this, what else is there left to see? What's next? deciding whether he gets the death penalty or 500 years in prison or what?

Reply · 34

Screenshot 35.

Regarding the Boston bombing. Posted in the YouTube video by GlobalLeaksNews.

Roy Alex (TwistedColors) 10 months ago

Krystal Campbell was a good family friend of ours, she was at the finish line when the first bomb went off, I wonder how this delusional lunatic can explain why me and my family saw her in a casket at such a young age, I wonder if he can explain why she isn't around any more.... But I am not mad at this guy, he is obviously suffering from a mental illness such as schizophrenia, or he is manic when he thought of this theory because anyone with a brain knows better. He is clearly completely separated from reality.

Reply · 2

Screenshots of the Tweets and YouTube Comments Quoted in Chapter Four

Screenshot 36.

Posted between 15-16GMT on the 18th February 2011 during the Libyan protests.

M. Ali Abdallah @libyanfsl
We are witnessing wide scale Genocide in Libya !! #Feb17 #Libya
5 years ago Reply Retweet Favorite 24 more

Screenshot 37.

Posted between 5-6GMT on the 20th October 2011, the day that Gaddafi was killed.

Beatriz @beaonchavez
RT @PantelisMichael: GENOCIDE IN LIBYA PROOF BREAKING NEWS - YouTube bit.ly/rxShZn via @addthis
4 years ago Reply Retweet Favorite

Screenshot 38.

Posted between 19-20GMT on the 18th February 2011 during the Libyan protests.

Nasser H Al-Khalifa @nasseribnhamad
The world should make sure what is going on in Libya is reported. Innocent People are killed by the dozens by regime's thugs and mercenaries
5 years ago Reply Retweet Favorite 3 more

Screenshot 39.

Posted between 11-12BST on the 18th February 2011 during the Libyan protests.

Dr. Maree محمد مرعي @mar3e
@miqla3 Qaddafi allow to the Africans who stay in #Libya to attack the peaceful protesters ,24 person have been killed
5 years ago Reply Retweet Favorite 1 more

Screenshot 40.

Posted between 15-16BST on the 18th February 2011 during the Libyan protests

Nada Rustomakis @nadarustomakis
The world is sleeping - this isnt fair, Gaddafi is massacring #BenGhazi - he paid Africans \$10,000 to kill us
5 years ago Reply Retweet Favorite 15 more

Screenshot 41.

Posted on the YouTube video by RT – Protest Violence

siliyemoodislam 4 years ago
I worry about minorites in Libya, are they safe? I am sure they are in danger!

Screenshot 42.

Posted between 18-19GMT on the 18th February 2011 during the Libyan protests

سلطان سعود القاسمي @sultanalqassemi
I am disgusted by how the news channels are ignoring Libya. There is absolutely no excuse. The next one to excuse it to me will be blocked.
5 years ago Reply Retweet Favorite 126 more

Screenshot 43.

Posted between 13-14GMT on the 18th February 2011 during the Libyan protests.

Juweira @jeeja
Libya its your day to move to topple Gaddafi and stand for nothing less than being represented as a people #Libya #Feb17 God is Great
5 years ago Reply Retweet Favorite 4 more

Screenshot 44.

Posted between 4-5GMT on the 18th February 2011 during the Libyan protests.

Anon_Pagan @idrobinhood
 #Libya #Feb17 Protesters in Libya running from gunmen [youtube.com/watch?v=gN9CBz...](https://www.youtube.com/watch?v=gN9CBz...) via @youtube
 5 years ago · Reply · Retweet · Favorite · 4 more

Screenshot 45.

Posted between 3-4GMT on the 18th February 2011 during the Libyan protests.

Mohamed Aboul-Azm @maboulazm
 Gaddafi used live ammunition to disperse a peaceful demonstration, please world help our brothers in #Libya
 5 years ago · Reply · Retweet · Favorite · 3 more

Screenshot 46.

Posted between 0-1GMT on the 18th February 2011 during the Libyan protests.

Dennis @brit_newsman
 #Libya Gaddafi is a criminal #gaddaficrimes Please RT and let's get #gaddaficrimes trending
 5 years ago · Reply · Retweet · Favorite · 2 more

Screenshot 47.

Posted between 14-15GMT on the 20th October 2011, the day that Gaddafi was killed.

Mona Eltahawy @monaeltahawy
 Good riddance, Gaddafi. May #Libya now find peace, may all those whose lives u ruined find strength 2 build the great country they deserve.
 4 years ago · Reply · Retweet · Favorite · 57 more

Screenshot 48.

Posted between 17-18GMT on the 20th October, the day that Gaddafi was killed.

Amira Al Hussaini @justamira
 WISDOM RT @wedday: Gaddafi provoked a bloodbath, gambled and lost. He is responsible for his fate, no one else.
 4 years ago · Reply · Retweet · Favorite · 13 more

Screenshot 49.

Posted between 14-15GMT on the 18th February during the Libyan protests.

Angry Mofo @angrymofo
 @acarvin @ChangeinLibya Gaddafi is hated more than Mubarak was. He's vermin that needs cleaning. I hope they string him up (hang him) #libya
 5 years ago · Reply · Retweet · Favorite · 11 more

Screenshot 50.

Posted between 13-14GMT on the 20th October, the day that Gaddafi was killed.

Wael Ghonim @ghonim
 I pray for thousands of Libyans who sacrificed their lives for a free #Libya. Gaddafi's end was expected. I hope all other Gaddafis get it!
 4 years ago · Reply · Retweet · Favorite · 203 more

Screenshot 51.

Posted between 22-23GMT on the 20th October, the day that Gaddafi was killed.

Kyle Grayson @chasing_dragons
 Mixed feelings on Gaddafi death as no trial means the opportunity to learn depth of foreign complicity with regime & its practices now gone
 4 years ago · Reply · Retweet · Favorite · 5 more

Screenshot 52.

Posted between 22-23GMT on the 20th October, the day that Gaddafi was killed.

NewZealandEconomics @economicsnz
 I'm sad that Gaddafi has been murdered. It's wrong. But in addition the oligarchs who've used him worldwide have not been held to account.
 4 years ago · Reply · Retweet · Favorite · 5 more

Screenshot 53.

Posted on the YouTube video by Al Jazeera.

[Colo nelski](#) 3 years ago
 THE REAL CRIMINALS ARE THE NATO!!
 THE HATE FOR GADDAFI IS A LONG STORY AND THEY GOT HIM NOW
 HE WAS THE LAST ARAB LEADER THAT COULD MAKE A CHANGE
 THERE ISNT GONNA STAND UP A NEW GADDAFI SOON.
 IM ASHAMED FOR ALL THE ARABS YOU ARE THE RATS!!
 ALLAHIE RAHMOE!!
[Show less](#)

Screenshot 54.

Posted on the YouTube video by RT – Army Defectors.

[PyroPredator](#) 4 years ago
 From what I hear Libya was one of the most forward thinking places in the arab world. A lot more equality, better education and health care. This isn't an issue you want to jump in and take sides. Any side the US decides you join I'm always weary of just due to the history of the US and the reasons it joins a side.

Screenshot 55.

Posted on the YouTube video by RT – Libyan Protests.

[ZarahLean](#) 4 years ago
 Lets hope this hated murderous government and the wacko heading it soon fall into the dust.
 Best wishes to the long suffering people of Libya.

Screenshot 56.

Posted on the YouTube video by RT – Libyan Protests

[SirWinstonChurchill](#) 4 years ago
 Ronald Reagan was right....
 Ronald Reagan tried to kill this asshole and you people complained...

Screenshot 57.

Posted on the YouTube video by Al Jazeera.

[Alie 23](#) 3 years ago
 Yeah The fucker is dead!!!!!! He's in the hell now and burning like i pig!!! hahahahha

Screenshot 58

Posted on the YouTube video by Al Jazeera.

[TaiaVersalStudios](#) 3 years ago
 He's dead after raping and killing thousandths, justice is preserved !

Screenshot 59.

Posted on the YouTube video by Al Jazeera.

[Legendshane78](#) 3 years ago
 Head on a pole please the dirty cunt needs humiliating even after death!!! STRING HIM UP!!!

Screenshot 60.

Posted on the YouTube video by Al Jazeera.

[Derail07](#) 3 years ago
 Find a Pig to fuck his bullet hole and ass

Screenshot 61.

Posted on the YouTube video by Al Jazeera.

[Bleu Viruz](#) 3 years ago
this is barbaric

Screenshot 62.

Posted on the YouTube video by Al Jazeera

[sprang12](#) 3 years ago
Inhumane. To rejoice I'm someone's murder. What next?

Screenshot 63.

Posted on the YouTube video by Al Jazeera.

[Impaired Dracula](#) 3 years ago [in reply to Saul Hudson](#)
@xXGAMELOVEXx A simple hanging or execution would've been enough but this is just plain brutal.

Screenshot 64.

Posted on the YouTube video by Al Jazeera.

[george washington](#) 3 years ago [in reply to Art](#)
@artnaim if this is bush the pig, i will say the same.
primitive animals?! if your family members got slaughter by such dictator, you will do the same.. gaddafi deserved this! :)

Bibliography

- “A Grotesque Attack on Britain’s Values” *Daily Mail* (London 24/5/13)
- “A Sea of Flowers and Flags Left in Woolwich” (*Mail on Sunday* 26/5/13)
 <<http://www.dailymail.co.uk/news/article-2331710/Every-faith-generation-joined-mourning-Sea-flowers-Woolwich-murder-scene-keeps-growing-hundreds-flock-support-Drummer-Rigby.html>>
 accessed 11/9/14
- “A Tanned and Smiling Casey Anthony Is Pictured for the First Time since Her Acquittal Three Years Ago but Her Lawyer Insists She Has Been Living Like a Hermit” *Daily Mail* (London 7/7/14)
- “Advertising World ‘Transformed by Social Media’” (*BBC* 6/8/12)
 <<http://www.bbc.co.uk/news/business-19147393>> accessed 29/1/15
- Alliance for Audited Media *Top 25 U.S. Newspapers for March 2013* (2013)
- “Amnesty International Urges Libya to Investigate Whether al-Gaddafi Death was a War Crime” (*Amnesty International* 2011) <<http://www.amnestyusa.org/news/press-releases/amnesty-international-urges-libya-to-investigate-whether-al-gaddafi-death-was-a-war-crime>> accessed 7/1/16
- “Associated Press-GfK Roper Public Affairs Poll” (5-9/5/11)
 <<http://www.pollingreport.com/terror2.htm>> accessed 24/3/16
- “Aurora Shooting Twitter: How News Of The ‘Batman’ Massacre Spread” (*Huffington Post* 20/7/12)
 <http://www.huffingtonpost.com/2012/07/20/aurora-shooting-twitter-batman_n_1688821.html>
 accessed 29/1/15
- “Back Victim by Buying T-shirt; Help for Heroes” *The Daily Telegraph* (London 23/5/13)
- “Batman Fans Flee Colorado Cinema after Shooting” (*The Guardian* 20/7/12)
 <<http://www.theguardian.com/world/video/2012/jul/20/batman-colorado-cinema-shooting-video>>
 accessed 24/3/2015
- “‘Better Me Than a Child - So I Asked What Did He Want?’: Passerby Felt She Had to Distract Man to Save Others...” *The Guardian* (London 24/5/13)
- “‘Bomber’ Kill Arrest” *The Sun* (London 22/7/13)
- “Boston Bombing Yields Heroic Responses, Troubling Questions” *USA Today* (Virginia 22/4/13)
- “Boston Bombs Were Loaded to Maim, Officials Say” *The New York Times* (New York 17/4/13)
- “Call Me Abu Hamza, Says the Man Accused of Soldier’s Murder” *The Daily Telegraph* (London 4/6/13)
- “Casey Anthony: Fried in Florida” (*TMZ* 2012) <<http://www.tMZ.com/2012/12/12/casey-anthony-restaurant-dining-french-fries-hot-wings/>> accessed 24/3/15
- “Celebrating the Death of Osama bin Laden” (*Time Magazine* 3/5/11)
 <<http://content.time.com/time/photogallery/0,29307,2068860,00.html>> accessed 27/2/16
- “Commanders Should Face Justice for Killings” (*HRW* 2011)
 <<https://www.hrw.org/news/2011/02/22/libya-commanders-should-face-justice-killings>> accessed 5/12/15
- “Coroner Clears Lindy Chamberlain, but Will the Public Now Clear Lindy” (*Herald Sun* 13/6/12) http://www.heraldsun.com.au/subscribe/news/1/index.html?sourceCode=HSWEB_WRE170_a&mode=premium&dest=http://www.heraldsun.com.au/news/opinion/will-the-public-now-clear-lindy/story-fncw91kq-1226393565152?nk=e5b7ca19bbc9322d0e59cf9fd3b2e08f&memtype=anonymous accessed 31/1/15
- “Counter Gadhafi’s Butchery with Coordinated Response” *USA Today* (Virginia 24/2/11)
- “Crime Solving by Crowdsourcing” *The Boston Globe* (Boston 18/4/13)
- “David Cameron: Bin Laden’s Death ‘Justice’” (*BBC* 2011) <<http://www.bbc.co.uk/news/uk-politics-13273051>> accessed 7/12/2015
- “‘Day of Rage’ Kicks Off in Libya” (*Al Jazeera* 17/2/11)
 <<http://www.aljazeera.com/news/africa/2011/02/201121755057219793.html>> accessed 17/2/11
- “Doc Tried to Save Bomber” *The New York Post* (New York 21/4/13)
- “Gaddafi ‘Will Gas Freedom Fighters’” *The Sun* (London 2/3/11)
- “Gaddafi Cash Haul” *The Sun* (London 5/3/11)
- “Gaddafi Defiant as State Teeters” (*Al Jazeera* 23/2/11)
 <<http://www.aljazeera.com/news/africa/2011/02/20112235434767487.html>> accessed 27/8/15
- “Gaddafi Has Got Chemical Weapons and He’s Ready to Use Them” *Daily Mail* (London 2/3/11)
- “Gaddafi is Routed” *The Sun* (London 19/7/11)
- “Gaddafi Strikes Defiant Note” (*Al Jazeera* 22/2/11)
 <<http://www.aljazeera.com/video/africa/2011/02/20112221852864320.html>> accessed 27/8/15
- “Grandad ‘Killer’ on Blast Rap” *The Sun* (London 24/7/13)
- “G20: Police Lay on the Security as Protestors Say Tactics Too Heavy” *Scotsman* (Edinburgh 3/4/09)
- “Hollie Gazzard Attack Was Filmed by Bystanders, Say Police” *The Guardian* (London 19/2/14)

- “Hundreds Protest In Oakland over BART Shooting” (*NPR* 8/1/09)
<http://www.npr.org/templates/story/story.php?storyId=99120914> accessed 21/1/14
- “Japan Turns to ‘I am Kenji’ Facebook Page on Hostage Crisis” *Daily Mail* (London 27/1/15)
- “John King: Boston Bombing Suspect A ‘Dark-Skinned Male’” (*Huffington Post* 17/4/13)
http://www.huffingtonpost.com/2013/04/17/john-king-boston-bombing-dark-skinned-male-ifill_n_3102195.html accessed 5/7/15
- “Khadafy Killed by Yankee Fan - Gunman Had More Hits Than A-Rod” *The New York Post* (New York 21/10/11)
- “Libya: Benghazi Clashes Deadly – Witnesses” (*BBC* 2011) <http://www.bbc.co.uk/news/world-africa-12506787> accessed 26/8/15
- “Libya: Protests: Pressure Mounts on Isolated Gaddafi” (*BBC* 23/2/11)
<http://www.bbc.co.uk/news/world-middle-east-12550719> accessed 27/8/15
- “Libya: Security Forces Fire on ‘Day of Anger’ Demonstrations” (*HRW* 2011)
<https://www.hrw.org/news/2011/02/17/libya-security-forces-fire-day-anger-demonstrations> accessed 5/12/15
- “Libya: Security Forces Kill 84 Over Three Days” (*HRW* 2011)
<https://www.hrw.org/news/2011/02/18/libya-security-forces-kill-84-over-three-days> accessed 5/12/15
- “Libyan City Mercilessly Attacked; Gadhafi Loyalist Forces Step Up Shelling as France Vows Defense” *USA Today* (Virginia 21/4/11)
- “Live Tweets from Rapper Boya Dee Go Viral” (*The Week* 23/5/13) <http://www.theweek.co.uk/uk-news/woolwich-attack/53191/woolwich-attack-boya-dee-tweets-viral-rapper> accessed 24/3/15
- “Mobile Phone Footage from Denver Cinema Shooting” (*The Daily Telegraph* 20/7/12)
<http://www.telegraph.co.uk/news/worldnews/northamerica/usa/9414632/Mobile-phone-footage-from-Denver-cinema-shooting.html> accessed 24/3/15
- “My Ex-Boyfriend, the Terror Suspect; ‘Lovely, Polite Boy’” *The Daily Telegraph* (London 24/5/13)
- “Nail Bomb at Mosque” *Daily Mail* (London 13/7/13)
- “Near Riot Breaks out at Oakland Protest” (*NBC Bay Area* 17/7/09)
<http://www.nbcbayarea.com/news/local/BART-Officer-Getting-Death-Threats.html> accessed 21/1/14
- “New York Post Hit with Libel Lawsuit over ‘Bag Men’ Boston Bombings Cover” *The Guardian* (London 6/6/13)
- “Obama: Gaddafi Must Leave Libya Now” (*Al Jazeera* 2011)
<http://www.aljazeera.com/news/americas/2011/02/2011226232530835912.html> accessed 27/8/15
- “Rebels Hold Off Gaddafi Forces in His Own Back Yard” *Daily Mail* (London 8/3/11)
- “Reddit Apologises for Online Boston ‘Witch Hunt’” (*BBC* 23/4/13)
<http://www.bbc.co.uk/news/technology-22263020> accessed 18/6/15
- “Riots in California after Police Officer Who Shot Dead Unarmed Black Man is Cleared of Murder” *Daily Mail* (London 12/7/10)
- “Running into a Nightmare” *The New York Post* (New York 16/4/13)
- “Sandy Hook Elementary School Massacre Memorial Page” (*Facebook* 14/12/12)
<https://www.facebook.com/pages/Sandy-Hook-Elementary-School-Massacre-Memorial-Page/142591449223701> accessed 24/2/14
- “Second Man Was the Victim of Knife Attack at Age of 16” *The Guardian* (London 25/5/13)
- “‘Soldier Beheaded’ in Woolwich Machete Attack: As It Happened” (*The Daily Telegraph* 22/5/13)
<http://www.telegraph.co.uk/news/uknews/crime/10074029/Shootings-and-machete-attack-in-south-east-London-live.html> accessed 1/9/14
- “Soldier’s Family Face Alleged Killers” *The Daily Telegraph* (London 29/6/13)
- “Spike in Islamophobic Incidents after Attack as Far-Right Exploits Public Fury...” *The Guardian* (London 24/5/13)
- “Suspect Led Away in Handcuffs at Fanatic’s Trial” *The Daily Telegraph* (London 24/5/13)
- “Suspects to be Shown Woolwich Footage” *The Guardian* (London 30/5/13)
- “Ten Years of Missed Opportunities” *Daily Mail* (London 28/5/13)
- “Terror in Beantown: Catch Those Cowards” *The New York Post* (New York 18/4/13)
- The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (N.Y. Norton 2004)
- “Too Soon to Revel in Gadhafi’s Death?” *USA Today* (Virginia 21/10/11)
- Twitter Counter*, <http://twittercounter.com/pages/100> accessed 29/1/15
- “Two Brothers, Two Paths into Everlasting Infamy” *The Boston Globe* (Boston 20/4/13)
- “UK ‘Took Fears over Suspected Killer Lightly’” *The Daily Telegraph* (London 27/5/13)
- “Ukrainian Student in One Man Racist Reign of Terror Targeting Black Country Mosques” *Express & Star* (Wolverhampton 22/10/13)

- "War-Crimes Prosecutor Seeks Gadhafi Arrest; Cites Proof of Regime Targeting Libyans on Hit List, Wholesale" *USA Today* (Virginia 17/5/11)
- "Watching Syria's War" <<http://projects.nytimes.com/watching-syrias-war>> accessed 1/2/15
- "Who Broke the News of the Boston Marathon Bombing?" (*Storify* 2013) <<https://storify.com/hqu/boston-marathon-breaking-news>> accessed 9/7/14
- "Why Are We Paralysed in the Face of Our Enemy?" *Daily Mail* (London 27/5/13)
- "YouTube: Statistics" (<<https://www.youtube.com/yt/press/en-GB/statistics.html>> accessed 23/7/14)
- "16 Die in Gaddafi Blitz on Besieged City" *Daily Mail* (London 16/4/11)
- "102 Hours in Pursuit" *The Boston Globe* (Boston 28/4/13)
- "£600,000 in Three Days for Heroes" *Daily Mail* (London 25/5/13)
- Abel "Doubts and Disbeliefs" *The Boston Globe* (Boston 27/7/13)
- Abel "Loss and Love" *The Boston Globe* (Boston 13/4/13)
- Abel and Finucane "Disgust, Outrage Greet News of Cover in Boston" *The Boston Globe* (Boston 18/7/13)
- Abel and Moskowitz "As Kin, Survivors Watch, Tsarnaev Pleads Not Guilty" *The Boston Globe* (Boston 11/7/13)
- Abraham "A Loss of Decency" *The Boston Globe* (Boston 25/4/13)
- Abraham "We Are Better Than Tsarnaev" *The Boston Globe* (Boston 9/4/15)
- Adekeye "Gaddafi: The Man Who Would Be King of Africa" *The Guardian* (London 26/8/11)
- Akhavan *Reducing Genocide to Law Definition, Meaning, and the Ultimate Crime* (Cambridge University Press 2012)
- Alexander and Swetnam *Usama bin Laden's al-Qaida: Profile of a Terrorist Network* (N.Y. Transnational Publishers 2001)
- Allan "Reweaving the Internet: Online News of September 11" in Zelizer and Allan (eds) *Journalism After September 11* (Routledge 2002)
- Allan "Witnessing in Crisis: Photo-Reportage of Terror Attacks in Boston and London" (2014) 7 *Media, War & Conflict* 133-151
- Allan and Thorsen *Citizen Journalism: Global Perspectives*, vol 2 (Peter Lang 2009)
- Allen and Osborne "Angels of Woolwich" *Daily Mail* (London 24/5/13)
- Allen and Wilkes "Probation Officer's Son Who Chatted with His Neighbours About Jamie Oliver Recipes" *Daily Mail* (London 25/5/13)
- Ambos "International Criminal Procedure: 'Adversarial', 'Inquisitorial' or Mixed?" (2003) 3 *International Criminal Law Review* 1-37
- Ambos and Alkatout "Has 'Justice Been Done'? The Legality of Bin Laden's Killing Under International Law" (2012) 45 *Israel Law Review* 341-366
- Andersen and Lalwani "Angry Sergeant Gives Another View of Tsarnaev" *The Boston Globe* (Boston 19/7/13)
- Andrews *Law, Magistracy and Crime in Old Regime Paris, 1735-1789*, vol 1: The System of Criminal Justice (Cambridge University Press 1994)
- Andriotis "Brits Behaving Badly: Template Analysis of Newspaper Content" (2010) 1 *International Journal of Tourism Anthropology* 15-34
- Anker "Villains, Victims and Heroes: Melodrama, Media, and September 11" (2005) 55 *Journal of Communication* 22-37
- Antony and Thomas "'This is Citizen Journalism at its Finest': YouTube and the Public Sphere in the Oscar Grant Shooting Incident" (2010) 12 *New Media & Society* 1280-1296
- Applebaum and Eligon "Victims, Ages 8 and 29, Remembered for Kindness and Laughter" *The New York Times* (New York 17/4/13)
- Archer "Who Would Argue with the Mob When It Gets So Large and So Loud?" *The Daily Telegraph* (London 25/5/13)
- Arsenault "Second Marathon Bombing Suspect Captured After All-Day Hunt that Brought Boston Area to Standstill; Alleged Accomplice Dead" *The Boston Globe* (Boston 20/4/13)
- Ashworth "Four Threats to the Presumption of Innocence" (2006) 10 *International Journal of Evidence and Proof* 241-278
- Atkins and Lines "Watch Shocking Footage of Terrorists Charging at Police Car in Attempt to Kill WPC" (*The Mirror* 24/5/13) <<http://www.mirror.co.uk/news/uk-news/woolwich-attack-video-watch-shocking-1907772>> accessed 25/7/14
- Atwan "Libya's Bloody Victory over Gaddafi Is Just the Beginning: Deep Tribalism and a Lack of Leadership Will Plague a Country That Is Nation-Building from Scratch" *The Guardian* (London 21/10/11)
- Bacon, Eversley, et al. "City Fights to Find Footing; Makeshift Memorial Appears as Security, Grief Tighten Grip" *USA Today* (Virginia 17/4/13)

- Baier, McCaleb, *et al.* "Bin Laden Claims Responsibility for 9/11" (*Fox News* 30/10/04) <<http://www.foxnews.com/story/2004/10/30/bin-laden-claims-responsibility-for-11/>> accessed 1/2/15
- Bain and Sheehy "Fighter with a Hidden Hatred" *The New York Post* (New York 20/4/13)
- Bain and Shields "Seeds of Hate Planted in U.S. Dead Bomber Radicalized by Local Muslims: Uncle" *The New York Post* (New York 21/4/13)
- Bains "Fury as Workers at Morrisons is Sent Home for Wearing Poppy" *Daily Mail* (London 29/5/13)
- Baker *An Introduction to English Legal History* (Butterworths 1990)
- Bakewell "Women Who Stepped into the Bloody and Rage, Talking" *The Guardian* (London 24/5/13)
- Bal, Archer-Brown, *et al.* "Do Good, Goes Bad, Gets Ugly: Kony 2012" (2013) 13 *Journal of Public Affairs* 202-208
- Ball and Lewis "Twitter and the Riots: How the News Spread" *The Guardian* (London 7/12/11) <<http://www.theguardian.com/uk/2011/dec/07/twitter-riots-how-news-spread>> accessed 21/1/14
- Banda and Elliot "Judge William Sylvester OKs Medication, Polygraph for James Holmes If He Takes Insanitary Plea" *Huffington Post* (New York 11/3/13)
- Barnes "The International Criminal Court's Ineffective Enforcement Mechanisms: The Indictment of President Omar Al Bashir" (2010) 34 *Fordham International Law Journal* 1584-1619
- Barnett "Will a Crisis in Journalism Provoke a Crisis in Democracy?" (2002) 73 *The Political Quarterly* 400-408
- Barrett and Carter "Lee Rigby Murderers Sentences to Life in Prison" *The Daily Telegraph* (London 26/2/14)
- Barrett and Marsden "Drummer Rigby Murder Suspect in Court" *The Daily Telegraph* (London 31/5/13)
- Bassiouni "The International Criminal Court in Historical Context" (1999) *St Louis-Warsaw Transatlantic Law Journal* 55-67
- Bassiouni and Blakesley "The Need for an International Criminal Court in the New International World Order" (1992) 25 *Vanderbilt Journal of Transnational Law* 151-182
- BBC "April Jones Killer Mark Bridger Drops Sentence Appeal" (*BBC* 13/1/14) <<http://www.bbc.co.uk/news/uk-wales-25715492>> accessed 15/6/14
- BBC "Christopher Jefferies: How I Was Hounded" (*BBC Magazine* 2014) <<http://www.bbc.co.uk/news/magazine-25625572>> accessed 24/3/15
- BBC "Christopher Jefferies Told 'Sorry' by Police over Arrest Distress" (*BBC* 16/9/13) <<http://www.bbc.co.uk/news/uk-england-bristol-24104834>> accessed 24/3/15
- BBC "April Jones: Hundreds Attend Machynlleth Funeral" (*BBC* 26/12/13) <<http://www.bbc.co.uk/news/uk-wales-mid-wales-24275423>> accessed 12/6/14
- BBC "Kenji Goto: Abe Condemns 'Despicable' IS Hostage Video" (*BBC* 28/1/15) <<http://www.bbc.co.uk/news/world-middle-east-31006588>> accessed 30/1/14
- BBC "Jo Yeates' Landlord Settles Libel Case out of Court" (*BBC* 29/7/11) <<http://www.bbc.co.uk/news/uk-14339807>> accessed 24/3/15
- BBC "Syria Chemical Weapons Allegations" (*BBC* 31/10/13) <<http://www.bbc.co.uk/news/world-middle-east-22557347>> accessed 21/1/14
- Beattie *Crime and the Courts in England, 1660-1800* (Princeton University Press 1986)
- Beattie "Garrow for the Defence" (1991) 41 *History Today* 49-53
- Beattie "Scales of Justice: Defense Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries" (1991) 9 *Law and History Review* 221-267
- Beaumont "Hospital: 'There Have Been No Deaths, Only Some Bullet Wounds': Peter Beaumont Finds Gaddafi's Men Claiming Attacks by Al-Qaida" *The Guardian* (London 2/3/11)
- Becker "Whose Side Are We On?" (1966) 14 *Social Problems* 239-247
- Becker *Outsiders: Studies in the Sociology of Deviance* (The Free Press 1997)
- Bell "All the World's an Outside Broadcast: Breaking News Is No Longer the Preserve of Established Broadcasters, Thanks to the Camera Phone and Social Media" *The Guardian* (London 24/5/13)
- Bellamy *The Tudor Law of Treason* (Routledge and Kegan Paul 1979)
- Bello "Casey Anthony Verdict Doesn't Sit Well with Most Americans" *USA Today* (Virginia 8/7/11)
- Bentley *English Criminal Justice in the Nineteenth Century* (The Hambledon Press 1998)
- Bentley "Carrying a Bomb on the Bus, Ukrainian Who Murdered Muslim OAP Five Days after Arriving in UK" *Daily Mail* (London 22/10/13)
- Bentley "Posing with Our Man in Kiev, the Ukrainian Held over Killing of Muslim Grandfather" *Daily Mail* (London 23/7/13)
- Bentley "Ukrainian Race Killer of Muslim Gets 40 Years in Jail? ...? But Not Life" *Daily Mail* (London 26/10/13)
- Bidgood "Body of Missing Student at Brown is Discovered" *The New York Times* (New York 26/4/13)
- Bird "Taking It Personally: Supermarket Tabloids After September 11" in Zelizer and Allan (eds) *Journalism After September 11* (Routledge 2002)

- Birkland "'The World Changed Today': Agenda-Setting and Policy Change in the Wake of the September 11 Terrorist Attacks" (2004) 21 *Review of Policy Research* 179-200
- Black "After the Air Raids, Gaddafi's Death Squad Keep Blood on Tripoli's Streets" *The Guardian* (London 22/2/11)
- Black "Death of Gaddafi: View From Tripoli: Exhaustion, Elation, and Hopes That Syria Will be Next" *The Guardian* (London 22/10/11)
- Black "Desperate Gaddafi Appears on TV as Libya's Revolution Gathers Pace: Tells Nation: 'I Am Not in Venezuela': Officials Quit Over Bloody Backlash" *The Guardian* (London 22/2/11)
- Black "Libya on Brink as Protests Hit Tripoli" (*The Guardian* 21/2/11) <<http://www.theguardian.com/world/2011/feb/20/libya-defiant-protesters-feared-dead>> accessed 26/8/15
- Black "Libya: Protests Met by Regime's Bullets and Loyalists" *The Guardian* (London 18/2/11)
- Black "NTC Agrees to Investigate the Killing of Gaddafi" *The Guardian* (London 25/10/11)
- Black and Bowcott "Protestors Report Massacres as Gaddafi Regime Imposes News Blackout" *The Guardian* (London 19/2/11)
- Blackstone *Commentaries on the Laws of England*, vol 2 (J. B. Lippincott Company 1893)
- Blanco "Casey Anthony: Her Strange Life 3 Years Later" (*People* 2014) <<http://www.people.com/article/casey-anthony-life-today-three-years-after-acquittal>> accessed 24/3/15
- Blow "The Mind of a Terror Suspect" *The New York Times* (New York 20/4/13)
- Bodgood and Storey "Kinship Emerges from a Day of Horror" *The New York Times* (New York 11/5/15)
- Bond *The Power of Others* (Oneworld 2014)
- Bond *Frames of Memory After 9/11* (Palgrave Macmillan 2015)
- Bowman and Willis *We Media: How Audiences are Shaping the Future of News and Information* (The Media Center at The American Press Institute 2003)
- Bramber "Bin Laden: Yes, I Did It" *The Daily Telegraph* (London 11/11/01)
- Brennen and Duffy "'If A Problem Cannot Be Solved, Enlarge It': An Ideological Critique of the 'Other' in Pearl Harbor and September 11 New York Times Coverage" (2003) 4 *Journalism Studies* 3-14
- Brenner, Savage, *et al.* "Legal Questions Riddle Boston Case" *The New York Times* (New York 21/4/13)
- Brierly "Do We Need an International Criminal Court" (1927) 8 *British Year Book of International Law* 81-88
- Brown "April Jones Murder - the Full Story: Alcoholic Paedophile Mark Bridger Turned Online Sex Fantasies into Grim Reality" *Independent* (London 30/5/13)
- Brown "Society and the Supernatural: A Medieval Change" (1975) 104 *Daedalus* 133-151
- Brundage "Full and Partial Proof in Classical Canonical Procedure" (2007) 67 *Jurist* 58-71
- Bruns and Burgess "Researching News Discussion on Twitter" (2012) 13 *Journalism Studies* 801-814
- Bruns, Highfield, *et al.* "The Arab Spring and Social Media Audiences: English and Arabic Twitter Users and Their Networks" (2013) 57 *American Behavioral Scientist* 871-898
- Burke *Al-Qaeda: The True Story of Radical Islam* (Penguin 2004)
- Burnap, Williams, *et al.* "Tweeting the Terror: Modelling the Social Media Reaction to the Woolwich Terrorist Attack" (2014) 4 *Social Network Analysis and Mining* 1-14
- Burns "Parallels between Qaddafi and Hussein Raise Anxiety for Western Leaders" *The New York Times* (New York 23/10/11)
- Burr "Cover Selection an Act of Irresponsibility" *The Boston Globe* (Boston 18/7/13)
- Camber "Freed, the 'Thug in Police Uniform': What Jury Weren't Told About the PC Cleared of G20 Killing" *The Daily Mail* (London 19/7/12)
- Carey "American Journalism On, Before, and After September 11" in Zelizer and Allan (eds) *Journalism After September 11* (Routledge 2002)
- Carr "The Pressure to Be the TV News Leader Tarnishes a Big Brand" *The New York Times* (New York 21/4/13)
- Carroll and Landry "Logging On and Letting Out: Using Online Social Networks to Grieve and to Mourn" (2010) 30 *Bulletin of Science, Technology & Society* 341-349
- Carter "The F.B.I. Criticizes the News Media after Several Mistaken Reports of an Arrest" *The New York Post* (New York 18/4/15)
- Casarez "What Life Is Like for Casey Anthony" (*CNN* 2014) <<http://edition.cnn.com/2014/07/03/justice/casey-anthony-today/index.html>> accessed 24/3/15
- Casey "Common Misperceptions: The Press and Victorian Views of Crime" (2011) 41 *Journal of Interdisciplinary History* 367-391
- Cassinelli "13 Best Social Campaigns of 2013" (*Postano* 31/12/13) <<http://www.postano.com/blog/13-best-social-media-campaigns-of-2013>> accessed 29/1/15

- Cathcart "The Ordeal of Christopher Jefferies" (*FT Magazine* 2011) <<http://www.ft.com/cms/s/2/22eac290-eee2-11e0-959a-00144feab49a.html> - axzz3Coo4Bhj8> accessed 24/3/15
- Cavender and Mulcahy "Trial by Fire: Media Constructions of Corporate Deviance" (1998) 15 *Justice Quarterly* 697-717
- Celona, Margolin, *et al.* "Siege of Terror Fiend Eyed in 2011 Murders Best Pal Among 3 Slain" *The New York Post* (New York 23/4/13)
- Chancellor "History Should Come Down Hard on Tony Blair for Embracing Gaddafi When He Knew What a Murderous 'Mad Dog' He Was" *The Guardian* (London 25/2/11)
- Chapman "Blair Ditches Gaddafi as He Backs Battle to Oust Tyrant" *Daily Mail* (London 9/6/11)
- Chenu *Nature, Man, and Society in the Twelfth Century* (Translated: Taylor and Little) (University of Chicago Press 1968)
- Chermak "Body Count News: How Crime is Presented in the News Media" (1994) 11 *Justice Quarterly* 561-582
- Chibnall "The Production of Knowledge by Crime Reporters" in Cohen and Young (eds) *The Manufacture of News: Social Problems, Deviance and the Mass Media* (Constable 1973)
- Chibnall *Law-and-Order News: An Analysis of Crime Reporting in the British Press* (Tavistock 1977)
- Chivers "Land Mines Descend on Misurata's Port, Endangering Libyan City's Supply Route" *The New York Times* (New York 7/5/11)
- Chrisafis "'We Used to Be Afraid. But Now We've Seen the Blood Our Fears Have Gone': Libyans Tell of Bloodshed Despite the News Blackout Mercenary Attacks Fail to Deter Anti-Gaddafi Protests" *The Guardian* (London 22/2/11)
- Chrisafis and Meikle "Death of Gaddafi: Libyan Reaction: 'The Tyranny Is Gone. We're Free'" *The Guardian* (London 21/10/11)
- Chulov "Libya Rebels Isolate Gaddafi, Seizing Cities and Oilfields" *The Guardian* (London 24/2/11)
- Chulov and Smith "After the Battle, the Backlash for Gaddafi's Army of Mercenaries: Soldiers of Fortune in Pay of Dictator Fear Retribution: We Were Press-Ganged by Regime, Say Black Africans" *The Guardian* (London 3/9/11)
- Clark "Peace, Justice and the International Criminal Court: Limitations and Possibilities" (2011) 9 *Journal of International Criminal Justice* 521-545
- Cockburn *A History of English Assizes 1558-1714* (Cambridge University Press 1972)
- Cockburn "Twelve Silly Men? The Trial Jury at Assizes, 1560-1670" in Cockburn (ed) *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton University Press 1988)
- Cockburn "Don't Believe Everything You See and Read About Gaddafi" *Independent on Sunday* (London 25/6/11)
- Coffey and Woolworth "'Destroy the Scum, and Then Neuter Their Families': The Web Forum as a Vehicle for Community Discourse?" (2004) 41 *The Social Science Journal* 1-14
- Coffman and Johnston "Accused Colorado Gunman Could be Medicated for Psychiatric Exams" (*Reuters* 11/3/13) <<http://www.reuters.com/article/2013/03/11/us-usa-shooting-denver-idUSBRE92A11520130311>> accessed 29/1/15
- Cogan "International Criminal Courts and Fair Trials: Difficulties and Prospects" (2002) 27 *Yale Journal of International Law* 111-140
- Cohen *Folk Devils and Moral Panics: The Creation of the Mods and Rockers* (3rd edn, Routledge 2002)
- Cohen "CVS and Walgreens Ban An Issue of Rolling Stone" *The New York Times* (New York 18/7/13)
- Cohen and Young "The Process of Selection" in Cohen and Young (eds) *The Manufacture of News: Social Problems, Deviance and the Mass Media* (Constable 1973)
- Collins "How Twitter's Breaking the News" (*PC Pro* 8/1/14) <<http://www.pcpro.co.uk/features/386428/how-twiters-breaking-the-news>> accessed 24/3/15
- Comment "Brutal End for Tyrant Who Exported Terror" *Daily Mail* (London 21/10/11)
- Comunello and Anzera "Will the Revolution Be Tweeted? A Conceptual Framework for Understanding the Social Media and the Arab Spring" (2012) 23 *Islam and Christian-Muslim Relations* 453-470
- Conley "Public Ire over Casey Anthony Verdict; Social Media Sites Explode with Opinions" (*ABC News* 2011) <<http://abcnews.go.com/Health/casey-anthony-verdict-outrage-spills-online/story?id=14002257>> accessed 24/3/15
- Conlon "Mad Dog Hunted for 'War Crimes'; International Court Slaps Warrant on Gaddafi" *The Sun* (London 28/6/11)
- Connolly "Norway Invites Ideas for Utøya Massacre Memorials" *The Guardian* (London 15/7/13)
- Cooper "Looking for Clues in Boston" (*New York Times* 16/4/13) <<http://www.nytimes.com/video/us/100000002174493/looking-for-clues-in-boston-bombings.html?playlistId=100000002173381>> accessed 5/7/15
- Copsey, Dack, *et al.* *Anti-Muslim Hate Crime and the Far Right* (Centre for Fascist, Anti-Fascist and Post-Fascist Studies, June 2013)

- Cottle "Media and the Arab Uprisings of 2011: Research Notes" (2011) 12 *Journalism* 647-659
- Craps "Conjuring Trauma: The Naudet Brothers' 9/11 Documentary" (2007) 37 *Canadian Review of American Studies* 183-204
- Crossley "April Jones' Killer Mark Bridger Abandons His Appeal Against Whole-Life Tarriff just Eleven Days Before Hearing is Due" *Daily Mail* (London 13/1/14)
- Cullen "Dysfunctional, Yes, but No Excuse for Tsarnaev" *The Boston Globe* (Boston 26/4/13)
- Cullen "Moments of Humanity Followed a Brutal Crime" *The Boston Globe* (Boston 24/4/13)
- Cullen "Nothing Tough About This Boxer's Character" *The Boston Globe* (Boston 20/4/13)
- Cullen "The Hub of Fairness" *The Boston Globe* (Boston 13/6/14)
- Cullen "In Midst of Dense Technical Testimony, Defense Finds a Gap" *The Boston Globe* (Boston 11/3/15)
- Cullen "More Than One Cause for Sorrow in Court" *The Boston Globe* (Boston 5/5/15)
- Cullen "Searing, Simple, Strong - Bill Richard Recounts Family's Tragedy" *The Boston Globe* (Boston 6/3/15)
- Cumming-Bruce and Marlise "U.N. Panel Calls for Inquiry Into Qaddafi's Death" *The New York Times* (London 22/10/11)
- Damaška "Rational and Irrational Proof Revisited" (1997) 5 *Cardozo Journal of International and Comparative Law* 25-39
- Damaška "The Quest for Due Process in the Age of Inquisition" (2012) 60 *American Journal of Comparative Law* 919-954
- Dao and Sussman "For Obama, Big Rise in Poll Numbers after Bin Laden Raid" *The New York Times* (New York 4/5/11)
- Dawson *A History of Lay Judges* (Harvard University Press 1960)
- Dee "My Faith in Humanity Is Strong after Woolwich..." *The Guardian* (London 29/5/13)
- Delfiner "'Bomb' Cleric Fanned Flames Posted YouTube Islam Hate Rant" *The New York Post* (New York 20/4/13)
- Dijk "Tracing Twitter: The Rise of a Microblogging Platform" (2011) 7 *International Journal of Media & Cultural Politics* 333-348
- Dodd "Adebawale Charged" *The Guardian* (London 30/5/13)
- Dodd "Bomb Attack on Mosque" *The Guardian* (London 13/7/13)
- Dodd "The Shy Student Who Turned Killer and Bomber: 82-Year-Old Man Knifed in Street before Bomb Attacks: Ukrainian's Lack of Links in UK Made Him Hard to Hunt" *The Guardian* (London 22/10/13)
- Dodd "Student Killed 82-Year-Old in 'Race War'" *The Guardian* (London 22/10/13)
- Dodd "Two Held over Suspected Mosque Bombing Campaign" *The Guardian* (London 20/7/13)
- Dodd "Ukrainian Charged with Mohammed Saleem Murder: Police Describe Killing as Terrorist Related More Than 5,000 People Mourn Pensioner" *The Guardian* (London 23/7/13)
- Dodd and Halliday "Jury Watches Tape of Adebolajo Interview: Rigby Trial Hears Accused Say 'May Allah Forgive Me': Soldier's Neck 'was Sawed ... Until Almost Detached'" *The Guardian* (London 5/12/13)
- Dodd and Halliday "Rigby Witness Said Attacker's Look was 'Pure Evil': Statements Reveal Trauma of People Who Watched Widow Leaves in Tears after Harrowing Evidence" *The Guardian* (London 3/12/13)
- Dodd and Halliday "'They Have Taken Lee, but His Memory Will Live on in All of Us': Islamists Convicted of Soldier's Murder: Trial Leaves Questions Over MI5 Role" *The Guardian* (London 20/12/13)
- Dodd, Hopkins, *et al.* "Services Knew of Soldier Murder Suspects..." *The Guardian* (London 24/5/13)
- Dodd and Howden "How Militant Ideology Drove Pair to Kill 'Enemy' in a London Street..." *The Guardian* (London 20/1/13)
- Dodd, Malik, *et al.* "'You People Will Never Be Safe'..." *The Guardian* (London 23/5/13)
- Donahue "Proof by Witnesses in the Church Courts of Medieval England: An Imperfect Reception of the Learned Law" in Arnold (ed) *On the Laws and Customs of England* (University of North Carolina Press 1981)
- Dorell "Runners Sprint Away from Scene; 'Like a Scene from 9/11' or War, Unthinkable Gore" *USA Today* (Virginia 16/4/13)
- Douglas "Social Media's Role in the Riots" (*BBC* 9/8/11) <<http://www.bbc.co.uk/news/entertainment-arts-14457809>> accessed 21/1/14
- Downing *The Cambridge Introduction to Michel Foucault* (Cambridge University Press 2008)
- Doyle "1,200 Extra Police on Streets as EDL Thugs Exploit Tragedy" *Daily Mail* (London 24/5/13)
- Doyle and Martin "Assassin-to-Be at the Side of a Ranting Cleric" *Daily Mail* (London 24/5/13)
- Drake "April Jones' Killer Mark Bridger Moans 'Monster Mansion' Prison is Too TOUGH for Him" *The Mirror* (London 31/5/14)

- Drury "Revealed, Atrocities That Could Put Gaddafi on Trial for War Crimes" *Daily Mail* (London 17/3/11)
- Drury "We Must Bomb Gaddafi More, Says UK General" *Daily Mail* (London 16/5/11)
- Drury "Every Faith, Every Generation Joined in Mourning" *Daily Mail* (London 28/5/13)
- Drury, Narain, *et al.* "Lee Was a Loving Husband and Son, a Proud Dad ... and a True Warrior" *Daily Mail* (London 24/5/13)
- Duffin "Mother Tells Terrorists to Drop Weapons" *The Daily Telegraph* (London 23/5/13)
- Dunn and Hughes "Sickening; Terror on Our Streets Community in Shock at Soldier Attack PM and Muslim Leaders Unite to Condemn Atrocity" *The Sun* (London 23/5/13)
- Durkheim *The Rules of Sociological Method and Selected Tests on Sociology and its Method* (The Free Press 2014)
- Earle "'We Will Pick Ourselves Up. We Will Finish the Race' Obama Pledges Comfort & Healing in Rousing Boston Speech" *The New York Post* (New York 19/4/13)
- Editorial "Gaddafi's Rights" *The Sun* (London 22/10/11)
- Editorial "Post-Gadhafi Libya Teeters Between Democracy and Tribal Tinderbox" *USA Today* (Virginia 21/10/11)
- Editorial "Stopping Qaddafi" *The New York Times* (New York 25/2/11)
- Editorial "Beyond Belief" *The Sun* (London 23/5/13)
- Editorial "The Rigby Killers Show Why We Must Be Vigilant" *The Daily Telegraph* (London 20/12/13)
- Editorial "They Sought Weakness, but Found Only Strength" *The Daily Telegraph* (London 24/5/13)
- Editorial "The Unfinished War" *The New York Post* (New York 20/4/13)
- Editorial "Police Training Should Reflect Findings in Bombing Report" *The Boston Globe* (Boston 4/4/15)
- Eichbauer "Medieval Inquisitorial Procedure: Procedural Rights and the Question of Due Process in the 13th Century" (2014) 12 *History Compass* 72-83
- Elgin "Neighborhood Mourns Loss of 8-Year-Old-Boy Following Boston Blasts" *The New York Times* (New York 16/4/13)
- Eligon and Cooper "Blasts at Boston Marathon Kill 3 and Injure 100" *The New York Times* (New York 16/4/13)
- Elkton "In Benghazi, Brutal Memories Fuel Opposition; Anti-Gadhafi Forces Ready to Stand Fast" *USA Today* (Virginia 4/3/11)
- Ellicot "How the Jihadists Stole My Only Son" *Daily Mail* (London 20/12/13)
- Ellicot "Woolwich Suspect Limps into Court" *Daily Mail* (London 31/5/13)
- Ellis "Achieving Justice Before the International War Crimes Tribunal: Challenges for the Defense Counsel" (1996) 7 *Duke Journal of Comparative & International Law* 519-537
- Ensor, Malnick, *et al.* "They Are Brainwashing My Son; Mother of Murder Suspect Tells of Her Desperate but Futile Fight to Stop Her Son's Descent into Islamist Extremism" *The Daily Telegraph* (London 25/5/13)
- Epatko "'I am Kenji' Facebook Page Rallies around Japanese Hostage" (*PBS Newshour* 29/1/15) <<http://www.pbs.org/newshour/rundown/kenji-facebook-page-rallies-behind-japanese-hostage/>> accessed 30/1/14
- Ericson "Mass Media, Crime, Law and Justice: An Institutional Approach" (1991) 31 *British Journal of Criminology* 219-249
- Erikson *Wayward Puritans: A Study in the Sociology of Deviance* (Wiley 1966)
- Evans "Lee Rigby Murderers Sentenced to Life Behind Bars in their Absence After Being Dragged from Dock Following Brawl" *The Mirror* (London 26/2/14)
- Eversley and El Nasser "Tragedy Cuts 'Big Dreams' Short; Community Mourns 8-year-old Boy, Restaurant Worker" *USA Today* (Virginia 17/4/13)
- Fahim "Rebels in Libya Hope for Qaddafi's Fall but Remain of an Onslaught" *The New York Times* (New York 24/2/11)
- Fahim and Gladstone "Qaddafi, Son and Former Defense Aide Buried in Secret Place" *The New York Times* (New York 26/10/11)
- Fahim and Gladstone "U.S. and U.N. Demand Details from Libyan Leaders on How Qaddafi Died" *The New York Times* (New York 22/10/11)
- Fahim and Kirkpatrick "Libyan Rebels Repel Qaddafi Forces Near Tripoli" *The New York Times* (New York 25/2/11)
- Fahim and Kirkpatrick "Libyan Rebels Said to Debate Seeking U.N. Airstrikes against Qaddafi" *The New York Times* (New York 2/3/11)
- Fahim and Nossiter "In Libya, Massacre Site Is Cleaned Up, Not Investigated" *The New York Times* (New York 25/10/11)
- Fahim, Shadid, *et al.* "Qaddafi Seized by Foes, Meet a Violent End" *The New York Times* (New York 21/10/11)

- Fahim and Worth "Rebels Repel Qaddafi's Forces in a Key Oil City" *The New York Times* (New York 3/3/11)
- Fahmy "Photojournalists' and Photo Editors' Attitudes and Perceptions: The Visual Coverage of 9/11 and the Afghan War" (2005) 12 *Visual Communication Quarterly* 146-163
- Farmer "You're One in a Million: Soldier's Last Text to Mother; Victim's Family" *The Daily Telegraph* (London 25/5/13)
- Farragher "Step by Step to Judgment" *The Boston Globe* (Boston 4/5/15)
- Fears "Boston Dad's Horror Knew Dying Boy 'Wouldn't Make It'" *The New York Post* (New York 6/3/15)
- Feeley "Legal Complexity and the Transformation of the Criminal Process" *Sbjektivierung des Justiziellen Beweisverfahrens* (Vittorio Klistermann 1994)
- Fisher "The Jury's Rise as Lie Detector" (1997) 107 *Yale Law Journal* 575-713
- Fitzgerald "Boston Marathon Bombings: Making Sense of the Social Media Blitz" (*Time* 21/4/14) <<http://time.com/69726/social-media-boston-marathon-bombings/>> accessed 9/7/14
- Foucault *The History of Sexuality* (Translated: Hurley) (Penguin 1981)
- Foucault "Prisons et Asiles dans le Mécanisme du Pouvoir" *Dits et Ecrits: 1954-1988*, vol 2 (Gallimard 1994)
- Foucault *Discipline and Punish: The Birth of the Prison* (Translated: Sheridan) (Vintage Books 1995)
- Fox "Tsarnaevs' Deadly Brotherhood; Understanding Motivation Requires Examination of Human Need for Belonging" *USA Today* (Virginia 24/4/13)
- France "Butchers: CCTV Film of 'Cowardly & Callous' Fusilier Horror" *The Sun* (London 30/11/13)
- France "I Didn't Think a Man Could Kill Another Man Like This; Soldier Horror Trial; Rigby Accused's 'Evil Look'" *The Sun* (London 3/12/13)
- France "Soldier's Death 'A Barbaric Act'" *The Sun* (London 30/11/13)
- Fredericks "Bomber's Evil Hook Ex: He Tried to Brainwash Me to Hate US" *The New York Post* (New York 20/4/13)
- Fredericks "NO, F*% YOU! - Boston Bomber Remorseless Jury Sees Dzho 'Flip'" *The New York Post* (New York 23/4/15)
- Fredericks "Tsarnaev a Dead Man Mocking Bomber Grins & 'Guns' after Death Decision" *The New York Post* (New York 16/5/215)
- Fricker and Smith "Police Blast 'Ghouls' Who FILMED Hairdresser Being Stabbed to Death and Paramedics' Efforts to Save Her" *The Mirror* (London 20/2/214)
- Friedman "Bring on the Next Marathon" *The New York Post* (New York 17/4/13)
- Fuller, Texier, et al. *Prolonged Pretrial Detention in Haiti* (Vera Institute of Justice 2002)
- Gallanis "The Mystery of Old Bailey Counsel" (2006) 65 *Cambridge Law Journal* 159-173
- Galtung and Ruge "The Structure of Foreign News: The Presentation of the Congo, Cuba and Cyprus Crises in Four Norwegian Newspapers" (1965) 2 *Journal of Peace Research* 64-90
- Garland "What is a 'History of the Present'? On Foucault's Genealogies and Their Critical Preconditions" (2014) 16 *Punishment & Society* 365-384
- Gelineau "Azaria Chamberlain's Disappearance Revisited: Once Again, Australian Courts Asks, 'Did a Dingo Kill the Baby?'" *Huffington Post* (New York 18/2/12)
- Gettleman "Libyan Oil Buys Loyal African Allies for Qaddafi" *The New York Times* (New York 16/3/11)
- Gewirtz "Victims and Voyeurs at the Criminal Trial" (1995) 90 *Northwestern University Law Review* 863
- Glanfield "Maxine Carr Marries New Boyfriend - Who is 'Absolutely Besotted with Her' Despite Her Shameful Past" *The Daily Mail* (London 27/5/14)
- Globalwebindex GWI Device Summary (2014)
<http://www.globalwebindex.net/hubfs/Reports/GWI_Device_Report_-_Q3_2015_Summary.pdf>
accessed 27/1/15
- Glover "Why Gaddafi's British Apologists Should Hang Their Heads in Shame" *Daily Mail* (London 1/3/11)
- Goertzel "Belief in Conspiracy Theories" (1994) 15 *Political Psychology* 731-742
- Goldstone "International Criminal Court and Ad Hoc Tribunals" *The Oxford Handbook on the United Nations* (Oxford University Press 2007) 463-478
- Goode and Ben-Yehuda *Moral Panics: The Social Construction of Deviance* (2nd edn, Wiley-Blackwell 2009)
- Goode and Kovalesski "A Brother at Ease in the U.S., Influenced by One Who Wasn't" *The New York Times* (New York 20/4/13)
- Google "Google Glass Tech Specs" <<https://support.google.com/glass/answer/3064128?hl=en-GB>>
accessed 27/4/16
- Gottfried and Sherer "News Use Across Social Media Platforms 2016" (*Pew Research Centre* 26/5/16)
<<http://www.journalism.org/2016/05/26/news-use-across-social-media-platforms-2016/>> accessed 17/1/17.

- Green *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800* (University of Chicago Press 1985)
- Greenberg "The Victim in Historical Perspective: Some Aspects of the English Experience" (1984) 40 *Journal of Social Issues* 77-101
- Greenberg and Folger "Procedural Justice, Participation, and the Fair Process Effect in Groups and Organizations" in Paulus (ed) *Basic Group Processes* (Springer-Verlag 1983)
- Greene "'I Heard This Bang - Then Chaos. You Could See the Panic'" *The New York Post* (New York 16/4/13)
- Greenhill "Gaddafi Thugs Gunned Down in Cold Blood" *Daily Mail* (London 25/10/11)
- Greenhill "Get Our People out of Libya" *Daily Mail* (London 23/2/11)
- Greenhill and Gladdis "He Was Just Normal and Polite Says Beautician Who Dated a Terrorist" *Daily Mail* (London 25/5/13)
- Greenhill, Gysin, *et al.* "Descent into Evil of Teenage from Devout Christian Family" *Daily Mail* (London 24/5/13)
- Greenslade "Is Gaddafi Guilty of All We Have Been Told by Journalists?" *The Guardian* (London 26/6/11)
- Greenwood "Police Told: Name Celebrity Suspects to Stop Web Gossip" *Daily Mail* (London 5/6/13)
- Greenwood and Evans "Horror of Lee's Last Moments" *Daily Mail* (London 30/11/13)
- Greenwood, Fagge, *et al.* "Our Profound Shame Over Soldier's Murder" *Daily Mail* (London 29/5/13)
- Greenwood and Martin "Crazed Animals?..? How News of the Savage Attack Exploded on Twitter" *Daily Mail* (London 23/5/213)
- Greenwood and Martin "Shopping for a Knife in Argos, Smiling as He Buys Petrol ... Then He Hacked Lee Rigby to Death" *Daily Mail* (London 4/12/13)
- Greenwood and Slack "Betrayal of a Hero Father" *Daily Mail* (London 24/5/13)
- Greer "Crime, Media and Community: Grief and Virtual Engagement in Late Modernity" in Ferrell, *et al.* (eds) *Cultural Criminology Unleashed* (The GlassHouse Press 2004)
- Greer "News Media, Victims and Crime" in Davies, *et al.* (eds) *Victims, Crime and Society* (SAGE 2007)
- Greer "News Media Criminology" in Newburn and McLaughlin (eds) *The SAGE Handbook of Criminological Theory* (SAGE 2010)
- Greer, Ferrell, *et al.* "It's the Image that Matters: Style, Substance and Critical Scholarship" (2007) 3 *Crime, Media, Culture* 5-10
- Greer, Ferrell, *et al.* "Investigating the Crisis of the Present" (2008) 4 *Crime, Media, Culture* 5-8
- Greer and McLaughlin "We Predict a Riot?: Public Order Policing, New Media Environments and the Rise of the Citizen Journalist" (2010) 50 *British Journal of Criminology* 1041-1059
- Greer and McLaughlin "Trial by Media: Riots, Looting, Gangs and Mediatized Police Chiefs" in Reiner, *et al.* (eds) *Policing: Politics, Culture and Control: Essays in Honour of Robert Reiner* (Hart 2011)
- Greer and McLaughlin "'Trial by Media': Policing, the 24-7 News Mediasphere and the 'Politics of Outrage'" (2011) 15 *Theoretical Criminology* 23-46
- Greer and McLaughlin "Media Justice: Madeleine McCann, Intermediatization and 'Trial by Media' in the British Press" (2012) 16 *Theoretical Criminology* 395-416
- Greer and McLaughlin "'This Is Not Justice': Ian Tomlinson, Institutional Failure and the Press Politics of Outrage" (2012) 52 *British Journal of Criminology* 274-293
- Greer and McLaughlin "The Sir Jimmy Savile Scandal: Child Sexual Abuse and Institutional Denial at the BBC" (2013) 9 *Crime, Media, Culture* 243-263
- Grochowski "The Tabloid Effect in the OJ Simpson Case: 'The National Enquirer' and the Production of Crime Knowledge" (2002) 5 *International Journal of Cultural Studies* 336-356
- Groot "The Jury of Presentment Before 1215" (1982) 26 *American Journal of Legal History* 1-24
- Groot "The Early-Thirteenth-Century Criminal Jury" in Cockburn (ed) *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton University Press 1988)
- Grossman *The Art of Alibi: English Law Courts and the Novel* (The John Hopkins University Press 2002)
- Gunaratna *Inside Al Qaeda: Global Network of Terror* (N.Y. Berkley Books 2003)
- Gupta, Lamba, *et al.* \$1.00 Per RT #BostonMarathon #PrayforBoston: *Analyzing Fake Content on Twitter* (IEEE 2013)
- Haberman "Vindication at Last for a Woman Scorned by Australia's News Outlets" *The New York Times* (New York 16/11/14)
- Hall "The Determination of News Photographs" in Cohen and Young (eds) *The Manufacture of News: Social Problems, Deviance and the Mass Media* (Constable 1973)
- Hall "A World at One With Itself" in Cohen and Young (eds) *The Manufacture of News: Social Problems, Deviance and the Mass Media* (Constable 1973)
- Hall, Critcher, *et al.* *Policing the Crisis: Mugging, The State and Law & Order* (Palgrave Macmillan 2013)

- Halliday "Sun and Mirror Fined For Contempt of Court in Christopher Jefferies Articles" *The Guardian* (London 29/7/11)
- Halliday, Taylor, *et al.* "'A Horrific, Frenzied Attack' - Jury Is Shown Lee Rigby's Final Moments, Caught on Film: Court Hears Countdown to Killing in Woolwich Murder Weapons Cost Just £54.97, QC Tells Old Bailey" *The Guardian* (London 30/11/13)
- Hamilton *The Medieval Inquisition* (Edward Arnold (Publishers) Ltd 1981)
- Hampson and Raasch "That Post-9/11 Quiet? It's Over; As Boston News Sweeps America, Nation's Worst Fears Are Reawakened" *The Boston Globe* (Boston 16/4/13)
- Harcup and O'Neill "What Is News? Galtung and Ruge Revisited" (2001) 2 *Journalism Studies* 261-280
- Harding *The Law Courts of Medieval England* (George Allen & Unwin 1973)
- Harding "Death of Gaddafi: Legal Process: Few Libyans Will Mourn Lost Opportunity to See Dictator Face Court" *The Guardian* (London 21/10/11)
- Harding "Libya: How Gaddafi's Men Took Bloody Revenge in Final Hours of War: Evidence of Executions as Rebels Poured in - to Tripoli Captured Loyalist Fighters Prove a Headache for NTC" *The Guardian* (London 29/8/11)
- Harding "Sympathy, Fear and a Citizenship Ceremony as Woolwich Wakes After a Day of Violence" *The Guardian* (London 24/5/13)
- Harding and Hatcher "MI5 Link: Arrest by Kenyan Police Raises Questions for Security Services in UK" *The Guardian* (London 27/5/13)
- Harvey "Dead Dog; Sun Man's Chilling Visit to Gaddafi's Grisly Corpse" *The Sun* (London 24/10/11)
- Harvey and Charity "Mad Max v Mad Dog; Men Meet the Rebels Fighting Gaddafi" *The Sun* (London 9/3/11)
- Hastings "A Tryant Falls, but I Fear What Will Come Next" *Daily Mail* (London 21/10/11)
- Hastings "Enemy Within That Hates Our Tolerance" *Daily Mail* (London 24/5/13)
- Hathaway "'Life in the TV': The Visual Nature of 9/11 Lore and Its Impact on Vernacular Response" (2005) 42 *Journal of Folklore Research* 33-56
- Hayes "Massacred by Gaddafi's Men; Mad Dog's Troops Kill Hundreds" *The Sun* (London 29/8/11)
- Heller *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (Oxford University Press 2011)
- Helmholz "Crime, Compurgation and the Courts of the Medieval Church" (1983) 1 *Law and History Review* 1-26
- Hermida "Trial by Tabloid" (1994) 7 *Saint Thomas Law Review* 197-216
- Hern "4Chan Plays Racist Where's Wally to Find the Boston Bomber" *New Statesman* (London 18/4/13)
- Hickman "I Thought, OK, Let's Listen to What He Has to Say': When Ingrid Loyau-Kennett's Bus Was Halted at the Scene of the Woolwich Attack, She Leapt out to Offer Aid, but Ended up Engaging One of the Suspects in Conversation. Back Home in Cornwall, She Tells Leo Hickman Why She Did It, and What Should Happen to the Killers" *The Guardian* (London 28/5/13)
- Hightower "Shock and Outrage Great Casey Anthony's Not Guilty Verdict" (*CNS News* 2011) <<http://www.cnsnews.com/news/article/shock-and-outrage-greet-casey-anthony-s-not-guilty-verdict>> accessed 24/3/15
- Hitchens "We're Cheering on a Football Crowd with AK-47s Who Could be Worse Than Gaddafi" *Mail on Sunday* (London 30/8/11)
- Hooper-Rome and Black "Libya: Defections: Pilots Were 'Told to Bomb Protestors'" *The Guardian* (London 22/2/11)
- Hopkins and Bunyan "Lee Rigby: An Ordinary Soldier Who Died in Extraordinary Circumstances" *The Guardian* (London 23/5/13)
- Hopkins and Bunyan "'Lee was Lovely. He Would Do Anything for Anybody': Proud to be A Fusilier - The Fallen Soldier" *The Guardian* (London 24/5/13)
- Horn "Not Guilty Verdict for Casey Anthony Causes a Surge in Internet Traffic" (*PC Mag* 2011) <<http://www.pcmag.com/article2/0,2817,2388119,00.asp>> accessed 24/3/15
- Hostettler *The Politics of Criminal Law Reform in the Nineteenth Century* (Barry Rose 1992)
- Hostettler *Politics of Punishment* (Barry Rose 1994)
- Hostettler *A History of Criminal Justice in England and Wales* (Waterside Press 2009)
- Hsan "The Muslim Faith Does Not Turn Men to Terror: The Two Suspects in the Woolwich Killing Were Violating the Doctrine of Their Holy Book" *The Daily Telegraph* (London 24/5/13)
- Human Rights Watch *Death of a Dictator: Bloody Vengeance in Sirte* (2012)
- Human Rights Watch *Government Should Demand End to Unlawful Killings* (2011)
- Human Rights Watch *Letter to the ICC Prosecutor Regarding Accountability for Serious Crimes in Libya* (2014)
- Human Rights Watch *Libya: All Sides Obligated to Protect Civilians* (2011)
- Human Rights Watch *Libya: Apparent Execution of 53 Gaddafi Supporters* (2011)
- Human Rights Watch *Libya: Cease Arbitrary Arrests, Abuse of Detainees* (2011)

- Human Rights Watch *Libya: Opposition Arbitrarily Detaining Suspected Gaddafi Loyalists* (2011)
- Human Rights Watch *Libya: Opposition Forces Should Protect Civilians and Hospitals* (2011)
- Human Rights Watch *Libya: Stop Arbitrary Arrests of Black Africans* (2011)
- Human Rights Watch *Libya: Stop Revenge Crimes Against Displaced Persons* (2013)
- Humphreys, Gill, *et al.* "Historicizing New Media: A Content Analysis of Twitter" (2013) 63 *Journal of Communication* 413-431
- Hurnard "The Jury of Presentment and the Assize of Clarendon" (1941) 56 *The English Historical Review* 374-410
- Hyams "Trial by Ordeal: The Key to Proof in the Early Common Law" in Arnold (ed) *On the Laws and Customs of England* (University of North Carolina Press 1981)
- Hyams "Feud and the State in Late Anglo-Saxon England" (2001) 40 *The Journal of British Studies* 1-43
- Innes "The Media as an Investigative Resource in Murder Enquiries" (1999) 39 *British Journal of Criminology* 269-286
- Israel *Democratic Enlightenment: Philosophy, Revolution, and Human Rights 1750-1790* (Oxford University Press 2011)
- Italiano "Mass. Brass Whacks Pix Cop but Public Furious over Badge Yank" *The New York Post* (New York 20/7/13)
- Jacobs, Filipov, *et al.* "Tamerlan's Dreams in Shards, the Voices Inside Grew Louder" *The Boston Globe* (Boston 15/12/13)
- Jacobson, Hunter, *et al.* *Structured Mayhem: Personal Experiences of the Crown Court* (Criminal Justice Alliance 2015)
- Jauregui "Student's Disturbing Video and Mass Shooting 'Appear Connected': Police" (*Huffington Post* 25/7/14) <http://www.huffingtonpost.com/2014/05/24/elliott-rodger-video-confession_n_5385175.html> accessed 24/7/14
- Jenkins "Trial by Media is a Servicable Variant of the Medieval Ordeal" *The Guardian* (London 17/3/06)
- Jewkes *Media and Crime* (SAGE 2004)
- Johnson "My Generation is Soft? Tell That to a Cub Leader From Cornwall" *Mail on Sunday* (London 26/5/13)
- Johnson "Authorities Seek Witnesses, Pore over Security Footage; Dozens of Federal Investigators Join Police on Case" *USA Today* (Virginia 16/4/13)
- Johnson "Man in Boston Probe Killed During Questioning; Was Being Grilled on Tsarnaev Brothers' Ties to 2011 Slayings" *USA Today* (Virginia 23/5/13)
- Johnson "Friend Wages 'I am Kenji' Campaign to Free Held Journalist" (*Japan Times* 25/1/15) <<http://www.japantimes.co.jp/news/2015/01/25/national/friend-wages-kenji-campaign-free-held-journalist/> - .VMtt5sbVvzI> accessed 30/1/14
- Johnson, Madhani, *et al.* "Suspect Opening Up to Police; Tsarnaev, Unable to Talk, Writes; Responses Said to be 'Substantive'" *USA Today* (Virginia 22/4/13)
- Johnston and McGovern "Communicating Justice: A Comparison of Courts and Police Use of Contemporary Media" (2013) 7 *International Journal of Communication* 1667-1687
- Jones "Shocking Pictures that Show Gaddafi's Brutality Against His Own People" *Mail on Sunday* (London 10/4/11)
- Jones "Do Not Fear the Loonies ... Support H4H with Pride; Terror on Our Streets Britain's Celebs Praise Charity Says Jeremy Clarkson" *The Sun* (London 24/5/13)
- Jones and McIlgorm "If Your Country Doesn't Stop Gaddafi Today He Will Kill All of Us and He Will Kill You Too" *Mail on Sunday* (London 20/3/11)
- Jones and Wardle "'No Emotion, No Sympathy': The Visual Construction of Maxine Carr" (2008) 4 *Crime, Media, Culture* 53-71
- Kakutani "Unraveling Brothers' Online Lives, Link by Link" *The New York Times* (New York 24/4/13)
- Kampf and Liebes *Transforming Media Coverage of Violent Conflicts: The New Face of War* (Palgrave Macmillan 2013)
- Kang "Crowd-Sourcing A Smear" *The New York Times* (New York 28/7/13)
- Katz "What Makes Crime 'News'?" (1987) 9 *Media, Culture and Society* 47-75
- Kawczynski "Muammar Gaddafi's Cult of Personality has Finally Crumbled" *The Guardian* (London 23/2/11)
- Kellner "September 11, The Media, and War Fever" (2002) 3 *Television & New Media* 143-151
- Kelly "Teach Our Kids That the World Isn't Full of Monsters" *The Sun* (London 25/5/13)
- Kennedy "Don't You Forget About Me" (2009) 11 *Journalism Studies* 225-242
- Kern, Forman, *et al.* "RIP: Remain in Perpetuity. Facebook Memorial Pages" (2013) 30 *Telematics and Informatics* 2-10
- Kerr, Forsyth, *et al.* "Cold Water and Hot Iron: Trial by Ordeal in England" (1992) 22 *The Journal of Interdisciplinary History* 573-595

- Kershner "Qaddafi YouTube Spoof by Israeli Gets Arab Fan" (*The New York Times* 27/2/11)
http://www.nytimes.com/2011/02/28/world/middleeast/28youtube.html?_r=1
- Kessel "Adversary Excesses in the American Criminal Trial" (1991) 67 *Notre Dame Law Review* 403-551
- Kim "The Institutionalization of YouTube: From User-Generated Content to Professionally Generated Content" (2012) 34 *Media, Culture & Society* 53-67
- Kim, Barak, *et al.* "Examining the 'CSI-effect' in the Cases of Circumstantial Evidence and Eyewitness Testimony: Multivariate and Path Analyses" (2009) 37 *Journal of Criminal Justice* 452-460
- King "'Illiterate Plebeians, Easily Misled': Jury Composition, Experience and Behavior in Essex 1735-1815" in Cockburn (ed) *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton University Press 1988)
- King "Template Analysis" in Symon and Cassell (eds) *Qualitative Methods and Analysis in Organizational Research* (SAGE 1998)
- King "All in League with Boston. Stadium Pays Tribute to Wounded City" *The New York Post* (New York 17/4/13)
- King Jr "Without Nuremberg – What" (2007) 6 *Washington University Global Studies Law Review* 653-661
- kingreverieone "G8 Gleneagles - Repression at the Fence" (*YouTube* 27/12/07)
https://www.youtube.com/watch?v=aSX0ISb_YQI accessed 15/6/14
- Kirkpatrick "In a New Libya, Racing to Shed Ties to Qaddafi" *The New York Times* (New York 8/9/11)
- Kirkpatrick and Fahim "Rebels Claim Small Gains Against Qaddafi Forces" *The New York Times* (New York 17/3/11)
- Kirkpatrick and Mona "Qaddafi's Forces Strike with Fury as Unrest Grows" *The New York Times* (New York 22/2/11)
- Kirkpatrick and Mona "Son of Qaddafi Says Libya Faces Civil War Peril" *The New York Times* (New York 21/2/11)
- Kirshenblatt-Gimblett "Kodak Moments, Flashbulb Memories: Reflections on 9/11" (2003) 47 *The Drama Review* 11-48
- Klein and Perone "Time to Go, Mo - Prez Calls on Khadafy to Step Down" *The New York Post* (New York 27/2/11)
- Klerman "Was the Jury Ever Self-Informing?" (2003) 77 *Southern California Law Review* 123-149
- Knight "Journalism as Usual: The Use of Social Media as a Newsgathering Tool in the Coverage of the Iranian Elections in 2009" (2012) 13 *Journal of Media Practice* 61-74
- Kotz "Many Could Suffer Hearing Issues from Blasts" *The Boston Globe* (Boston 18/4/13)
- Kovaleski and Oppel "Bombing Suspect Is Seen as Linked To 2011 Slayings" *The New York Times* (New York 11/7/13)
- Kowalczyk "For His Nurses, Angst Gave Way to Duty" *The Boston Globe* (Boston 19/3/13)
- Kowalczyk "In ER, Ethos Takes Over" *The Boston Globe* (Boston 25/4/13)
- Kowsh "FBI Grills Saudi Man 'Smells of Gunpowder'" *The New York Post* (New York 16/4/13)
- Kowsh and Fenton "Tragic Victim's 'Heart of Gold'" *The New York Post* (New York 17/4/13)
- Kress "The Procedural Law of the International Criminal Court in Outline: Anatomy of a Unique Compromise" (2003) 1 *Journal of International Criminal Justice* 603-617
- Kritzman "Power and Sex: An Interview with Michel Foucault" in Kritzman (ed) *Michel Foucault: Politics, Philosophy, Culture: Interviews and Other Writings, 1977-1984* (Routledge 1988)
- Kwak, Lee, *et al.* *What is Twitter, a Social Network or a News Media?* (ACM 2010) 591-600
- Lammy "Why Are Young British Men Drawn to Radicalisation? From the EDL to Extreme Islam, Angry Males Are Being Manipulated" *The Guardian* (London 25/5/13)
- Landau *The Justices of the Peace, 1679-1760* (University of California Press 1984)
- Landsman "The Rise of the Contentious Spirit: Adversary Procedure in Eighteenth Century England" (1990) 75 *Cornell Law Review* 497-1426
- Lang and Lang "The Inferential Structure of Political Communications: A Study in Unwitting Bias" (1955) 19 *The Public Opinion Quarterly* 168-183
- Lang and Lang "Polling on Watergate: The Battle for Public Opinion" (1980) 44 *Public Opinion Quarterly* 530-547
- Langbein "The Origins of Public Prosecution at Common Law" (1973) 17 *American Journal of Legal History* 313-335
- Langbein *Prosecuting Crime in the Renaissance: England, Germany, France* (The Lawbook Exchange Ltd 1973)
- Langbein *Torture and the Law of Proof* (University of Chicago Press 1977)
- Langbein "The Criminal Trial Before the Lawyers" (1978) *The University of Chicago Law Review* 263-316

- Langbein "Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources" (1983) *The University of Chicago Law Review* 1-136
- Langbein "The Historical Origins of the Privilege Against Self-Incrimination at Common Law" (1994) *Michigan Law Review* 1047-1085
- Langbein "Historical Foundations of the Law of Evidence: A View from the Ryder Sources" (1996) 96 *Columbia Law Review* 1168-1202
- Langbein "The Prosecutorial Origins of Defence Counsel in the Eighteenth Century: The Appearance of Solicitors" (1999) 58 *The Cambridge Law Journal* 314-365
- Langbein *The Origins of Adversary Criminal Trial* (Oxford University Press 2003)
- Langdon-Down "Trial by Media: Watching for Prejudice" *Independant* (London 10/10/95)
- Langley "Aurora Judge Rules 'Truth Serum' Can Test Suspect's Insanity" (*Psychology Today* 2013) <<https://www.psychologytoday.com/blog/beyond-heroes-and-villains/201303/aurora-judge-rules-truth-serum-can-test-suspects-insanity>> accessed 24/3/15
- Laville, Malik, *et al.* "'We Saw the Meat Cleaver. They Were Hacking at This Poor Guy'" *The Guardian* (London 23/5/13)
- Lawson "Lawless Juries? The Composition and Behaviour of Hertfordshire Juries, 1573-1624" in Cockburn (ed) *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton University Press 1988)
- Lea *The Inquisition of the Middle Ages: Its Organisation and Operation* (Eyre and Spottiswoode 1963)
- Leeson "Ordeals" (2012) 55 *Journal of Law and Economics* 691-714
- Levenson "Suspects' Alleged Acts Betray City" *The Boston Globe* (Boston 20/4/13)
- Liberman "An Eye for an Eye: Public Support for War Against Evildoers" (2006) 60 *International Organization* 687-722
- Liebermann *Die Gesetze der Angelsachsen*, vol 2 (Halle a. S 1903)
- Lindgren "YouTube Gunmen? Mapping Participatory Media Discourse on School Shooting Videos" (2011) 33 *Media, Culture and Society* 123-136
- Liston "Amid Security, Anthony Released from Florida Jail" (*Reuters* 2011) <<http://www.reuters.com/article/2011/07/17/us-crime-anthony-idUSTRE76E4NJ20110717>> accessed 24/3/15
- Littlejohn "Toytown Jihadists and a Lack of Political Power" *Daily Mail* (London 24/5/13)
- Littlejohn "When They Said Fight Them on the Beaches, Dave..." *Daily Mail* (London 28/5/13)
- Lohr "Colorado Shooting: What We Know About James Holmes" *Huffington Post* (New York 20/7/12)
- Longman "Where Finish Line Is a Crime Scene, No Talk of Defeat" *The New York Times* (New York 19/4/13)
- Lovett and Nagourney "Video Rant, Then Deadly Rampage in California Town" *The New York Times* (New York 24/5/14)
- Lowery, Filipov, *et al.* "Second Autopsy Set as Conspiracists Gravitates to Cause" *The Boston Globe* (Boston 5/5/13)
- Lowery and MacQuarrie "Funeral Home Searches for a Place to Bury Tsarnaev" *The Boston Globe* (Boston 4/5/13)
- MacAskill "Oakland Riots after Verdict in Police Shooting of Oscar Grant" *The Guardian* (London 9/7/10)
- MacDonald "Tsarnaev Pleads Not Guilty to 30 Counts in Boston Bombings; Suspect Fidgets in First Public Appearance" *USA Today* (Virginia 11/7/13)
- MacDonald "Emotion Packed Courtroom in Boston" *USA Today* (Virginia 18/5/15)
- MacDonald "'It Was Him'; Tears and Trauma of Recollections Take Over Court" *USA Today* (Virginia 5/3/15)
- MacDonald "Tales of Horror Shared at Boston Bombing Trial; Tsarnaev Shows No Emotion as Survivors Tell Their Painful Stories" *USA Today* (Virginia 6/3/15)
- MacFarquhar "Muammar el-Qaddafi, 69, an Erratic, Brutal and Defiant Leader" *The New York Times* (New York 21/10/11)
- MacFarquhar, Schmitt, *et al.* "The Vacuum After Qaddafi" *The New York Times* (New York 27/2/11)
- Machado and Santos "The Disappearance of Madeleine McCann: Public Drama and Trial by Media in the Portuguese Press" (2009) 5 *Crime, Media, Culture* 146-167
- Mackey "Photo Essay Offers Clues on Tamerlan Tsarnaev's Life" *The New York Times* (New York 19/4/13)
- Macnair "Vicinage and the Antecedents of the Jury" (1999) 17 *Law and History Review* 537-590
- MacQuarrie "Most Want Life Term for Tsarnaev" *The Boston Globe* (Boston 16/9/13)
- Malek "We Can No Longer Live Under Gaddafi's Evil Subjugation" *The Guardian* (London 22/2/11)
- Malik "'I Am a Soldier' Adebolajo Tells Old Bailey Hearing" *The Guardian* (London 6/6/13)
- Malik and Dodd "Woolwich Murder Suspect Appears in Court" *The Guardian* (London 31/5/13)

- Malik and Walker "Second Man Appears in Court Charged With Soldier's Murder" *The Guardian* (London 4/6/13)
- Mallard "New ISIS Video Appears to Show Japanese Hostage Kenji Goto" (*Huffington Post* 27/1/15) <http://www.huffingtonpost.com/2015/01/27/kenjo-goto-isis-video_n_6554720.html> accessed 30/1/14
- Mansfield "Being Seen to be Done" (1995) 6 *British Journalism Review* 60-63
- Margulies "Deviance, Risk, and Law; Reflections on the Demand for the Preventive Detention of Suspected Terrorists" (2011) 101 *The Journal of Criminal Law and Criminology* 729-780
- Martha "Social Media Fuels Protests in Iran, Bahrain and Yemen" (*ABC News* 15/2/11) <<http://abcnews.go.com/International/social-media-fuels-protests-iran-bahrain-yemen/story?id=12926081>> accessed 26/1/14
- Martin "Posing like Usain Bolt and Kissing the Koran, Woolwich Suspect Now Known as Abu Hamza" *Daily Mail* (London 4/6/13)
- Martin "Two Accused of Stabbing Soldier in the Street Deny Murder" *Daily Mail* (London 28/9/13)
- Martin, Greenhill, *et al.* "Chilling Rant into Cameraphone" *The Guardian* (London 23/5/13)
- Martin, Greenhill, *et al.* "'You and Your Children Will Be Next': Islamic Fanatics Wielding Meat Cleavers Butcher and Try to Behead a British Soldier, Taking Their War on the West to a Whole New Level of Horror" *Daily Mail* (London 23/5/12) <<http://www.dailymail.co.uk/news/article-2329089/Woolwich-attack-Two-men-hack-soldier-wearing-Help-Heroes-T-shirt-death-machetes-suspected-terror-attack.html>> accessed 11/9/14
- Martin and Greenwood "I Love Al Qaeda ... They Are My Brothers. I Am a Soldier and This Is War" *Daily Mail* (London 10/12/13)
- Marwick "I Tweet Honestly, I Tweet Passionately: Twitter Users, Context Collapse, and the Imagined Audience" (2011) 13 *New Media & Society* 114-133
- Marwick and Ellison "'There Isn't Wifi in Heaven!' Negotiating Visibility on Facebook Memorial Pages" (2012) 56 *Journal of Broadcasting & Electronic Media* 378-400
- Mason "Terror Attacks Will Only Make Us Stronger, says Cameron" *The Daily Telegraph* (London 24/5/13)
- Mast and Hanegreifs "When News Media Turn to Citizen-Generated Images of War" (2015) 3 *Digital Journalism* 594-614
- Mawby "Chibnall Revisited: Crime Reporters, the Police and 'Law-and-Order News'" (2010) 50 *British Journal of Criminology* 1060-1076
- May "Who Tube? How YouTube's News and Politics Space Is Going Mainstream" (2010) 15 *The International Journal of Press/Politics* 499-511
- May "Gaddafi Killers to Face Trial in Libya" *The Sun* (London 28/10/11)
- McCarthy "Kony 2012: How the Video Spread Across the Internet" (*The Guardian* 9/3/11) <<http://www.theguardian.com/world/us-news-blog/2012/mar/09/kony-2012-how-video-spread>> accessed 7/1/16
- McEnery, McGlashan, *et al.* "Press and Social Media Reaction to Ideologically Inspired Murder: The Case of Lee Rigby" (2015) 9 *Discourse & Communication* 1-23
- McFarlane and Hay "The Battle for Seattle: Protest and Popular Geopolitics in 'The Australian' Newspaper" (2003) 22 *Political Geography* 211-232
- McGreal, MacAskill, *et al.* "Libya: After Five Days of 'Hell', Allied Bombs Lift Siege of Misrata: Air Strikes Repel Gaddafi's Forces from Key Rebel Town Residents Say Nearly 100 Died in Bloody Onslaught" *The Guardian* (London 24/3/11)
- McKinley "In California, Protests after Man Dies at Hands of Transit Police" *New York Times* (New York 8/1/09)
- McLane "Juror Attitudes Toward Local Disorder: The Evidence of the 1328 Lincolnshire Trailbaston Proceedings" in Cockburn (ed) *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton University Press 1988)
- Meikle "Citizen Journalism, Sharing, and the Ethics of Visibility" in Allan and Thorsen (eds) *Citizen Journalism: Global Perspectives*, vol 2 (Peter Lang 2009)
- Meikle, Lewis, *et al.* "Man Dies During G20 Protests in London" *The Guardian* (London 2/4/09)
- Mekay "One Libyan Battle is Fought in Social and News Media" *The New York Times* (New York 23/2/11)
- Mensch "Bombers Taint Lee's Memory" *The Sun* (London 14/7/13)
- Mensch "Death Penalty is Easy Way Out" *The Sun* (London 26/5/13)
- Meraz and Papacharissi "Networked Gatekeeping and Networked Framing on #Egypt" (2013) 18 *The International Journal of Press/Politics* 138-166
- Merback *The Thief, the Cross and the Wheel: Pain and the Spectacle of Punishment in Medieval and Renaissance Europe* (Reaktion Books 1999)

- Michael "Resurgent Libyan Rebels Move Toward Tripoli; Gadhafi Aide Defects and Flees Country" *USA Today* (Virginia 14/6/11)
- Michaels "Libya's Gadhafi, Rebels in Power Standoff; Analysts Don't See Huge Gains on Either Side" *USA Today* (Virginia 9/3/11)
- Mihoces "Tributes Flow from Near, Far; Sporting World Unites to Honor City, Victims" *USA Today* (Virginia 17/4/13)
- Miller "Choosing the Avenger: Some Aspects of the Bloodfeud in Medieval Iceland and England" (1983) 1 *Law and History Review* 159-204
- Miller and Fredericks "Delusion in Libya - Khadafy: I Don't See Dead People" *The New York Post* (New York 28/2/11)
- Mills "Images of Terror: Enduring the Scars of 9/11" (2009) 56 *Dissent* 75-80
- Mills "'Bashir is Dividing Us': Africa and the International Criminal Court" (2012) 34 *Human Rights Quarterly* 404-447
- Mirkinson "Aurora Shooting: ANC's Brian Ross Incorrectly Suggests Tea Park Link" (*Huffington Post* 20/7/12) <http://www.huffingtonpost.com/2012/07/20/brian-ross-tea-party-colorado-shooting_n_1689471.html> accessed 29/1/15
- Mohammed "Social Media Buzz: Don't Gas the Bunnies!" (*Syria Deeply* 10/12/12) <<http://www.syriadeeply.org/articles/2012/12/2210/social-media-buzz-dont-gas-bunnies/>> accessed 1/2/15
- Mongelli "Vigil for 8-Year-Old Martin" *The New York Post* (New York 17/4/13)
- Mongelli and De-Falco "Boy Slain but Dream Lives Littlest Victim's Lasting Memory Will Be Precious Cry for Peace" *The New York Post* (New York 17/4/13)
- Moore "'It Was Just Like a Cannon Went Off'; On Day of Chaos, People Scramble for Loved Ones" *USA Today* (Virginia 16/4/13)
- Moore "We Are Too Weak to Face up to the Extremism in Our Midst; Despite the Woolwich Outrage, David Cameron has Failed to Act Against Islamist Terrorism" *The Daily Telegraph* (London 15/6/13)
- Moran "Mass-Mediated 'Open Justice': Court and Judicial Reports in the Press in England and Wales" (2014) 34 *Legal Studies* 143-166
- Morgan "Rest in Peace Baby; Thousands in Homage at Death Spot" (*The Sun* 26/5/13) <<http://www.thesun.co.uk/sol/homepage/news/4942677/Rest-in-peace-baby-Heartrending-note-by-girlfriend-of-Lee-Rigby.html>> accessed 26/5/13
- Morgan "Soldier Killer's Family Shamed; 'We Pray for Lee'" *The Sun* (London 29/5/13)
- Morgan and Ryan "In the Dock Bandaged and Cuffed; Shot Terror Accused in Court" *The Sun* (London 31/5/13)
- Morgan, Wisneski, *et al.* "The Expulsion from Disneyland: The Social Psychological Impact of 9/11" (2011) 66 *American Psychologist* 447-454
- Morris "Police Demand Facebook Ban Pages Attacking Lead Suspect in Australian Murder Case" (*Daily Dot* 3/10/12) <<http://www.dailydot.com/society/adrian-ernest-bayley-jillian-meagher-facebook-page/>> accessed 31/1/15
- Morrison "The Significance of Nuremberg for Modern International Law" (1995) 149 *Military Law Review* 207-215
- Moynihan "Libya's U.N. Diplomats Break with Qaddafi" *The New York Times* (New York 22/2/11)
- Mulcahy *Legal Architecture: Justice, Due Process and the Place of Law* (Routledge 2011)
- Mullen and Skitka "When Outcomes Prompt Criticism of Procedures: An Analysis of the Rodney King Case" (2006) 6 *Analyses of Social Issues and Public Policy* 1-14
- Murphy "Mad Dog Put Down: Gaddafi Shot in Head" *The Sun* (London 21/10/11)
- Murthy "Twitter: Microphone for the Masses?" (2011) 33 *Media, Culture and Society* 779-789
- Nelson "Woolwich Was a Case Study in Banality - and the Idiocy - of Evil: We Shouldn't Bother Looking for Any Logic in Attacks Like These. There is None to be Found" *The Daily Telegraph* (London 24/5/13)
- Nestel, Celona, *et al.* "He Partied with Pals after the Blast" *The New York Post* (New York 20/4/13)
- Netto, Black, *et al.* "Death of Gaddafi: On Show in a Meat Locker: The Body of the Dead Dictator: Further Evidence Emerges of Former Leader's Last Moments" *The Guardian* (London 22/10/11)
- Newman, Fletcher, *et al.* *Reuters Institute Digital News Report 2016* (Reuters Institute for the Study of Journalism 2016)
- Newton-Dunn, *et al.* "Arm Us ... We'll Defeat Gaddafi in Days: Rebels Appeal for Weapons. They Want Dictator on Trial" *The Sun* (London 30/3/11)
- Newton-Dunn and Syson "Stop the Mad Dog Genocide; U.S. in Air Strikes Bid Crisis in Libya but Gaddafi Threatens Blitz" *The Sun* (London 18/3/11)
- Nolan "Were These Sheep and Lambs Killed by Nerve Gas Attack in Syria? Photograph Emerges of Aftermath of Rocket Barrage 'Fired by Rebels'" *Dail Mail* (London 27/4/13)

- <<http://www.dailymail.co.uk/news/article-2315655/Syria-Were-sheep-lambs-killed-nerve-gas-attack-Photograph-emerges-aftermath-rocket-barrage-fired-rebels.html>> accessed 21/1/14
- Obama *Osama bin Laden Dead* (2/5/11) <<https://www.whitehouse.gov/blog/2011/05/02/osama-bin-laden-dead>> accessed 27/2/16
- Oette "Peace and Justice, or Neither? The Repercussions of the al-Bashir Case for International Criminal Justice in Africa and Beyond" (2010) 8 *Journal of International Criminal Justice* 345-364
- Office of the United Nations High Commissioner for Human Rights *Report of the International Commission of Inquiry on Libya* (A/HRA/19/68 2/3/12)
- Oliver "Inside Filthy Tunnel Lair of Tyrant; Sun Man Visits Scene of Gaddafi's Final Hours" *The Sun* (London 22/10/11)
- Olson "Of Enchantment: The Passing Of The Ordeals And The Rise Of The Jury Trial" (2000) 50 *Syracuse Law Review* 109-196
- Oppel and Bidgood "Marathon Bombing Suspect, in First Court Appearance, Pleads Not Guilty" *The New York Times* (New York 11/7/13)
- Owen and Urquhart "Aftermath and Reaction to Killing on London Street - As it Happened" (*The Guardian* 22/5/13) <<http://www.theguardian.com/uk/2013/may/22/woolwich-two-shot-in-police-incident-live-coverage>> accessed 1/9/14
- Papacharissi and de Fatima Oliveira "Affective News and Networked Publics: The Rhythms of News Storytelling on #Egypt" (2012) 62 *Journal of Communication* 266-282
- Parker and Mills "Bomb Nut: I Wanted Race War; Nazi Fan's Hate; Killer Took Bomb on Bus" *The Sun* (London 22/10/13)
- Parker, Wells, *et al.* "Footie-Mad Class Joker Who Turned into Killer Extremist; Anti-Troop Madman 'Wanted to be Cop'" *The Sun* (London 24/5/13)
- Parkinson "What Rhymes with Disaster? Robin Thicke Trolled Hard in Twitter Q&A" *The Guardian* (London 1/7/14)
- Parry "Man Found Dead Amid Massive G20 Protest" (*CBC* 1/4/09) <<http://www.cbc.ca/news/world/man-found-dead-amid-massive-g20-protest-1.789416>> accessed 15/6/14
- Pella "Towards an International Criminal Court" (1950) 44 *American Journal of International Law* 37-68
- Pendlebury "Ceasefire? All the World Knows That Gaddafi is a Liar" *Daily Mail* (London 19/3/11)
- Pendlebury "Outgunned! Rebels with Rocket Grenades Take on Gaddafi's Artillery" *Daily Mail* (London 10/3/11)
- Pendlebury "To the Very End, His Mere Mention Made Even the Toughest Rebel Flinch" *Daily Mail* (London 21/10/11)
- Pennington "Innocent until Proven Guilty: The Origins of a Legal Maxim" (2003) 63 *Jurist* 106-124
- Perkin "The Social Causes of the British Industrial Revolution" (1968) 18 *Transactions of the Royal Historical Society* 135-136
- Petersen "Syria: Video Purports to Show Massacre of Pro-Bashar Fighters in Aleppo" (*Global Post* 2012) <<http://www.globalpost.com/dispatch/news/regions/middle-east/syria/120802/syria-aleppo-massacre-video-free-syria-army-war-crime-youtube-video>> accessed 24/7/14
- Peterson "Amateur Social Media Sleuth Outs Wrong James Holmes on Facebook" (*Daily Caller* 2012) <<http://dailycaller.com/2012/07/20/amateur-social-media-sleuth-outs-wrong-james-holmes-on-facebook/>> accessed 24/3/15
- Petrecca "After Bombings, Social Media Informs (and Misinforms)" *USA Today* (Virginia 23/4/13)
- Phifer "Law, Politics, and Violence: The Treason Trials Act of 1696" (1980) 12 *Albion: A Quarterly Journal Concerned with British Studies* 235-256
- Phillips "Lee's Widow in Tears at Pleas" *The Sun* (London 28/9/13)
- Pilkington, Rice, *et al.* "Gaddafi Faces New ICC Charges of Using Rape as Weapon in Conflict" *The Guardian* (London 9/6/11)
- Pollard "Gaddafi Gives Troops Viagra for Mass Rapes" *The Sun* (London 9/6/11)
- Pollock "King's Peace in the Middle Ages" (1899) 13 *Harvard Law Review* 177-189
- Pollock and Maitland *The History of English Law before the Time of Edward I: Volume II* (Cambridge University Press 1911)
- Potts, Seitzinger, *et al.* *Tweeting Disaster: Hashtag Constructions and Collisions* (ACM 2011)
- Powell "Jury Trial at Gaol Delivery in the Late Middle Ages: The Midland Circuit, 1400-1429" in Cockburn (ed) *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton University Press 1988)
- Powell Jr "The Right to a Fair Trial" (1965) 51 *American Bar Association Journal* 534-538
- Price "Lee is Now a Symbol of UK's Unbreakable Spirit" *The Sun* (London 21/5/13)
- Prynn "Pluck of a Cub Leader; Brave Mum Tackles Bloodied Fanatic" *The Sun* (London 23/5/13)
- Pugh "The Duration of Criminal Trials in Medieval England" in Ives and Manchester (eds) *Law, Litigants and the Legal Profession* (Swift Printers 1983)

- Qawalish "'We're Not Scared. We Get Used to It. It's the Gaddafi Army Who's Afraid': War in Libya: Gains by Ragtag Rebel Forces after Fierce Fighting Raise Hopes of Breakthrough" *The Guardian* (London 13/7/11)
- Quinn "Student Given Community Sentence Over Rigby Tweet" *The Guardian* (London 8/6/13)
- Quintard-Morénas "The Presumption of Innocence in the French and Anglo-American Legal Traditions" (2010) 58 *The American Journal of Comparative Law* 107-149
- Raasch and Alcindor "What Made These Two Tick? A Troubling Portrait is Emerging of Dzhokhar and Tamerlan Tsarnaev, the Brothers Suspected in the Boston Marathon Bombings, and it Contradicts What Others Close to Them Have Said" *USA Today* (Virginia 26/4/13)
- Radding "Superstition to Science: Nature, Fortune, and the Passing of the Medieval Ordeal" (1979) 84 *The American Historical Review* 945-969
- Rainey "'I Looked Him in the Eye. I Was Sure He Wasn't Going to Kill Me'; Former Cub Scout Leader Tells of Moment She Came Face to Face with Suspects and Told Them to Drop Their Bloody Weapons" *The Daily Telegraph* (London 24/5/13)
- Rajan "Fake News: Too Important to Ignore" (*BBC* 16/1/17) <<http://www.bbc.co.uk/news/entertainment-arts-38636042>> accessed 17/1/17
- Ralph *America's War on Terror: The State of the 9/11 Exception from Bush to Obama* (Oxford University Press 2013)
- RawCrime <<https://www.youtube.com/user/RawCrime/about>> accessed 25/3/15
- Rayner, Marsden, *et al.* "Slaughtered 'Like a Piece of Meat' on the Daytime Streets of London" *The Daily Telegraph* (London 23/5/13)
- Rayner and Swinford "An Eye for an Eye, a Tooth for a Tooth. We Won't Stop Fighting Until You Leave Us Alone" *The Daily Telegraph* (London 23/5/13)
- Recuber "The Terrorist as Folk Devil and Mass Commodity: Moral Panics, Risk and Consumer Culture" (2009) 9 *Journal of the Institute of Justice & International Studies* 158-170
- Redfield "Virtual Trauma: The Idiom of 9/11" (2007) 37 *diacritics* 55-80
- Reilly and Earlam "Fury at Ban on Poster for Lee" *The Sun* (London 30/5/13)
- Reilly, Sabey, *et al.* "You and Your Kids Are Next: Chilling Video of Machete Killer; Bloodstained Nut's Rant He Made Witnesses Film It" *The Sun* (London 23/5/13)
- Reiner (ed) *Media Made Criminality: The Representation of Crime in the Mass Media*, (The Oxford Handbook of Criminology, Oxford University Press 2007)
- Reitman "Jahar's World" *Rolling Stone* (New York 17/7/13)
- Rezendes and Hohler "Tie Sought Between Brother, 3 Killings" *The Boston Globe* (Boston 23/5/13)
- Richard and Richard "To End the Anguish, Drop the Death Penalty" *The Boston Globe* (Boston 17/4/15)
- Richards, Gaul, *et al.* "How Twitter Tracked the News of the World Scandal" (*The Guardian* 13/7/11) <<http://www.theguardian.com/media/interactive/2011/jul/13/news-of-the-world-phone-hacking-twitter>> accessed 16/7/14
- Rieder "Race to be First Becomes Race to be Wrong; Reports on an Arrest in Boston Bombing Prove Incorrect" *USA Today* (Virginia 18/4/13)
- Rimé "Emotion Elicits the Social Sharing of Emotion: Theory and Empirical Review" (2009) 1 *Emotion Review* 60-85
- Rimé "The Social Sharing of Emotion as an Interface Between Individual and Collective Processes in the Construction of Emotional Climates" (2007) 63 *Journal of Social Issues* 307-322
- Roberts and Doob "News Media Influences on Public Views of Sentencing" (1990) 14 *Law and Human Behavior* 451-468
- Robertson "Gaddafi to The Hague: David Cameron is Wrong. Justice Can't Be Left to the Libyans. It's Time to Start Putting Tyrants on Trial" *The Guardian* (London 29/8/11)
- Robinson, Smith-Lovin, *et al.* "Heinous Crime or Unfortunate Accident? The Effects of Remorse on Responses to Mock Criminal Confessions" (1994) 73 *Social Forces* 175-190
- Rock "News as Eternal Recurrence" in Cohen and Young (eds) *The Manufacture of News: Social Problems, Deviance and the Mass Media* (Constable 1973)
- Rohan "War Zone at Mile 26: 'So Many People without Legs'" *The New York Times* (New York 16/4/13)
- Ronson *So You've Been Publically Shamed* (Picador 2015)
- Rosen "The Dock: Should It Be Abolished?" (1966) 29 *The Modern Law Review* 289-300
- Roshier "The Selection of Crime News by the Press" in Cohen and Young (eds) *The Manufacture of News: Social Problems, Deviance and the Mass Media* (Constable 1973)
- Rosie and Gorringer "What a Difference a Death Makes: Protest, Policing and the Press at the G20" (2009) 14 *Sociological Research Online* 4
- Ross "Qaddafi's End and Libya's Future" *The New York Times* (New York 20/10/11)
- Ruthven *Torture: The Grand Conspiracy* (Weidenfeld and Nicolson 1978)
- Sabbagh "It is Not Always Attractive but We Must Aim for Openness" *The Guardian* (London 3/6/13)
- Sagan and Leighton "The Internet and the Future of News" (2010) 139 *Daedalus* 119-125

- Sanger "U.S. and Allies Seek a Refuge for Qaddafi" *The New York Times* (New York 17/4/11)
- Saul "Kenji Goto, Muath al-Kasaesbeh and Sajida al-Rishawi: The Three People at the Centre of the Isis Hostage Crisis" *Independent* (London 29/1/15)
- Sawyer "Flowers That Say We Won't Give in to Hate" *The Sunday Telegraph* (London 26/5/13)
- Sayare and Kirkpatrick "Berber Rebels in Libya's West Face Long Odds against Qaddafi" *The New York Times* (New York 25/4/11)
- Schram, Babcock, *et al.* "Idiots Beat up 'Arab' in Revenge" *The New York Post* (New York 18/4/13)
- Schworm and Saltzman "Thorny Questions as US Prepares Case" *The Boston Globe* (Boston 22/4/13)
- Secretary-General "Secretary-General, Calling Osama bin Laden's Death 'Watershed Moment', Pledges Continuing United Nations Leadership in Global anti-Terrorism Campaign" (*un.org* 2/5/11) accessed 14/4/16
- Seelye "Defense Rests in First Phase of Marathon Bombing Trial after Just Four Witnesses" *The New York Times* (New York 1/4/15)
- Seelye "Prosecution in Boston Marathon Trial Closes with Raw Details of Killings" *The New York Times* (New York 31/3/15)
- Seelye "Striking Moments from Bombing Trial" *The New York Times* (New York 16/5/15)
- Seelye and Lovett "After Attack, Suspects Returned to Routines, Raising No Suspensions" *The New York Times* (New York 27/4/13)
- Seelye, Rashbauu, *et al.* "2nd Bombing Suspect Is Captured, Wounded, After A Frenzied Manhunt Paralyzes Boston" *The New York Times* (New York 20/4/13)
- Seelye, Schmidt, *et al.* "F.B.I. Posts Images of Pair Suspected in Boston Attack" *The New York Times* (New York 19/4/13)
- Seelye and Schwartz "After Night of Terror in Boston Suburb, a Dawn of Doughnuts and Relief" *The New York Times* (New York 21/9/13)
- Selby "Robin Thicke Trolled After #AskThicke Twitter Publicity Stunt Goes Horribly Wrong" *The Independent* (London 1/7/14)
- Shapiro "To a Moral Certainty: Theories of Knowledge and Anglo-American Juries 1600-1850" (1986) 38 *Hastings Law Journal* 153-193
- Shapiro "Political Theory and the Growth of Defensive Safeguards in Criminal Procedure: The Origins of the Treason Trials Act of 1696" (1993) 11 *Law and History Review* 215-255
- Shereen "Don't Let Gaddafi's Crimes Die with Him" *The Sun* (London 24/10/11)
- Sherwell "Batman Shooting Suspect James Holmes: The Making of a Sick Joker" *The Daily Telegraph* (London 21/7/12)
- Silverman "Should Osama Bin Laden Have Been Caught and Tried?" (*BBC* 4/5/11) <<http://www.bbc.co.uk/news/world-south-asia-13279532>> accessed 10/12/14
- Silverman "This Analysis Shows How Viral Fake Election News Stories Outperformed Real News on Facebook" (16/11/16) <<https://www.buzzfeed.com/craigsilverman/viral-fake-election-news-outperformed-real-news-on-facebook>> accessed 17/1/17
- Simons, Burns, *et al.* "Hague Prosecutor Seeks Warrant for Qaddafi in Attacks on Civilians" *The New York Times* (New York 17/5/11)
- Skitka "Do the Means Always Justify the Ends, or Do the Ends Sometimes Justify the Means? A Value Protection Model of Justice Reasoning" (2002) 28 *Personality and Social Psychology Bulletin* 588-597
- Skitka "Of Different Minds: An Accessible Identity Model of Justice Reasoning" (2003) 7 *Personality and Social Psychology Review* 286-297
- Skitka, Bauman, *et al.* "Moral Conviction: Another Contributor to Attitude Strength or Something More?" (2005) 88 *Journal of Personality and Social Psychology* 895-917
- Skitka and Houston "When Due Process Is of No Consequence: Moral Mandates and Presumed Defendant Guilt or Innocence" (2001) 14 *Social Justice Research* 305-326
- Skitka and Mullen "Moral Convictions Often Override Concerns About Procedural Fairness: A Reply to Napier and Tyler" (2008) 21 *Social Justice Research* 529-546
- Skitka and Mullen "Understanding Judgements of Fairness in a Real-World Political Context: A Test of the Value Protection Model of Justice Reasoning" (2002) 28 *Personality and Social Psychology Bulletin* 1419-1429
- Skitka and Wisneski "Moral Conviction and Emotion" (2011) 3 *Emotion Review* 328-330
- Slackman "Dislike for Qaddafi Gives Arabs a Point of Unity" *The New York Times* (New York 22/3/11)
- Sleeve "Defense in Marathon Bombing Has Echo of Clarence Darrow" *The New York Times* (New York 14/3/15)
- Sleeve "Tears Dissolve Boston Bomber's Bored Facade as Relatives Try to Spare Him" *The New York Times* (New York 5/5/15)
- Sleeve and Bidgood "Accounts of Blood and Heartbreak in Boston Trial" *The New York Times* (New York 6/3/15)

- Sleeve and Oppel "Boston Suspect Viewed as Terrorist, and as Youth in Brother's Spell" *The New York Times* (New York 5/3/13)
- Smith "Did the Presumption of Innocence Exist in Summary Proceedings?" (2005) 23 *Law and History Review* 191-199
- Smith "The Presumption of Guilt and the English Law of Theft, 1750-1850" (2005) 23 *Law and History Review* 133-171
- Smith, Viera, *et al.* "The Search for April Jones - in Pictures" (*The Guardian* 3/10/12) <<http://www.theguardian.com/uk/gallery/2012/oct/02/search-april-jones-in-pictures-/?picture=397078927&index=0>> accessed 12/6/14
- Solon "Facebook's Failure: Did Fake News and Polarised Politics get Trump Elected?" *The Guardian* (London 10/11/16)
- Soltis "Humans Shield Coward Khadafy - Forces Civilians into Target City" *The New York Post* (New York 22/3/11)
- Soltis "Khadafy Qaeda-Crazy - Scared Madman's Blame Game Amid Mutiny and Murder" *The New York Post* (New York 25/2/11)
- Soltis "Khadafy's Hired Guns - 2G-Per-Day Mercenaries Battle Rebels" *The New York Post* (New York 4/3/11)
- Soltis "Madman Khadafy Trumped by Aces - 2 Defy Airstrike Order and Fly Coop" *The New York Post* (New York 22/2/11)
- Soltis "Wanted: Khadafy Killer" *The New York Post* (New York 28/10/11)
- Soltis "Dzhokhar 'Smug' in Courtroom" *The New York Post* (New York 11/7/13)
- Somaiya "Graphic Photos of Tsarnaev Capture Released" *The New York Times* (London 20/7/13)
- Sontag, Kovalski, *et al.* "Before Bombs, a Battered American Dream" *The New York Times* (New York 28/4/13)
- Stenton *English Justice Between the Norman Conquest and the Great Charter 1066-1215* (George Allen and Unwin 1965)
- Stenton *Anglo-Saxon England* (3rd edn, Oxford University Press 1971)
- Stockman "Tweets from a Teen Suspect" *The Boston Globe* (Boston 20/4/13)
- Stone and Sharpley "Consuming Dark Tourism: A Thanatological Perspective" (2008) 35 *Annals of Tourism Research* 574-595
- Sullivan, Reilly, *et al.* "As Woman Strokes a Beheaded Soldier, His Killer Cries for Jihad; Machete Maniacs Murder Squaddie" *The Sun* (London 23/5/13)
- Sullivan, Wells, *et al.* "Killer No.2 Was Knifed in Neck at a Crack Den Aged Just 16" *The Sun* (London 25/5/13)
- Surette "Media Trials" (1989) 17 *Journal of Criminal Justice* 293-308
- Surette "The Media, the Public, and Criminal Justice Policy" (2003) 2 *Journal of the Institute of Justice & International Studies* 39
- Sutter "Theater Shooting Unfolds in Real Time on Social Media" (*CNN* 20/7/12) <<http://edition.cnn.com/2012/07/20/tech/social-media/colorado-shooting-social-media/>> accessed 29/1/15
- Swinford "'He Would Do Anything for Anybody'; Family and Colleagues Pay Tribute to Loving Father and Talented Parade Drummer Who Served with Distinction in Afghanistan" *The Daily Telegraph* (London 24/5/13)
- Tapia, LaLone, *et al.* "Run Amok: Group Crowd Participation in Identifying the Bomb and Bomber from the Boston Marathon Bombing" (2014) *Proceedings of the 11th ISCRAM* 265-274
- Taylor "Badge Row" *The Guardian* (London 29/5/13)
- Taylor "Why so Many African Leaders Hate the International Criminal Court" *The Washington Post* (Washington D.C. 15/6/15)
- Tee, Paulsen, *et al.* "Revisiting Followership through a Social Identity Perspective: The Role of Collective Follower Emotion and Action" (2010) 24 *The Leadership Quarterly* 902-918
- TellMAMA "200 Islamophobic Incidents since Lee Rigby's Killing" (29/5/13) <<http://tellingmamauk.org/woolwich-murder-200-islamophobic-incidents-since-lee-rigbys-killing/>> accessed 22/10/14
- Terrill *World Criminal Justice Systems: A Comparative Survey* (8th edn, Hoboken Taylor and Francis 2014)
- Thompson *Whigs and Hunters: The Origin of the Black Act* (Penguin Books 1985)
- Tisdall "The Wheel of History Turned Yesterday: It Won't Turn Back: Gaddafi was a Liar, Murderer and Cheat. But He Said He'd Fight to the Death, and for Once, He Stuck to His Word" *The Guardian* (London 21/10/11)
- Tomlinson "Nonadversarial Justice: The French Experience" (1983) 42 *Maryland Law Review* 131-195
- Tomlinson "'You Did Not Deserve This': Carpet of Floral Tributes for Drummer Lee Rigby is Growing Everyday After a Huge Outpouring of Grief at Murder" (*Daily Mail* 28/5/13)

- <<http://www.dailymail.co.uk/news/article-2332179/Drummer-Lee-Rigbys-carpet-floral-tributes-grows-day-huge-outpouring-grief-Woolwich-murder.html>> accessed 26/2/14
- Tonkin, Pfeiffer, *et al.* "Twitter, Information Sharing and the London Riots?" (2012) 38 *Bulletin of the American Society for Information Science and Technology* 49-57
- Toobin "Killing Osama: Was it Legal?" (*The New Yorker* 2/5/11)
<<http://www.newyorker.com/news/news-desk/killing-osama-was-it-legal>>
- Townsend and Lewis "Police 'Assaulted' Bystander who Died During G20 Protests" *The Observer* (London 5/4/09)
- Truitt "Social Media Tributes Pouring in after Theatre Shooting" *USA Today* (Virginia 21/7/12)
- Turnbull and Gregory "Riot Mob Death; Obama Drama: Cops Pelted as they Try to Save Man" *The Mirror* (London 2/4/09)
- UN Press Release "International Criminal Court Prosecutor Calls on Libyan Authorities to Ensure No Impunity" (*UN* 7/11/12) <<http://www.un.org/apps/news/story.asp?NewsID=43435-VnCqzYTVXzK>> accessed 16/12/15
- Urquhart "Eyewitness: 'He Talked About War and Killing People'" *The Guardian* (London 23/5/13)
- Valencia "Judge Keeps Tsarnaev Trial in Boston, Delays the Start" *The Boston Globe* (Boston 25/9/14)
- Valencia "'It Was Him'" *The Boston Globe* (Boston 5/3/15)
- Valencia and Wen "Jurors Hear Testimony on Lives Torn Apart" *The Boston Globe* (Boston 22/4/15)
- van Caenegem *The Birth of the English Common Law* (2nd edn, Cambridge University Press 1988)
- Van den Bos, Bruins, *et al.* "Sometimes Unfair Procedures Have Nice Aspects: On the Psychology of the Fair Process Effect" (1999) 77 *Journal of Personality and Social Psychology* 324
- Vennochi "Fears of a New Generation" *The Boston Globe* (Boston 21/4/13)
- Vennochi "The Judge Who Wants to Move the Tsarnaev Trial" *The Boston Globe* (Boston 24/2/15)
- Victoria Police (*Facebook* 2012) <<https://www.facebook.com/victoriapolice/posts/392963264109149>> accessed 25/3/15
- Vogler *A World View of Criminal Justice* (Ashgate 2005)
- Vogler "Due Process" in Rosenfeld and Sajó (eds) *Comparative Constitutional Law* (Oxford University Press 2012)
- Vogler and Fouladvand "Standards for Making Factual Determinations in Arrest and Pretrial Detention: A Comparative Analysis of Law and Practice" in Thaman and Ross (eds) *Handbook of Comparative Criminal Justice* (Edward Elgar 2016)
- Volpp "The Boston Bombers" (2014) 82 *Fordham Law Review* 2209-2220
- Vora "Meanwhile, Sunil Tripathi Is Still Missing" *The New York Times* (New York 20/4/13)
- Walker "Clifton College is in the Dock over Christopher Jefferies" *The Daily Telegraph* (London 5/12/11)
- Walker "Gaddafi's Death Still Shrouded in Confusion" *The Guardian* (London 21/10/11)
- Walker "Towns Empty as Gadhafi Loyalists Flee; Thousands Scatter Fearing Rebel Reprisals" *USA Today* (Virginia 28/9/11)
- Walker, Malik, *et al.* "Suspect's Journey from Schoolboy Football to Phoning Jacking and Jihad..." *The Guardian* (London 24/5/13)
- Wallace "Operation Neptune's Spear: The Lawful Killing of Osama Bin Laden" (2012) 45 *Israel Law Review* 367-377
- Wardle "The 'Unabomber' vs. the 'Nail Bomber': A Cross-Cultural Comparison of Newspaper Coverage of Two Murder Trials" (2003) 4 *Journalism Studies* 239-251
- Wardle "'It Could Happen to You': The Move Towards 'Personal' and 'Societal' Narratives in Newspaper Coverage of Child Murder, 1930-2000" (2006) 7 *Journalism Studies* 515-533
- Wardle "Monsters and Angels: Visual Press Coverage of Child Murders in the USA and UK, 1930-2000" (2007) 8 *Journalism* 263-284
- Wells "I Am a Man. I Am a Soldier. I Am a British Citizen. You Cannot See My Privates; Soldier Killing Accused's Rant Silenced by Judge" *The Sun* (London 6/6/13)
- Wells "Outburst of Soldier Murder Accused" *The Sun* (London 6/6/13)
- Wells "Soldier Killing Accused's Rant Silenced by Judge" *The Sun* (London 6/6/13)
- Wells and Grant "I'll Cleanse Nation of These Greasy Rats House by House; Gaddafi Vows Bloody Revenge for Protests" *The Sun* (London 23/2/11)
- Wells and Soodin "Air Blitz on Demo; Gaddafi Bombs His People as Mid East Teeters Libya" *The Sun* (London 22/2/11)
- Wen "Defense Unable to Generate Sympathy for a Terrorist" *The Boston Globe* (Boston 16/5/15)
- West and Syson "My Mum is a Real Badass!" *The Sun* (London 24/5/13)
- Wheeler "What Did I Ever Do to You? The Humiliation He Richly Deserved. Gaddafi's Plea to Raging Mob" *The Sun* (London 21/10/11)
- Wheeler and Willetts "Blast Days of Gaddafi; As World Leaders Meet to Plan Libya's Future" *The Sun* (London 29/3/11)

- Whitehead "From Quiet Christians to Islamist Murders; Lee Rigby Murder Troubled as Children, Radicalised in Adolescence, Killers Were Never Far from Sight of Authorities" *The Daily Telegraph* (London 20/12/13)
- Whitehead "I Saw Pure Evil in Eyes of Woolwich Killers, Old Bailey Told" *The Daily Telegraph* (London 3/12/13)
- Whitehead "I'm a Man, a Soldier: Court Outburst by Rigby Suspect" *The Daily Telegraph* (London 6/6/13)
- Whitehead "Mosque Bomb Suspect Held over OAP Murder" *The Daily Telegraph* (London 22/7/13)
- Whitehead "Mosque Bombing 'Could Have Hit Hundreds'" *The Daily Telegraph* (London 13/7/13)
- Whitehead "New Threat to Britain: Lone Wolves under the MI5 Radar" *The Daily Telegraph* (London 23/5/13)
- Whitehead "Rigby Suspect: Blair Is Wicked and Corrupt" *The Daily Telegraph* (London 5/12/13)
- Whitehead "Suspect's Family Pray for Dead Soldier Rigby" *The Guardian* (London 29/5/13)
- Whitehead "Ukrainian Accused over Bombings" *The Daily Telegraph* (London 24/7/13)
- Whitehead and Dixon "A Barbarous and Cowardly Killing"; Two Islamists Tried to Behead Fusilier in Street after Running Him over, Court Told Lee Rigby Murder Trial" *The Daily Telegraph* (London 30/11/13)
- Whitehead, Prynn, *et al.* "Ukrainian Tried to Start UK Race War" *The Daily Telegraph* (London 22/10/13)
- Wickham "Would Gadhafi Accept Exile That Leaves Him Open to Future Prosecution?" *USA Today* (Virginia 5/4/11)
- Wickham "Decision to 'Mirandize' Boston Suspect Was Wise; Initial Denial of Right Stokes Terrorists' Belief" *USA Today* (Virginia 23/4/13)
- Wilkes and Greenwood "Killing of Grandfather Near Mosque was Act of Terrorism" *Daily Mail* (London 22/7/13)
- Wilkins "Information and the Definition of Deviance" in Cohen and Young (eds) *The Manufacture of News* (Constable 1981)
- Wilkinson "Attacker a 'Quiet Lad'" *The Sun* (London 24/5/13)
- Willcox "Footage Shows Aftermath of Cinema Shooting" (*BBC* 20/7/12) <<http://www.bbc.co.uk/news/world-us-canada-18925312>> accessed 25/3/15
- Willems, Patrick, *et al.* "Riggers ... a True Warrior; Terror on Our Streets Drummer Lee was Dad of Boy Aged 2. Tributes to Beheaded Fusilier, 25" *The Sun* (London 24/5/13)
- Williams and Burnap "Cyberhate on Social Media in the Aftermath of Woolwich: A Case Study in Computational Criminology and Big Data" (2016) 56(2) *British Journal of Criminology* 211-238.
- Williams and Delli Carpini "Unchained Reaction: The Collapse of Media Gatekeeping and the Clinton-Lewinsky Scandal" (2000) 1 *Journalism* 61-85
- Williams and Greenhill "Gaddafi Rants as Rebels Close on His Bunker" *Daily Mail* (London 25/2/11)
- Winch "Constructing an 'Evil Genius': News Uses of Mythic Archetypes to Make Sense of bin Laden" (2005) 6 *Journalism Studies* 285-299
- Wines and Lovett "The Dark Side, Carefully Masked" *The New York Times* (New York 5/5/13)
- Winfield, Friedman, *et al.* "History as the Metaphor Through Which the Current World Is Viewed: British and American Newspapers' Uses of History Following the 11 September 2001 Terrorist Attacks" (2002) 3 *Journalism Studies* 289-300
- Winter "New Photos of Tsarnaev Released; Photographer Angered by Rolling Stone Cover" *USA Today* (Virginia 19/7/13)
- Wintour, Taylor, *et al.* "Crackdown on the Preachers of Hate as Soldier's Family Grieves: Muslims Urge Creation of List of Banned Speakers: Government is Reluctant to Create New Laws" *The Guardian* (London 25/5/13)
- Wintour and Watt "Act Not to Calm Public Mood, Warns Blunkett: Feelings Worse Than 2005, Says Ex-Home Secretary. Social Media Images Make it Harder to Contain Anger" *The Guardian* (London 24/5/13)
- Withnall "Gloucester Hairdresser Stabbing: Police Criticise 'Distasteful' Onlookers Who Used Mobile Phones to Film Death of 20-Year-Old Hollie Gizzard" *Independent* (London 20/2/14)
- Wolfson "The Real Face of Terror: Behind the Scenes Photos of the Dzhokhar Tsarnaev Manhunt" (*Boston Magazine* 18/7/13) <<http://www.bostonmagazine.com/news/blog/2013/07/18/tsarnaev/>> accessed 13/7/15
- Worth "Qaddafi's Never-Neverland" *The New York Times* (New York 25/9/11)
- Yankah "Good Guys and Bad Guys: Punishing Character, Equality and the Irrelevance of Moral Character to Criminal Punishment" (2003) 25 *Cardozo Law Review* 1019
- Yates "Thirty Years Later and the Truth Remains: It is Communities That Defeat Terrorism" *The Daily Telegraph* (London 24/5/13)
- Young "The Norway Attacks" (*The Boston Globe* 27/7/11)

- <http://www.boston.com/bigpicture/2011/07/the_norway_attacks.html> accessed 24/2/14
- Young "The War Room" in Meyerowitz (ed) *History and September 11th* (Temple University Press 2003)
- Zelizer "Photography, Journalism and Trauma" in Zelizer and Allan (eds) *Journalism After September 11* (Routledge 2002)
- Zelizer "On 'Having Been There': 'Eyewitnessing' as a Journalistic Key Word" (2007) 24 *Critical Studies in Media Communication* 408-428
- Zinger "At the Bruins Game, a Time to Rally" *The New York Times* (New York 19/4/13)
- Zuckerman "International Reporting in the Age of Participatory Media" (2010) 139 *Daedalus* 66-75