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THE OFFICE OF CORONER 1860-1926:
RESISTANCE, RELUCTANCE AND REFORM

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ABSTRACT

This study explores, analyses and seeks to explain the processes by which legislative changes were achieved to overcome the problems associated with the role and duties of the office of coroner from the mid-nineteenth century to the 1920s. From time to time during the period, the office was exposed to political and public scrutiny that brought calls for reform. Despite that, and the general recognition that change was necessary, the process was extremely protracted and reform limited so that when the 1926 Act reached the statute book, it was greeted with a level of subdued dissatisfaction.

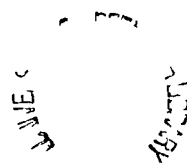
Throughout the period, the coroners resisted change based on an appeal to their traditional links with the people and representing the office as an ancient institution rooted in long established custom and practice. Despite that, the coroners were unable to evade the impact of changes associated with developments in local and national government which had an indirect, though significant, effect on coroners' reform. For most of the period, the policy of successive governments was to have no policy on coroners. To fill that void, various groups with conflicting interests and ambitions proposed changes to meet their needs and attempted to influence the government to implement them. A slow, complex, haphazard, fragmented and undirected process evolved that had its own dynamic. There was no strategist, no over-riding driving force, no single source. Suggestions were adopted, modified or rejected to produce a 'policy' that was eventually accepted by the Home Office.

From the detailed examination of the complex events, issues and stances adopted by the various bodies, including the Home Office, an explanation for the unusual, slow and tortuous process of reform emerges. Coroners' problems were a minor issue for the government and carried little weight in the wider scheme of politics. With such a low priority rating, the government was reluctant to intervene except under the pressure of public criticism when events created a crisis or near crisis. Eventually, a minimum legislative intervention brought closure, but left important problems unresolved. The coroners still investigated unexplained deaths on behalf of the Crown and retained intact their traditional authority, independence, common law powers and discretion.

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Family members normally end up at the end of this section, but my wife deserves, and receives, a higher ranking. She has always been a constant support and I thank her for her love, ongoing patience and forbearance. I dedicate this thesis to Beryl.

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Finally, my thanks go to the staff at the following institutions for their help. The Home Office (particularly Mr. R.J. Clifford); the Archives of Queen’s College, Oxford; the Barbican Library; the Bodleian Library (particularly Mr. R. Wilkes); the British Library (Bloomsbury, St.Pancras and Colindale); the Guildhall Library; the History of Medicine Library, Wellcome Trust; the Institute of History Library, University of London; the London Metropolitan Archives; the Public Records Office (Chancery Lane and Kew); and the University of Greenwich Library (Woolwich).

LIST OF ABBREVIATIONS

ACC	Association of County Councils
BMA	British Medical Association
<i>BMJ</i>	British Medical Journal
BoT	Board of Trade
CorSoc	Coroners' Society of England and Wales
GMC	General Medical Council
GP	General medical practitioner
HC Deb.	House of Commons Debates ¹
HL Deb.	House of Lords Debates ¹
LCC	London County Council
LCJ	Lord Chief Justice
LGB	Local Government Board
MCA	Municipal Corporations Association
MLS	Medico-Legal Society
MP	Member of Parliament
PCC	Public Control Committee of the London County Council
Parl. Deb.	Parliamentary Debates ²
SSA	National Association for the Promotion of Social Science

¹ Post-1909 See: Social Policy Information Service Publication 1: *British Parliamentary Publications* (London: British Library 1999) pp.9-10

² Pre-1909

THE OFFICE OF CORONER 1860-1926:
RESISTANCE, RELUCTANCE AND REFORM

CHAPTER 1
INTRODUCTION

Go thou and seek the Crowner.
*Twelfth Night*¹

The coroner's inquest has long been regarded as a quiet and curious backwater of the English legal system, though from time to time in recent years it has been the subject of considerable publicity and controversy.² Even as I compile this thesis, the coroner and the coroner's inquest have again come under unprecedented scrutiny as a result of the Harold Shipman case, the Bristol heart babies, the Alder Hey Hospital organs scandal and the *Marchioness* inquiry. These high profile cases have confirmed problems within the system and brought calls for radical reform, including the abolition of the office of coroner and its replacement with district judges.³ The present discourse has a familiar ring. Although it is taking place in a very different world to that which existed in the nineteenth and early twentieth centuries, similar problems and calls for change were made throughout that period.

¹ William Shakespeare *Twelfth Night* Act 1, sc.5, l.136

² Joe Sim and Tony Ward 'The magistrate of the poor? Coroners and deaths in custody in nineteenth-century England' in Michael Clark and Catherine Crawford, (eds.) *Legal Medicine in History* Cambridge, 1994 pp.245-67

³ Rosamund Rhodes-Kemp 'Is it time for an inquest into the coroner's role' *The Times* Law Supplement Feb 13 2001 p.3a

These have provided the basis of this study which deals primarily with the attempts to reform the office of coroner between 1860 and 1926.⁴

Few people come into direct contact with coroners or the inquest system and, for the most part, their activities are unreported. Consequently, as the recent high profile cases have revealed, there is general lack of knowledge and understanding of the work of coroners and the relationship of their work and decisions to the wider court system. Who are the coroners? How are they appointed? How do they work? What are their powers? What are the limits of their discretion? To whom are they accountable?⁵ Let me answer those questions, not for the present day, but to establish the position of the coroners in the mid-nineteenth century.

As a judicial officer, the coroner is unique within the English legal system and has the responsibility to inquire into unexplained deaths on behalf of the Crown. The origin of the office is lost in remote antiquity⁶ and is one of the oldest known to English law, with only the monarch and the sheriff preceding it.⁷ County coroners came into existence in 1194, followed about a hundred years later by borough and franchise coroners.⁸ An irony of the Quarter Sessions system was that the county coroner was the only elected official of the court—not a politician or an administrator, but a judicial figure.⁹ Although contested elections were

⁴ The dates mark the passing of two Acts of Parliament: 23 & 24 Vict. c.116 An Act to amend the Law relating to the Election, Duties and Payment of County Coroners [28th August 1860], 16 & 17 Geo.V c.59 An Act to amend the law relating to coroners [Coroners (Amendment) Act] [15th December 1926]

⁵ Phil Scruton and Kathryn Chadwick *In the Arms of the Law: Coroners' Inquests and Deaths in Custody* (London: Pluto 1987) p.14, Rhodes-Kemp op.cit. p.3a

⁶ See Deuteronomy Chapter 21, verses 1-7

⁷ James Craig *The Law of the Coroner, and on Medical Evidence in the Parliamentary Investigation of Cases in Scotland* (Edinburgh: Sutherland and Knox 1855) p.4, J. Maxwell Atkinson *Discovering Suicide, studies in the social organization of death* (London: Macmillan 1978) p.93, PP 1971-72 [Cmnd.4810] XXI. 367 Report of the Committee on Death Certification and Coroners [The Brodrick Report] [Hereafter: Brodrick] p.107

⁸ R.F. Hunnisett *The Medieval Coroner* (Cambridge: Cambridge University Press 1961) p.1

⁹ David Eastwood *Governing Rural England: Tradition and Transformation in Local Government 1780-1840* (Oxford: Clarendon Press 1994) [Hereafter: Rural] p.67

not the norm, when they took place they were usually tainted by bribery and corruption, and (like inquests) their association with public houses. The process was a remnant of the ancient practice of electing all local officials whose office dealt with matters affecting the liberties of the people. Nevertheless, in the 1830s, a Royal Commission considered that popular election was 'certainly a questionable method of appointing a judicial functionary'.¹⁰ Election to office by the freeholders and payment for service separated the coroners in the social hierarchy from the justices of the peace who were appointed by the Lord Chancellor.¹¹ That separation was widened because many coroners were solicitors employed by the magistrates as clerks of the peace¹² and acted as coroners only on a part-time basis—there being very few full-time coroners. Borough coroners were appointed by the borough councils and franchise coroners by the charter holder—most frequently, a lord of the manor.¹³ Minimal qualifications were required for appointment,¹⁴ yet a certain class of person was expected; for example, in the 1870s there were concerns about auctioneers or house-agents achieving office.¹⁵ All coroners were appointed for life and had a limited accountability to the Lord Chancellor. Only he had the power to remove a coroner from office for 'inability or misbehaviour'.¹⁶ There was no definition for either term,¹⁷

¹⁰ *Ibid.*

¹¹ Esther Moir *The Justice of the Peace* (Penguin, Harmondsworth 1969) p.184

¹² Olive Anderson *Suicide in Victorian and Edwardian England*. (Oxford: Clarendon Press 1987) p.16

¹³ John Jervis *A Practical Treatise on the Office and Duties of Coroners: with an Appendix of Forms and Precedents* First edition (London: S. Sweet, R. Pheney, A. Maxwell, and Stevens & Sons 1829) pp.3-4

¹⁴ The degree of knighthood was no longer demanded, but a county coroner still required 'sufficient property to maintain the dignity of his office, and to answer any fine that may have to be set upon him for misbehaviour.' Jervis *op.cit.* p.7 It was rare for qualifications to be defined for franchise coroners, and a borough coroner was required only to be a 'fit person' 5 & 6 Will. IV c.76 An Act to provide for Regulation of Municipal Corporations in England and Wales [9th September 1835] s.62

¹⁵ *BMJ* 2: Jul 22 1876 p.115

¹⁶ 23 & 24 Vict. c.116 An Act to amend the Law relating to the Election, Duties, and Payment of County Coroners [28th August 1860] s.6

¹⁷ PP 1909 [Cd.4782] XV.389 Report of the Departmental Committee appointed to inquire into the Law relating to Coroners and Coroners Inquests: Part II, Evidence and Appendices Q.95 [Hereafter: [Cd.4782]]

though 'inability' tended to be associated with extreme age. In any case, removal from office was a very rare event.¹⁸

The coroner was also unique because at an inquest he performed the role of 'inquisitor' leading an inquiry into an unexplained death rather than simply presiding over court proceedings.¹⁹ Nevertheless, the jury had the responsibility to return the verdict—not the coroner. As in the present day, an inquest was not a trial but an open and continuous inquiry to ascertain the true facts of a death, which were then recorded in the inquisition at the end of the process.²⁰ There was no accused person, only witnesses who provided evidence to the court. If evidence of criminal liability emerged during an inquest and the jury returned an appropriate verdict, the coroner had powers equivalent to a grand jury and could indict directly for trial by a petty jury at the assizes. However, the coroner had no powers to grant bail, this could only be granted by application to a superior court.²¹

The coroner did not investigate every death. From the earliest days, the coroner was required to investigate violent or unexplained deaths and had to rely on common law for jurisdiction since there was little legislation to define his duties.²² Relevant case-law was equally sparse,²³ though two early nineteenth century judgements²⁴ placed constraints on the jurisdiction of the coroners. The first defined that an inquest was appropriate only when there was 'reasonable suspicion'

¹⁸ For example, see: LCO2/61 Removal of Coroner 1893

¹⁹ Christopher P. Dorries *Coroner's Courts: a guide to law and practice* (John Wiley & Sons, Chichester 1999) p.1

²⁰ John Burton 'Coroners under fire' in *Medico-Legal Journal* 51:(4) 1983 p.218

²¹ John Jervis *On the Office and Duties of Coroners. With an appendix of forms and precedents* First edition (London: S. Sweet, R. Pheney, A. Maxwell, and Stevens & Sons 1829) p.274

²² Dorries op.cit. p.xxvii

²³ Ibid.

²⁴ R v. Kent JJ (1809) 11 East, 229 and R v. Western Railway (1842) 3 Q.B. 333 cited in J.D.J. Havard *The Detection of Secret Homicide: A Study of the Medico-legal System of Investigation of Sudden and Unexplained Deaths* (London: Macmillan 1960) (London: Macmillan 1960) p.39

that the death was caused by 'violent or unnatural means'. The second, that:

. . . dying suddenly is not to be understood of a fever, apoplexy, or other visitation of God, and Coroners ought not in such cases, nor indeed in any case, to obtrude themselves into private families for the purpose of instituting inquiry.²⁵

For an inquest to be 'duly held' there were five legal requirements that had to be met. The three most important were that the coroner had to have notice of the death to start proceedings, that a jury of at least twelve men was summoned and that the coroner and the jury viewed the body.²⁶

The processes used by the coroners had evolved over a period of several hundred years and consisted of a mixture of techniques, working procedures, practice, experience and common sense.²⁷ But the coroners' isolation from their colleagues and their traditional independence, combined with substantial discretion and individual interpretation of the law,²⁸ allowed considerable variation in practice and procedure from jurisdiction to jurisdiction. Even today, there are almost as many (correct) ways of approaching an inquest as there are coroners.²⁹ For most detailed points of practice and procedure most coroners have relied (and still rely) on Sir John Jervis's *A Practical Treatise on the Office and Duties of Coroners*,³⁰ first published in 1829 and updated at regular intervals ever since.

As the country became an increasingly more industrial and urban society the scope and number of inquests increased significantly. In

²⁵ Jervis op.cit. p.24

²⁶ J. Toulmin Smith *The Right Holding of the Coroner's Court and Some recent Interferences therewith: Being a Report Laid before the Royal Commissioners appointed to inquire into "The law now regulating the Payment of the Expenses of holding Coroners' Inquests."* (London: Henry Sweet 1859) pp.26-7

²⁷ David Garland *Punishment and Modern Society* (Clarendon Press, Oxford 1990) p.283 [Hereafter: Garland Society]

²⁸ Scraton and Chadwick op.cit. p.27

²⁹ Dorries op.cit. p.xxvii

Middlesex, for example, between 1828-48 the number of inquests more than doubled and the costs increased sixfold.³¹ The rise in costs resulted from an increase in coroners' remuneration, payment of fees for medical evidence and post-mortem examinations,³² and the new system of death registration.³³

Despite the increase in the number of inquests, the coroners still only dealt with a small proportion of total deaths. In the 1850s approximately 10% of all deaths were reported to the coroner and inquests were carried out on around half of them. This had increased to 7% by the first decade of the twentieth century.³⁴ In all cases of sudden or suspicious death it was the duty of 'those who are about the deceased' to inform the coroner or a police officer, who then communicated with the coroner.³⁵ The information came from a variety of sources, such as the family or friends of the deceased (if they had some suspicions about a death), a neighbour (possibly acting maliciously), a doctor, the local registrar or the parish constable. In 1860, the *only* statutory requirements for reporting deaths to the coroner were restricted to individuals under restraint in prisons and private lunatic asylums.³⁶ Under common law, an inquest was required following a prison death (including an execution),³⁷ but that apart, each coroner used his discretion whether to hold an inquest or not. Other elements of the inquest process and the problems associated with it will unfold as the thesis develops.

³⁰ Jervis op.cit.

³¹ Middlesex Magistrates Middlesex *Report of the Committee appointed at the Michaelmas Session, 1850, as to the Duties and Remuneration of Coroners and the Resolutions of the Court* (April Quarter Sessions 1851) pp.10-11

³² 6 & 7 Will.IV c.89 An Act to provide for the Attendance and Remuneration of Medical Witnesses at Coroners Inquests [17th August 1836]

³³ 6 & 7 Will. IV. c.86 An Act for registering Births, Deaths and Marriages in England [17th August 1836]

³⁴ [Cd.4782] op.cit. Appendix No.2 p.220

³⁵ Jervis op.cit. Fourth edition (London: H. Sweet & W. Maxwell, and Stevens & Sons 1880) p.197

³⁶ Anderson op.cit. p.18, 16 & 17 Vict. c.96 An Act to amend an Act passed in the Ninth year of Her Majesty, "for the Regulation of the Care and Treatment of Lunatics" [20th August 1853] s.19

³⁷ Jervis op.cit. First edition p.23

Let me now turn to other studies that have in one way or another touched on the office of coroner. The topic of coroners' reform has been largely neglected and other studies in which coroners and their inquests have featured have dealt with some of the related wider social issues. These have included subjects such as infanticide, suicide, deaths in police custody and the ambitions of the medical profession. However, they do not address the central focus of this study which is to explain the difficulties associated with the reform the office of coroner through the legislative process and why that reform was such a prolonged affair.

Thomas Wakley had a key influence on the role of the coroner in the nineteenth century and, as a result, studies have tended to focus on him and his career between 1825 and 1862. Today, he is almost unknown, yet as a surgeon, radical Member of Parliament and coroner, he made in his day important contributions to journalism, politics and jurisprudence.³⁸ He was the best known of the county coroners of the period, believing that the coroner was 'the people's judge'³⁹ with the primary responsibility to detect and prevent crime, and to check official negligence. Sprigge's late nineteenth century biography of Wakley was based on original documentation provided by the family. The documents disappeared when the book was completed⁴⁰ and, for that reason, his book still remains a starting point for studies that attempt to re-evaluate Wakley's career.⁴¹ The best academic study is that by Edwina Sherrington.⁴² She provides a balanced account of his career, taking into consideration its counterproductive aspects, and

³⁸ Charles G. Roland 'Introduction' in S. Squire Sprigge *The Life and Times of Thomas Wakley* (New York: Robert E. Kruger 1974, facsimile of 1899 edition) p.iii

³⁹ Rhodes-Kemp op.cit. p.3a

⁴⁰ Roland op.cit. p.iii

⁴¹ Charles Wortham Brook *Battling Surgeon* (Glasgow: Strickland Press 1945); Charles Wortham Brook *Thomas Wakley* (London: Today and Tomorrow Publications for the Socialist Medical Association 1962); Elisabeth E. Cawthorn 'Thomas Wakley and the Medical Coronership: Occupational Death and the Judicial Process' in *Medical History* 30: (1986) 191-202; John Hostettler 'Thomas Wakley: an Enemy of Injustice' in *Journal of Legal History* 5: (1984) 60-75, John Hostettler *Thomas Wakley: An Improbable Radical* (Chichester: B. Rose Law Publishers 1993)

⁴² Edwina Sherrington *Thomas Wakley and Reform 1823-62* (unpublished University of Oxford DPhil thesis 1974)

demonstrates how his various activities interrelated. Important sections are devoted to his work as a coroner and his efforts to have doctors appointed to the office.⁴³ Starting with Sprigge, she uses available contemporary sources to develop the study—especially Wakley’s own articles and reports that appeared in the *Lancet* (which he founded), his speeches (reported in Parliamentary Debates) and reports of events in the coroner’s court.

Wakley died in 1862 and was replaced as county coroner by another doctor, Edwin Lankester, for whom Mary English has written a useful, if short, biography. She explores his career as a medical man, biologist and scientist in a period when considerable change was taking place, not only in basic scientific knowledge, but also in the organisation of the professions.⁴⁴ He was an entirely different breed of coroner to the charismatic Wakley. With his experience as a doctor and particularly as a medical officer of health, he believed passionately that the first purpose of a coroner was ‘the promotion of sanitary measures’ rather than the detection and prevention of crime as advocated by Wakley and his London contemporaries Baker, Bedford and Payne.⁴⁵ During his period in office, Lankester was supported by many sanitarians who campaigned for medical coroners and a move towards the Scottish and Continental systems for the investigation of unexplained deaths. This important topic will be dealt with at an early stage of the thesis.

A group of studies⁴⁶ have examined particular facets of the office of coroner other than reform in the nineteenth and twentieth centuries.

⁴³ Ibid. Chapter 6 and chapter 7 sections (iv), (v)

⁴⁴ Mary P. English *Victorian Values: The Life and Times of Dr. Edwin Lankester M.D., F.R.S.* (Biopress, Bristol 1990) p.xv

⁴⁵ Anderson op.cit. p.110

⁴⁶ Sim and Ward op.cit., H.H. Pilling ‘Social Change and the Coronership’ in *Medicine, Science and the Law* 10: (4) (1970) 238-243. See also: Olive Anderson, ‘Suicide in Victorian London: an Urban View’ *Bulletin of the Society of the Social History of Medicine* 26: (1980) 18-21, Ian Burney ‘Making room at the public bar: coroner’s inquests, medical knowledge and the politics of the constitution in early-nineteenth century England’ in James Vernon (ed.) *Re-reading the constitution* (Cambridge 1996), (This article and book was brought to my attention by G.H.H. Glasgow), John

Useful insights have been provided by studies such as that of Sim and Ward, who explore the role of the coroners' inquest with the question of political and legal accountability for deaths in custodial institutions in the nineteenth century, Rose who investigates infanticide and Pilling who discusses social change and the coronership.

But it was Olive Anderson's book, *Suicide in Victorian and Edwardian England*,⁴⁷ that made me aware of the importance of coroners when I was working on an earlier research project.⁴⁸ In this important study, Anderson provides a new dimension for understanding suicidal behaviour and responses to it.⁴⁹ However, she also aims to throw more light on the history of Victorian and Edwardian England. In doing so, she ranges across a broad spectrum of social, religious, medical, urban cultural, legal and administrative history.⁵⁰ The study is based on a variety of sources including coroners' private case papers and other available inquest records.⁵¹ In order to explain the limitations imposed by these sources and the processes of reporting deaths following inquests, she describes the framework supporting the inquest and coroners' work. Anderson's book has provided some useful references and signposts to significant events.

Another useful study is John Havard's *The Detection of Secret Homicide*.⁵² His clearly stated objective was:

Fenwick 'Misadventures of the Coroners' Inquest' *New Law Journal* **130**: (1980) 1164-66, Georg Rosen 'The fate of the concept of medical police 1780-1890' *Centaurus* **5**: 1956-8 97-113, D. Zuck 'Mr. Troutbeck as the Surgeon's Friend: The Coroner and the Doctors—An Edwardian Comedy' in *Medical History* **39**: (1995) 259-287, Scraton and Chadwick op.cit., T. Ward 'Coroners, police and deaths in custody in England: a historical perspective' in *Working Papers in European Criminology* **6**: (1985) 186-215, Lionel Rose *The Massacre of Innocents: Infanticide in Great Britain* (London: Routledge & Kegan Paul 1986)

⁴⁷ Anderson op.cit.

⁴⁸ Donald Prichard *Prison Suicides in the Late Victorian Period* (unpublished University of Greenwich MA dissertation 1994)

⁴⁹ David Cannadine in *History In Our Time* (London: Penguin 2000) p.121

⁵⁰ Ibid. p.126

⁵¹ Anderson op.cit. pp.427-9

⁵² Havard op.cit.

. . . to examine the efficiency of the existing medico-legal investigative system used in such investigations preventing the concealment of homicide, and to *suggest methods whereby it might be improved*.⁵³ [emphasis added]

He believes that the problems associated with the coroner's inquest system in the mid-twentieth century can only be explained in the light of its long history. The main problem of covering almost eight hundred years of obscure and often complex history is to do so with both accuracy and brevity. Havard is criticised for being partisan, failing to appreciate some of the arguments and allowing his reformist agenda to overshadow his historical analysis.⁵⁴ Leon Radzinowicz defends him by saying that he 'may be excused if he is found in places to have oversimplified the issue here and there for the sake of giving a lucid account'.⁵⁵ Despite the valid criticisms, he provides a framework of related events, especially in the mid-nineteenth century, which I have found useful.

The book by Phil Scraton and Kathryn Chadwick, *In the Arms of the Law: Coroners' Inquests and Deaths in Custody*,⁵⁶ is primarily concerned with the adequacy of coroners in handling complex and controversial cases which clearly involved liability in the 1970s.⁵⁷ Like Havard, they were primarily interested in developing proposals for reforms to deal with these controversial deaths.⁵⁸ A section is devoted to an historical examination of the office of coroner and, by reference to some late eighteenth and early nineteenth century cases involving deaths in custody, they demonstrate that it has always been a site for 'persistent conflict and controversy'.⁵⁹ Some views expressed, with

⁵³ Ibid. p.xiv

⁵⁴ Anderson op.cit. p.17, Ian Adnan Burney *Decoding Death: Medicine, Public Inquiry, and the Reform of the English Inquest, 1836-1926* (unpublished University of California at Berkeley PhD thesis 1993) [Hereafter: Burney Thesis] p.31

⁵⁵ Leon Radzinowicz 'Preface' in Havard op.cit p.ix

⁵⁶ Phil Scraton and Kathryn Chadwick *In the Arms of the Law: Coroners' Inquests and Deaths in Custody* (London: Pluto 1987)

⁵⁷ Ibid. p.172

⁵⁸ Ibid. pp.166-80

⁵⁹ Ibid. p.23



respect to the period 1910-1926 in particular, have influenced my thinking.

Two academic studies initially appeared to be of interest. The first is Mary McHugh's 1976 thesis, *The Influence of the Coroner's Inquisition on the Common Law and the Medico-Legal System*.⁶⁰ It can be compared to Havard's work because it covers, rather unevenly, the development of the office of coroner from the eleventh century to 1975. However, the events of the late nineteenth and early twentieth centuries are mentioned only in passing. Overall, it is a rather disappointing work since it lacks analysis and reaches no conclusions.⁶¹ Despite the title, it appears that McHugh had a similar objective to Havard. Her final chapter⁶² is devoted to outlining 'practical suggestions for the extension of the role of the coroner and his [sic]⁶³ jurisdiction in the future'.⁶⁴ The second is John Fenwick's sociological study of the coroner system in the period from 1926-80⁶⁵ which he completed in the early 1980s. Overall, it has limited relevance to this thesis, though his reports of discussions with a number of coroners, in the late 1970s and early 1980s, echo some of the diverse perceptions and attitudes of their nineteenth and early twentieth century predecessors.

⁶⁰ Mary Patricia McHugh *The Influence of the Coroner's Inquisition on the Common Law and the Medico-Legal System* (University of London: unpublished PhD thesis 1976) [Hereafter: McHugh Thesis]

⁶¹ J.D.K. Burton Personal communication

⁶² McHugh Thesis op.cit. chapter 5 p.380

⁶³ McHugh made history in 1965 when she was appointed as the first whole-time women coroner in England and Wales (having served since 1962 as a deputy coroner). She must have been aware of the existing gender issues in society when she completed her PhD in 1976 and her use of the masculine possessive adjective is therefore surprising. Women were eligible for appointment to the office after 1919, but in the period 1860-1926 the office was occupied only by men and has continued to be dominated by them. See: Eric Hobsbawm *On History* (Weidenfield & Nicholson, London 1997) p.71, LCC: *Minutes of Proceedings* Nov 3 1964 p.918, *The Times* Aug 11 1992 p.13a, 9 & 10 Geo.V c.71 An Act to amend the Law with respect to disqualifications on account of sex [Sex Disqualification (Removal) Act] [23rd December 1919]

⁶⁴ McHugh Thesis op.cit. p.3

⁶⁵ John Fenwick *Accounting for Sudden Death: A Sociological Study of the Coroner System* (unpublished University of Hull PhD thesis 1984)

There are also two post-1926 official inquiries. Lord Wright was appointed as chairman of a Departmental Committee in 1935 following widespread criticism of the manner in which some recent inquests had been performed.⁶⁶ The Second World War interrupted the implementation of the recommendations. Some well-publicised criticisms of coroners in the mid-1960s led to another inquiry (to which Havard contributed) chaired by Mr. Norman Brodrick, a Central Criminal Court judge. The Wright and Brodrick reports⁶⁷ incorporate sections devoted to the historical development of the office of coroner and related topics, but the objective was to make recommendations for reform. However, like the other works noted above, they have provided useful information on the reforms that were made rather than attempting to explain why they occurred. The appointment of such committees confirms that the 1926 Act had not satisfactorily dealt with the long-standing problems associated with the coroners.

The most important study, relative to this thesis, is that by Ian Burney. He developed his 1993 thesis, *Decoding Death: Medicine, Public Inquiry, and the Reform of the English Inquest, 1836-1926*,⁶⁸ into the much more eloquent book, *Bodies of Evidence*,⁶⁹ which was published last year. Burney's study is a parallel to this thesis in which he considers the public role of science, specifically medical science, and its relationship to politics in the period from 1836 and 1926. His institutional focus is on the inquest. He analyses the interaction between the medical claims to expertise and the broader social and political rationale upon which the inquest rested. As he states:

From the former perspective, the inquest figured as an important opportunity for the development and display of a scientific

⁶⁶ Brodrick op.cit. p.117

⁶⁷ PP 1936 [Cmd.5070] VIII.1 Departmental Committee Report on Coroners [The Wright Report], Brodrick op.cit.

⁶⁸ Burney Thesis op.cit.

⁶⁹ Ian A. Burney *Bodies of Evidence: Medicine and the Politics of the English Inquest 1830-1926* (Johns Hopkins University Press, Baltimore 2000) [Hereafter: Burney Bodies]

understanding of death; from the latter, the inquest was anchored in a politics of openness and transparency considered by lay and medical commentators alike as the hallmark of a quintessentially English conception of participatory civil society. In matters of unexpected death, the inquest was thought to guarantee the basic requirements of a liberal polity—public access, knowledge, and assent.⁷⁰

He examines the strategies adopted by the medical reformers to establish, at least in theory, a socially acceptable place of exclusive expertise at the inquest and still maintain what he calls ‘the imperatives of publicity’. He reaches the conclusion that they were in part successful because many of the medical profession's fundamental critiques of the inquest were embodied in the terms of the 1926 legislation.⁷¹ Despite that, the involvement of the medical profession in the inquest system remained with the coroners, the majority of whom were lawyers.

Burney's study is valuable because he has shown, in considerable detail, the importance of the medical profession to the reform process. It is not surprising, therefore, that there are some aspects of the present study that overlap with Burney. Indeed, some of his insights have influenced my thinking. However, as I am attempting to demonstrate, there were other programmes in the *wider* social scene that were just as important or, indeed, more important than the medical profession that he does not consider. Disparate events, government policies, individuals and groups with vested interests—including the medical profession—all made contributions to the historical processes of change that affected the role and duties of the office of coroner in the period 1860-1926.

What emerges from my study is a slow, complex, multi-layered and fragmentary process where, as David Garland asserts, no particular agenda, ideology or programme completely succeeded or dominated:

⁷⁰ Burney Thesis op.cit. Abstract

⁷¹ Ibid. p.357

Instead, particular elements of each programme were adopted and established, while others were either rejected or ignored or else adopted in a modified or compromised form.⁷²

Garland uses the term 'strategy' to refer to the outcome of these responses, though he makes it clear that there is no question of a strategy existing first and being later implemented as fact.⁷³ There was no strategist, no over-riding programme, no single process, no single source.⁷⁴ The unfocused, haphazard, fragmented and undirected nature of the process of reform largely explains why the 1926 Act failed to deliver on several key demands—not only for the medical profession, but also for the London County Council (LCC) and others.

The chapters are essentially in chronological order and based on a series of events which demonstrate the intricacies of the complex interactions that affected the processes of reform. From time to time, it has been necessary to go into considerable detail in order to understand and explain the significance of events and activities in this process. A significant feature of the process is discontinuity with significant periods of quiescence and apparent inactivity; interest in coroners' affairs waxed and then waned as they were overtaken by other events or as public interest fell. This discontinuity makes each chapter an almost discrete narrative, though there are links (sometimes tenuous) to the previous and following chapters. In selecting the events, prominence has been given to those that, for the most part, focus on London. As well as being the seat of national government⁷⁵ which had to deal with the legislative aspects of reform, it was also the main centre of activity for the many institutions and organisations interested in reform. These included the Coroners' Society of England and Wales, the British Medical Association (BMA), the Medico-Legal Society (MLS)

⁷² David Garland *Punishment and Welfare* (Aldershot: Gower 1985) pp.161-2 [Hereafter: Garland Welfare]

⁷³ *Ibid.* p.65

⁷⁴ *Ibid.* p.161

⁷⁵ W. Eric Jackson *Achievement: A Short History of the London County Council* (London: Longmans 1965) p.

and, especially, the London County Council (LCC) which, as will become clear, played a significant part in the reform process.

Chapter two looks back to the discussions that developed from legislation in the 1830s, which provided the basis and source of change for the development of the state and the office of coroner. It examines the disputes between the magistrates and the coroners. These arose out of concern for the growing number of inquests, many of which were deemed 'unnecessary' by the magistrates. Added to that were the problems associated with dual proceedings and the overlap in responsibility and jurisdiction between coroners and magistrates. The 1860 County Coroners Act marked the end of the dispute, though the discord, disagreements and conflicting issues remained.⁷⁶

Chapter three deals with the attempt by the sanitarians in the 1850-60s to move the coroners' investigations in a new direction. This arose, to a certain extent, because of the dispute with the magistrates. The sanitarians' objective was to medicalise the office of coroner and change its primary objective from the investigation of criminal activities to the improvement of public health by using experts and continental practices of investigation.⁷⁷ The argument is examined from the point of view of two coroners, though the implied polarisation hides the wide diversity of opinion that existed between coroners.

Although discussions continued to take place with respect to the role of the coroner, there was a period of more than a decade after 1860 in which coroners' affairs were not under public scrutiny. That changed in the mid-1870s when a series of inquests became *causes célèbres*, and these are dealt with in chapter four. These inquests not only illustrate some of the critical issues that have been discussed in previous chapters, but also confirm that the 1860 Coroners Act had not resolved

⁷⁶ Scraton and Chadwick op.cit. p.27

⁷⁷ Anderson op.cit. p.24, p.110

the problems associated with the system. Most importantly, the series of sensational events, year after year, influenced the process of reform by persuading the Government to introduce Bills to reform the office in 1878 and 1879. Chapter five deals with these Bills and the other related legislative activities of the 1870s. Following the general election in 1880, coroners again disappeared from the agenda until 1887. The second part of the chapter examines the evolution and impact of two Acts, which originated from tangential issues unrelated to the coroners, but had significant consequences for them: the 1887 Coroners (Consolidation) Act and the 1888 Local Government Act. The former resulted from the need to revise the statute book, but used the 1879 Coroners Bill as its basis. The latter not only set up county councils to replace the administrative duties of the magistrates in quarter sessions, but also introduced the first significant break with ancient tradition by abolishing the election of county coroners to office.

Chapter six focuses on the London County Council which came into existence as a result of the 1888 Local Government Act. In 1895, the LCC produced a policy to deal with the London coroners which was used in regular attempts to persuade the Government to carry out a general review of coroners' law—and became the basis for eventual reform. This leads into chapter seven which is devoted mainly to the activities of John Troutbeck who was appointed in 1902 as the coroner for the South Western district of London. He enthusiastically endorsed and implemented some elements of the LCC's policy which led to two serious conflicts with the medical profession in the years following his appointment. The first was with the general medical practitioners regarding the use of expert pathologists and the second resulted from an inquest into a death following a surgical operation. As the latter conflict escalated towards a crisis, the Home Office intervened and set up a departmental committee of inquiry on coroners and inquests. The role of the Home Office in coroners' affairs and the important 1909 Report of the departmental committee are covered in chapter eight. The

Committee's recommendations were a compromise intended to balance and satisfy the diverse inputs. It was dominated by the practical problems of coroners and the desire of central government for administrative coherence and tidiness. For the first time, all the interested parties accepted the recommendations as a basis for reform and legislation was expected to follow quickly. But it was delayed by a series of unanticipated events including the outbreak of war in 1914.

Chapter nine concentrates on the period from the beginning of the First World War in August 1914 up to 1926 in which halting, but steady and relatively rapid progress was made towards reform. It examines several related but independent 'strands' of influential events. These involved the emergency wartime Acts, the efforts of the LCC to persuade the government to implement the measures permanently and the dispute between the Home Office and the Ministry of Health. They are followed by the problems of dual proceedings with the magistrates' courts and finally the events that led up to the enactment of the Coroners (Amendment) Act in 1926, which was based on the 1909 Departmental Committee Report.

The thesis ends with an examination of the reactions to the Act and then looks back over the events to reach some conclusions. The overall conclusion is that there was no strategist, no over-riding programme, no single process, no single source.⁷⁸ The process was haphazard and undirected. As a result the ancient law remained predominantly intact in the 1887 Coroners Act, though somewhat modified by the 1926 legislation. Although the coroners' resistance to change had inhibited progress, the primary cause of delay to reform was the low priority accorded to coroners' problems by the government, which in its turn led to a reluctance to act. The most important influences on the reform were the changes associated with developments in local and national government. Without these, reform might have been considerably

⁷⁸ Garland Welfare op.cit pp.161-2

delayed. The 1926 Act significantly reduced the use of the inquest jury and was, in effect, a break with this ancient cornerstone of English justice. Nevertheless, the position of the coroners had been enhanced and they retained all their ancient powers, authority and independence as officials of the Crown. The 1926 Act was the last statute on the topic for fifty years but, just as in 1860, conflicting issues and problems remained unresolved—and, as seen at the beginning of this chapter, still do so today.

CHAPTER 2

MAGISTRATES AND CORONERS

At last a great victory has been achieved . . .
"The County Coroners' Emancipation Act".¹

The problems between the magistrates and the coroners had their roots in a piece of mid-eighteenth century legislation. The coroners were lacking care and diligence in performing the duties² and often 'remiss in doing their Office'.³ Rather than abolish them, Parliament attempted to restore some dignity, status and purpose to the office⁴ through the legislative process in 1751. The first sentence of the Act states that the office of coroner is 'very ancient and necessary'.⁵ Clearly, Parliament wanted unexplained deaths to be investigated, and perhaps it was easier to resurrect an existing office rather than create a new one. But the antiquity of the office was not relevant to that requirement and the inclusion of the phrase 'very ancient' implies some sort of reverence for the traditions and customs of the distant past—and as H.G. Hanbury reminds us:

¹ Coroners' Society of England and Wales Annual Report 1860 Vol.1 p.563 [Hereafter: CorSoc (See Appendix 3)]

² Mark Jackson 'Suspicious infant deaths: the statute of 1624 and medical evidence at coroners' inquests.' in Michael Clark and Catherine Crawford (eds.) *Legal Medicine in History* (Cambridge: Cambridge University Press 1994) p.64.

³ 25 Geo.II c.29 An Act for giving a proper Reward to Coroners, for the due Execution of their office; and for the Amoval of Coroners upon a lawful conviction, for certain Misdemeanours [14th November 1751] s.1

⁴ PP 1971-2 [Cmnd.4810] XXI.367 [Cmnd.4810] Report of the Committee on Death Certification and Coroners [The Brodrick Report] p.112 [Hereafter: Brodrick]

⁵ 25 Geo.II c.29 op.cit. s.1

English sentiment has at all periods of history hesitated to put old friends, though senile in their debility, out of their pain.⁶

The Act recognised that the existing payments were inadequate and defined the fees for inquests held on all cases of sudden or unexplained death. There was no definition of these terms, only that the fees were to be paid from the county rates for inquests that were 'duly held'. The county rates were under the control of the magistrates and, administratively, they had to approve such payments to the coroners.

The eighteenth and nineteenth century justices on the whole took the view that the coroner was never intended to include all sudden deaths unless there was manifest evidence of violence, whilst the coroners contended that their jurisdiction was to include all sudden and unexplained deaths.⁷

This chapter examines the problems that arose between the coroners and the magistrates between 1830 and 1860 because of that difference of opinion.

The Middlesex magistrates became particularly concerned with the increasing number of inquests and their effect on the rates. One of the reasons for the increase was the growth in population of the county but the greatest cost increases came from the impact of three Acts of Parliament.

The 1836 Births and Deaths Registration Act⁸ was instituted primarily to facilitate legal proof of death and to produce more accurate mortality statistics for medical purposes.⁹ When the Act was drafted, the role of the coroners received little, if any, consideration but since they investigated some deaths, their role had to be defined. The Act required

⁶ H.G. Hanbury *English Courts of Law* (London, New York & Toronto: Oxford University Press 1949) p.116

⁷ Brodrick op.cit. p.112

⁸ 6 & 7 Will.IV c.86 An Act for registering Births, Deaths and Marriages in England [17th August 1836]

⁹ J.D.J Havard *The Detection of Secret Homicide: A Study of the Medico-legal System of Investigation of Sudden and Unexplained Deaths* (London: Macmillan 1960) p.47

only that the coroner informed the registrar of the result of the inquest stating the cause of death.¹⁰ An unintended effect of the Act was to cause many more cases of sudden death to be reported to the coroners in order to improve the accuracy of medical information recorded in the register.¹¹

The second was the 1836 Medical Witnesses Act¹² which was drafted and piloted through Parliament by Thomas Wakley. For the first time, the coroners were given the power to pay a doctor a guinea¹³ to attend an inquest to give evidence and, if directed by the coroner, to perform a post mortem examination and certain analyses for a further guinea.

The third was the 1837 Coroners' Expenses Act¹⁴ which transferred the expense of coroner's inquests from the poor rate to the county rate. This included the fees paid to medical witnesses under Wakley's 1836 Act. The magistrates had gained even more control over the coroners—including, in effect, the coroner's right to call medical witnesses.¹⁵ The Act also increased the coroner's fee by a third. However, this imposed a considerable burden on the coroner because he had to pay all the expenses of the inquests from his own pocket, only to be repaid after approval by the magistrates at quarter sessions.¹⁶

The population changes and the increasing complexities of city life combined with the three Acts significantly raised the costs of inquests. The magistrates exercised their legal duties, as they interpreted them, in assessing whether fees and expenses should be paid to coroners.

¹⁰ 6 & 7 Will.IV c.86 op.cit. s.25

¹¹ Brodrick op.cit. p.113

¹² 6 & 7 Will. IV, c.89 An Act to provide for the Attendance and Remuneration of Medical Witnesses at Coroner's Inquests [17th August 1836]

¹³ £1 1s 0d = £1.05

¹⁴ 1 Vict. c.68 An Act to provide for Payment of the Expenses of holding Coroners Inquests [15th July 1837]

¹⁵ Havard op.cit. p.49

¹⁶ 1 Vict. c.68 op.cit. ss.1, 2, 3

For inquests that they considered 'unnecessary', the fees and expenses were disallowed.¹⁷

Following a serious dispute between Wakley and the Middlesex magistrates soon after his election to the coronership in 1839, a Commons select committee was set up in 1840¹⁸ to inquire into the coroners' expenses system and the problems with the magistrates. As Sherrington comments:

Wakley was not altogether satisfied by the resolutions finally agreed by the committee because they were diplomatically balanced on the issues between the magistrates and the coroners, so that neither side was completely cleared or totally condemned. . . . the committee decided that the magistrates had acted in conformity with Coroners Expenses Act . . .¹⁹

Consequently, the problems between coroners and magistrates continued throughout the 1840s which caused the Lord Chief Justice to express concern about the magistrates' restrictive activities. He believed that insufficient inquiry was being made into poisonings and suspicious deaths.²⁰ Similarly, the Home Secretary, Sir James Graham, reported a case in which it appeared that twenty one people had died from poison administered by one person—without any inquiry being made. In a statement to the Commons, he remarked on the infrequency of coroners' inquests in many parts of the country:

He regretted to say that, during the last few years, so much jealousy had arisen at courts of quarter-session with regard to the charges consequent upon holding those inquiries, as to prevent their being holden; and in his opinion inquests had not been held in a great many instances in which they ought to have been. Some of the magistrates of Devonshire had come to the resolution that they would not allow expenses where the verdict had been "died by visitation of God." . . . This course had operated most injuriously

¹⁷ Edwina Sherrington *Thomas Wakley and Reform 1823-62* (unpublished University of Oxford DPhil thesis 1974) p.232-3.

¹⁸ Parl. Deb. 3rd Series 52: cols.1216-9 Mar 17 1840

¹⁹ Sherrington op.cit. p.234

²⁰ CorSoc Annual Report 1847 Vol.1 p.29

in reference to the performance of their duties by coroners, and inquests had in many cases that ought to have held. [sic] ²¹

William Baker reported:

It is a remarkable fact, that it is those counties in which the justices have been the most busy in preventing the holding of inquests, that the cases of poisoning have been the most prevalent.²²

Such comments had little effect and it was reported that a 'growing spirit of hostility has been manifested towards the coroners . . . by a few of the Justices of Peace . . .'²³ There were also a large number of applications to the Court of Queen's Bench to set aside inquisitions. This often caused difficulties for the individual coroners who had to pay the costs associated with such cases from their own resources.²⁴

In January 1846, the continuing problems prompted William Payne, the respected coroner for the City of London and Southwark, to write to all the coroners to suggest that 'some cooperation should take place between the Coroners in England' to protect their interests. He continued:

It will also readily occur to the minds of Coroners that there are many other occasions on which it might be desirable to support the rights and privileges of the office, in a way that could not so effectually be done by one Coroner, as by a body at large, and that for such purpose the joint interests of the whole body should be associated . . .²⁵

Shortly afterwards, a dozen coroners met to establish the Coroners' Society of England and Wales. A small management committee was elected consisting of Payne as chairman with four coroners from the metropolis and one from each of two nearby jurisdictions in Kent and

²¹ Parl. Deb. 3rd Series 87: cols.375-6 Jun 12 1846

²² William Baker *A Practical Compendium of the Recent Statutes, Cases, and Decisions affecting the Office of Coroner* (London: Butterworths 1851) p.66

²³ CorSoc Annual Report 1847 Vol.1 p.29

²⁴ CorSoc Jan 1846 Vol.1 p.1

²⁵ Ibid.

Essex. The Home Secretary, Sir George Lewis, later pointed out that the 'coroner had no defence against the magistrates'.²⁶ The Society's primary objective was therefore the protection of the office and the coroners,²⁷ but it also wanted to deal with questions related to coroners' duties and to promote desirable legislation.²⁸ Payne did not know exactly how many coroners existed, so the postscript to his letter stated 'In case I should have omitted to send this Circular to any of my brother Coroners, please mention it to any you may meet with.' Despite sending out 317 letters, by mid-1846, only twenty one coroners had sent their subscriptions.²⁹ A year later this had increased to fifty eight³⁰—just under 18% of all the coroners. Many coroners appeared to be reluctant to pay their one guinea annual subscription out of their income. This was not entirely surprising since many coroners held only two or three inquests a year.³¹

Wakley twice attempted to persuade the Society that they should either link up with a legal journal or establish a dedicated coroners' journal to 'sell' the Society's message.³² He was well aware of the value of such a process. The *Lancet*, which Wakley established, was much more than a collection of articles devoted to medical matters.³³ He used it successfully as a vehicle to promote his views and influence reform.³⁴ He believed that a coroners' journal could be used for the same purpose and to counteract any negative press reports that might appear.

²⁶ Parl. Deb. 157: col.82 Mar 7 1860

²⁷ J.D.K. Burton Personal communication.

²⁸ CorSoc Feb 5 1846 Vol.1 p.3, William Baker op.cit. pp.388-9, Olive Anderson *Suicide in Victorian and Edwardian England* (Oxford: Clarendon Press 1987) p.109 n.3

²⁹ CorSoc Vol.1 pp.7-9 Mar 3 1846, Apr 7 1846, Jun 22 1846

³⁰ Ibid. May 4 1847 p.34

³¹ PP 1851 (148) XLIII.403 Return of Number of Inquests held by Coroners in Counties, Cities and Boroughs in England and Wales, 1843-49 p.14

³² CorSoc Dec 29 1851 Vol.1 p.253, May 3 1853 Vol.1 p. 310

³³ D.J. Weatherall 'Foreword' in Peter W.J. Bartrip *Mirror of medicine, a history of the British medical journal* (Oxford: Clarendon Press 1990) p.v

³⁴ Sherrington op.cit. p.14

Since one of the objectives was to promote 'cooperation', it might have been expected that the Committee would have taken up the idea of a journal. However, it was not convinced that it was in the interest of the coroners 'to have any Journal either partially or entirely devoted to their advocacy',³⁵ and rejected the proposal. No reasons for that decision were given in the minutes of the meeting, but it appears that the Committee wanted to maintain a low profile and achieve their objectives by quiet diplomacy through the legislative process. It was not until the end of the twentieth century that the Society recognised that it lacked an effective medium of communication for the members and produced a (private and confidential) newsletter.³⁶

One of the problems for the coroners was their isolation in the jurisdictions, so that there was little opportunity for interaction or communication between them and was another reason for establishing some sort of journal. The Society's Annual General Meeting (AGM) was never well attended, mainly because they were always held in London. The minutes were distributed in the form of an annual report but, apart from that, general communications to the members were few. The domination of the management committee by the metropolitan coroners led some of their country colleagues to complain that their interests were not sufficiently represented by the Society.³⁷

The 1850s did not start well for the coroners. The Middlesex and Staffordshire³⁸ magistrates informed their coroners that in future they would 'require assurance that inquests were held on grounds sufficient to justify suspicion and investigation'.³⁹ The new procedure brought a powerful leading article in *The Times*⁴⁰ supporting the coroners. It accepted that the costs had increased considerably, but people 'did

³⁵ CorSoc May 3 1853 Vol.1 p.310

³⁶ Gordon H.H. Glasgow Personal communication

³⁷ CorSoc Jun 6 1854 Vol.1 p.335

³⁸ Ibid. April 2 1850 p.165

³⁹ *The Times* Jan 29 1850 p.4c

enjoy a great amount of security' from the existence of the office. There was criticism for the magistrates on two counts. First, it was considered unacceptable that the county magistrates should exercise any control over a coroner as it gave the magistrates the power to avoid inquests on deaths for which they were responsible. The most important of these were inmates in prisons and workhouses.⁴¹ Second, that they would 'not find that their resolutions meet with the general acquiescence of the public'.⁴² The Staffordshire magistrates⁴³ decided to disallow the fees for inquests involving burns, scalds and some other violent deaths. Instructions were issued to the police to make inquiries and report whether there were 'suspicious circumstances' involved. It appeared that the Magistrates intended to disallow the coroner's fees if the constable reported an absence of suspicious circumstances.

THE MIDDLESEX SPECIAL COMMITTEE:

In October 1850, the Middlesex Justices appointed a Special Committee⁴⁴ to examine the 'duties and remuneration of coroners'. They investigated:

. . . the expediency of a change in the office of Coroner itself. . . the best mode of paying the Coroners or whatever other persons may be employed to perform the duties of the office. [And] . . . the propriety of appointing a Medical Officer—for the special purpose . . . of taking post mortem examinations.⁴⁵

The principal objections to the existing inquest system were:

⁴⁰ Ibid.

⁴¹ The problems associated with these institutions was dealt with some years later by: Henry Cartwright *Should Coroners be obliged to hold Inquests in all Cases of Deaths within Union Poor-houses?* *Transactions of the Social Science Association* 1866 pp.228-32

⁴² *The Times* Jan 29 1850 p.4c

⁴³ *CorSoc* Dec 4 1849 Vol.1 p.149

⁴⁴ Middlesex Justices of the Peace *Report of the Special Committee appointed at the Michaelmas Session, 1850, as to the Duties and Remuneration of Coroners, and Resolutions of the Court* (April Quarter Sessions 1851). [Hereafter SpecComm. Middx.] See: HO45/3593 Report of the Middlesex Magistrates Special Committee on "Duties and Remuneration of Coroners"

. . its expensiveness; and, (connected therewith,) the immoderate exercise of the powers of the office; the cumbrousness of its machinery; the exceptionable mode in which Coroners are appointed; the want of sufficient publicity in the proceedings; and the inconvenience and discredit consequent upon the concurrent and occasionally conflicting jurisdiction of the Coroners and the Magistracy.⁴⁶

The concerns relating to expense resulted from a six-fold increase in the cost of inquests in the previous twenty years. This was considered an unreasonable increase since the population had risen only by an estimated thirty per cent between 1828 and 1848.⁴⁷ It was accepted that the increases in cost had partially arisen from the 1830s Acts⁴⁸, but it was also considered that the coroners were holding what they termed 'unnecessary inquests'. If a case did not involve, in the magistrates' judgement, a clear *suspicion and obscurity*, the fees and expenses of the coroner were withheld. The magistrates were convinced that they had this power under a ruling of the Court of Queen's Bench.⁴⁹

The magistrates produced statistics to show that inquests in which criminal, or apparently criminal activities were involved were a very small proportion of the total.⁵⁰ In these circumstances, they then asked whether 'a *separate tribunal*' was necessary, why should inquests not be treated as part of the general criminal procedure of the country and why the magistrates, who conducted other criminal investigations, might not 'with advantage' have inquests committed to them.⁵¹

The Committee did:

⁴⁵ Ibid. p.2-3

⁴⁶ Ibid. p.8

⁴⁷ SpecComm. Middx. op.cit. p.10

⁴⁸ 6 & 7 Will. IV, c.89 op.cit. and 1 Vict. c.68 op.cit., SpecComm. Middx. op.cit. pp.8-9

⁴⁹ R. v. Carmarthenshire JJ 10 Q.B. 796 cited in J.D.J. Havard *The Detection of Secret Homicide: A Study of the Medico-legal System of Investigation of Sudden and Unexplained Deaths* (London: Macmillan 1960) pp.56-7

⁵⁰ Ibid. p.17

⁵¹ SpecComm. Middx. op.cit. p.7

. . . fully admit, that there are a considerable number of cases not assuming a decidedly penal aspect, which yet require to be subjected to some form or other to judicial investigation. Cases of apparent suicide . . . [and] . . . the less serious cases which constitute the majority of the inquests, your Committee believe that it is of importance to the security of life, that there should be an exposure of neglect or misconduct, though it be not of so extreme a nature as to subject the individual guilty of it to legal punishment.⁵²

There were a growing number of deaths in an increasingly complex and industrial society.⁵³ These needed to be investigated in order to ensure an absence of negligence or crime. The Registrar-General was critical of the coroners because many uncertified deaths, which may have had criminal aspects, were not being investigated. Nevertheless, he supported the coroners because they could improve the statistics by investigating the cause of death in these cases. He accepted that although few inquests led to the committal and conviction of criminals, their value was not 'the number of *crimes detected* . . . [but] the number of *crimes prevented*'⁵⁴ [original emphasis]. The Middlesex Committee appeared not to consider that they would have to deal with deaths in prisons, lunatic asylums and workhouses. Their impartiality would have been compromised because the magistrates had responsibility for these institutions.

The magistrates' focus was on the criminal law and concentrated only on suspicious and sudden deaths in terms of the possibility of crime and criminal acts. Despite the potential for crime in other unexplained deaths, the Committee recommended the transfer of the coroners' jurisdiction to the magistrates. It was realised that it needed legislative

⁵² Ibid. pp.17-18

⁵³ William Baker op.cit. p.iv

⁵⁴ William Farr 'Suggested Improvements in the Coroner's Inquest' PP 1857-8 (2431) XXIII.1 Nineteenth Annual Report of the Registrar-General p.205. See HO45/6554 Registrar-General's circular to coroners. The same point had been made in 1840: 1840 (549) XIV.339 Report from the Select Committee appointed to inquire into any measures which have been adopted for carrying into effect, in the County of Middlesex, the provisions of the Act 1 Vict. c.68, and also into any proceedings of the Justices of the Peace in relation to the Office of Coroner in the said County Q.1198

action to implement the change which would take time to achieve. In the meantime, in order to limit 'unnecessary inquests', it also recommended that coroners' inquiries should be confined to suspicious cases only and that the police should be the official channel of communication.⁵⁵ This effectively transferred the decision whether to hold an inquest or not from the coroner to the police constable. It raised the serious question of what would happen if a death occurred in a police station or as a result of police activities.⁵⁶

The magistrates failed to appreciate the limitations of the Metropolitan Police. The primary role of the ordinary police constables was to prevent and deter crime, achieved mainly through surveillance,⁵⁷ and they had little, if any, training in investigation. Of course, they did work closely within the community and were frequently called to sudden and other deaths. As they gained experience, they could have been expected to be able to recognise suspicious circumstances worthy of investigation.⁵⁸ The detectives in the Metropolitan Police 'were very loose and uncertain in their operation'.⁵⁹ Not having a system of detection and surveillance anywhere close to those on the Continent, they had to rely on informers.⁶⁰ Indeed:

. . . the [Police] Commissioners distrusted detection on principle and limited the detectives in the way they operated; they tried to keep them from consorting closely with criminals, which was necessary in an age with almost no scientific aids for detection.⁶¹

⁵⁵ SpecComm. Middx. op.cit. pp.19, 58

⁵⁶ Ibid. p.165, see also Joe Sim and Tony Ward 'The magistrate of the poor? Coroners and deaths in custody in nineteenth century England' in Michael J. Clark and Catherine Crawford *Legal Medicine in History* (Cambridge 1994) p.255

⁵⁷ Phillip Thurmond Smith *Policing Victorian London, political policing, public order, and the London Metropolitan Police* (Westport, Conn: Greenwood Press 1985) p.70

⁵⁸ Margaret Marshall 'Police Coping with Death: Assumptions and Rhetoric' in Glennys Howarth and Peter Jupp (eds.) *Contemporary Issues in the Sociology of Death, Dying and Disposal* (Basingstoke: Macmillan 1996) p.137

⁵⁹ Charles Dickens *The Lamplighter's Story, Hunted Down; The Detective Police; and Other Nouvelettes*. (Philadelphia: T.B. Peterson & Bros 1861) p.5

⁶⁰ Thurmond Smith op.cit p.61

⁶¹ Ibid. p.61-2

Nevertheless, the magistrates considered that the police 'investigated' suspicious deaths and, when there was sufficient evidence to justify an arrest, the person was brought before the magistrates and committed for trial. As a result, in almost every serious case, the coroner's inquest was considered to be little more than a duplicate of the magistrates' proceedings, a waste of time and money and therefore unnecessary.

The Committee did concede that, in one respect, the coroner had an advantage in the conduct of an investigation because he could direct a post mortem examination and, when necessary, the disinterment of a corpse. The Report continued:

But, whilst the usefulness of the authority just referred to affords a ground for conferring it upon Justices, it presents none for the continuance of so anomalous a course as a double investigation of the same charge, and a double committal of the same offender—a course which your Committee believe to be wholly indefensible.⁶²

Clearly, the double investigation was a cause of irritation and some jealousy⁶³ to the magistrates. But the coroners were acting lawfully by holding an inquest and bypassing the magistrates and, when an inquest jury returned an appropriate verdict, committing to trial at the assizes.

Much of the Report was devoted to looking at the procedures of the coroner's court. The legal coroner for the Liberty and City of Westminster, Charles St.Clare Bedford, was a long-serving coroner accustomed to being consulted on the controversial issues which had for a generation surrounded their office.⁶⁴ He stated that 'the whole [coroner] system is most defective and ill-adapted to effect the important objects originally had in view'. He directed his criticism mainly at the jury and was 'decidedly against them', believing that an investigation could be better undertaken without one. Criticism of juries

⁶² Ibid. p.15

⁶³ Parl. Deb. 3rd Series 157: col. 78 Mar 7 1860

⁶⁴ Anderson op.cit. p.109

was not new and arguments for and against them had been going on for years. But the usual call was to reform juries rather than abolish them.⁶⁵ All the witnesses agreed with Bedford except for the other two county coroners, Wakley and Baker. They were more 'in tune' with public opinion, which valued the jury system highly throughout the period. Juries were still generally considered the safeguard of liberty and the best means for establishing truth since they introduced into the legal process the elements of community sentiment and fairness.⁶⁶ Nevertheless, the magistrates reserved their strongest criticisms for the juries, referring to their 'misplaced interference and irrelevant questions'.⁶⁷ They believed that the problems were partly attributable to the quality of the jurors selected by incompetent parish constables; but to compel the better-educated classes to serve 'would be attended with great public inconvenience'.⁶⁸

The Committee accepted that the law required an inquest to be performed *super visum corporis* ('on view of the body'), but decided that little time need be spent discussing it—'the view' was not required in a trial for murder or manslaughter, so why was it necessary for an inquest. They pronounced 'this part of the system to be wholly useless'. The Committee agreed that publicity was necessary for all inquests. But because inquests were normally performed in a public house, newspaper reports were limited to cases of notoriety. The magistrates believed that if the need to 'view the body' were removed, then inquests could be held at the nearest workhouse or some other place of a public nature. This would 'promote the efficiency' of cases requiring prosecution and provide the necessary level of publicity.⁶⁹

⁶⁵ J.H. Baker *An Introduction to English Legal History* Second edition (London: Butterworth 1979) p.94

⁶⁶ John Baldwin and Michael McConville *Jury Trials* (Oxford: Clarendon Press 1979) pp.1-2

⁶⁷ SpecComm. Middx. op.cit. p.26

⁶⁸ Ibid.

⁶⁹ Ibid. p.29

Though the 1836 Medical Witnesses Act was not mentioned in the Report, there was an implied criticism of the use of ordinary general practitioners (GPs) to carry out post mortem examinations for the coroners. The Committee decided that if post mortem examinations were required, then provisions had to be made for them to be performed efficiently. It therefore recommended employing GPs who had experience in 'this difficult branch of Medical Science, and . . . the benefit of continued practice in it'.⁷⁰ This recommendation was made even though hostility to specialisation in the medical profession was well known.⁷¹ Bedford had provided support for the Committee with his comments that:

. . . in no case of sudden death, in which an inquest is proper at all, should a post mortem examination be dispensed with; and that without it, the proceeding was worse than useless, . . . because it affords no indication of the slightest value as to the cause of death; and worse than useless, because the show of investigation which is thereby presented, tends to lull suspicion, and, where actual guilt exists, to screen it from detection.⁷²

The three coroners who gave evidence were in agreement with the proposal to appoint medical examiners and supported the Committee's recommendation.⁷³

The Scottish system had been suggested as a model for adoption in England on several occasions by reformers.⁷⁴ A leading article in the *Daily News* agreed that there were some 'some hints' that could be usefully applied in England, but also expressed a concern:

We should hesitate . . . to recommend transplanting any institution which has been developed under different social circumstances,

⁷⁰ Ibid. p.37

⁷¹ Roy Porter *The Greatest Benefit to Mankind* (London, Fontana Press 1999) p.388, Reginald Pound *Harley Street* (London: Michael Joseph 1967) p.12, Christopher Hamlin 'Scientific Method and Expert Witnessing: Victorian Perspectives on a Modern Problem' *Social Studies of Science* 16: 1986 485-583 pp.503-4

⁷² SpecComm. Middx. op.cit. p.36

⁷³ Ibid. p.36.

⁷⁴ Ibid. pp.37-8

even from a country so closely akin to, so identified with, our own as that of Scotland.⁷⁵

In the Scottish system, the procurator fiscal held a similar preliminary inquiry as the coroner. But he had the advantage that, if necessary, he could call for a post mortem examination as part of that inquiry—which might lead to a quick termination. Under the 1836 Act, a coroner could only order a post mortem examination if he proceeded to an inquest. Another important difference between the two was that the procurator fiscal's inquiry was held *in camera* without a jury or any publicity. Only if evidence of criminal activity were discovered would a case proceed to a public trial.⁷⁶ The appeal of the Scottish system to the magistrates was that the procurator fiscal concentrated his inquiries on criminal activities, which the magistrates were attempting to impose on the coroners, and eliminated the jury. The magistrates appear to have been influenced by the witnesses who gave evidence relating to the systems in Scotland and the Continent. The preliminary inquiry was essentially the same in both systems, the only real difference was the absence of a jury in Continental trials.

The Committee recommended that the magistrates should take over the coroners' duties and that investigations should be carried out by the police, by the registrars of deaths, and by two new agencies, a public prosecutor and one or more medically qualified professional post mortem examiners.⁷⁷ The duties of the public prosecutor were not defined, but he presumably would have carried out the secret preliminary investigation, as in the Scottish system. When the prosecutor found indications of criminal activity, he and the medical witnesses (who would contribute the necessary expert knowledge), would present the case before the magistrates. They would then

⁷⁵ *Daily News* Dec 15 1848 p.2c

⁷⁶ PP 1909 [Cd.4782] XV.389 First Report of the Departmental Committee appointed to inquire into the Law relating to Coroners and Coroners Inquests: Part II, Evidence and Appendices Q.3241

⁷⁷ Sim and Ward op.cit. p.254

evaluate the evidence by application of their 'judicial habits of mind'.⁷⁸ It has to be assumed that in the 'considerable number of cases not assuming a decidedly penal aspect'⁷⁹ (see above), there would be no further action.

The Committee ignored the coroners' argument that investigations needed to be completely *independent* of the magistrates and the police.⁸⁰ The 1849 Criminal Law Commission had suggested that the coroner should not indict for trial, but only issue a warrant for a person to be examined before a magistrate.⁸¹ The magistrates, however, recommended that cases:

. . . under investigation before a Magistrate, should, at all events, be exempted from the jurisdiction of Coroners; and it would be but a slight extension of the measure, to leave it to the Magistracy to enquire into all cases in which there was a suspicion of criminal homicide, whether there was or was not any individual in charge before them.⁸²

The Committee believed that the number of cases of a criminal, or apparently criminal, character formed a very small proportion of the inquests and therefore, they would not impose much additional work on the magistrates. The overall conclusion was that the coroners' duties should be transferred to the magistrates. This left little to discuss about coroners' remuneration,⁸³ but it was agreed that, if the office were to be retained, a fixed salary should be paid rather than fees.⁸⁴ In addition, that expenses should be paid, like other judicial appointments, from the consolidated fund and not the county rate.⁸⁵

⁷⁸ *Ibid.*

⁷⁹ SpecComm. Middx. op.cit.

⁸⁰ Sim and Ward op.cit. p.254

⁸¹ PP 1849 [1100] XXI.477 Royal Commission on Criminal Law. Fifth Report p.11.

⁸² SpecComm. Middx. op.cit. p.16

⁸³ *Ibid.* p.34

⁸⁴ *Ibid.* p.35

⁸⁵ *Ibid.* p.36

Finally, the Committee recognised that the Report was unlikely to be acted on without a further official inquiry:

No alteration can be made in the office of Coroner, except by an Act of the Legislature: and the interference of Parliament can scarcely be looked for, in a matter of so much moment, without a previous enquiry before a Committee of one or other of the two Houses. Your Committee will consider that they will have effected the object which the [Middlesex] Court [of Quarter Sessions] had in view, . . . if they have prepared the way for a Parliamentary investigation, and so contributed to the administrative improvement and financial relief which the interests of the County appear to require.⁸⁶

The Middlesex Quarter Sessions adopted the Report in April 1851 and resolved to limit the cases in which coroner's expenses would be allowed; coroners would not be informed of sudden deaths except in certain cases.⁸⁷

In an attempt to persuade the Government to implement a parliamentary inquiry and the reforms, the Court of Quarter Sessions sent a copy to the Home Secretary and the Law Officers. The Coroners' Society sent a letter opposing the Report. This accompanied a protest from a number of ratepayers protesting against the interference of the magistrates in the coroners' affairs.⁸⁸ This response might have been expected since the Middlesex coroners Wakley and Baker were on the committee of the Society and disagreed with the recommendations. If the Government could have been persuaded to adopt the transfer of duties from the coroners to the magistrates, the expenses associated with inquests would have disappeared. These savings would have been offset by the costs of the public prosecutor and the medical examiners. In addition, all the problems associated with the election of coroners and the conflicts arising from dual proceedings would also have been eliminated. The Report had revealed the difficulties of an ancient office

⁸⁶ *Ibid.* p.38

⁸⁷ *Ibid.* p.58

⁸⁸ *The Times* Jun 13 1851 p.6f

struggling to deal with problems associated with changes in society using ancient and out of date laws which might have persuaded the Government to consider reform. A copy was also sent to all the quarter and borough sessions in England and Wales. Many adopted the resolutions⁸⁹ which increased the risk of crime being committed under the guise of an accident, suicide or an apparently natural death.

Even before the inquiry had started, the Coroners' Society was considering ways of nullifying the influence of the magistrates. Bremridge and Wakley, the two MP coroners, agreed to approach the Chancellor of the Exchequer to request in his next Budget that coroners' expenses be paid from the consolidated fund rather than the county rate and replace fees with a salary.⁹⁰ That must have failed because, in June 1850, the Committee requested the Society's President, William Payne, to prepare a Bill to pay coroners by salary.⁹¹ The Bill did not progress in the Commons and had to be reintroduced early in 1851.⁹²

The Middlesex inquiry had shown up some differences between the coroners who gave evidence, especially the necessity for juries and the 'view of the body'. However, there were other differences. Edward Herford and ten coroners sent a letter to the Coroners' Society opposing its Bill to pay coroners by salary. The Committee of the Society was rather concerned and sent out a circular to the coroners defending its stance with a plea:

It is therefore clear, that whilst attempts are made to get rid of the office, and place its duties in other hands, the wise policy of the Coroners would be, not to oppose each other, but, by united and firm resistance to unconstitutional encroachments, and a ready

⁸⁹ 1859 Sess. II (2575) XIII.13 Royal Commission Report. The Costs of Prosecutions, the Expenses of Coroners' Inquests, &c. p.130 cited in Havard op.cit. p.57

⁹⁰ CorSoc Mar 5 1850 Vol.1 p.159

⁹¹ Ibid. Jun 4 1850 p.178

⁹² PP 1851 (225) II.171 A Bill for Abolishing the Fees paid to County and other Coroners, and providing for the Payment of such Coroners by Salaries

disposition to encourage and promote improvements, to show to the country at large that they desire to make the office as efficient for the public good as can be.⁹³

The Middlesex magistrates decided that efforts should be made to obtain legislation to transfer the powers of the coroners to the justices.⁹⁴ The second reading of the Society's Bill would provide an opportunity to take action and the Coroners' Society recorded that an MP sympathetic to the magistrates gave notice of his intention:

. . . to move, by way of Amendment, that a Select Committee be appointed to consider the state of the law and practice as regards the taking of inquisitions in cases of deaths, and the appointment and remuneration of the officers employed therein; and whether it is expedient that any, and what, alterations should be made in any of such matters, and particularly whether it would be of advantage to transfer the whole, or any portion, of the duties now discharged by the Coroners to any other persons.⁹⁵

The select committee was duly appointed, though with a more limited scope of inquiry.⁹⁶ Both Wakley and Bremridge were members, so the Coroners' Society was well represented. It not only failed to complete the work before the end of the session, but also failed to report on any of its deliberations. The evidence taken was never published⁹⁷ and the committee was not reappointed as it had requested. The outcome was very disappointing to the Coroners' Society which had been making considerable efforts behind the scenes to achieve its objective.⁹⁸

As noted above, the magistrates' approval of specialist practitioners to perform post mortem examinations was a criticism of GPs. Parliament had regarded regulation of the medical profession as a minefield since

⁹³ CorSoc May 22 1851 Vol.1 p.232

⁹⁴ *Morning Advertiser* May 15 p.2d, May 16 1851 p.4c

⁹⁵ CorSoc May 22 1851 Vol.1 p.232

⁹⁶ PP 1851 (584) X.335 Report of the Select Committee on Office of Coroner p.2.

⁹⁷ *Ibid.* p.3

⁹⁸ CorSoc May 22 1851 Vol.1 pp.232-245.

the first attempt to set standards of professional medical education in the early nineteenth century:⁹⁹

A further forty years' pressure, prevarication and politicking were required to produce the Medical Act of 1858,¹⁰⁰ another compromise which pleased no one but which worked. This established a unified medical register of all approved practitioners, who alone would be eligible for public employment, specified entry qualifications, and created the General Medical Council (GMC) as an ethico-legal watchdog.¹⁰¹

However, unlicensed practice continued to be lawful and the BMA were not entirely pleased because the elite physicians and surgeons were further strengthening their position in the hospitals.¹⁰² However, by defining entry requirements the Act provided a basis for exclusivity and the development of a genuine profession. The profession would define and enforce rules of professional conduct so that the members would mutually guarantee their competence.¹⁰³ It would deal with any problems arising internally in order to avoid any uninformed lay judgements by the public that could adversely affect reputations and lead to loss of confidence in the profession. Similarly, in the legal profession, Acts of Parliament defined entry qualifications for admission as a solicitor, and the Law Society (equivalent to the GMC) administered the Acts.¹⁰⁴ The development of new professions and the 1858 Medical Act may have prompted the Registrar-General to include Dr. William Farr's long and detailed observations on coroners' inquests in his annual report.¹⁰⁵ He suggested that:

⁹⁹ Porter op.cit. p.355

¹⁰⁰ 21 & 22 Vict. c.90 An Act to regulate the Qualifications of Practitioners in Medicine and Surgery [The Medical Act] [2nd August 1858]

¹⁰¹ Porter op.cit. p.355

¹⁰² Ibid.

¹⁰³ A.M. Carr-Saunders *Professions: their Organization and Place in Society*. (Oxford: Clarendon Press 1928) p.9

¹⁰⁴ Ibid. pp.19-20

¹⁰⁵ PP 1857-8 [2431] XXIII.1 Nineteenth Annual Report of the Registrar-General pp.196-205

Physicians, surgeons, clergymen, barristers, solicitors, now undergo examinations. Why should not the future candidate for the office of Coroner be required to produce a diploma, certifying the possession of a competent knowledge of medical jurisprudence?¹⁰⁶

The Coroners' Society had shown concern for its public image which could have been enhanced by such a qualification. It would also have provided the first move towards its development into a professional body with a defined requirement for entry. But in 1858, it was more intent on protecting the coroners from the interference of the magistrates and maintaining independence than developing as a profession. It completely ignored the suggestion of a qualification, but it appreciated the considerable support that the Registrar-General gave to the coroners. The Society therefore circulated nearly 4,000 copies of the *Observations* to magistrates, MPs and others throughout England and Wales. The Society even attempted to persuade *The Times* to publish it, but that was not successful.¹⁰⁷

ESCALATION AND RESOLUTION:

Some coroners responded to the magistrates by limiting their inquiries which resulted in undetected poisonings in the mid-1850s.¹⁰⁸ Starting in 1857, the number of inquests for which magistrates disallowed fees began to rise significantly in several counties.¹⁰⁹ There was an alarming drop in the number of inquests as coroners failed to hold inquiries in order to avoid loss of fees. In 1859, inquests were half those carried out five years earlier.¹¹⁰ A deputation from the Coroners' Society visited the Home Secretary, Spencer Walpole. He had already looked at the conflict between the coroners and the magistrates and had reached the

¹⁰⁶ HO45/6554 Registrar-General's circular to coroners, PP 1857-8 [C.2431] XXIII.1 op.cit. p.205, CorSoc Oct 5 1858 Vol.1 p.491

¹⁰⁷ CorSoc Dec 7 1858 Vol.1 p.494

¹⁰⁸ Parl. Deb. 3rd Series 157: col. 77-8 Mar 7 1860

¹⁰⁹ See PP 1860 (237) LVII.313 Return of Orders and Regulations by Magistrates in England and Wales relating to Costs and Expenses of Coroners' Inquests

¹¹⁰ Havard p.62

conclusion that the problems could be resolved by payment of a salary or some system of appeal to the Court of Queen's Bench.¹¹¹ He agreed to have the 1851 select committee reappointed and to report the evidence that had been taken.¹¹² That did not occur.¹¹³ Instead, the Government set up a Royal Commission to enquire generally into the costs of prosecutions which included consideration of the expenses of coroners' inquests.¹¹⁴

It was a positive move because much Victorian legislation emanated from the investigative Royal Commissions; two notable examples were on the Poor Laws (1832-4) and Municipal Reform (1835).¹¹⁵ A Commission had many important advantages over a select committee. The most important were that the commissioners could be chosen from a wider community and were appointed by government ministers. Members of select committees tended to have vested interests and, generally, had the objective of championing parliamentary Bills. Another important advantage was that Royal Commissions were not limited to Parliamentary terms, whereas select committees had to complete their work within the session.¹¹⁶

The dissolution of Parliament delayed the work of the Commission on costs of prosecutions and this raised concerns in the Coroners' Society. It wanted 'a speedy determination' of the problems¹¹⁷ because of the increasing number of fees that were being disallowed. The Report contained a relatively short section on the remuneration of coroners.¹¹⁸ It avoided the controversies that had arisen and sympathised with the

¹¹¹ CorSoc Mar 22 1858 Vol.1 p.453, p.457

¹¹² Ibid. p.458

¹¹³ Ibid. Jul 6 1858 p.480

¹¹⁴ PP 1859 Sess. II (2575) XIII.13 Royal Commission Report. *The Costs of Prosecutions, the Expenses of Coroners' Inquests, &c.* [Hereafter: RoyCommCosts]

¹¹⁵ David M. Walker *The Oxford Companion to Law* (Oxford: Clarendon Press 1980) pp.1089-90

¹¹⁶ Ibid.

¹¹⁷ CorSoc Annual Report 1859 Vol.1 p.510.

¹¹⁸ RoyCommCosts. op.cit. Part III, pp.xviii-xix.

'invidious and unjust position'¹¹⁹ in which the coroners had been placed. It agreed that the problems would cease if all matters concerning payment of coroners were placed under the Home Secretary and he were empowered to lay down regulations for the holding of inquests. However, it acknowledged the problems associated with unnecessary inquests and, in order to limit them, (like the magistrates in 1851) recommended entrusting the responsibility for initiating proceedings to the police.¹²⁰ With the separation from preliminary inquiries, the office of coroner would have been elevated to a purely judicial status. The Commission recommended payment by salary, fixed by the magistrates but with right of appeal to the Home Secretary in certain circumstances.¹²¹

The Government failed to act on the recommendations and the Coroners' Society became impatient. Even though it was reported that a Government Bill was awaiting approval,¹²² in January 1860 it started to adjust the draft of its 1856 salaries Bill.¹²³ Shortly afterwards the new Home Secretary, Sir George Lewis, introduced the Government Bill,¹²⁴ but it was not well received by the Coroners' Society.¹²⁵ The main objection was to the complex and expensive process of appeal to the Court of Queen's Bench to resolve disputes regarding fees. The Home Secretary stated that he would oppose payment by salary¹²⁶ because it might make the coroner 'less zealous in pursuing his office'.¹²⁷ The Coroners' Society persuaded a sympathetic MP, Mr. J.M. Cobbett, to introduce its Bill¹²⁸ and, at the second reading, it was referred to a

¹¹⁹ Ibid. p.xviii.

¹²⁰ Ibid. p.xix.

¹²¹ Ibid.

¹²² CorSoc Jan 27 1860 Vol.1 p.529

¹²³ Ibid. p.528

¹²⁴ PP 1860 (47) II.561 A Bill to amend the Law in Relation to Remuneration of Coroners

¹²⁵ CorSoc Mar 6 1860 Vol.1 p.531.

¹²⁶ Parl. Deb. 3rd Series **158**: col.1632 May 24 1860

¹²⁷ Ibid. **157**: Mar 7 1860 col.82

¹²⁸ PP 1860 (53) II.565 A Bill to amend the Law relating to Office of Coroner, and to provide for Payment of Coroners by Salary.

select committee¹²⁹ as the Society had wanted.¹³⁰ Cobbett was appointed as a member and represented the coroners' interests. But the most influential members were probably the Home Secretary and his immediate predecessor.¹³¹

The Select Committee moved with unusual rapidity, meeting on only five occasions and reported at the end of March.¹³² The scope of the inquiry was restricted¹³³ and the Committee acknowledged the considerable help from the previous year's Royal Commission Report. It recommended the introduction of a short Bill of only six clauses, of which the four most important were: 1) a declaration of when inquests ought to be held, 2) a process to deal with a coroner who failed to hold an inquest, 3) the Home Secretary to have the power to make rules defining the information the county police should give to coroners, 4) the magistrates to fix county coroners' salaries, a provision for periodic revision and a right of appeal to the Home Secretary.¹³⁴

The Committee rejected the earlier attempts by the magistrates and the Royal Commissioners to limit the number of inquests by stating that 'it is far better that inquests should occasionally be held unnecessarily than the detection of great crimes should be diminished.'¹³⁵ It believed:

. . . it to be desirable that an inquest should be held in every case of violent or unnatural death, and also that an inquest should be held in cases where sudden death where the cause of death is unknown, and also where, though the death is apparently natural, reasonable suspicion of criminality exists.¹³⁶

¹²⁹ Parl. Deb. 3rd Series 157: col.81 Mar 7 1860

¹³⁰ CorSoc Mar 6 1860 Vol.1 p.531.

¹³¹ PP 1860 (193) XXII.257 Report, Proceedings and Minutes of Evidence of the Select Committee on Office of Coroner

¹³² Ibid. p.ii

¹³³ CorSoc Annual Report 1860 Vol.1 p.553.

¹³⁴ PP 1860 (193) XXII.257 op.cit. p.v

¹³⁵ Ibid. p.iii

¹³⁶ Ibid.

This provided strong support for the coroners and an incentive for them to pursue investigations.

In June, a deputation from the Coroners' Society visited the Home Secretary and was sufficiently influential to persuade him to drop the Government Bill. He agreed to support the Society's Bill if a clause was included to give the Lord Chancellor the authority to remove the coroner for inability or misconduct.¹³⁷ The Bill¹³⁸ received 'the most powerful and decided support of the Lord Chancellor'¹³⁹ and passed through the parliamentary process without opposition, reaching the statute book at the end of August 1860.¹⁴⁰ The Coroners' Society quickly published its delayed annual report and stated:

At last a great victory has been achieved [over the magistrates]; . . . an Enactment of the Legislature, which might be fairly entitled "The County Coroners' Emancipation Act".¹⁴¹

It was considered a victory because the coroners regained their independence to decide whether to hold an inquest or not. The Society did not appear to realise that the magistrates could still make life difficult for the coroners. Although the magistrates could no longer refuse to pay a coroner's expenses and disbursements,¹⁴² they could (and subsequently did) delay the repayments which caused hardship.¹⁴³ Similarly, at the quinquennial reviews, they could set the salary at an unacceptable level and force the coroner to go through the process of

¹³⁷ CorSoc May 24 1860 Vol.1 p.546

¹³⁸ PP 1860 (159) II.571 Bill to amend Law relating to Election, Duties and Payment of Coroners; PP 1860 (271) II.577 [As amended in Committee]; PP 1860 (313) II.583 [Amendments by Lords]

¹³⁹ CorSoc Annual Report 1860 Vol.1 p.551

¹⁴⁰ 23 & 24 Vict. c.116 An Act to amend the Law relating to the Election, Duties, and Payment of County Coroners [28th August 1860]

¹⁴¹ CorSoc Annual Report Vol.1 p.551.

¹⁴² 23 & 24 Vict. c.116 op.cit. s.4

¹⁴³ Mary P. *English Victorian Values: The Life and Times of Dr. Edwin Lankester M.D., F.R.S.* (Bristol: Biopress 1990) p.141, 145-6

appeal to the Home Secretary for redress.¹⁴⁴ The Act also left the coroners further divided because only the county coroners were to be paid by salary. The Government had agreed to the request of the borough and franchise coroners to exclude them from the salary provisions of the Act—for the most part, they had suffered little interference in their affairs.¹⁴⁵

The Coroners' Society appeared to believe that all the problems were resolved and the management committee dropped its weekly meetings and reverted to quarterly meetings.¹⁴⁶ It failed to address any of the issues highlighted by the conflict (as did the Government) and ignored the professionalisation issue. However, it would only be a matter of time before the problems arose again.

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The extensive authority of the magistrates in local government combined with their central role in the administration of justice made for an uneasy relationship with the ancient office of coroner. The conflict developed from the desire of the magistrates to reduce the impact of the cost of inquests on the local rates.¹⁴⁷ An additional factor was that the magistrates saw the coroners as an interference in their judicial role. However, this obscured the fact that there were more serious problems besetting the office of coroner. The 1850 Middlesex magistrates' inquiry and the later 1859 Select Committee identified the problems and practical defects that plagued the office. These deserved the consideration of the Coroners' Society in order to adapt the office to the rapidly changing world in which it had to operate. But it chose to ignore

¹⁴⁴ 23 & 24 Vict. c.116 op.cit. s.4. Several coroners (including Wakley) had to appeal to the Home Secretary in 1861 and salary increases were awarded. CorSoc Jun 26 1861 Vol.1 p.575

¹⁴⁵ An exception was Edward Herford, the Manchester coroner (see chapter 3)

¹⁴⁶ CorSoc Jun 26 1861 Vol.1 p.577

¹⁴⁷ Scraton and Chadwick op.cit. p.27

what were considered the less important recommendations for change, and concentrated efforts on persuading the Home Secretary to replace fees with a salary for county coroners. The Society's 'victory' over the magistrates left the coroners with all their ancient traditions, authority, procedures and independence unchanged. The 1860 Coroners Act brought an uneasy peace between the magistrates and the coroners—and the complete disappearance of the coroners from parliamentary proceedings for more than a decade.

Although the conflict with the magistrates had taken centre stage, in the mid-nineteenth century wider debate was already taking place on the future of the office. The sanitarians saw the opportunity to move the coroners away from their traditional role to a new function—'the promotion of sanitary measures'.¹⁴⁸ That is dealt with in the next chapter.

¹⁴⁸ Ibid.

CHAPTER 3

A NEW DIRECTION?

A fragmented series of responses to perceived problems.¹

The 1860 County Coroners Act brought to an end more than two decades of tension and conflict between coroners and magistrates. The conflict arose because of the rise in the cost of inquests and their effect on the county rates, and what the magistrates saw as the coroners' interference in their judicial role. However, there were more fundamental problems. These related to an ancient office struggling to deal with a rapidly changing world using ancient and ill-defined laws.² Although attention was focused on the conflict, a debate had commenced in the 1840s over the future of the coroners. Rather than abolish the office as recommended by the Middlesex magistrates in 1851, the sanitarians suggested a change in direction from the detection and prevention of crime, the primary objective as advocated by the traditionalists, to the promotion of sanitary measures. At its most basic, the dividing line between the two sides was the attitude adopted towards inquest juries and medical investigators.³ The annual congresses of the Social Science Association provided the opportunity for 'an annual field day' of debate on the subject. Both sides had their heyday in the 1850s and 1860s and, although the debate moderated, it

¹ David Garland *Punishment and Welfare: A history of penal strategies* (Gower, Aldershot 1985) p.65 [Hereafter: Garland Welfare]

² Phil Scraton and Kathryn Chadwick *In the Arms of the Law: Coroners' Inquests and Deaths in Custody* (Pluto, London 1987) p.27

³ Olive Anderson *Suicide in Victorian and Edwardian England* (Oxford: Clarendon Press 1987) n.46 p.25

continued into the early twentieth century.⁴ This chapter outlines the development of the sanitarian approach and the opposition to it.

THE SANITARIANS:

The sanitarians' change of role for the coroner can be seen as developing from five disparate elements, that when integrated together provided a response to the perceived problems in the inquest system and some aspects of society. The first element was Wakley's quest to replace legal coroners with exclusively trained medical men. He started the process in the late 1820s with articles in the medical journal, *Lancet*, in which he criticised the performance of legal coroners. Wakley became progressively knowledgeable on the office and its history so that, by 1830, his ideas for change were well worked out and available to anyone who cared to read them in the *Lancet*. In order to demonstrate the methods he advocated, he attempted to achieve office as a Middlesex county coroner.⁵ Despite being 'admirably suited for the office' and strongly supported by the medical profession, he narrowly failed to achieve office.⁶

He continued to assert that coroners required sound medical qualifications and that the legal knowledge needed was minimal. The rules of evidence that obtained in the higher courts did not apply at an inquest, which was purely an investigation to determine the exact cause of death and how it was brought about. A doctor could effectively deal with any medical testimonies given in court, especially discrepant medical evidence and technical terminology, and explain its significance to the jury. Wakley was well supported by some members of the medical profession. For example, Michael Ryan confirmed Wakley's

⁴ See: John Troutbeck 'Modes of Ascertaining the Fact and Cause of Death' in *Transactions of the National Association for the Promotion of Social Science* 3 (1905-06) pp. 86-117 cited in Anderson op.cit. n.46 p.25

⁵ Edwina Sherrington *Thomas Wakley and Reform 1823-52* (University of Oxford DPhil, 1974) p.118

⁶ *Ibid.* pp.117-9

findings of 'the most absurd and unscientific medical evidence' given in legal proceedings at coroners' inquests.⁷ He believed that such cases would never occur if all coroners were medically qualified and witnesses had a proper knowledge of forensic medicine.⁸ The latter point is significant because in 1831 Ryan was already referring to the need for forensic medicine experts to participate at inquests. He believed that a knowledge of medico-legal science was indispensable to a coroner who would be 'incompetent to secure impartial justice' without it.⁹

The second element also came from Wakley. Although unsuccessful in his attempt to become a coroner in 1830, that election paved the way for him to become a Member of Parliament (MP) in 1835. He quickly gained the respect of the Commons on medical matters. That provided the opportunity to advance another aspect of his vision which had also been advocated by Ryan. As well as medical coroners, he wanted to make medical evidence an indispensable part of the proceedings at inquests.¹⁰ Up to that time, the coroners had had to rely on the goodwill of a doctor to testify at an inquest because it was not possible to pay a fee for his attendance at court as a witness. Wakley introduced a private members Bill to permit this, and for the GP to carry out a post mortem examination, with certain analyses, for an additional fee. The Medical Witnesses Act¹¹ reached the statute book in 1836 and was a major step forward for the coroner's court.

The third element came from the influence of the Scottish system and, particularly, the Continental system. The systematic approach to performing post mortem examinations was developed in Germany by Rudolph Virchow in the 1840s and incorporated into government rules in 1858. These rules were to guide medical jurists in performing post

⁷ Michael Ryan *Manual of Medical Jurisprudence*. (London: Renshaw and Rush 1831) p.viii

⁸ Ryan op.cit. pp.vii-viii

⁹ Ibid. p.ix

¹⁰ Sherrington op.cit. pp.177-8. See also *DNB* Vol.XX Wakley p.464

mortem examinations for legal purposes.¹² Although Virchow pointed out that the rules had defects and were already antiquated at the time of their issue,¹³ in England, there was nothing equivalent and the system was rudimentary when compared to that in Germany. He insisted on the need for order and consistency of performance when performing post mortem examinations for medico-legal purposes. It was necessary to show that nothing had been omitted which could throw any possible light on the cause of death. That could only be achieved by completeness of examination and exactness of method, both considered critical in such examinations. The Middlesex magistrates had recognised the flaw in the 1836 Medical Witnesses Act which gave local GPs the responsibility to perform a post mortem examinations. They recommended that such examinations should be carried out by doctors with experience and continued practice in this 'difficult branch of Medical Science'.¹⁴ But there was no comment on a defined procedure or process such as that advocated by Virchow.

The fourth element was the 1836 Births and Deaths Registration Act.¹⁵ The system of death certification and registration was instituted primarily for statistical purposes¹⁶ which developed from the medical profession's agitation for more accurate information on mortality. This had links to public health because the doctors considered that the figures being circulated for deaths from the epidemics of cholera were excessive.¹⁷ It was realised at a very early stage that if consistent death

¹¹ 6 & 7 Will. IV c.89 An Act to provide for the Attendance and Remuneration of Medical Witnesses at Coroner's Inquests [17th August 1836]

¹² Rudolph Virchow *Description and explanation of the method of performing Post-Mortem Examinations in the dead-house of the Berlin Charité Hospital with especial reference to medico-legal practice* Transl. T.P. Smith (London: J.A. Churchill 1880) p.3

¹³ *Ibid.* pp.3-4. New regulations were not imposed until 1874

¹⁴ Middlesex Justices of the Peace *Report of the Special Committee appointed at the Michaelmas Session, 1850, as to the Duties and Remuneration of Coroners, and Resolutions of the Court* (April Quarter Sessions 1851) p.37

¹⁵ 6 & 7 Will. IV, c.86 An Act for registering Births, Deaths and Marriages in England [17th August 1836]

¹⁶ Havard, J.D.J. *The Detection of Secret Homicide: A Study of the Medico-legal System of Investigation of Sudden and Unexplained Deaths* (London, Macmillan 1960) p.69

¹⁷ *Ibid.* p.46

registration was to be achieved, then the medical profession would have to play an important part in the scheme by use of standard definitions for causes of death. A basic statistical nosology was established only in 1842¹⁸ and not revised again until 1858.¹⁹ A leading article in the *Lancet* agreed that such a system was indispensable to the medical profession and the public to develop preventive measures. However, it also reported that even in the late 1870s it was the fashion of the day to neglect, almost to ignore, such systems.²⁰ One of the reasons for that was because GPs were not always keen to give certificates with the genuine cause of death because they did not wish to alienate their patients. The poor state of knowledge of medicine (and particularly legal medicine), as well as the reliance on GPs for post mortem examinations and chemical analysis, further diminished the possibility of accurate diagnosis of the cause of death.

As Brodrick reports:

The coroner . . . had existed as an official in the English legal system for hundreds of years before any attempt was made to introduce a system of universal certification of death or to place the arrangements for disposal of the dead on a regular footing.²¹

The death certification and the coronatorial systems had different objectives and little consideration was given to the part to be played by the coroners in the registration process when the Registration Act was being drafted. But the coroners could not be ignored because of their involvement with unexplained deaths. The Act required the inquest jury to inquire into the 'the cause of death'; the coroner had to inform the

¹⁸ M.A. Crowther *The Workhouse System 1834-1929: The history of an English social institution* (London: Batsford Academic and Educational Ltd. 1981) p.159, PP 1842 (423) XIX.441 Fourth Annual Report of the Registrar-General pp.93-105

¹⁹ Anderson op.cit. p.30

²⁰ *Lancet* 2: Jul 13 1878 pp.51-2

²¹ PP 1971-2 [Cmnd.4810] XXI.367 Report of the Committee on Death Certification and Coroners p.xii [Hereafter: Brodrick]

registrar of the result and he had to enter it in the register.²² The section was not well-defined and would lead to problems of interpretation.

The final element was the development of a policy for public health by influential figures such as Edwin Chadwick and John Snow. The existing coroners' role in public health was emphasised by the General Board of Health in a communication to the clerk of the Keynsham Union:

. . . the occurrence of deaths, known or suspected to be from epidemic disease, that is, disease produced from causes which are *preventible*, and the prevention of which may have been charged as a special duty on some particular officer or officers, *implies a probable culpability on the part of some person or other*, and therefore, forms a proper subject of legal investigation, especially where the deaths in question have been amongst paupers, or in any class under the charge of a public body responsible for their proper treatment.²³ [original emphasis]

Traditionalist coroners like Thomas Wakley and William Baker were already doing that²⁴ and, therefore, occasionally having problems with the magistrates. Joshua Toulmin Smith believed that the common law provided 'a most careful regard for all that concerns public health'—and provided 'an extremely ancient office . . . for the purpose of those inquiries'. Since such clear principles already existed in the common law, he contended that it was unnecessary to introduce 'new and theoretical remedies, interfering with numerous private rights'.²⁵

The developments related to the topic of public health in the nineteenth century have received considerable attention in the literature,²⁶ and

²² 6 & 7 Will. IV, c.86 op.cit. s.25

²³ William Baker *A Practical Compendium of the Recent Statutes, Cases and Decisions Affecting the Office of Coroner* (London: Butterworths 1851) p.v, see also pp.113-9

²⁴ Anderson op.cit. p.347

²⁵ J. Toulmin Smith *The Laws of England Relating to Public Health* (London: S. Sweet 1848) p.v, p.59

²⁶ C. Fraser Brockington *Public Health in the Nineteenth Century* (Edinburgh and London: E. & S. Livingstone 1965), Jeanne L. Brand *Doctors and the State: The British Medical Profession and Government Action in Public Health* (Johns Hopkins

need not be repeated here. Suffice to say that the relationship between poverty, living conditions and disease (particularly cholera and typhus) caught the attention of the public and Parliament, and eventually led to the 1848 Public Health Act.²⁷ That encouraged the sanitarians to pursue the new direction they saw for the coroners.

These five elements made up the basis of the sanitarians' vision, though it is important to note that 'there is no question of a strategy existing first as intention and later being implemented as fact'.²⁸ Neither was there a 'strategist' in the way that Chadwick performed that role in public health. The sanitarians saw the advantage of a change to the system²⁹ and there was 'a fragmented series of responses to perceived problems'.³⁰ Elements were adopted, rejected, amended, modified or extended to suit their purpose. The sanitarians were trying to meet specific objectives using the knowledge and various programmes of action available. It is important to recognise that the fragmentary process of development of this type of 'strategy' is *dynamic*. The 'strategy' is constantly being influenced by events, new programmes or processes which could modify, change its direction or even replace it.

The sanitarians strongly supported the appointment of medical coroners and believed that their first object should be 'the promotion of sanitary measures'.³¹ They agitated for the use of specialised experts as demonstrated by the processes used on the Continent and in Scotland. In particular, they wanted post mortem examinations to be performed by

University Press, Baltimore 1965), S.E. Finer *The Life and Times of Edwin Chadwick* (Methuen, London 1952), R. Lambert *Sir John Simon 1816-1904 and English Social Administration* (MacGibbon & Kee, London 1963), R.A. Lewis *Edwin Chadwick and the Public Health Movement 1832-1854* (London: Longmans, Green & Co. 1952), F.B. Smith *The People's Health 1830-1910* (Croom Helm, London 1979)

²⁷ 38 & 39 Vict. c.55 An Act for consolidating and amending the Acts relating to Public Health [Public Health Act] [11th August 1875]

²⁸ Garland Welfare op.cit. p.65

²⁹ Edwin Lankester 'On some Points of Relation between the Office of Coroner and that of the Medical Officer of Health' paper given on 16 May 1863 to the Association of Medical Officers of Health, reported in *Lancet* 1: 16 May 1863 p.608 cited in Anderson op.cit. pp.348

³⁰ Garland Welfare op.cit. p.65

an expert in every case where the pathological cause of a death was uncertain.³² They also wanted greater use of other experts, such as chemists, toxicologists and engineers, to participate and give evidence at inquests. Implicit in the use of such experts, and the example of the 'foreign' Scottish and Continental systems, was that the role of the inquest jury would change and probably disappear. The overall objective of the sanitarians was to influence social policy. They believed that implementation of these progressive ideas would lead to 'improved public health, scientific death registration and better forensic medicine'.³³

Strong support for the sanitarian movement came from the SSA and from Dr. William Farr, the first head of the statistical department at the General Register Office.³⁴ He saw not only the movement as an opportunity for improved statistics, but also that the appointment of medical coroners would have the effect of raising their professional profile.³⁵ The sanitarians' approach was also encouraged by the recommendation of the 1860 select committee which stated:

. . . it to be desirable that an inquest should be held in every case of violent or unnatural death, and also that an inquest should be held in cases where sudden death where the cause of death is unknown . . .³⁶

Although this was not incorporated in to the 1860 Coroners Act, it effectively gave the coroners discretion to hold an inquest into any death they considered necessary.

³¹ Anderson op.cit. p.110

³² Ibid. p.24

³³ Ibid. pp.24-5, 228

³⁴ Ibid. n.45 p.25

³⁵ William Farr 'Suggested Improvements in the Coroner's Inquest' PP 1857-8 (2431) XXIII.1 Nineteenth Annual Report of the Registrar-General p.205. See HO45/6554 Registrar-General's circular to coroners. CorSoc Oct 5 1858 Vol.1 p.491

³⁶ PP 1860 (193) XXII.257 Report, Proceedings and Minutes of Evidence of the Select Committee on Office of Coroner p.iii

The Home Secretary commented during the second reading of the 1860 Coroners Bill that changes in the social system had:

. . . rendered the duties of the office of less importance than they were in ancient times. . . [and] . . . the general institution of county police, had diminished the value of the office in question.³⁷

With the broadening of the coroners' role and the police taking over the investigation of criminal deaths, the sanitarians were encouraged to believe that a significant change in the primary objective of the office of coroner was a possibility.

A coroner who strongly supported the sanitarian approach was Dr. Edwin Lankester. He had replaced Wakley as coroner in 1862 but was of an entirely different breed, believing passionately that the first purpose of a coroner was 'the promotion of sanitary measures'.³⁸ He was:

. . . above all an outsider, a non-conformist for whom life was one long unremitting battle against what it is now fashionable to call "the Establishment"—medical social, commercial and juridical. . . He had to struggle to find the resources to qualify as an apothecary and a surgeon.³⁹

He was forced by circumstances to go to Heidelberg in Germany for his doctorate of medicine; not that obtaining a German diploma offered any immediate guarantee of success before the 1870s.⁴⁰ Indeed, there was a strong feeling of ambivalence in England regarding German degrees⁴¹ and that, with his humble beginnings and non-conformism, may have counted against him in his early efforts to become a Member of the

³⁷ Parl. Deb. 3rd Series **157**: col.81 Mar 7 1860

³⁸ Anderson op.cit. p.110

³⁹ Alexander W. Macara 'Foreword' in Mary P. English *Victorian Values: The Life and Times of Edwin Lankester M.D., F.R.S.* (Biopress, Bristol 1990) p.xiii

⁴⁰ Godelieve van Heteren 'Students Facing Boundaries: The Shift of Nineteenth-Century British Student Travel to German Universities and the Flexible Boundaries of a Medical Educational System.' in Vivian Nutton and Roy Porter *The History of Medical Education in Britain* (Amsterdam; Atlanta, GA, 1995) p.318

⁴¹ Ibid. p.319 See also: Richard D. Altick 'The Smethurst Case' in Jonathan Goodman (ed.) *Medical Murders* (London: Piatkus 1991) pp.83-4

socially superior Royal College of Physicians⁴²—despite being a Fellow of the Royal Society.

Lankester was persuaded by members of the medical profession to stand for election to the new central Middlesex jurisdiction⁴³ which resulted from the division of Wakley's district on his death.⁴⁴ He received strong support from Dr. Farr,⁴⁵ the medical profession and journals,⁴⁶ the SSA⁴⁷ and others. The strenuous, expensive and vicious campaign was backed by the leading sanitarians of the day who saw him as an ideal candidate. He had been Medical Officer of Health for St. James's Westminster since 1856, was a leading figure in the Association of Metropolitan Medical Officers of Health, actively involved in the SSA, and a well-known and effective science writer and lecturer.⁴⁸ His election to the coronership was therefore considered a triumph for the medical profession and the sanitarians who backed him.

He was determined to demonstrate to the full that as a medical coroner he could powerfully advance the cause of public health⁴⁹ and became the enthusiastic champion of the sanitarian cause. He believed that the two offices provided the opportunity for him to use all his medical, scientific and social skills to the full and be able to improve 'the lot of the poor and downtrodden'.⁵⁰ Like Wakley, he understood the necessity for publicity if progress was to be made and published annual reports of his activities as Medical Officer of Health and coroner.⁵¹ For twelve years he put his sanitarian views into practice at inquests and 'insisted on

⁴² English op.cit. p.6

⁴³ Ibid. p.137

⁴⁴ *London Gazette* Jun 10 1862 p.2963

⁴⁵ *St.Pancras Reporter and North London Advertiser* Jun 14 1862 p.1f

⁴⁶ *BMJ* 1: Jun 7 1862 p.609, 2: Jul 5 1862 p.13, *Lancet* 1: Jun 21 1862 p.672, 1: Jun 26 1862 p.696

⁴⁷ Anderson op.cit. p.110

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid. p.74

⁵¹ Ibid. p.142, See also Edwin Lankester *The Sixth Annual Report of the Coroner for the Central District of Middlesex* (London, Hardwicke 1869) and *Lancet* 2: Nov 7 1874 pp.676-7

post-mortems on a very lavish scale'.⁵² This not only brought condemnation for the expense from the Middlesex magistrates,⁵³ but financial difficulties as they delayed payments to him.⁵⁴ Although an enthusiastic advocate of the sanitarian vision, Lankester adapted it to his own requirements. He had a foot in the traditionalist camp as a strong supporter of the popular liberties provided by the inquest jury. He believed that jurors could understand even difficult cases 'if they were addressed in Saxon and not Latin'.⁵⁵ He used his inquests to impress on jurors and public alike any lessons in both social and health matters which could be learned from the cases.⁵⁶

Following the publication of his Third Annual Report in 1866, the *BMJ* reported:

Dr. Lankester drew attention to the importance of the Coroner's Court in deaths from preventable diseases . . . showing that . . . there was no doubt that not only the coroner had the power, but that it was his duty to hold inquests in such cases. In many cases of zymotic disease, the cause was so obviously dependent on neglect and deficiency that it was only necessary to draw public attention to the existence of these causes at once, to put an end to the spread of disease. . . One of the most powerful aids provided by the law for arresting the spread of preventable disease, was the Coroner's Court.⁵⁷

On this occasion, the important sanitarian message was being proclaimed widely to the medical profession.

When elected, Lankester became one of the six coroners based in London or close by that ran the Coroners' Society. He played an active part in the proceedings,⁵⁸ but he appeared quite unable to influence the

⁵² Anderson op.cit. p.229

⁵³ *Warwick & Warwickshire Advertiser* Apr 16 1864 p.3a, *The Times* May 24 1866 p.11d, Apr 13 1866 p.11e, *BMJ* 2: Sept 2 1871 p.270, *Lancet* 2: Nov 7 1874 p.677

⁵⁴ *BMJ* 2: Nov 28 1874 p.771

⁵⁵ Edwin Lankester 'The extension of Coroners' Jurisdiction.' Discussion *Transactions* of the Social Science Association 1866 p.293 cited in Anderson op.cit. p.229

⁵⁶ English op.cit. p.143

⁵⁷ *BMJ* 1: Apr 28 1866 p.448 cited in English op.cit. p.143

⁵⁸ *Ibid.* pp.141-2

Society to take any interest in the proposals for reform he was advocating and practising. The blinkered attitude adopted by the Society after the 1860 Act prevented it seeing the advantages of change. As English observes, if Lankester's version of the sanitarian vision had been 'adopted officially it would have added a whole new dimension to the coronership'.⁵⁹

TRADITIONALIST RESISTANCE:

Some of the objectives of the sanitarians must have been discussed during the 1850 Middlesex magistrates' inquiry into the coroners. Bedford, the Westminster coroner, wrote to the chairman on the subject. His letter, appended to the 1851 Report, stated:

I do not consider the first object [of the coroner] to be "the promotion of sanitary measures". Such measures are of necessity promoted by such enquiries but I consider the prime objects to be the prevention, detection and punishment of crime. The effect that such enquiries may have in *detering* crime, I consider to be *incalculable*.⁶⁰ [original emphasis]

The other two Middlesex coroners, Thomas Wakley and Baker, agreed with him and believed that 'crime' included deaths caused by the negligence of officials, such as magistrates, gaolers, policemen and poor law functionaries. The coroners had considerable support in the community from those:

. . . who believed the coroner's primary function was to check private crime and official negligence, whose watchwords were popular liberties, the ancient constitution and no centralization [*sic*].⁶¹

⁵⁹ English op.cit. p.143

⁶⁰ Middlesex Magistrates Middlesex April Quarter Sessions *Report of the Committee appointed at the Michaelmas Session, 1850, as to the Duties and Remuneration of Coroners and the Resolutions of the Court* (April Quarter Sessions 1851) pp.42-3 [Hereafter: SpecComm. Middx.]

⁶¹ Anderson op.cit. p.24

A most significant supporter was Joshua Toulmin Smith who determinedly supported the Middlesex coroners in their conflict with the magistrates. Smith's evidence to the Royal Commissioners' inquiry in 1859 was a powerful defence of the ancient office and its traditional authority.⁶²

As Blau and Scott point out:

Traditional authority tends to *perpetuate the existing social order* and is *ill suited for adaptation to social change*; indeed, *change undermines its very foundation*.⁶³ [emphasis added]

In institutions that rely on 'traditional' authority, 'the present social order is viewed as sacred, eternal, and inviolable'⁶⁴ which can be seen as the main source of the coroners' resistance. Edward Herford, the outspoken coroner for Manchester, was one of the hidebound traditionalists who wanted to maintain the ancient processes without too much consideration for the needs of a changing society.⁶⁵ He was appointed in 1849 and not unknown to controversy, being one of the few coroners who had problems with a borough council with respect to his fees. A Court of Queen's Bench ruling had been necessary to prohibit him from holding non-fatal fire inquests which he, and others, considered one of the coroner's ancient duties.⁶⁶

A leading article in the *Lancet* complained of meaningless verdicts at inquests. In doing this, they were supporting the Registrar-General who was looking for improved statistics, a cornerstone of the sanitarian

⁶² J. Toulmin Smith *The Right Holding of the Coroner's Court and Some recent Interferences therewith: Being a Report Laid before the Royal Commissioners appointed to inquire into "The law now regulating the Payment of the Expenses of holding Coroners' Inquests."* (London: Henry Sweet 1859). See also J. Toulmin Smith *The Laws of England Relating to Public Health* (London: S. Sweet 1848)

⁶³ Peter M. Blau and W. Richard Scott *Formal Organisations* (London: Routledge and Kegan Paul 1970) p.30

⁶⁴ *Ibid.*

⁶⁵ Iain Pears *Death and Restoration* (London, Harper Collins 1996) p.7

⁶⁶ R. v. William [sic] Herford 1860 29LJQB.249 etc. cited in John Jervis, W.B. Purchase and H.W. Wollaston (eds.) *On the Office and Duties of Coroners. With an appendix of forms and precedents* Ninth edition (London: Sweet & Maxwell 1957) p.36

approach. The journal named Herford as an example, pointing out that a significant proportion of his inquests resulted in a verdict of 'natural causes', which was of no statistical value whatever. It went on to state that the main object of an inquest was to 'record scientific information into the cause of death'—something that it considered was too generally ignored by the coroners.⁶⁷

Herford sent an uncompromising reply to the journal:

[Your article] . . . is founded upon a complete misunderstanding of the nature and duties of the office of coroner. Whatever you and your medical friends *might* make of the office if permitted—which I devoutly deprecate—to upset the law and practices of centuries, you must at present, however unwillingly, take these and not any new-fangled theories as your only guide.⁶⁸ [original emphasis]

Herford was pointing out the traditional practices and the ancient law of England relating to the coroner's court as confirmed by Lord Hale:

. . . the business of the [inquest] jury is to find how the deceased came by his death, whether by the visitation of God, by misfortune, by his own hand, by the hand of a unknown person, or by the hand of a known person.⁶⁹

Herford emphasised the role of the jury:

. . . the inquest proceeds with all the strictness and solemnity of an open public trial in any other court of justice. The inquest is thus *by* the jury, *before* the coroner but not *by* the Coroner. [original emphasis]

The question to be decided by the jury, after hearing the evidence, is, primarily, not what is the medical cause of death, but whether anybody appears to be "culpable". If this is not clearly proved in the negative, further inquiry into the medical cause of death

⁶⁷ *Lancet* 1: Mar 2 1878 pp.322-3

⁶⁸ *Ibid.* 1: Mar 30 1878 p.480

⁶⁹ LCO2/289 Coroners Inquests: procedure for altering the law; and special reference to the conduct of the Reading Coroner. Letter Clynes to Lord Chancellor pp.2-3

becomes necessary, and is then prosecuted by means of dissection, or by medical or other scientific evidence.⁷⁰

In this, Herford makes clear the place of the expert witness in the court. Medical or other scientific evidence would be called if the question of culpability had not already been established. He regarded such experts as being just like any other 'common witness'. They were called to present the factual evidence for the jury to take into consideration in reaching the verdict—not to decide the outcome.⁷¹

The traditionalist attitude was that to 'scientise justice' would lay 'the foundations for the growth of a more esoteric law'.⁷² In particular, it would have led to the disappearance of the lay element in the system—the jury. Without that element, there would be no check at all against a time when an expert would find it 'necessary to address himself only to his own kind',⁷³ using only exotic technical language. In these circumstances, the experts would have enjoyed an 'unrivalled position as diviners of the facts' and their findings considered as the result 'not of personal whim, but of impersonal judgement'. Their version of the facts would be the objective truth and 'free of normative relativism'.⁷⁴

The elimination of the jury would have given satisfaction to the medical profession because it removed the opportunity for 'laypersons to challenge the scientific and legal establishments'.⁷⁵ The *BMJ*, for example, made its view clear when commenting on the coroner's court as a clinical tribunal:

What possible place or power can a jury claim to exercise its criticisms of medical treatment? The only plausible pretence for so doing is a difference of opinion among skilled witnesses, and if the

⁷⁰ Edward Herford 'On Alleged Defects in the Office of Coroner' *Transactions of the Manchester Statistical Society* Jan 10 1877 pp.43-4

⁷¹ Herford op.cit. p.44

⁷² Geoff Mungham and Zenon Bankowski 'The jury in the legal system' in Pat Carlen *The Sociology of the Law* (Keele: University of Keele 1976) p.216

⁷³ Ibid. p.216

⁷⁴ Carol A.G. Jones *Expert Witnesses* (Oxford: Clarendon Press 1993) pp.9-10

⁷⁵ Ibid. p.3



profession were true to itself, and its members loyal to the dignity and interest of their cloth, no such "difference" would be allowed to reach the public ear.⁷⁶

This expresses the desire of the medical profession to retain judgement of medical men within the profession and for any assessment of their skills to be made behind closed doors. As Burney points out, the debate about medicine and the inquest revolved around 'a crucial theme of contemporary political thought—the "public"'.⁷⁷ The inquest and the inquest jury were a part of the British constitution that provided a system of checks⁷⁸—the components of participation necessary to satisfy the public that its interests were being protected from suspicions of 'corruption and abuse that results from irresponsible power'.⁷⁹ The traditionalists may have accepted the use of pathologists and other experts in their inquiries, but they would resist the loss of the jury.

The Registrar-General looked to inquests as an important source of accurate mortality statistics, especially for deaths that would otherwise have been registered as uncertified. He was concerned that many coroners failed to hold inquests even when the registrars did refer cases to them. He especially wanted juries' verdicts to give the 'exact essential facts, not vague generalities'.⁸⁰ He objected to unregistrable and valueless verdicts such as 'sudden death,' 'death by visitation-of-God,' 'natural causes', 'found dead' etc. which were returned by Herford and many other coroners.⁸¹

The Registrar-General stated that:

⁷⁶ *BMJ* 2: Nov 22 1884 p.1027

⁷⁷ Ian Adnan Burney *Decoding Death: Medicine, Public Inquiry, and the Reform of the English Inquest, 1836-1926* (unpublished University of California at Berkeley PhD thesis 1993) p.55 [Hereafter: Burney Thesis]

⁷⁸ Matthew Arnold, Stefan Collini (ed.) *Culture and Anarchy and Other Writings* (Cambridge: Cambridge University Press 1993) p.83 cited in David Eastwood *Government and Community in the English Provinces, 1700-1870* (Basingstoke and London: Macmillan Press 1997) p.7

⁷⁹ Burney Thesis p.58

⁸⁰ PP [C.3620] 1883.XX.1 *Forty Fourth Annual Report* of the Registrar-General p.xxi

⁸¹ See John Fenwick *Accounting for Sudden Death: A Sociological Study of the Coroner System* (unpublished University of Hull PhD thesis 1984) Table 5 (4) 2 p.259

. . . many coroners appear to think that the exclusive object of an inquest is to ascertain whether a crime has been committed, and ignore altogether the other purposes, scientific and medical, to which *inquests are intended to be subservient*. . . vague findings . . . may possibly satisfy the requirements of criminal law, but are utterly inadequate for all other purposes, and cannot be considered as *really fulfilling the requirements of the Act* . . .⁸²
[emphasis added]

His statement that inquests were subservient to scientific and medical purposes was not new.⁸³ However, he was expressing *his* interpretation of the of the Registration Act in order to meet *his* objectives; an interpretation generally accepted by the medical profession.⁸⁴ Such statements 'may not always agree with the conscious aims of those who introduced the legislation'⁸⁵ and, as Fifoot comments, it is not reasonable to assume that:

. . . any collection of words, statutory or otherwise, possesses a single, predetermined, invariable meaning. . . "a word generally has several meanings even in the dictionary". . . A lively mind, moreover, could always detect a convenient ambiguity . . .⁸⁶

Herford firmly believed that the court existed to protect human life, not to provide statistical information.⁸⁷ He also saw the Registrar-General's interpretation of the law as a threat to the office. In his view, the Registrar-General and Dr. Farr had 'constructed a system for practically superseding the coroner's duty'.⁸⁸ This was in accordance with the opinion of the Coroners' Society⁸⁹ (see chapter 5). Nevertheless, there was a growing awareness of the importance of the relationship between registrars, coroners and doctors as 'agents in the process of certifying the cause of death'.⁹⁰ Despite that convergence, it had probably been

⁸² Ibid. p.xxi

⁸³ *Lancet* 1: Mar 21 1868 p.390

⁸⁴ Ibid. 2: Oct 23 1875 p.601, 2: Sept 29 1877 p.469

⁸⁵ Brodrick op.cit. p.xii

⁸⁶ C.H.S Fifoot *Judge and Jurist in the Reign of Queen Victoria* (Stevens and Sons, London 1959) p.131

⁸⁷ Herford op.cit. p.45

⁸⁸ *Lancet* 2: Sep 15 1877 p.401

⁸⁹ CorSoc Dec 26 1874 Vol.1 p.815

⁹⁰ Brodrick op.cit. p.xiii

made more difficult because the responsibility for the Registrar-General had been transferred from the Home Office to the Local Government Board (LGB) in 1871.

Another source of resistance to the sanitarian demand for medical coroners was the legal profession. The argument was very simple—the coroner's court was a court of law and it was obvious, therefore, that a lawyer should be appointed to this judicial position. A man with legal training was more accustomed to conduct business in court and better able to cross-examine witnesses expeditiously in order to elicit the truth. Additionally, lawyers were considered more capable and experienced in weighing and deciding the evidence before reviewing and clarifying it for consideration by a jury.⁹¹ The medical profession's response was that every lawyer and barrister had his own way of extracting evidence, and success depended on the 'talent of the man, not on the method and learning of the law'.⁹²

One problem that held back the implementation of the sanitarian approach was to get doctors into office. It was a slow process because coroners were elected for life and the office often brought with it the gift of longevity.⁹³ Contested elections to office were not the norm⁹⁴ and a vacancy was often filled, more or less automatically, by the coroner's son, his partner in the legal practice or the deputy coroner.⁹⁵ Even when there was an election, it was not always possible to find a doctor to stand. Lankester did not help the cause. Although he firmly believed in the principle of medical coroners, he discouraged doctors from the election process and offered the following advice:

⁹¹ *Solicitors' Journal* **23**: Jun 28 1879 p.675

⁹² *Social Science Review* Jun 28 1862, reported in *BMJ* **2**: Jul 5 1862 p.13

⁹³ D. Zuck 'Mr. Troutbeck as the Surgeon's Friend: The Coroner and the Doctors—An Edwardian Comedy' in *Medical History* **39**: 1995 259-287 p.260. Herford was in office for 47 years and died at 81, and other octogenarians achieved 50 years

⁹⁴ David Eastwood *Governing Rural England: Tradition and Transformation in Local Government 1780-1840* (Oxford: Clarendon Press 1994) p.67

⁹⁵ See: Anderson op.cit. p.150, Gavin Thurston *The Great Thames Disaster* (London, George Allen & Unwin 1965) p.173

In the present state of the law, no medical man of limited means should venture in the uncertainty of what the expenses may be in a contest. Those in Middlesex, within his knowledge, cost the successful candidates from two to seven thousand pounds. Neither the position nor the salary justified this expenditure. He regarded having obtained the coronership for Middlesex as one of the great calamities of his life. He did not believe that those who helped him to win this office knew how hardly it had pressed on his resources, but he would warn them against any attempt at pressing a medical brother into so dangerous a position, as that of sustaining the expenses of a county contest for so thankless an office. Even when got without contest, the salary paid is not equal to the service demanded.⁹⁶

The attitude of the medical profession had also changed. In 1861, the *BMJ* was still favouring medical coroners and criticising legal coroners. It contended that coroners:

. . . when chosen from the legal profession, . . . retain only that "antique rigour and overdone severity" in the examination of evidence, which, in the more early ages, distinguished all judges, who, being bred in habits of great subtlety, and unacquainted with the general concerns of men, confined the sphere of their jurisdiction to the bare maxims and fictions of law.⁹⁷

However, by 1868 the *BMJ* had changed its tune and stated that legal training was better than medical training for the conduct of coroners' inquiries and advocated that 'a staff of competent surgeons' should be appointed for each district as in Scotland.⁹⁸ But the greatest blow to the sanitarian vision came from the Government. It decided to deal with the public health issues that had been developing since the 1830s. In 1868 the SSA and the BMA formed a joint committee which persuaded the Government to set up a Royal Commission to deal with the subject.⁹⁹ That inquiry led to the consolidation of the complex mass of related statutes into the 1875 Public Health Act. Few measures have rendered

⁹⁶ *BMJ* Sept 5 1868 pp.254-5

⁹⁷ *Ibid.* 1: Feb 9 1861 p.146

⁹⁸ *Ibid.* Sept. 5 1868 p.255

⁹⁹ Brian Rodgers 'The Social Science Association, 1857-1886' *The Manchester School of Economic and Social Studies* 20: (3) Sep 1952 283-310 pp.290-1

more social service.¹⁰⁰ It was sufficiently clear, well drafted and comprehensive to provide the basis of a public health service for the next forty years. Indeed, it permitted rapid progress to be made in public health after it was enacted.¹⁰¹ Most of the activities that the sanitarians had hoped to incorporate in the coroners' duties were progressively assimilated into the responsibilities of the medical officers of health. The desire for medical coroners did not die,¹⁰² but by the 1880s medical opinion was moving away from the doctrine that coroners ought to be medically qualified and the numbers have slowly declined since then.¹⁰³ However, the debate on coroners, the role of inquest juries and medical investigators continued with varying intensity into the early twentieth century.¹⁰⁴

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This chapter has shown that, behind the conflict between the coroners and the magistrates, a debate had started over the future of the office and the development of a potential change of direction. The sanitarians wanted medical coroners to direct their efforts primarily towards sanitary affairs in order to achieve accurate mortality statistics—the essential tool of enlightened social policy.¹⁰⁵ Resistance to change came from the traditionalist coroners, the legal profession and others who wanted to maintain the ancient process without consideration for the needs of a changing and still developing world.¹⁰⁶

¹⁰⁰ R.C.K Ensor *England 1870-1914* (Oxford: Oxford University Press 1992) p.36

¹⁰¹ L.C.B. Seaman *Victorian England* (London and New York: Routledge 1995) p.172

¹⁰² See: Frederick Walter Lowndes *Reasons Why The Office Of Coroner Should Be Held By A Member Of The Medical Profession* (London: J.A. Churchill 1892), Second edition (London: J.A. Churchill 1895), Third edition (London: J.A. Churchill 1900)

¹⁰³ *Annual Report of the Coroners' Society, 2000* cited in G.H.H. Glasgow *Lancashire and the Campaign for Medical Coroners in the Nineteenth Century* (unpublished paper. n.d. (2000?)) p.40

¹⁰⁴ See: John Troutbeck 'Modes of Ascertaining the Fact and Cause of Death' in *Transactions of the National Association for the Promotion of Social Science* 3 (1905-06) pp. 86-117 cited in Anderson op.cit. n.46 p.25

¹⁰⁵ Anderson op.cit. pp.24-5

¹⁰⁶ Pears op.cit. p.7,

The sanitarian approach did not arise fully formed, but developed by a fragmentary process which assimilated several diverse elements to provide a potential change of direction for the coroners. The process was dynamic so that the process of acceptance, rejection, amendment or modification was ongoing. Indeed, the measures adopted by the Government in the early 1870s to deal with long-standing public health problems, in effect, ended the sanitarians' campaign.

The 1860 Coroners Act brought an uneasy peace between the magistrates and the coroners. However, it had removed only one of the problems of the inquest system—the ability of the magistrates to limit the freedom of action of the coroner. Other problems, some of which had been identified by the Middlesex magistrates in 1851, still remained unresolved. The quiescence of the 1860s was followed in the mid-1870s by a period in which the office came under increasing political and public scrutiny as a result of a series of inquests that became *causes célèbres*. These and their significance are explored in the next chapter.

CHAPTER 4

'OCCURRENCES AT INQUESTS'

... the public temper has been aroused, not to say shocked, by certain unseemly, if not disgraceful, occurrences at inquests.

*Lancet*¹

The 1860 Coroners Act was followed by a quiescent period of over a decade in which debate continued and the inquests that did take place attracted little publicity. The year 1874 brought the first of five inquests that again brought the office of coroner under increasing political and public scrutiny. To put these inquests into context, between 1874 and 1877, 108,903 inquests were conducted in England and Wales.² The majority of these were factually reported in the local newspapers and a relatively small number were covered with a paragraph or two in the national press. *The Times*, for example, normally published short reports on around 800 inquests each year—in the region of 3% of the total number—which were then forgotten. But the considerable publicity given to the five inquests transformed them into *causes célèbres*.

These *causes célèbres* illustrate some of the critical issues that have been discussed in previous chapters and confirm that the 1860 Coroners Act had not overcome the problems associated with the inquest system. But they also reveal some new aspects that have not so far been touched upon, such as the problems associated with sensational reporting by the press and further inadequacies of the death registration process. Also exposed is the distaste of the upper classes

¹ *Lancet* 2: Nov 23 1878 p.738

² PP 1909 XV.389 [Cd.4782] First Report of the Departmental Committee appointed to inquire into the Law relating to Coroners and Coroners Inquests: Part II, Evidence and Appendices. Appendix No.2

for publicity in cases of sudden or violent death and their abhorrence of inquests.³ One inquest exposes an aspect of the Victorian attitude towards women. Also shown is the almost unconditional independence and power of a coroner, and the need for a high level of professionalism, integrity and quality in any individual appointed to the office in order to avoid bias and incorrect verdicts. More importantly, the *causes célèbres* persuaded the government to make an attempt to address the coroners' problems by the introduction of legislation to deal with them.

THE WEST HADDON CASE:

The first *cause célèbre* started inauspiciously at the end of 1873 in the tiny and obscure hamlet of Crick in Northamptonshire. Alice Gulliver was an old lady of 73 years who lived alone and had become enfeebled by living very frugally on a poor diet. By her own admission she was subject to frequent fainting attacks, though like many old ladies, she hid this fact from some members of her family. She requested a niece living in Worcester to visit her, though there is no indication why she did so. Two days after the niece arrived, the old lady was suddenly taken ill. Despite attention from the doctor she died and he, knowing the existence of heart disease, issued a death certificate and she was buried.⁴

Immediately following the death, the niece told the doctor that she regretted being there and explained that a will had been made in favour of her husband. The family apparently knew nothing of this and the niece suspected that there would be a terrible 'rumpus', which is

³ Olive Anderson *Suicide in Victorian and Edwardian England* (Oxford: Clarendon Press 1987) p.23 [Hereafter: Anderson 1987]

⁴ *The Times* Jan 9 1874 p.5f

probably the reason the coroner was informed of the death. He ordered an inquest and issued instructions for the body to be exhumed.⁵

Two days before Christmas, William Tomalin, a solicitor in the borough of Northampton and deputy county coroner for the Western district, was sent to take the inquest. Crick had no public house, so the inquest was held at the *Crown Inn* in the nearby village of West Haddon. Inquests in the nineteenth century were almost always conducted in public houses and, as Dickens aptly observes in *Bleak House*:

The Coroner frequents more public-houses than any man alive. The smell of sawdust, beer, tobacco-smoke, and spirits, is inseparable in his vocation from death in its most awful shapes.⁶

Tomalin would have sworn in the jury and, together with them, viewed the exhumed body of Mrs. Gulliver in an outhouse or a nearby farm building. In a room set aside in the *Crown Inn*, some evidence was heard at a short session before the inquest was adjourned to allow time for a post mortem examination and analysis of the contents of the stomach.⁷

The inquest resumed in January 1874. The two doctors who performed the post mortem examination confirmed that Mrs. Gulliver had died from advanced heart disease, as stated in the death certificate.⁸ The viscera had been sent for analysis to the toxicologist, Dr. Julian Disbrowe Rodgers, and he appeared at the inquest as an expert witness. This was an unusual procedure. According to the 1836 Medical Witnesses Act, the additional fee paid to a medical witness for the post mortem examination also included carrying out any analyses. Strictly speaking, there was no way to pay such an expert witness, though the Home Office occasionally gave permission, in special cases, for a fee to be

⁵ *Northampton Mercury* Jan 10 1874 p.8b, *The Times* Jan 9 1874 p.5f, *BMJ* 1: Jan 17 1874 pp.89-91

⁶ Charles Dickens *Bleak House* (London, Penguin Books, 1994) p. 134

⁷ *The Times* Jan 9 1874 p.5f

⁸ *Northampton Mercury* Jan 10 1874 p.8b, *BMJ* 1: Jan 17 1874 pp.89-91

paid. In this case, there is no indication of who approved the fee or who paid it.

Tomalin appears to have been appointed only in 1873⁹ for the rural Western district of the county. His inexperience may be the reason why he permitted two solicitors present to take over the examination of the witnesses rather than leading the questioning himself. Rodgers, giving his evidence as the expert witness, stated that he had found no signs of irritation in the stomach or the oesophagus, and that the contents of the stomach contained no mineral poisons. However, he had found minute, unweighable quantities of morphia which, though insufficient to cause death, had probably accelerated it.¹⁰ It is important to note that Rodgers was a doctor and toxicologist at the London Hospital College in Whitechapel Road. Therefore, the solicitor who represented the family, Mr. Becke, was able to press Rodgers to give his opinion on the cause of death. Initially, despite the question being repeated several times, Rodgers would not speculate. Nevertheless, Becke persisted and eventually asked:

. . . whether he thought that Mrs. Gulliver's death arose from syncope, he said "No, certainly not syncope. . . Further, I would state that . . . I am of opinion that she died from some noxious substance given to her immediately prior to death, but which I am unable to detect."¹¹

Rodgers had suddenly introduced the hypothesis that the death was caused by a 'noxious substance' without any supporting evidence.¹² It might have been expected that the solicitor representing the family

⁹ *The Law List* (London: Stevens & Sons 1874) p.673 Tomalin is listed as deputy coroner for the Midland district of Northampton in the 1874 edition of the Law List. This is the first time that this entry appears. He qualified in 1855 and practiced with Vizard, Crowder and Anstie in Northampton. He was not listed with the Coroners for England and Wales (Ibid. pp.978-987), though that is not significant since it varied from county to county.

¹⁰ Ibid.

¹¹ *BMJ* 1: Jan 17 1874 p.89. There is a slight difference between the reports of the *BMJ* and the *Northampton Mercury* Jan 10 1874 p.8b. The latter has Rodgers suggesting that 'something such as prussic acid would cause death'

¹² *BMJ* 1: Jan 17 1874 p.90

would have protested at Rodger's statement. He did not do so, and neither did the coroner, who should have interfered to reject the hypothesis. The objective of the inquest was to establish the true facts of the case in order to establish the cause of death. An hypothesis put forward as a stimulant to further critical enquiry¹³ might have been acceptable, but Rodgers' testimony should have been immediately rejected as a basis for reaching the verdict.

The other witnesses gave their evidence and, eventually, the deputy coroner expressed his obligation to the solicitors for the 'great assistance they had rendered in eliciting the facts of the case'. He then briefly summarised what he considered were the main points for the jury:

The first point they would have to consider was whether the death of Mrs. Gulliver was by natural causes or not. If they decided it was by violence, the question would be by whom the death was occasioned. Then again, if they believed her death had been accelerated by anything given to her wilfully, he apprehended that person would be responsible in the same manner as though it had caused death at that instant. They had heard the evidence as to the motives which might have actuated one person, and it rested entirely with them to say whether that person did or did not poison the deceased. If they were in any doubt as to the cause of death it would be for them to return an open verdict.¹⁴

Tomalin had failed to reject Rodgers' hypothesis and to emphasise the clear clinical evidence of heart disease provided by the doctor and confirmed by the post mortem examination. As in other cases, the authority of the witness appears to have persuaded the coroner and the jury to set aside common sense in favour of the expert's 'evidence'.¹⁵ The jury returned a verdict that the deceased died from poison, but that

¹³ Peter Medawar *Pluto's Republic* (Oxford & New York: Oxford University Press 1987) p.102

¹⁴ *Northampton Mercury* Jan 10 1874 p.8b

¹⁵ Tony Ward 'Law, Common Sense and the Authority of Science: Expert Witnesses and Criminal Insanity in England, ca. 1840-1940' *Social and Legal Studies* 6: (3) 343-362 p.352

there was insufficient evidence to say who administered it.¹⁶ A magistrate present in the court issued a warrant for the arrest of the niece.

The niece had been in an adjoining room throughout the inquest but had not been called as a witness. On hearing the verdict, she proclaimed her innocence and immediately committed suicide with the alkaloid poison strychnine.¹⁷ The next day, the county coroner, Mr. William Terry, was at the *Crown Inn* to carry out the inquest with almost the same jury, which quickly returned a verdict of *felo-de-se* (felonious self-murder). She was buried without the rites of the church between 9 p.m. and Midnight, as the law required.¹⁸ Her husband was the only mourner present and he read the burial service.¹⁹

Rodgers was swiftly castigated by the medical profession for failing in his responsibilities as an expert witness.²⁰ It was considered that his 'scientific evidence . . . was of the flimsiest character'²¹ and concern was expressed for the good name of the profession. Rodgers defended himself in a letter to *The Times*.²² Ernest Hart, the influential editor of the *BMJ*, accused Rodgers of failing to deal with the real issue—the absence of the principal witness. He continued:

If Mr. Rodgers can now prove before the world that there was any scientific justification for the theory he propounded before to the jury, he might certainly do so. Until he does, a more fearful responsibility is upon him than most men would be willing to bear. What was this volatile poison? What were the symptoms which it produced? What were the signs of its administration? These are questions which he cannot be content to leave unanswered.²³

¹⁶ *Northampton Mercury* Jan 10 1874 p.8b

¹⁷ *Ibid.* Jan 10 1874 p.8e, *The Times* Jan 12 1874 7b,

¹⁸ 4 Geo. IV c.52 An Act to alter and amend the Law relating to the Interment of the Remains of any Person found *Felo de se* [8th July 1823], *The Times* Jan 12 1874 7b

¹⁹ *Northampton Mercury* Jan 10 1874 p.8e

²⁰ *BMJ* 1: Jan 17 1874 p.89, 1: Jan 24 1874 p.113, 1: Feb 28 1874 p.284

²¹ *Ibid.* 1: Jan 17 1874 p.89-91, 1: Jan 24 1874 p.113-4

²² *The Times* Jan 21 1874 p.11f,

²³ *Ibid.* Jan 23 1874 p.5b

The *BMJ* used the case to argue the advantages of medical rather than legal coroners: 'A mistake made by a medical coroner on a point of law can scarcely lead to such serious results' as those in this case.²⁴ It also reached the conclusion that:

So monstrous a perversion of reason, and so wild and mischievous use of "the scientific imagination", were surely never before seen in a British court of justice, or what claimed to be such.²⁵

There is little doubt that Rodgers failed in his responsibilities as a witness. But as the *BMJ* implied, the main criticism should have been directed at the deputy coroner—he was surely the major cause of a flawed verdict. He permitted the two solicitors to usurp his authority in the examination of the witnesses. He neglected to call the niece who had important evidence which may well have vindicated her.²⁶ He failed to reject Rodgers' unsubstantiated hypothesis and to emphasise the positive result of the post mortem examination. Apart from the brief comment in the *BMJ*, there was no other censure on the coroner's inadequate performance. His inadequacy cannot be excused, but can probably be accounted for by his lack of experience and the limited opportunities to gain it as a deputy coroner in a sparsely populated area of the county.

Had the niece lived and the case gone to trial, it could have been expected that the judge would have immediately rejected Rodgers' hypothesis since there was no evidence to support it. This occurred in the Staunton trial in 1877 (see below) when a medical witness was quickly withdrawn when the judge objected to an opinion founded on an 'if' hypothesis.²⁷ Neither inquest had elicited the true facts and, rather than clear any suspicions, many questions were left unanswered.

²⁴ *BMJ* 2: Nov 21 1874 p.651

²⁵ *Ibid.* 1: Jan 24 1874 p.114

²⁶ *Ibid.* 1: Jan 17 1874 p.90

²⁷ *The Times* Sept 26 1877 p.9a

The very public exposure of the case in *The Times* and the medical press brought the West Haddon case to a wide audience. It had the greatest impact on the medical profession—which was not the objective of the inquest. But it offered considerable support to those who favoured a move towards the Scottish system where the preliminary inquiries were held in secret. Evidence only came into the public arena if a criminal prosecution resulted. The secrecy associated with the Scottish system appealed to the medical profession. If a problem did occur with a doctor, it wanted it dealt with *internally* by those who understood medicine. This process would have avoided any adverse publicity or lay judgements of members of the medical profession—such as those that may have resulted from the West Haddon case. There were many that objected to any restriction which limited publicity, and the Government appeared to be very conscious of this aspect. Indeed, there was also ambivalence within the profession because it realised that the Scottish system could not be reconciled with the demands of society for publicity and openness that existed in England. Burney made this one of his most important conceptual points and states that:

. . . the language of exclusion deployed by medical observers of inquests was itself saturated with the very terms of publicity and public accountability that it ostensibly sought to exclude.²⁸

Another problem for the profession was the increasing demand for the involvement of experts at inquests, such as Rodgers. Some members of the profession recognised that experts were a logical consequence of the acceleration in medical research and discovery that provided an incentive to exclusive study and practice.²⁹ In fact, by the mid-1870s, the number following that route was already increasing, particularly in London³⁰ as developments in medicine impacted on the profession. But British medicine was extremely conservative with a hatred of

²⁸ Ian Adnan Burney *Decoding Death: Medicine, Public Inquiry, and the Reform of the English Inquest, 1836-1926* (unpublished University of California at Berkeley PhD thesis 1993) p.37 [Hereafter: Burney Thesis

²⁹ Reginald Pound *Harley Street* (London: Michael Joseph 1967) p.12

specialism.³¹ That generated considerable resistance from the GPs who were struggling for income and status.³² But as Virchow had demonstrated in Germany (see chapter 3), post mortem examinations needed experience, practice, order and consistency, especially when used for medico-legal purposes.³³ The Penge Mystery amply demonstrated the importance of this in 1877.

THE PENGE MYSTERY:

One morning in April 1877 a couple called at a house in Penge to arrange lodgings for an invalid lady who needed medical attention. That evening Mrs. Harriet Staunton was covertly delivered to the house. The next morning a local doctor, Dr. Longrigg,³⁴ visited her as arranged by the couple, and found her in a terrible state—insensible, terribly emaciated and verminous. By the time of his second visit a few hours later, she had already died and he issued a certificate giving cerebral disease as the cause of death.³⁵ Harriet's mother received the news of the death and contacted Longrigg,³⁶ who then wrote to the West Kent coroner, Charles J. Carrtar:

. . . I was called to a case of somewhat peculiar character, and from information afforded me considered the symptoms sufficient to justify me giving a certificate of death; but from what has since been told me I am of opinion that the circumstances necessitate an inquisition into the cause of death.³⁷

³⁰ Ibid. p.16

³¹ Ibid. p.12

³² M. Jeanne Peterson *The Medical Profession in Mid-Victorian London* (Berkeley 1976) See chapter V

³³ Rudolph Virchow *Description and explanation of the method of performing Post-Mortem Examinations in the dead-house of the Berlin Charité Hospital with especial reference to medico-legal practice* [Translated by T.P. Smith] (1876) p.3

³⁴ *The Times* May 21 1877 p.10d

³⁵ Ibid. Jun 1 1877 p.11d

³⁶ Ibid. May 15 1877 p.5f

³⁷ Ibid. Jun 1 1877 p.11d

Under the 1836 Medical Witnesses Act,³⁸ Longrigg, being the GP who had last attended Harriet before her death, was requested to perform the post mortem examination. This was carried out in the presence of five other doctors, who all agreed that Harriet had been poisoned rather than starved. Dr. Julian Disbrowe Rodgers (of West Haddon ‘fame’) reinforced that diagnosis. He too was ‘strongly of opinion’ that poison had caused the death. However, when he carried out his analysis, he failed to detect the presence of any mineral or other poison.³⁹ That left the doctors no medical explanation of the cause of death. In these circumstances, Longrigg and the other doctors fell back on starvation as the cause of death because of the considerable emaciation.⁴⁰

The full details unfolded at the Park Tavern in Penge where Carrtar conducted the inquest. Lewis Staunton, an auctioneer's clerk, had married Harriet in order to acquire her small fortune.⁴¹ After some time, he arranged for her to live with his brother and sister-in-law, Patrick and Elizabeth, where she was isolated in filthy conditions, neglected, half-starved, and frequently assaulted.⁴² He lived in nearby Cudham with his mistress and without the interference of his feeble-minded wife. A few days before her death, Patrick Staunton took the twelve-month-old son of Lewis and Harriet to Guy's Hospital for treatment, where he died. The death was registered under a false name, with details of parents ‘unknown’ and the cause of death recorded as ‘inanition’. That was a rare cause defined as exhaustion from lack of nourishment—and reflected the treatment of his mother. The child was buried in an unnumbered grave in Plaistow⁴³—possibly buried surreptitiously by the sexton. The coroner, Charles Carrtar, had long experience and his professionalism, patience, attention to detail and devotion to the public

³⁸ 6 & 7 Will.IV c.89 An Act to provide for the Attendance and Remuneration of Medical Witnesses at Coroner's Inquests [17th August 1836]

³⁹ *The Times* May 21 1877 p.10d

⁴⁰ *Ibid.* Oct 15 1877 p.4f

⁴¹ *Ibid.* May 16 1877 p.5f, Ernest Bowen-Rowlands *Seventy two Years at the Bar. A memoir* [of Sir Harry Bodkin Poland] (London: Macmillan 1924) p.179

⁴² Bowen-Rowlands *op.cit.* p.181

⁴³ *The Times* May 12 1877 p.13f

interest can be inferred from his work.⁴⁴ This can be seen in the efforts that he made to discover the details of the child's registration and burial. He suggested that the strange circumstances surrounding the child's death just before that of the mother might lead to another inquiry.⁴⁵

The inquest attracted a high level of publicity very quickly with detailed reports appearing in the major newspapers. The public interest was heightened by the presence of the barrister Mr. Harry Poland. He represented the Treasury—a clear indication that a murder verdict was the anticipated outcome of the inquest. Since the post of public prosecutor did not exist in England, the Attorney-General or a Treasury barrister usually prosecuted for capital offences when the case reached the higher courts. After ten sessions, the coroner decided that enough evidence had been heard, though Poland was prepared to produce more.⁴⁶

Carrtar gave a detailed review of the evidence, including the degree of responsibility of each of the four individuals if the jury believed that starvation and neglect had caused the death. Lewis Staunton, Alice Rhodes (his mistress), Patrick and the unwell Elizabeth Staunton were arrested after the jury returned a verdict of wilful murder against them. The inquest had attracted a mass of people to Penge. After the verdict it was reported that:

The critical condition of Mrs. [Elizabeth] Staunton left it an open question whether she would be removed or not to Maidstone [prison]. The other prisoners were again mobbed and fiercely yelled at by the crowd on their removal to the railway station.⁴⁷

The public had already decided their guilt. The Bromley magistrates agreed with the inquest jury and remanded the prisoners to appear at

⁴⁴ Gavin Thurston *The Great Thames Disaster* (London: George Allen and Unwin 1965) [Hereafter: Thames] pp.54-6

⁴⁵ *The Times* May 11 1877 p.10e

⁴⁶ *Ibid.* May 21 1877 p.10d

⁴⁷ *Ibid.* Jun 1 1877 p.11d

the next Maidstone Assizes on the charge of murder.⁴⁸ Later, the grand jury also returned true bills for murder against them.⁴⁹

The medical and analytical evidence given at the inquest had been accepted without question by the magistrates and the grand jury. However, the trial would revolve around the post mortem examination and the significance of its findings. The doctors had unanimously agreed the cause of death so that a lay or legal audience would be able to do little but accept their interpretation as valid—provided that it was not challenged.⁵⁰ But as the *BMJ* commented:

. . . it is a general belief among lawyers that there is no opinion given by one member of the [medical] profession which you may not find another of equal standing to contradict.⁵¹

A clever defence lawyer would use every effort to obtain medical evidence that would conflict with that of the prosecution, with the hope of raising sufficient doubt into the minds of the jury to obtain an acquittal.⁵² This method was adopted at the Staunton trial.

Dr. Thomas Bond, a lecturer in medical jurisprudence, who was not present at the post mortem examination, was called as a prosecution witness. Based on his experience, he believed that starvation was the cause of death and rejected several other possibilities, including tubercular meningitis.⁵³ Dr. Joseph Payne, a pathologist—also absent when the post mortem examination was performed—was the first medical witness for the defence. He contradicted Bond and stated that death was due to tubercular meningitis. He was highly critical of the poor procedure adopted at the post mortem examination. He claimed that if a microscopic examination of the brain had been made, rather

⁴⁸ Ibid. Jun 9 1877 p.14a

⁴⁹ Ibid. Jul 11 1877 p.10d

⁵⁰ Ward op.cit. p.352

⁵¹ *BMJ* 2: Oct 20 1877 p.568

⁵² Ibid. 2: Sept 29 1877 p.449

⁵³ *The Times* Sept 21 1877 p.12d

than relying on the naked eye, the miliary tubercles would have been revealed and confirmed his opinion.⁵⁴

One aspect of the case raised a serious concern. Dr. Harman had represented the four accused at the post mortem examination. It was considered that he must have reached the same conclusion as the other medical witnesses for the prosecution—of that:

. . . there can be no doubt; otherwise he would have been made a most important witness for the defence, and his opinion, if conflicting, might have had great weight with the jury. It was not, however, considered advisable to place him in the witness box. The suppression of the evidence of this witness shows that those who conducted the defence were of opinion that his testimony would not have supported their case.⁵⁵

As the *BMJ* commented:

It is not to be supposed that even a pathological professor would so conduct a post mortem at an inquest as to satisfy a counsel for the accused, if the report were adverse to the case of the latter examination.⁵⁶

The judge 'expressed his surprise and astonishment' that in the conflict of medical evidence Harman was not called.⁵⁷ This led him to indicate that, to a great extent, he supported the prosecution case.⁵⁸ The jury followed the judge's lead and returned a verdict of murder on the four accused.

The newspaper reports on the inquest and subsequent hearings had ensured that the Old Bailey and the precincts were full of excited people during the trial. When the guilty verdict was heard, the general public demonstrated their satisfaction and approval with loud cheering in the

⁵⁴ Ibid. Sept 25 1877 p.11f

⁵⁵ *BMJ* 2: Oct 6 1877 p.491

⁵⁶ Ibid. 2: Oct 20 1877 p.568

⁵⁷ Ibid. 2: Oct 6 1877 p.491

⁵⁸ Bowen-Rowlands op.cit. p.180, *The Times* Oct 15 p.9c

crowded streets around the court⁵⁹—a verdict which they had reached long before.

A leading article in the *Lancet* commented:

The medical aspects of “the Penge mystery” are, if possible, more momentous than the legal. However just the conclusion at which the judiciary has arrived may appear . . . it is impossible not to feel that the case is, professionally speaking, eminently unsatisfactory in nearly all the leading features of its strange history. . . .

Frankly, we are compelled—most reluctantly—to protest that every attempt to penetrate the mystery is foiled by want of evidence of medical *facts*.⁶⁰ [original emphasis]

There was an extraordinary interest in the outcome of the trial. The newspapers and especially the medical journals⁶¹ were inundated with letters, mainly from doctors, calling attention to the deficiencies of the medical evidence⁶² which was repeatedly reviewed.⁶³ Protest meetings were held, committees appointed and petitions raised to urge commutation of the death sentences.⁶⁴

News of the controversy quickly reached the continent. The eminent and highly respected German pathologist, Professor Virchow, gave his opinion that starvation had been the probable cause of death.⁶⁵ The

⁵⁹ *Ibid.* p.181

⁶⁰ *Lancet* 2: Sept 29 1877 p.468

⁶¹ *BMJ* 2: Oct 6 1877 pp.505-6, 2: Oct 13 1877 pp.549-50, 2: Oct 20 1877 pp.578-80, 2: Nov 10 1877 p.685, 2: Nov 17 1877 pp.712-4, 2: Nov 17 1877 p.720, 2: Dec 1 1877 pp.786-787 and p.791, 2: Dec 8 1877 p.832

⁶² *Annual Register* (1877) II p.186, Bowen-Rowlands *op.cit.* p.182

⁶³ 'Notes of a post mortem examination on the body of Harriet Staunton' *BMJ* 2: Oct 6 1877 p.495, W.S. Greenfield 'Report on the Medical Evidence before the Committing Magistrates, and the Post Mortem Notes in the case of Harriet Staunton' *BMJ* 2: Oct 6 1877 p.495, J.F. Payne 'Medical History of the Penge Case: with Remarks' in *BMJ* 2: Oct 6 1877 pp.497-500, J.F. Payne 'Further Remarks on the Penge Case' in *BMJ* 2: Oct 27 1877 pp.587-8, J.E. Wilkinson et al 'Report of Post Mortem Examination, and on the Cause of death, of Harriet Staunton, Aged 35' *BMJ* 2: Oct 27 1877 p.604, 'The Penge Case' *BMJ* 2: Nov 3 1877 p.644, 'Medical Action in the Penge Case' *Lancet* 2: Oct 20 1877 p.583. Leading articles: *BMJ* 2: Sept 29 1877 p.449, 2: Oct 6 1877 p.490, 2: Oct 20 1877 p.568. *Lancet* 2: Sept 29 1877 pp.468-9, 2: Oct 6 1877 pp.502-3

⁶⁴ *Annual Register* (1877) II p.186, 'The *Lancet* "Medical Memorial"' *Lancet* 2: Oct 13 1877 p.545

⁶⁵ *Berlin Klin. Wochenschrift* cited in *BMJ* 2: Nov 3 1877 p.644

belated acceptance of legal medicine in England was well known⁶⁶ and Virchow took the opportunity to point out the inadequacies of the English post mortem examination system and that the defects in the evidence and procedure used could not have occurred in Germany. A leading article in *The Times* agreed that 'the imperfect manner in which the body had been examined prior to the inquest' had prevented the cause of death being established beyond doubt, and that the employment of medical experts at the beginning of an inquiry was necessary.⁶⁷ It continued:

. . . it would be absurd to blame the medical men concerned merely because they do not appear to have been equal to a duty which they had probably never prepared themselves to fulfil. The *fault was not in the men*, but in the *antiquated system of procedure*.⁶⁸
[emphasis added]

The imperfections of the 1836 Medical Witnesses Act had been recognised very soon after it reached the statute book. Also recognized was the need to use doctors with experience and practice in pathology to perform post mortem examinations.⁶⁹ Nevertheless, *The Times* had deflected the genuinely inadequate performance of the doctors to a criticism of the inquest system. In fact, the Kent coroner had efficiently and professionally carried out the inquest within the limits available to him under the law. Also, the magistrates and the grand jury had endorsed the verdict reached, based on the same original medical evidence.

Despite *The Times* deflection, the medical profession was well aware of the failings of its members. The *BMJ* believed that most GPs would

⁶⁶ J.D.J. Havard *The Detection of Secret Homicide: A Study of the Medico-legal System of Investigation of Sudden and Unexplained Deaths* (London: Macmillan 1960) chapter 1, Charles Newman *The Evolution of Medical Education in the Nineteenth Century* (London: Oxford University Press 1957) pp.308-9

⁶⁷ *The Times* Oct 15 1877 p.9c

⁶⁸ *Ibid.* Oct 15 1877 p.9c

⁶⁹ Middlesex Justices of the Peace *Report of the Special Committee appointed at the Michaelmas Session, 1850, as to the Duties and Remuneration of Coroners, and Resolutions of the Court* (April Quarter Sessions 1851) p.36

have gladly given up their legal responsibility and allowed official inspectors to conduct the necessary post mortem examinations for coroners.⁷⁰ A leading article in the *Lancet* went much further and suggested that there were three lessons to be learned:

Cases which have not been observed during life should not be certified after death. Every post-mortem examination undertaken to clear up a mystery ought to be conducted and recorded in strict conformity with the most complete methods of scientific investigation, and no pre-conceived or striking theory of a case ought to tempt the operator to omit a single step in the research to exhaust every possibility. Such researches should be *prosecuted personally by experts in pathology*, with the aid of all approved appliances.⁷¹ [emphasis added]

The call to 'science' was not new. The Middlesex magistrates had suggested as much in their 1851 Report. But the *Lancet* was demanding a move to using the approach and methods that Virchow had pioneered in Germany. The suggestion was not universally accepted within the medical profession and the prejudice against specialism and specialists would not be easily overcome. But even if the medical profession did accept the change, the Government still had to be persuaded to amend Wakley's 1836 Act to permit the use of expert pathologists rather than GPs. Acceptance of that would be the first move towards having the post mortem examination as part of a *preliminary inquiry*—as in the Scottish system.

The Old Bailey trial had produced overwhelming evidence of the criminal neglect of Harriet Staunton,⁷² but the charge of murder based on the 'medical evidence' was not proved. There was also criticism of the press since it was considered that the detailed newspaper reports throughout might have influenced the jury in their verdict. A spectator present in court commented in a letter to the *Daily Telegraph*:

⁷⁰ *BMJ* 2: Oct 20 1877 p.568

⁷¹ *Lancet* 2: Sept 29 1877 p.469

⁷² *Ibid.*

I conclude that not one of the jurymen entered the box without being familiar with the outlines of the case. Every one knew . . . To pretend that anyone could have entered the jurybox without some sympathy for the dead woman, if indeed without a lurking prejudice against the four accused, would be to deny the ordinary instincts of human nature.⁷³

As Knelman reports, the *Telegraph* reached the conclusion that the 'jury in the street' had decided the outcome.⁷⁴

A petition against the conviction was drawn up by the *Lancet* and signed by over six hundred doctors, including the most prominent pathologists and practitioners of the day.⁷⁵ Some large and very excited public meetings led to another petition demanding a review of the case because of the contradictions in the medical evidence.⁷⁶ The Home Secretary received the petitions, but was initially reluctant to take any action.⁷⁷ He was 'most jealous of disturbing a verdict of the jury except on the recommendation of the judge'.⁷⁸ That suggested some ambivalence towards the traditional jury system and a preference for the superiority of the opinion of a trained, professional judge. Even though the judge and the public continued strongly to assert the guilt of the four,⁷⁹ the Home Secretary was eventually persuaded to recommend a reprieve for the three Stauntons and to release Lewis's mistress.⁸⁰

This case might never have come to light and illustrates the precarious nature of investigations into unexplained deaths despite all the claims

⁷³ *Daily Telegraph* Oct 2 1877 p.2b. The correspondence came to my notice through Judith Knelman's citation (n.74 below)

⁷⁴ *Daily Telegraph* Oct 3 1877 p.3 cited in Judith Knelman *Twisting in the Wind: The Murderess and the English Press* (Toronto, Buffalo and London: University of Toronto Press 1998) p.120

⁷⁵ *Lancet* 2: Oct 13 1877 p.545

⁷⁶ *The Times* Oct 4 1877 p.7d, Oct 10 1877 p.6d

⁷⁷ Roger Chadwick *Bureaucratic Mercy: The Home Office and the Treatment of Capital Cases in Victorian Britain* (New York & London: Garland Publications 1992) p.184

⁷⁸ *Ibid.* p.187

⁷⁹ *Ibid.* p.185

⁸⁰ *The Times* Oct 31 1877 p.9c

made for the inquest system. The Stauntons almost certainly moved Harriet from Cudham to Penge with the intention of evading potentially awkward questions, suspicion and the inevitable inquiry that would have arisen if an attempt had been made to register the death locally.⁸¹ Had Harriet been taken to a house only a short distance further up Forbes Road in Penge, she would have died in Surrey in a different coroner's jurisdiction.⁸² The East Surrey coroner, William Carter, had a dubious record (see below) and might not have proceeded with an inquest. The Stauntons were almost successful. Longrigg issued a death certificate, the only legal document necessary to register the death and bury the body. But:

. . . by an astonishing coincidence Harriet's brother-in-law happened to be in the local post office when Louis [*sic*] [Staunton] came in to ask where he should register the death. This relative heard the word 'Cudham' and his curiosity was aroused.⁸³

As a result, Harriet's mother contacted Longrigg who withdrew his certificate and put the inquest process into operation by contacting the coroner. The ease with which Longrigg issued his certificate and the registration and burial of Harriet's son after he died in hospital confirm that the 1874 Births and Deaths Registration Act was not achieving the objectives of the Registrar-General. Some sections of the Act were open to interpretation, or could be easily evaded, by individual doctors, registrars, coroners, clergymen, undertakers and others. However, there was no criticism of the hospital, the registrar, those involved in the burial and the lack of follow up investigations.

⁸¹ Ibid. May 24 1877 p.10d

⁸² Ordnance Survey Map of Surrey, Sheet VIII S.E. Second Edition (1861 Edition, Revised 1893-4) (Southampton: Ordnance Survey Office 1899). Ordnance Survey Map of Kent, Sheet VII S.W.. Second Edition (1861-2 Edition, Revised 1894-5) (Southampton: Ordnance Survey Office 1899).

The name was changed from Forbes Road to Mosslea Road as a result of the Penge case: Felix Barker and Denise Silvester-Carr *Crime and Scandal: The Black Plaque Guide to London* (London, Constable 1995) p.273

⁸³ Barker and Silvester-Carr op.cit. p.273

There was a final twist in the story. In 1881, Patrick Staunton died in gaol from tubercular meningitis. This circumstantial evidence suggests that this disease may also have killed his sister-in-law Harriet, as proposed by the defence at the trial⁸⁴ and accepted by many in the medical profession.

In 1875, two very public inquests in London involved the upper classes and brought the spotlight firmly on to the coroners rather than the medical profession. The first involved Sir Charles Lyell and the second the Queen and her cousin.

THE LYELL CASE:

The standing in the scientific world of the venerable geologist, Sir Charles Lyell, ensured that his death in February 1875 at the age of seventy seven years was prominently reported.⁸⁵ If there had been any doubts about his fame and eminence, they were quickly dispelled when it was announced that he would be interred in Westminster Abbey by the Dean⁸⁶ in the presence of the Queen and the Prince of Wales.⁸⁷

Several months after Dr. Andrew Clarke had started treating him for a brain disorder, Lyell fell down the stairs. Clarke called in additional help to deal with the injuries sustained in the accident, but despite their efforts, Lyell continued to decline and eventually died three months after the accident.

It is not known who informed the coroner of the death, but he was required to make inquiries to determine whether an inquest was required. The coroner's officer was sent to make inquiries to Lyell's house in Harley Street, near Cavendish Square—a smart upper class

⁸⁴ Roger Chadwick op.cit. p.188

⁸⁵ *The Times* Feb 24 1875 p.5f

⁸⁶ *Ibid.* Mar 1 1875 p.6b

⁸⁷ *Ibid.* Mar 1 1875 p.6a

quarter where many well-to-do people resided.⁸⁸ The relatives were unhappy with the visit of the coroner's officer and declined to give him any details of the death. He was referred to Dr. Clarke who was no more welcoming. Reluctantly, he gave the officer a note which simply stated 'Death of Sir Charles Lyell. - Meningitis, ten weeks; Effusion, six days'⁸⁹ and failed to provide a death certificate.⁹⁰

When the family and Dr. Clarke heard that there was to be an inquest,⁹¹ they immediately opposed the decision and protested that it was unnecessary—it was an intrusion into the family's private affairs.⁹² Dr. Hardwicke, the coroner, responded that it was *his* decision whether an inquest should be held or not. But as he later pointed out:

If any one of the medical attendants . . . had communicated to me, personally, or by letter, the details of the accident, and its effect on the course of the illness, I might possibly have seen it unnecessary to hold the inquiry. . . . the opportunity for such consideration was never afforded me . . .⁹³

In those circumstances and in the absence of a death certificate, he had no choice but to hold an inquest since an accident, considered to be a violent death, was involved.⁹⁴

Hardwicke made an effort to minimise any publicity by holding the inquest quietly at Lyell's residence⁹⁵ one evening four days after the death. There was considerable time pressure on the coroner as the ceremonial funeral had been arranged for the next day. The body was already sealed in the coffin, but as the jury had to 'view the body', it was necessary to send for an undertaker to expose Lyell. While waiting for

⁸⁸ Reginald Pound *Harley Street* (1967) p.16

⁸⁹ PP 1875 LXI.459 (298) Copy of Correspondence which has passed between the Lord Chancellor and the Coroner relative to the Inquest held upon the Body of the late Sir Charles Lyell p.2

⁹⁰ *Ibid.*

⁹¹ *The Times* Feb 27, 1875 p.5d

⁹² PP 1875 LXI.459 (298) op.cit. p.1 and *The Times* Mar 23 1875 p.9e

⁹³ *Ibid.* p.2

⁹⁴ *Ibid.*, *The Times* Feb 27, 1875 p.5d

⁹⁵ In Harley Street on Friday Feb 26 1875

him to arrive, the jury heard the evidence, mainly from Dr. Clarke and the butler who had found Lyell after the accident. The undertaker removed the wooden lid of the coffin and cut a small opening in the lead casket so that the coroner and jury could just see a part of the face.⁹⁶ The jury quickly returned a verdict of death from natural causes accelerated by the fall.⁹⁷ The next day, a memorial wreath from the Queen was placed on the coffin before it was borne up the nave of the Abbey.⁹⁸ The funeral took place with great pomp and ceremony without a hitch.⁹⁹

It was clear from those attending the funeral that Lyell had moved in high social and political circles. This ensured that when the matter of an unnecessary inquest was raised with the Home Secretary,¹⁰⁰ Richard Assheton Cross, there was a very rapid response. Only two days after the funeral, Cross was asked in Parliament whether the inquest was lawful, and if so, would he consider amending the law to prevent 'the possible recurrence of like actions of a like painful nature?' Cross gave the details he had received and continued:

When it was pressed upon the family by the coroner that an inquest should be held, Dr. Clarke expostulated with that official, to whom he presented a certificate of cause of death in, I believe, his own handwriting. The coroner, however, insisted upon holding the inquest, and I believe the facts which were made known in the public press with regard to the inquiry are substantially true. If I were sitting as Chairman of Quarter Sessions considering whether this inquest, held in the discretion of the coroner, ought so to have been held and ought to be allowed in the accounts of the coroner, I should strike it out of my list with the explanation that, in my opinion, it was great outrage on decency and common sense.¹⁰¹

Cross explained that he had 'no power over Coroners', but thought it his duty, 'being responsible for the true administration of the law', to write to

⁹⁶ *The Times* Feb 27, 1875 p.5d

⁹⁷ *Ibid.*

⁹⁸ *Ibid.* Mar 1 1875 p.6a

⁹⁹ *Ibid.*

¹⁰⁰ *Lancet* 2: Dec 18 1875 p.883

¹⁰¹ *Parl. Deb. 3rd Series* 222: col.1050 Mar 2 1875

the coroner for an explanation.¹⁰² This he had duly passed to the Lord Chancellor to deal with as he had 'a certain jurisdiction over coroners': He finished:

Feeling strongly in regard to this case . . . I can only say for myself that if such acts of discretion or indiscretion were at all common among coroners, it would be quite necessary to clip their wings.¹⁰³

There followed a correspondence between Hardwicke and the Lord Chancellor that was subsequently published as a Parliamentary Paper.¹⁰⁴ A leading article in the *Lancet* commented:

. . . For the first time in the history of the coroner's court the Lord Chancellor, who holds, or rather is supposed to hold, supreme control over the coroners of England, has ventured an authoritative opinion on the duties of the coroner . . . altogether subversive of past rule and precedent, which will, if they be obeyed, change the whole order of the court, and establish between coroners everywhere in England and the representatives of the profession of medicine a connexion, for good or evil, upon which will be founded a new development of coroner's law . . .¹⁰⁵

The Lord Chancellor stated that the coroner should have made a *personal* inquiry with the doctor to avoid the inquest and he questioned the need to meet the 'technical rule' to view the body.¹⁰⁶ It appeared that the Lord Chancellor was not 'fully informed of the usages, precedents and necessities of the coroner's court'.¹⁰⁷ The 1751 Act required that an inquest be taken *super visum corporis* and there was no duty of preliminary inquiry required of the coroner in cases of violent death.¹⁰⁸

¹⁰² *Ibid.*

¹⁰³ *Ibid.* col.1051

¹⁰⁴ PP 1875 LXI.459 (298) *op.cit.*, See also: HO45/9379/42176/1, 1A, /2, /4, /5, /6, /8.

¹⁰⁵ *Lancet* 2: Jul 10 1875 p.64

¹⁰⁶ PP 1875 LXI (298) pp.6-7, p.1

¹⁰⁷ *Lancet* 2: Jul 10 1875 p.64

¹⁰⁸ J.Toulmin Smith *The Right Holding of the Coroner's Court and Some recent Interferences therewith: Being a Report Laid before the Royal Commissioners appointed to inquire into "The law now regulating the Payment of the Expenses of holding Coroners' Inquests."* (London: Henry Sweet 1859) p.24 and pp.37-8, *The Times* Sept 30 1876 p.4d

As the *Lancet* pointed out,

Up to now it was as unlikely that a coroner would ask questions of a doctor previous to an enquiry as it would be for the Lord Chief Justice to call upon us [the medical profession] respecting a patient who was about to bring an action before him . . .¹⁰⁹

But the journal's dominant concern was the necessity to maintain a public inquiry, with a jury, into suspicious deaths. It did not want a coroner and the doctor to settle all inquiries in a private tête-à-tête, which was 'contrary to all past rule and precedent', otherwise:

. . . a coroner, from motives of feeling, real or assumed, may take secret evidence, and allow the judgement of a witness, however eminent, to *suppress the open verdict of a jury*.¹¹⁰ [emphasis added]

The *Lancet*, in effect, rejected the Lord Chancellor's suggestion that clearly looked towards the Scottish system where the preliminary investigation was carried out in secret.

The Times also supported the coroner. It pointed out that a coroner *had* to inquire into any death caused by injury and that failure to do so could lead to severe penalties. Also that he had no power to hold any extra-judicial inquiry or to take evidence in any informal manner. In those circumstances, Hardwicke could meet any censure by stating that he had received information that Lyell had fallen down stairs and received injuries which contributed to his death.¹¹¹ The paradox was that a coroner could receive information which would have rendered him indictable if he failed to hold an inquest. Yet when it came to the inquest and a verdict of natural death was returned, he could then be accused of holding an unnecessary inquest and creating unnecessary problems for the family. He had to bear in mind that there needed to be 'reasonable suspicion' that the death was by 'violent or unnatural

¹⁰⁹ *Lancet* 2: Jul 10 1875 p.64

¹¹⁰ *Ibid.*

¹¹¹ *The Times* Mar 3 1875 p.9e

means,¹¹² but also that 'to obtrude themselves into private families for the purpose of instituting inquiry was illegal.'¹¹³ This was a thin line for a coroner to tread. He had to distinguish between the *interests* of the public in investigating an unexplained death and the *wishes* of the friends and relatives of the deceased. He had to balance what was *needed* against what people *wanted*, and that required independence to avoid influence on his decisions.¹¹⁴

In Victorian England, the concept of 'deference' was strong—the acknowledgement that the people in the classes above one's own were justly entitled to superiority'.¹¹⁵ The upper classes expected to be protected by the conventions and restraints of established usage¹¹⁶ and it was almost always assumed that gentlemen were outside the rough and tumble of popular institutions.¹¹⁷ The objective of the coroner's court was to detect and deter crime. Crime was associated with the lowest sections of the working classes—the poor, illiterate and unskilled,¹¹⁸ and those who killed their children to obtain a 'few paltry shillings . . . from a death club'.¹¹⁹ But crime included deaths caused by the negligence of officials, such as magistrates, gaolers, policemen and poor law functionaries. Indeed, *The Times* had coined the phrase that 'the coroner is eminently the magistrate of the poor'.¹²⁰ For a poor family, an inquest provided perhaps the only recourse to the law, since the expense of the proceedings fell upon the ratepayers. The main expense for a family member would have been loss of earnings to attend the inquest. For the upper classes, expense was of considerably

¹¹² Ibid.

¹¹³ John Jervis *A Practical Treatise on the Office and Duties of Coroners: with an Appendix of Forms and Precedents* First edition (London: S. Sweet, R. Pheney, A. Maxwell, and Stevens & Sons 1829) p.24

¹¹⁴ Blau and Scott op.cit. pp.51-2

¹¹⁵ Richard D. Altick *Victorian People and Ideas* (New York and London, W.W. Norton 1973) p.18

¹¹⁶ Leon Radzinowicz and Roger Hood *A History of English Criminal Law and its Administration from 1750* Volume 5 (Stevens & Sons, London 1986) p.166

¹¹⁷ Anderson 1987 op.cit. p.33

¹¹⁸ David Garland *Punishment and Welfare: A history of penal strategies* (Gower Publishing, Aldershot 1985) p.38 [Hereafter: Welfare]

¹¹⁹ *The Times* Jan 29 1850 p.4d

less importance. Their problem, as Anderson notes, was a 'general distaste for publicity in cases of sudden or violent death' and an 'abhorrence of inquests', something that was not shared by the poorer classes.¹²¹ Hardwicke specifically made the point that an inquest was necessary 'as much for a rich man as for a poor one'¹²²—the law applied to everybody. But his 'sin' was that he had failed to take into account Lyell's eminence and exalted position in upper class society.

In fact, Hardwicke did take the necessary action to minimise publicity by holding Lyell's inquest quietly at the house. In this respect, he was following the example set by his predecessor, Lankester. On the rare occasions when an inquest had to be held on the body of one of the well-to-do and the body lay at home, Lankester held the inquest privately in the house, as requested by the relatives.¹²³ In the Lyell Case, the publicity was caused, not by Hardwicke, but by the decision of the family to protest to the Home Secretary about the 'unnecessary inquest'.

Hardwicke had had to consider the possibility that the 'accident' to Lyell may have been deliberate. As a note in the Home Office file on the case comments: ' . . . some aged totterers have heirs-expectant; and some falls may not be accidental!'¹²⁴ Dr. Clarke appeared to be primarily interested in protecting the family and his dead patient from publicity. He could have achieved this easily by cooperating with the coroner by issuing a death certificate and providing more information to help him reach a decision. If he had done so, the entire episode could have been avoided.

¹²⁰ *Ibid.*

¹²¹ Anderson 1987 *op.cit.* p.23

¹²² *The Times* Feb 27, 1875 p.5d

¹²³ *Ibid.*

¹²⁴ HO45/11214/403923/29 Suggested Amendments of Coroners' Law 1919-1923 Item 11(c)

At least the information that Clarke did provide, though limited, was correct. This was not always the case when doctors were dealing with coroners. In 1902 William W. Westcott, the medical coroner for North-East London, pointed out in a paper to the BMA:

Perhaps there is a suspicion that a doctor may be inclined to stretch a point as to the cause of death if the patient has been wealthy; whereas he will not do so among the poor.¹²⁵

Westcott suggests that social class had an influence on the inquest system. However, such cases were infrequent and would not have unduly influenced the overall inquest statistics. But what he does make clear is that much depended on the discretion of the doctor.

Apart from the influence of social class, the Lyell case illustrates three important aspects of coroners and inquests. First, with respect to the independence of the coroner. Godfrey Lushington, permanent under-secretary at the Home Office,¹²⁶ communicated to the Lord Chancellor that he believed that it was 'an exceedingly aggravated case of indiscretion'.¹²⁷ He suggested that the Lord Chancellor might consider administering 'a reprimand' to the coroner, though he was not aware of any precedent for such an action.¹²⁸ Although the Home Secretary and the Lord Chancellor disapproved of Hardwicke's actions, neither could find real fault and followed Lushington's advice with the lightest of admonishments:

The Lord Chancellor is ready to believe that you acted in this matter under a scrupulous sense of what you considered to be your duty, but he feels obliged to point out to you . . . the considerations which lead him to the conclusion that in a more

¹²⁵ William Wynn Westcott 'An Address on the Coroner and His Relations with the Medical Practitioner and Death Certification.' *BMJ* 2: Dec 6 1902 p.1756

¹²⁶ Jill Pellew *The Home Office 1848-1914* (1982) p.208

¹²⁷ HO45/9379/42176/1 1875-78 General Papers re: Law on Coroners' Inquests. Memorandum from Godfrey Lushington on the powers of the Lord Chancellor respecting Coroners Mar 1 1875 p.5

¹²⁸ *Ibid.*

sound and careful exercise of your discretion you would have adopted a different course . . .¹²⁹

The coroners' independence and his lack of accountability had been confirmed.

The second aspect, as in the West Haddon Case, was that the discussions, opinions and excitement were generated mainly in educated circles. But the case confirmed that the inquest was firmly grounded in popular tradition as shown by the differing class attitudes towards it. Finally, the inquest confirmed that the 'view' was valueless—as expressed by the Middlesex magistrates twenty five years earlier.

THE QUEEN AND *MISTLETOE*:

Public interest in coroners and inquests waned after Lyell's funeral, only to wax again later in the year as a result of a ship collision that involved Queen Victoria. By 1875, the unpopularity of the Queen was a thing of the past—the recovery of the Prince of Wales from illness¹³⁰ a few years earlier had evoked a 'burst of enthusiasm which founded his own popularity and restored his mother's'.¹³¹ This popularity ensured that the collision would be reported not only in the local, but also the national, press.

In August 1875, the Queen and the Royal family were crossing the Solent from Ryde to Gosport on the royal yacht *Alberta* when it violently rammed a schooner yacht, the *Mistletoe*, causing it to turn over and sink immediately, with the loss of three lives.¹³² Two bodies were taken to Gosport, but the third went to Portsmouth, necessitating two inquests because the bodies were in different coroners' jurisdictions.

¹²⁹ PP 1875 LXI.459 (298) op.cit. pp.6-7

¹³⁰ George Plumptre *Edward VII* (Pavilion Books, London 1995) pp.66-7

¹³¹ R.C.K. Ensor *England 1870-1914* (Oxford: Oxford University Press 1992) p.26

¹³² *Portsmouth Times and Naval Gazette* Aug 21 1875 p.5, *Hampshire Telegraph and Sussex Chronicle* Aug 21 1875 pp.4, 8, *The Times* Aug 19 1875 p.7f, Aug 23 1875 p.3f

The inquest at Gosport was marred by the involvement of the onlookers in the court. The coroner was unable to control the court so that expressions of approval or disapproval of the evidence were noisily expressed as the inquest proceeded.¹³³ After hearing the evidence, the jury retired to consider its verdict, but returned to confer with the coroner on several occasions. It was rumoured that eleven jurors were in favour of a manslaughter verdict and two opposed. But the coroner had to have twelve jurors in agreement to accept their verdict. After almost eleven hours of deliberations, the coroner called the jury to the court to ask whether they had agreed a verdict:

[Foreman]: We are not agreed.

[Coroner]: Is there any probability, by my granting you a longer space of time, that you will arrive at a verdict?

[Foreman]: Not the slightest possibility.¹³⁴

Normally, a coroner would have dismissed the jury, but he chose to use an obscure common law provision to adjourn it to the Winchester Assizes. A leading article in the local newspaper gave the reason:

The issue was one of such immense public interest; feelings ran so high on the matter, that if the Coroner had hastened to discharge the jury it would have been said of a surety that being Admiralty Law Agent he had been only too glad to seize an opportunity of hushing up the case.¹³⁵

The fact that the coroner had connections with the Admiralty may explain why he had requested the presence of a legal adviser for the inquest, but the County Treasurer refused that request.¹³⁶

At the December Assizes Mr. Baron Bramwell, apparently unaware of the coroner's connections with the Admiralty, made it clear that he considered the referral to him was unnecessary. After a brief review of

¹³³ *The Times* Sept 3 1875 p.8f

¹³⁴ *Portsmouth Times and Naval Gazette* Aug 28 1875 p.5

¹³⁵ *Ibid.* Dec 11 1875 p.4

the evidence and an explanation of the law relating to manslaughter and murder to the jury, he handed the case back to the coroner. The jury was still unable to agree a verdict and was discharged.¹³⁷

In the meantime the inquest on the third fatality had taken place in Portsmouth. W.H. Garrington, the borough coroner, was allowed to have a legal adviser¹³⁸ and a nautical assessor to help him with the inquest.¹³⁹ The Gosport coroner was in court and he provided the depositions taken at his inquest to help with the investigation. Enormous public interest had been generated and the coroner made it clear that he was:

. . . determined not to permit any of the manifestations which had marked the proceedings in Gosport, and . . . had given strict orders to the police to eject any one who should express approval or disapproval of the evidence given.¹⁴⁰

On the last day of the inquest, the court was crowded with a great number of naval officers. There were also a large number of ladies present, so many that:

. . . on the present occasion, not only did they occupy seats on the Bench, but encroached upon the sacred precincts of the jury, and invaded the seats allotted to the press.¹⁴¹

The coroner gave the jury a detailed review of the voluminous evidence, clear definitions of manslaughter, two kinds of excusable homicide and the remarks made by a judge to a grand jury in a similar case. Two and a half hours after the jury had retired, the doors of the court were opened and the crowd 'made an eager rush up the stairs and filled the Court to suffocation'.¹⁴² The verdict was 'death by drowning . . . brought

¹³⁶ Ibid. Aug 24 1875 p.4

¹³⁷ Ibid. Dec 7 1875 p.2, *The Times* Nov 29 1875 p.5f

¹³⁸ *The Times* Sept 11 1875 p.5a

¹³⁹ Ibid. Sept 3 1875 p.8f

¹⁴⁰ Ibid.

¹⁴¹ Ibid. Sept 11 1875 p.5a

¹⁴² Ibid.

about by an accidental collision'. However, the jury added the critical rider that there had been an error of judgement by the navigating officer of *Alberta*, that a lower speed was necessary in the summer months and that there should have been a more efficient look-out.¹⁴³ The verdict was received with 'some hissing at the back of the court'. But when the two naval officers involved, Captain, His Serene Highness, the Prince Leiningen and Captain Welch, left the court, they were 'loudly hooted by the mob'.¹⁴⁴

A leading article in the *Portsmouth Times* commented on the jury's rider and the importance of the collision:

Seventeen knots is a common speed of the steamers plying between London and Gravesend . . . recklessness on the Thames would be no excuse for rashness on the Solent, especially with such a precious freight as our beloved QUEEN [*sic*].¹⁴⁵

The Gosport jury had apparently wanted to return a verdict of manslaughter against Captain Welch. At that time, such a verdict would have been generally acceptable, though it was later believed that he could not have been convicted on the available evidence.¹⁴⁶ The Portsmouth verdict became 'accepted by the public as a virtual settlement of a grave case'. As a result, the Gosport coroner decided not to proceed with another inquest and the matter appeared to be at an end.¹⁴⁷

Starting in February 1876, questions on the collision were raised in Parliament by the MP, Mr. George Anderson.¹⁴⁸ These included whether the findings of the independent Admiralty Court of Inquiry

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ *Portsmouth Times and Naval Gazette* Dec 11 1875 p.4

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

¹⁴⁸ Parl. Deb. 3rd Series **228**: col.1410, Apr 10 1876, **228**: col.1761 April 27 1876; **229**: col.1194 May 25 1876, **230**: cols.428-9 Jun 26 1876

would be reported to the Commons.¹⁴⁹ The First Lord of the Admiralty replied affirmatively and agreed to 'lay papers upon the Table and give the information required'.¹⁵⁰ In due course, he reported:

. . . my lords have come to the conclusion that, as the attention of Prince Leiningen is frequently and unavoidably taken up by attendance on the Queen during the time Her Majesty is on board the *Alberta* in crossing the Solent, the conduct of the navigation is properly left to the staff-captain [Welch], and that the latter officer must be held responsible for it.¹⁵¹

It appeared that a senior naval officer, Captain Welch, was being 'sacrificed' to avoid embarrassment to a cousin of the Queen. This view was reinforced when it was rumoured that Welch had refused to accept a reprimand and had requested a court-martial.¹⁵² However, the First Lord reported that no such request had been made.¹⁵³

It had been expected that the full inquiry report would be published,¹⁵⁴ but the First Lord of the Admiralty stated that it was not done:

. . . on the grounds that it has always been deemed undesirable, on grounds of public policy, to produce such Reports of Inquiry—either naval or military—and there was no precedent for doing so. On that ground and not because there was any wish to keep back anything in the present report.¹⁵⁵

This, combined with rumours about Welch, immediately raised suspicions of a 'cover up'. These increased even further when it was discovered that one juryman had had connections with the Admiralty and may have influenced the outcome.¹⁵⁶ The MP continued to press for another inquest at Gosport in order to get a manslaughter verdict

¹⁴⁹ *Ibid.* 227: col.1204 Mar 2 1876

¹⁵⁰ *Ibid.*

¹⁵¹ *Portsmouth Times and Naval Gazette*, Supplement Apr 8 1876 p.9

¹⁵² *Parl. Deb. 3rd Series* 229: col.1194 May 25 1876

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.* 228: col.1410 Apr 7 1876, *The Times* Apr 6 1876 p.5d

¹⁵⁵ *Parl. Deb. 3rd Series* 228: col.141 Apr 7 1876

¹⁵⁶ *The Times* Apr 21 1876 p.12a

that would lead to a public trial.¹⁵⁷ However, he made it clear that a conviction or acquittal was not important, but that:

. . . public justice would have been vindicated and the Admiralty would have been prevented from smothering under a *secret inquisition* the real causes that led to the death of three people.¹⁵⁸
[emphasis added]

Again, it was the concern for *public* accountability.

The MP made his last, unsuccessful, attempt to get a new inquest ten months after the collision.¹⁵⁹ But interest in *Mistletoe* faded quickly as the press concentrated their readers' attention on the death of a rich, young barrister in Balham. The extensive newspaper coverage would engage the attention of the public for several months as if it had been a major criminal trial. But the focus was directly on the coroner and his court.

THE BALHAM MYSTERY:¹⁶⁰

Charles Bravo dined one evening in April 1876 with his relatively new wife, Florence, and her companion, Mrs. Cox. Shortly after retiring to bed, he was taken seriously ill. Over the next twenty-four hours or so he was visited by no less than five doctors who did virtually nothing for him. Florence, without consulting the other doctors, then called in the famous Sir William Gull who had gained a high reputation since saving the life of the Prince of Wales, ostensibly from typhoid.¹⁶¹ Although this was a significant breach of medical etiquette, Dr. Johnson, who was nominally in charge of the case, agreed to his involvement. Despite his reputation, Gull could do no more than the other doctors to prevent Bravo's

¹⁵⁷ Parl. Deb. 3rd Series **227**: col.1204 Mar 2 1876, **228**: col.1410 Apr 7 1876, **228**: col.1761 Apr 27 1876, **230**: cols.428-9 Jun 26 1876

¹⁵⁸ *The Times* Apr 21 1876 p.12a, Apr 25 1876 p.7f

¹⁵⁹ Parl. Deb. 3rd Series **230**: cols. 428-9 Jun 26 1876

¹⁶⁰ The best contemporary source is *The Balham Mystery, or The Bravo Poisoning Case* Published in 7 parts (1876). The best recent research findings are in Bernard Taylor and Kate Clarke *Murder at the Priory* (London, Gafton Books 1988) p.68

eventual death. They were all convinced that it was a case of poisoning—but they made no attempt to help him, not even to use a stomach pump. The doctors' opinion was confirmed when antimony was identified as the poison.

None of the doctors present at Bravo's death would issue a death certificate, so an inquest was necessary¹⁶² and would be presided over by the East Surrey coroner, William Carter. He did not have a high reputation and had been criticised by the *Lancet* for lack of stringency at an inquest and reluctance to call medical evidence.¹⁶³ Carter received a request from Florence Bravo to hold the inquest at her house in Balham, indicating that there would be 'refreshments prepared for the jury'.¹⁶⁴ The Lord Chancellor's comments to Hardwicke (see above) on the use of discretion in the Lyell case may have been in his mind when he agreed to Florence's request.

. . . he seems to have considered that he would be justified in confining his inquiry within the narrowest limits and to do all in his power to avoid touching upon anything which might cause pain to the dead man's relatives and friends.¹⁶⁵

Indeed, it appeared that Carter's main concern was that 'the privacy of people of the social standing of the Bravos should be preserved from the curiosity of the lower orders'.¹⁶⁶

Carter knew that Sir William Gull was certain that Charles Bravo had committed suicide,¹⁶⁷ and he had told Florence's father, Robert Campbell, that it 'would be expedient to assume this was the case'.¹⁶⁸ A suicide verdict would have been very convenient for Florence. Though something of a disgrace, it would have been quickly forgotten, and

¹⁶¹ John Hall *The Bravo Mystery and Other Cases* (London: John Lane 1923) p.26

¹⁶² Taylor and Clarke op.cit. p.67

¹⁶³ *Lancet* 1: Feb 13 1869 p.238

¹⁶⁴ Taylor and Clarke op.cit. p.68

¹⁶⁵ Hall op.cit. p.29

¹⁶⁶ F.J.P. Veale *The Bravo Case* (Brighton: Merrymade Publishing 1950) p.24

¹⁶⁷ Taylor and Clarke op.cit. p.68

would certainly save her and the family from a great deal of anguish in the long run.¹⁶⁹ Campbell understood this and suggested to Dr. Johnson that it would be unnecessary for him to attend the inquest. But Carter was in the strongest position to achieve a suicide verdict. He knew that some other witnesses, particularly Dr. Johnson, were opposed to this verdict. But Carter had the authority to select the witnesses that appeared before the jury and could prevent them expressing that opinion. Even if a coroner excluded a person from an inquest, no action could be taken against him because it was an 'act done by him in the exercise of his judicial function.'¹⁷⁰ In addition, there was no requirement on the coroner to divulge the list of witnesses he would call or to release any information in his possession.

At the inquest, few people were present. Details of the post mortem examination and analyses were given to the court. Two of the doctors who attended Charles gave their evidence¹⁷¹ and then Dr. Johnson—the doctor ostensibly in charge of the case—offered to give his evidence. But Carter quickly dismissed his offer with the comment that the jury did not require further medical evidence and then refused a juryman's request to have Mrs. Bravo give evidence.¹⁷² She stayed in an adjoining room throughout the proceedings. Carter appeared to be attempting to minimise the inquiry and pressed the jury to return his preconceived verdict of suicide; but the members maintained their independence and returned an open verdict.¹⁷³ This was acceptable to Florence Bravo—the police investigation had apparently achieved

¹⁶⁸ *Ibid.* p.68

¹⁶⁹ *Ibid.* p.68

¹⁷⁰ *Garnett v. Ferrand* 1827 6 B. and C. 611, see William Holdsworth (eds. A.L. Goodhart and H.G. Hanbury) *A History of English Law* (London: Methuen 1952) p.523.

¹⁷¹ Taylor and Clarke *op.cit.* p.71

¹⁷² *Ibid.* p.72

¹⁷³ *Ibid.* p.73

nothing¹⁷⁴ since no further action was taken. The coroner issued his certificate, the case was closed and Charles was buried.

The first significant report of the inquest appeared in the *Daily Telegraph*¹⁷⁵ twelve days after the event. A barrister friend of Charles who had been present at the inquest had supplied the details. The article criticised Carter for his incompetence and for conducting what was considered an inadequate inquest.¹⁷⁶ Extensive coverage and letters in other newspapers followed this report before the real facts were available and started the process of 'trial by newspaper'. An article in the *Saturday Review*¹⁷⁷ condemned the process and concluded that 'if the scandal continues, something will have to be done'.¹⁷⁸ An application for a second inquest was made to the Court of Queen's Bench when it was asserted that the coroner:

. . . [Carter] performed his duties in a perfunctory and unsatisfactory manner. Having rushed to the conclusion that this was a case of suicide, he allowed no evidence to be given that tended to another conclusion.¹⁷⁹

The court reluctantly quashed the first inquest and ordered a new inquiry.¹⁸⁰ Carter again presided, though he requested the presence of a legal assessor to assist him—'owing to the state of his health'.¹⁸¹

An array of distinguished lawyers descended on the *Bedford Hotel*, Balham, for the second inquest. They were headed by the Attorney-General, Sir John Holker and Mr. Harry Poland on behalf of the Crown.

¹⁷⁴ HO45/9410/55336/3 Bravo, Charles. Suspicious death. Inquests conducted unsatisfactorily. Second Inquest ordered by Queen's Bench. Report of the enquiry made by the Police

¹⁷⁵ *Daily Telegraph* May 10 1876 p.3f

¹⁷⁶ *Ibid.* May 10 1876 p.3f, May 12 1876 p.6d

¹⁷⁷ *Ibid.* May 16 1876 p.3b,c

¹⁷⁸ *Saturday Review* May 20 1876 pp.646-647

¹⁷⁹ R. v. Carter, 1876, 13 Cox C.C. 220, HO45/9410/55336/58 p.5, *Law Journal* XI: Jun 24 1876 p.373, XI: Aug 19 1876 p.473

¹⁸⁰ HO45/9410/55336/58 p.6

¹⁸¹ *Ibid.* /29 Letter from Messrs Morrison (Carter's solicitors) to the Home Secretary Jul 4 1876

Sir Henry Thompson represented Florence Bravo.¹⁸² The presence of Holker had the effect of making the inquest appear to be a trial—even though there was no accused person. As noted above, the Attorney-General often prosecuted on behalf of the Crown in murder cases.

The coroner and the jury went to the West Norwood cemetery. A small section of the coffin had been cut away and a piece of glass inserted to expose the face.¹⁸³ The stench of carbolic acid and other disinfectants was considered the worst part of the ordeal of viewing the 'body'.¹⁸⁴ They returned to Balham to start the inquiry, much of which was devoted to an exhaustive and remorseless investigation into the sex life of Florence Bravo rather than to the cause of her husband's death. Every detail received the eager attention of the press and 'brought murmurs of delighted horror' from the spectators who crowded into the billiard room of the *Bedford Hotel*.¹⁸⁵

Florence, though apparently innocent, was a victim of the prevailing Victorian double standard of sexual misconduct.¹⁸⁶ As Sir Charles Russel said thirteen years later when defending Mrs. Maybrick at her trial for murder:

In a man, such faults [of sexual misconduct] are too often regarded with toleration, and they bring him often but few penal consequences. But in the case of a wife, in the case of a woman, is with her sex the unforgivable sin.¹⁸⁷

Florence admitted having had a relationship with a Dr. Gully prior to her marriage to Charles—and the doctor still lived nearby. Adultery with Gully would have provided a strong motive for murder—and with evidence of a continuing relationship, she would have stood a very poor

¹⁸² *The Times* Jul 13 1876 p.11a

¹⁸³ *Ibid.* Jul 12 1876 p.11a

¹⁸⁴ *Ibid.*

¹⁸⁵ Veale *op.cit.* p.4

¹⁸⁶ Bernard Ryan and Lord Havers *The Poisoned Life of Mrs. Maybrick* (London, Penguin Books 1989) p.28

¹⁸⁷ *Ibid.* p.175

chance of avoiding the jury bringing in a verdict of murder against her.¹⁸⁸

The jury returned a verdict of 'wilful murder by a person or persons unknown'.¹⁸⁹ Two inquests (one at considerable cost) completely failed 'to solve the mystery of Bravo's death or even bring to light a single fact of material importance.'¹⁹⁰ Both were considered travesties of what was supposed to be judicial inquiries and 'brought a loud cry for the abolition of the office of coroner'.¹⁹¹ They were also a further poor reflection on Carter as a coroner. There were no rules of evidence in a coroner's court so that one of his responsibilities was to ensure that none of the witnesses incriminated themselves. But even with the aid of a legal adviser, he had been unable to control the excessive and unreasonable cross-examination of the witnesses by the eminent and highly distinguished lawyers. Indeed, he had allowed the lawyers to usurp his role and put both Florence and Dr. Gully at risk. He was equally unable to control the jury or the onlookers who crowded into the billiard room each day. They actively participated in the proceedings by flagrantly intimating their approval or disapproval of witnesses and evidence—as had occurred at the Gosport inquest.

The case created extraordinary excitement¹⁹² and was treated in every respect like a major murder trial by the press,¹⁹³ which ensured the public's curiosity was fully focused on the proceedings as they unfolded in the court. Shortly after the events, a highly detailed account of both inquests, including all the depositions, was published in a broadsheet in

¹⁸⁸ Veale op.cit. p.4

¹⁸⁹ *The Times* Aug 12 1876 p.12a, Bowen-Rowland op.cit. p.131

¹⁹⁰ Veale op.cit. p.27

¹⁹¹ *Sessional Proceedings* National Association for the Promotion of Social Science **10**: (1) Dec 11 1876 p.13

¹⁹² Bowen-Rowlands op.cit. p.131

¹⁹³ To give just the example of one newspaper: *The Times* Jul: 12 p.11a; 13 p.11a; 14 p.10a; 15 p.12a; 18 p.10b; 19 p.14a; 20 p.12a; 21 p.12a; 22 p.13a; 25 p.11a; 26 p.12a; 27 p.12a; 28 p.7e; 29 p.11e; Aug: 1 p.11c; 2 p.10a; 3 p.10a; 4 p.12a; 5 p.12a; 8 p.8a; 9 p.12a; 10 p.10a; 12 p.12a.

seven serial parts.¹⁹⁴ This type of popular literature was common in the nineteenth century, though usually reserved for sensational crimes, especially murders, rather than inquests.¹⁹⁵ The public participation and interest clearly indicate another aspect of the popular liberties associated with the inquest.

The medical journals also took a particular interest in the inquest and devoted many detailed articles to it.¹⁹⁶ The significant discrepancies and contradictions in the medical evidence given at the second inquest by Dr. Johnson and especially the eminent Sir William Gull, did not show them or the profession in a good light. They had also exposed the problems relating to etiquette and professional decency when medical men worked together. The dispute between the two doctors was eventually referred to the Board of Censors of the Royal College of Physicians. The Board failed to exonerate either doctor completely and observed that the conduct of Gull had been 'disastrous'.¹⁹⁷ Once again an inquest had, very publicly, exposed some prominent doctors to embarrassing criticism and brought the medical profession into some disrepute.

Within eighteen months Florence Bravo had died in strange circumstances. W.H. Garrington, who had presided over the *Mistletoe* inquiry, held the inquest into her death at the *Granada Arms Hotel* in Southsea. The proceedings were considered 'unsatisfactory and incomplete' because a key witness was not called and the circumstances not fully investigated. In complete contrast to her

¹⁹⁴ *The Balham Mystery, or The Bravo Poisoning Case* Published in 7 parts (1876)

¹⁹⁵ See Knelman op.cit. Chap. 2

¹⁹⁶ Including: the medical history of the case *BMJ* 2: May 20 1876 pp.755-6; the details of the post mortem examination *BMJ* 2: May 20 1876 pp.756-7; and the analytical report *BMJ* 2: May 20 1876 p.757

¹⁹⁷ *The Times* Oct 28 1876 p.9f citing *Lancet*, see also *BMJ* 2: Jul 29 1876 p.150, *BMJ* 2: Oct 7 1876 p.477, *Lancet* 2: Aug 19 1876 pp.260-263

husband's inquest, there was limited press exposure and no second inquest.¹⁹⁸

In an alleged murder case, the major focus of attention was on the trial and its outcome, but the Bravo case was particularly important because the scandal focused directly on the coroner and his inquests. It revealed some important aspects of the inquest system.

The first concerns the wide-ranging questioning that occurred at the Bravo inquest. A competent, professional coroner who maintained control of the questioning and cross-examination could use his ability and skills to widen an inquiry in order to call attention to *related*, important concerns. This was a strength of the coroner's independence and a justification for maintaining the indefinite conditions for holding an inquest. It also contrasted the inquest with a criminal trial which was strictly limited to proving the guilt or innocence of an accused person of a specific charge.

An important illustration of the positive use of such powers was demonstrated in 1878. A major disaster on the Thames provided an opportunity for the West Kent coroner, Charles J. Carrtar, to demonstrate his professional skills. A heavily laden passenger ship, the *Princess Alice*, was involved in a collision near Woolwich with the loss of over 600 lives and, as with the *Mistletoe* accident in the Solent, bodies were landed on both sides of the river in several coroners' jurisdictions.¹⁹⁹ This caused considerable problems for those who had to travel to distant locations to find their friends or relatives and to attend the inquests that were held in Woolwich (528 bodies), Barking, Poplar, Rainham and Westminster.²⁰⁰ The collision and the aftermath

¹⁹⁸ John Williams *Suddenly at the Priory* (London: Heinemann 1957) p.294

¹⁹⁹ Mick *Lobbying from Below: INQUEST in defence of civil liberties* (London: UCL Press 1996) pp.116-7

²⁰⁰ Thurston Thames op.cit. pp.10, 56-58, cited in Mary Patricia McHugh *The Influence of the Coroner's Inquisition on the Development of the Common Law and the Medico-Legal System* (unpublished University of London PhD thesis 1976) p.340

received extensive press coverage with over 100 reports in September alone though, within a month, public concern had evaporated.²⁰¹

Despite liaison with government officials, Carrtar believed that the 276 page Board of Trade Report on the collision was inadequate and left much to be desired. He therefore used his powers at the Woolwich inquest to extend his investigation beyond simply establishing the cause of death of the individuals. His summing up to the jury occupied a full day and his manuscript notes amounted to 213 foolscap pages—about 65,000 words.²⁰² The recommendations that resulted from the inquest eventually led to the tightening of the marine laws for navigation on the Thames.²⁰³ Carrtar demonstrated how an experienced, professional coroner could conduct an acceptable, full and independent inquiry beyond the cause of death to establish the need for change.

Fenwick reached an interesting conclusion as a result of his interviews with coroners in the early 1980s that reflected aspects of the *Bravo* and *Princess Alice* inquests:

It is reasonable to conclude however, that inquest verdicts routinely have the character of foregone conclusions. Let us also note that the inquest is seen by coroners as having more than one purpose, and the purposes of the inquest extend beyond formal and ostensible purposes and that recording the verdict may not be the sole or not even the main point of the exercise, *so far as the coroners themselves are concerned*.²⁰⁴ [original emphasis]

The scope for such activity was limited to some extent as a result of changes in the law in 1926 (dealt with in a later chapter), but as Fenwick concluded, the powers still exist and can be an important part of the coroners' work.

²⁰¹ Ibid. op.cit. p.76

²⁰² Ibid. p.146

²⁰³ Ibid. p.172

²⁰⁴ Fenwick Thesis op.cit. p.90

Another aspect of the inquest relates to the view of the body. The presence of the body gave the coroner jurisdiction²⁰⁵ and the law required that he and the jury viewed it together. An inquisition was void if that requirement did not take place.²⁰⁶ The cursory, very limited 'view' of the face of Bravo (and Lyell) met the statutory requirement, but it was clearly a valueless exercise, indeed it had long been considered 'wholly useless'.²⁰⁷ But 'the view' had been part of the traditional ritual since the mediaeval period when the body was examined to determine the cause of death.²⁰⁸ The body had become 'the symbolic and operational centre of every inquest'.²⁰⁹ Its 'presence' emphasised to the jury the gravity and importance of the inquest. In these circumstances, many coroners resisted abolishing the requirement to view.

The Bravo, Lyell and *Mistletoe* cases all exposed the expectation of deference to the upper classes. It is difficult to know how frequently this occurred because the objective was to avoid publicity. An example in 1891 came close to achieving a secret inquest. *The Times* reported the death of the Duke of Bedford, stating that he had died from an 'illness of a short duration but very acute'.²¹⁰ The newspaper was somewhat embarrassed to discover shortly afterwards that its report was incorrect.

Mr. John Troutbeck, the coroner for the franchise Liberty of Westminster since 1888, held the inquest at which the jury returned the verdict that the Duke had shot himself while temporarily insane. It was six days before a very short paragraph appeared in *The Times* stating

²⁰⁵ PP 1910 XXI.561 [Cd.5004] Second Report of the Departmental Committee appointed to inquire into the Law relating to Coroners and Coroners Inquests: Part I, Report p.15

²⁰⁶ John Jervis *On the Office and Duties of Coroners. With an appendix of forms and precedents* First edition (London: S. Sweet, R. Pheney, A. Maxwell, and Stevens & Sons 1829) p.27

²⁰⁷ SpecComm. Middx op.cit. p.28, PP 1910 XXI.561 [Cd.5004] op.cit. p.15

²⁰⁸ Jervis op.cit. p.23-4

²⁰⁹ Ian Adnan Burney 'Viewing Bodies: Medicine, Public Order, and English Inquest Practice' in *Configurations* 1: 33 1994 p.35

²¹⁰ *The Times* Jan 15 1891 p.9f

the facts.²¹¹ Over the following months a whole series of questions were raised in the Commons by the MP, Mr. Cobb. Was it customary to give notice to the police of such an inquiry? Was it done in this case? Was the case treated differently from other cases? Was the case listed in the Coroner's Office? Was it a secret inquiry?²¹² The Home Secretary, Henry Matthews, gave Troutbeck his full support. He confirmed that the normal procedures were followed, that a police inspector was present and 'the Coroner knew no reason why the public and reporters were absent'.²¹³ The MP persevered, highlighting the difference in treatment between the humble and rich:

[Cobb]: I should like to ask . . . whether the right hon. Gentleman is aware that in the same [news]paper containing the short paragraph announcing . . . an inquest [on the Duke of Bedford], there was a full report of an inquest held by the same coroner on the widow of a sculptor, and before another coroner an inquest, also held on the previous day, on a sign painter, who likewise committed suicide; whether he can find out or account in any way for the difference made between the cases of the comparatively humble individuals and the case of the late Duke of Bedford? I also wish to ask whether the Coroner means to allege that the Press having had full information of the inquest in the usual manner, no reporters attended it?

[Matthews]: . . . I understand the Coroner's information to amount to this, the Press had the usual means of information in the list. If they did not choose to avail themselves of it, it was not the Coroner's fault.²¹⁴

The questions continued for several months, but eventually the MP gave up his quest.²¹⁵ A Home Office file reveals that the inquest was considered to be the 'most notorious example' of the "'hushed-up" inquests on well-to-do folk.'²¹⁶ It appears that the Home Secretary may

²¹¹ Ibid. Jan 21 1891 p.6c

²¹² Parl. Deb. 3rd Series **349**: cols.789-90 Jan 22 1891, **349**: col.893 Jan 23 1891

²¹³ Ibid **349**: col.894 Jan 23 1891

²¹⁴ Ibid. cols.893-4

²¹⁵ *The Times* Jan 15 1891 p.9f, Jan 15 1891 p.9f, Jan 16 1891 p.7d, Jan 19 1891 p.9f, Jan 20 1891 p.4a, Jan 21 1891 p.6c. Parl. Deb. 3rd Series **349**: cols.789-90 Jan 22 1891, **349**: cols.893-4 Jan 23 1891, **349**: cols.1024-5 Jan 26 1891, **349**: cols.1518-9 Feb 2 1891, **350**: cols.1686-7 Feb 26 1891, **351**: cols.235-6 Mar 5 1891, **351**: cols.429-30 Mar 8 1891

²¹⁶ HO45/11214/403923/29 op.cit. Item 11A

well have condoned Troutbeck's procedure. The inquest almost succeeded in achieving the secrecy that the family wanted in order to avoid exposure and publicity. The case only came to light when it was discovered that the Duke had been cremated and that required an inquest to be completed before a burial certificate could be issued.²¹⁷

Mr. James Ollis, the head of the Public Control Department of the London County Council, revealed this deference to the upper classes in the first decade of the twentieth century. The department had responsibility for what is now termed social policy.²¹⁸ Ollis gave evidence to the Select Committee on Infant Protection in 1908. With respect to the inspection of nurse-mothers he perceived:

. . . valid and natural reasons for maintaining as much secrecy as possible as to parentage. Unless it can be shown that the evil is of such character that it cannot be otherwise met, attempts to break down the barriers of this secrecy might result in misfortune.²¹⁹

'The veneer of silence had protected families so that their unwanted infants could be disposed of without scrutiny.'²²⁰ A departure from the norm of discretion would affect:

. . . the child born of people in a *good position of society* who never under any circumstances come under a need of inspection, and where disclosure of parentage might result in trouble.²²¹ [emphasis added]

The reality was that the expectation of deference to the upper classes was not restricted to coroners. It was an accepted element of Victorian and Edwardian English society. The police, registrars, medical men, lawyers, the public, journalists, government ministers, local government officials, those who buried the dead and juries—all as a rule, were

²¹⁷ G. Thurston *Coroner's Practice* (London, Butterworth 1958) p.68

²¹⁸ Susan D. Pennybacker *A Vision for London 1889-1914: labour, everyday life and the LCC experiment* (London & New York, Routledge 1995) p.12

²¹⁹ PP 1908 IX.147 (99) Report of Select Committee on Infant Protection Qs. 1,272, 1,276 cited in Pennybacker op.cit. p.167

²²⁰ Pennybacker op.cit. p.167

'respecters of persons'.²²² They used their discretion in this respect in their various activities up to the beginning of the First World War at least.

One of the key issues raised by all the inquests was publicity. The inquest was considered by many as a key public element that disclosed the facts surrounding an unexplained death. It dispelled rumours and provided a preventive role in crime by showing that all unexplained deaths would be investigated. In 1860 the Home Secretary considered that the county newspapers achieved sufficient publicity,²²³ but from the 1870s the great national daily newspapers gradually superseded the provincial press.²²⁴ This resulted from efficient transport of newspapers by railway throughout much of the country.²²⁵ Faster than the speeding railway was the electric telegraph that brought important local news to the national newspaper editors.²²⁶

The contents of the national newspapers were overwhelmingly political with special attention to Parliamentary speeches, but for 'human interest' they focused on increasingly sensationalised reporting of law cases²²⁷ that pandered to the Victorians' interest in deviant behaviour.²²⁸ It was unusual for a reporter not to be present in the coroner's court. An inquest gave the first indications of a potential 'story' that might lead to a sensational murder trial—considered to be 'the

²²¹ Ibid.

²²² Anderson 1987 op.cit. pp.34-5

²²³ Parl. Deb. 3rd Series 157: col.81 Mar 7 1860

²²⁴ David Cannadine 'The Context, Performance and Meaning of Ritual: The British Monarchy and the 'Invention of Tradition', c.1820-1977' in Eric Hobsbawm and Terence Ranger *The Invention of Tradition* (Cambridge 1983) p.122

²²⁵ James R. Wright 'They Were the Very Models of the Modern Information Age' in Charles Putney, Joseph A. Cutshall King and Sally Sugarman *Sherlock Holmes: Victorian Sleuth to Modern Hero* (Lanham Md., and London, Scarecrow Press 1996) p.16

²²⁶ Ibid. p.17

²²⁷ Matthew Engel *Tickle the Public: One hundred years of the popular press* (London: Victor Gollancz 1996) p.44, Ensor op.cit. p.144

²²⁸ Knelman op.cit. p.21

opera of the working classes'.²²⁹ However, as the Bravo and Bedford inquests demonstrated, a coroner could prevent a reporter being present at an inquest.

Despite the coverage of inquests in the press, as Brodrick discovered in the mid-twentieth century, there was no indication how the operation of the law affected people as individuals.²³⁰ Participation at an inquest was a very rare event for most people. The press often sensationalised a story with an element of scandal or controversy—achieved if necessary by the 'gentle manipulation' of the facts.²³¹ This could produce a significant bias in the public's perception of coroners, the medical witnesses and inquests in general.

The trend towards national news, sensationalism and the influence on the public's perception raised serious questions about publicity and inquests. An 'interesting' inquest attracted crowds and substantial newspaper reports that often included the process of 'trial by newspaper'²³² before the full facts were available. An important question posed was if the inquest *did* indict somebody for murder, what chance was there of finding a jury that could try a person without prejudice?²³³ There were two other aspects. First, an inquest was an investigation into an unexplained death, and not intended to expose details of a personal nature or expose families to unnecessary intrusion. Second, the medical profession had been put under the glare of adverse publicity as a result of three of the *causes célèbres*, but again, that was *not* the object of an inquest.²³⁴ These issues associated with publicity gave considerable support to those in favour of moving towards the Scottish system where the preliminary inquiries were held in secret and

²²⁹ Tom Baker *Who on Earth is Tom Baker? An autobiography* (London: Harper Collins 1997) p.38

²³⁰ Brodrick op.cit. p.xi

²³¹ Anthony Burgess 'Introduction' in Daniel Defoe, Anthony Burgess and Christopher Brjstow (eds.) *A Journal of the Plague Year* (Harmondsworth: Penguin 1966) p.13

²³² *Daily Telegraph* May 16 1876 p.3b,c

²³³ *The Times* May 16 1879 p.12b

²³⁴ Burney Thesis pp.297-8

only came into the public arena if a criminal prosecution resulted. Nevertheless, there were many who objected to any restriction which limited publicity and the Government appeared to be very conscious of this right. The Scottish system would also have limited the ability of the coroner to extend his inquiry into the wider aspects of a death, such as in the *Princess Alice* disaster. In that case, since there were no criminal elements, the case would not have been pursued by the procurator fiscal. The wider problems, associated with navigation on the Thames, were the responsibility of the Board of Trade (BoT). However, Carrtar's ongoing efforts showed that the BoT's inquiry had been unsatisfactory.

The last area of importance with respect to the coroner's discretion was his considerable power to decide on procedure. He decided whether an inquest was necessary or not based on evidence collected on his behalf. Apart from the basic statutory requirements that had to be completed, he controlled everything else, including whether the court should be held *in camera*. Having selected the witnesses, he also decided who could question them. Members of the jury (who he also selected) were usually permitted to participate in the proceedings, but lawyers had no standing in the coroners' court and could only question witnesses with the permission of the coroner. They were not permitted to address the jury as in a trial—that was reserved to the coroner. Thus, the coroner carried considerable responsibility, and his professionalism was of great importance since it was his interpretation of the overall evidence, with an indication of possible verdicts, that was put to the jury.²³⁵

The five *causes célèbres* were one-off, local, disconnected events, but the issues probably extended to the remainder of the country. They illustrated the considerable divergence that existed between the way that each coroner interpreted his duties and used his discretion. One of

²³⁵ Mick Ryan *Lobbying from Below* (London: UCL Press 1996) p.32 [Hereafter Lobbying] op.cit.

the original aims of the Coroners' Society was to promote 'regularity and uniformity of practice in an office',²³⁶ but although it gave advice to individual coroners when requested, it did little to meet the stated objective. Indeed, there is no indication that the Society concerned itself with the coroners presiding over any of the inquests in the 1870s. Yet, it is inconceivable that they were not discussed at the meetings of the Council. There was little communication between coroners and the system relied on each individual coroner who operated freely 'within the province of convention and tradition'.²³⁷ The coroner applied the values and characteristics of his particular locality rather than 'bureaucratic processes or laws and orders'.²³⁸ These differences were particularly noticeable between coroners in the larger towns where there were higher levels of professionalism that resulted from full-time working and experience gained from frequent inquests, and those in country areas who held few inquests. A two-tier system clearly existed.²³⁹

The weaknesses of the inquest system and of coroners disclosed by the inquests were not new: they included the variability between coroners, the way they interpreted and performed their duties, the inadequacies of the law relating to inquest post mortems, the independence of coroners' law and death certification, the growing importance of the medical witnesses, the use of experts and the influence of society. The participation of the jury at inquests was important to provide a check on the coroner and to ensure that justice was done. The awareness of these key elements and the need for publicity was not limited to the public at large, but was widely acknowledged—even by the medical profession which would have preferred to avoid them.

²³⁶ William Baker op.cit. chapter XXX

²³⁷ Fenwick Thesis p.112

²³⁸ Anderson 1987 op.cit. p.40

²³⁹ Ibid. pp.35-6 See also Gordon H.H. Glasgow 'Clarke Aspinall: Liverpool Borough Coroner 1867-91' in *Lancashire History Quarterly* 3: (1) Mar 1 1999 p.16

Isolated sensational inquests had occurred before with perhaps the most serious example in 1856. William W. Ward, the Staffordshire county coroner, presided over the inquest on a victim of the poisoner William Palmer²⁴⁰ which led to the most popular of Victorian murder trials.²⁴¹ But the 1870s saw a series of inquests, starting with the relatively obscure West Haddon case in 1874 and building up, year after year, to the Bravo and Staunton cases which attracted massive publicity. The problems had all existed since the 1850s, and their sensationalised re-exposure only confirmed that the 1860 Act had done no more than provide a temporary respite from the deeper problems.

The *Lancet* summarised the mood in 1878:

. . . the public temper has been aroused, not to say shocked, by certain unseemly, if not disgraceful, occurrences at inquests . . . some change in the order of things is advisable if not imperative, if the coroner's court is to retain its ancient and undoubted usefulness and *prestige* as a conservator of law and order, as well as of the liberty and safety of the subject.²⁴² [original emphasis]

The *causes célèbres* and the demands for 'something to be done' put the Government under pressure to introduce legislation to reform the office of coroner. It eventually responded with Bills in 1878 and 1879. These are dealt with in the next chapter, which goes on to examine the evolution and impact of two Acts in the late 1880s that originated from issues unrelated to the coroners, but had significant consequences for them.

²⁴⁰ The case is covered in J.F. Stephen *A History of the Criminal Law of England* 3 volumes (London: Macmillan 1883) Vol.3 p.408, cited in Havard *op.cit.* p.79. But see also, William Palmer (the Rugeley Poisoner) papers, letters etc: Staffordshire Record Office. Reference: D(W) 1548

²⁴¹ Evelyn Burnaby 'The Fatal Gambles of William Palmer' in Jonathan Goodman (ed.) *Medical Murders* (London: Piatkus 1991) p.67-77

²⁴² *Lancet* 2: Nov 23 1878 p.738

CHAPTER 5

TOWARDS REFORM?

. . . there was a widespread feeling that the coroner ought to be regarded to some extent as a representative of the people . . .
Hansard May 15 1888¹

A few sensational inquests in the 1870s brought the coroners under considerable public scrutiny and exposed many problems associated with the outdated system. They also brought the coroners on to the political agenda for the first time since 1860 and put pressure on the Home Secretary to introduce reforms.

The inquests revealed the weaknesses of the coronatorial system and the problems that emanated from it. They also showed the importance of the doctors in the process of identifying the causes of death at inquests, as well as their growing connection with the coroners in the death registration process. But they also disclosed internal problems and tensions within the medical profession between the specialists and the GPs. These resulted from the increasing pressures from the rapid and progressive developments in techniques, technology and the understanding of disease that accelerated the growth of specialisms and demands for change. If specialist pathologists were to take over the performance of post mortem examinations at inquests from GPs, the latter would lose fees and the rift would deepen. The medical profession also wanted to avoid adverse publicity and lay judgements that came from exposure in the coroner's court—as seen in the last chapter. It wanted to deal with any problems within the profession and saw the answer in the Scottish system, with the preliminary investigation being

held in secret. But it was impossible to reconcile that system with the demands of society—the right to public knowledge and the participation of ‘the people’ in the justice system. The demands for change were not universally welcomed by either the coroners or the medical men, though there were those who saw that change was necessary—even inevitable.

It was in that climate that the Home Secretary was pressured to introduce reform of the office of coroner in the late 1870s. Though the Bill failed to reach the statute book at that time, his efforts were not entirely wasted because the 1879 Bill provided the basis for the 1887 Coroners Act. However, the driving force for that was not coroners’ problems, but the statute law revision process. The following year, a Government Bill to amend the 1887 Coroners Act was the catalyst which achieved the consensus that county councils, rather than the freeholders, should appoint county coroners. That measure was incorporated in the 1888 Local Government Act, but the statute’s greatest significance for coroners was the establishment of the London County Council (see Chapter 6).

In 1874, the year in which the first *cause célèbre* occurred, the newly installed Government made the third attempt to pass the recently departed administration’s legislation² on registration of births and deaths. The serious flaws in the 1836 Registration Act had been apparent before it reached the statute book, but Parliament was very slow to remedy the defects—even when a Government department was involved. The President of the Local Government Board (LGB) and the Home Secretary jointly introduced a Government Bill into the Commons

¹ Parl. Deb. 3rd Series 326: col.287 May 15 1888

² PP 1872 (272) V.55 An Act to amend the Law relating to the Registration of Births and Deaths in England

PP 1873 (180) IV.577 An Act to amend the Acts relating to the Registration of Births and Deaths in England and to consolidate the Law respecting the Registration of Births and Deaths at Sea.

to amend the law³ which was intended to improve the recording of statistics. This was to be achieved by making it obligatory for the attending medical practitioner to provide a certificate stating the cause of death to the best of his knowledge and belief.⁴

Clause twenty in the Bill caused serious concern to the Coroners' Society:

Where a person dies unattended by a registered medical practitioner, or where no certificate of the cause of death from the registered medical practitioner who attended the deceased during his last illness is produced to the registrar, and no inquest is held, the registrar before registering the death of such person shall take such means as (subject to the prescribed rules) he may think fit to satisfy himself that the death arose from natural causes.⁵

The Society attempted to discuss the Bill with the Home Secretary because it considered that it transferred the coroners' duties to the registrars, but he declined to hear any representations. The Society then wrote to all coroners asking them contact their MPs to 'point out the mischief that would arise if such power is given to the registrar'.⁶ However, it was the few MPs that the Society contacted directly who managed to have the clause deleted before it reached the statute book.⁷ It seems unlikely that this could have been achieved without the acquiescence of the Government.

The Act failed either to require the registrars to notify coroners if any suspicious facts emerged during the registration formalities or to clarify the role of the coroners. However, it did link the coroner more closely to

³ PP 1874 (180) IV.429 An Act to amend the Acts relating to the Registration of Births and Deaths in England and to consolidate the Law respecting the Registration of Births and Deaths at Sea

⁴ 37 & 38 Vict. c.88 An Act to amend the Law relating to the Registration of Births and Deaths in England and consolidate the Law respecting the Registration of Births and Deaths at Sea [Births and Deaths Registration Act] [7th August 1874 s.20 (2) cited in J.D.J. Havard *The Detection of Secret Homicide: A Study of the Medico-legal System of Investigation of Sudden and Unexplained Deaths* (London, Macmillan 1960) p.69

⁵ PP 1874 (Bill 180) op.cit. Clause 20

⁶ CorSoc Annual Report 1874 Vol.1 p.815

⁷ Ibid.

the disciplined bureaucracy of the Registrar-General's office. He was required to send to the registrar the findings of the inquest jury within five days.⁸ Despite the amendments, the death registration provisions were weak and it was possible to evade them with relative ease, as seen in the Staunton case.

The Home Secretary was asked whether he intended to introduce any measure for the coroners to investigate and prevent fires. Cross replied that he had no intention to do so because it would increase the rates. He continued:

*The whole question [of the role of the coroner] was so much mixed up with the appointment of a public prosecutor, that until the Judicature Commission had reported on that point, this and other similar questions could not be considered by the Government.*⁹
[original emphasis in Coroners' Society Annual Report]

The Coroners' Society saw the appointment of a public prosecutor as the equivalent of the procurator fiscal in Scotland and, therefore, another threat to the office of coroner. The Home Secretary's answer convinced the Society that the Government would introduce a Bill that would make considerable alterations to the duties of the office. It informed the members that it was 'very desirable that the coroners should be prepared to act as a *united body to resist any encroachments*'.¹⁰ [emphasis added]

The conservative, protective policy adopted by the Society at its formation in 1846 to maintain its ancient traditions and practices still obtained—it was determined to resist any change. However, its appeal to its members to act as a 'united body' was wishful thinking. In 1874, only sixty-four of the 330 coroners had thought it worth while to pay their subscription for membership.¹¹ In the nineteenth century, the

⁸ 37 & 38 Vict. c.88 op.cit. s.16

⁹ CorSoc Annual Report 1874 Vol.1 p.815

¹⁰ Ibid.

¹¹ Ibid.

Society's only communication with its members was through the annual report and occasional letters to deal with specific important issues. It was not until 1998 that it produced a newsletter as a medium for communication.¹² The annual general meeting provided another opportunity for intercourse, but this had a relatively limited attendance since it was held in London. Although some counties, such as Lancashire and Yorkshire,¹³ had local coroners' associations, coroners rarely met even when they operated in adjacent jurisdictions.

The final Judicature Commission Report appeared in 1874¹⁴ and confirmed the Society's concerns. It recommended the appointment of public prosecutors to bring England in line with Scotland and other countries where the system worked well. In the Report, the coroner's role was briefly outlined¹⁵ with criticism of the unnecessary expense and the inconvenience of dual investigations by coroners and magistrates. It also recommended the removal of the coroner's power to commit individuals for trial.¹⁶ The recommendations were not new—they had been put forward in 1851 by the Middlesex magistrates (see Chapter 2).

The recommendation to appoint public prosecutors brought a diverse response. *The Times* strongly supported the proposal, but worried about the associated costs—without any mention of the impact on coroners.¹⁷ An 'Old Magistrate' suggested merging the coroner and prosecutor into one office so that 'Some expense and much vexation from the double inquiry' would be saved.¹⁸ The diversity between coroners was shown by one who did not want to spoil a useful office by imposing foreign duties on it¹⁹ and another who wanted to abolish the

¹² G.H.H. Glasgow Personal communication.

¹³ CorSoc May 5 1857 Vol.1 p.425

¹⁴ PP 1874 [C.1090] XXIV.307 Judicature Commission. Fifth and Final Report of the Commissioners. Vol.I. The Report. Vol.II. First and Second Appendices

¹⁵ Ibid. 1st Appendix, section D, pp.26-27

¹⁶ Ibid. p.27

¹⁷ *The Times* Sep 4 1874 p.7b

¹⁸ Ibid. Sep 7 1874 p.7f

¹⁹ Ibid. Sep 11 1874 p.5f

office.²⁰ A leading article in the *Lancet* reported that it was not surprised to see such propositions, but it saw the value of the office of coroner and supported it. It also wanted the jury retained in the legal process and emphasised its educational role:

. . . when we remember how much many coroners do to give the impression that the office is a useless one, and the work of it done in a slovenly way. But we are far from agreeing with those who would abolish the office of coroner. Rightly filled, as it is by the majority of coroners, the office is highly useful one, and represents . . . the immense care which our constitution takes of the humblest human life. We approve greatly of the jury being parties with the coroner in investigating the cause of death. It is one of the ways the common people are taught the great value of human life, and the minor lesson—the nature and value of evidence.

No related legislation was introduced in that parliamentary session and interest in coroners faded away until the Lyell inquest in 1875. That brought renewed demands for amendment of the law from a variety of sources. The Middlesex magistrates recommended:

. . . that coroners should be appointed by the Crown, that they should be paid by fixed salary, that they should be barristers-at-law, that the Courts of Quarter Sessions should have the power to refuse to pay the costs of unnecessary inquests, and that the coroners should be set in motion by the police and should direct their warrants to police constables.²¹

The Town Clerk of the Manchester Corporation had already instructed the Chief Constable to withhold reports of some cases of sudden death to the coroners.²² The Guardians of the St. Pancras Workhouse wrote to the Home Secretary and the Lord Chancellor to complain about the number of post mortem examinations performed on dead inmates; they urged an alteration in the law relating to coroners and inquests, but without suggesting specific measures. The Government informed the

²⁰ Ibid. Sep 9 1874 p.9f

²¹ *Lancet* 2: Jul 31 1875 p.176

²² *Manchester Weekly Times* Sep 5 1874 p.6d. See also HO45/9379/42176/7 General Papers re: Law on Coroners' Inquests. Edward Herford to the Mayor of Manchester Sept 1 1874.

Guardians that a Bill was not contemplated in that session.²³ An attempt was made with a private members Bill to place the appointment of coroners in the hands of the magistrates but, like similar Bills, it failed to proceed.²⁴

The absence of a Government Bill to deal with coroners is easily explained. In 1875, apart from a heavy legislative load,²⁵ the Home Secretary was particularly burdened with the reorganisation of his department. He had had to respond to a demand from the Treasury to reduce costs and improve efficiency. When that was completed a year later, the Home Office was left with a relatively small establishment of only thirty-six permanent officials and clerks to carry out the work of all departments.²⁶ Bearing in mind that officials could devote only a limited time to any specific area of policy, coroners were probably low on the priority list and considered an additional rather than a main task for somebody.²⁷

In mid-1875, a private members Bill on Irish coroners was re-introduced into Parliament. In a short debate on the measures²⁸ the suggestion to replace the coroner with a prosecutor resurfaced—indicating the attraction of the systems in Scotland and on the Continent. Sir Michael Hicks-Beach, the Chief Secretary for Ireland, came to the defence of the coroners referring to the great antiquity of the office. He thought that any proposal to abolish the office or adapt its essential character would not be adopted by the Government or Parliament because the persons

²³ *The Times* Mar 18 1875 p.10f

²⁴ PP 1875 (174) 1.465 Bill to alter and amend the Law relating to Election of County Coroners

²⁵ 38 & 39 Vict. c.36 An Act for facilitating the Improvement of the Dwellings of the Working Classes in Large Towns [29th June 1875]; 38 & 39 Vict. c.86 An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes [13th August 1875]; 38 & 39 Vict. c.60 An Act to consolidate and amend the Law relating to Friendly and other Societies [11th August 1875]; 38 & 39 Vict. c.63 An Act to repeal the Adulteration of Food Acts, and to make better provision for the Sale of Food and Drugs in a pure state [11th August 1875]

²⁶ Jill Pellew *The Home Office 1848-1914* (London: Heinemann 1982) op.cit. pp.29-31

²⁷ Paul Rock 'The Opening Stages of Criminal Justice Policy Making' *The British Journal of Criminology* 35: (1) 1995 p.3



appointed coroners 'were elected by the people themselves'.²⁹ He was expressing the importance of localism and the awareness of the complex relationship between 'the people' and the law that reached back to the mediaeval period. It also explains something of the dilemma of the Government in considering any coroners' law reform—whatever the social or other changes that were taking place, the traditional and historic rights of the people could not be ignored.

The Home Office was too busy in 1875 to embark on consolidation of coroners' law, but that is not to say that the coroner's problems were ignored. The Home Office files show that coroners frequently consulted the Home Office directly and that problems raised were often discussed with the Lord Chancellor or the Law Officers to ensure that an accurate response was provided.³⁰ The Home Office was already acting unofficially as a 'central authority' on coroners' matters, providing information and advice. But when confronted with any questions in Parliament relating to coroners, home secretaries usually denied any responsibility for them³¹ and the covert activities were not mentioned.

In July 1876, Lord Francis Hervey moved in the Commons 'That further legislation is desirable with regard to the qualification and appointment of Coroners and the mode of holding inquests.'³² In the short debate that followed, he particularly highlighted the problems associated with the election of county coroners, the 'ridiculous qualification' of 'land in fee' for appointment, and the lack of quality and professionalism. Looking back at the history of coroners' jurisdiction he reached the conclusion that, overall, the coroners were 'like the unfortunate maidservant in *Barnaby Rudge*, they had "failed to give satisfaction."³³

²⁸ Parl. Deb. 3rd Series 224: cols.514-29 May 12 1875

²⁹ Ibid. cols.527-8

³⁰ For Example: HO45/4856 Control of Coroner under Lord Chancellor, not Secretary of State and HO45/11039/B20365 Rights and Duties of Coroners 1896-1922

³¹ For example: Parl. Deb. 3rd Series 222: col.1050 Mar 2 1875, 227: col.1761 Apr 27 1876

³² Ibid. 230: col.1301 Jul 11 1876

³³ Ibid. col.1305

The Home Secretary hoped that the debate would be disassociated from any recent case.³⁴ Nevertheless, he defended the coroners commenting that they had performed ‘a great deal of good’, especially with regard to colliery and other explosions. He agreed with Lord Francis Hervey that there were too many coroners and that they were unequally distributed over the country.³⁵ The point was that satisfactory performance came with experience and continuous practice. A coroner performing four or five inquests a year could not compare with the twenty four or twenty five each week carried out by Carttar, the West Kent coroner. Most importantly, the Home Secretary agreed that ‘the time had come’ for great change³⁶ and the Commons resolved that further legislation was desirable. An element of scepticism was sounded in the final words of the debate by one MP—he ‘trusted the Resolution would not become a dead letter’.³⁷

The Home Secretary’s selection of colliery inquests to defend the coroners was based on experience. Cross had made a visit to a South Yorkshire district where a deputation of miners from various collieries raised questions with him regarding the welfare and safety of the miners. They were particularly concerned about the coroners’ court, complaining that the coroner was the ‘only absolute monarch we have in England’ because of his control over the proceedings. They stated that the court had:

. . . escaped the prying eyes of modern reformers and stands at the present moment in exactly the same position it has occupied longer than the memory of the oldest inhabitant. . . we respectfully submit this antiquated court needs some revision and alteration to fit it for modern thought and make it more capable of commanding our respect and confidence.³⁸

³⁴ Ibid. col.1310

³⁵ Ibid. cols.1310-1

³⁶ Ibid. col.1310

³⁷ Ibid. col.1313

³⁸ HO45/9560/71638/82 1878-85 Coroners Bill 1878, Amended Coroners Bill 1879. Copy of an extract from a letter addressed to Sir Richard Cross. Copy dated Oct 9 1885

Their concerns were not unreasonable because more than a thousand miners were killed each year. The juries were generally made up of workmen or small tradesmen who were dependent on the collieries for their livelihood and were open to the suspicion of partiality. The deputation urged consideration for three changes in the law. First, for the appointment of knowledgeable juries or half the jury to be practical working miners in all cases of colliery accidents. Second, that coroners' courts should be open and the general public admitted as in ordinary courts of justice. Third, that the relatives and fellow workmen of the deceased should have power to appoint a lawyer to watch the case, examine or cross-examine witnesses and 'every facility be given to him by the Coroner for the purpose of bringing out the whole of the evidence bearing upon the inquiry'.³⁹ Cross had heard at first hand the importance of the coroner's court to ordinary people who expected justice to be done—people who had real interest in the outcome of inquests. They were confirming not only the value of the inquest system to them, but the need for the impartiality in the coroner's court. The interests of the legal or medical professions or the coroners were of secondary importance.

Later in 1876 Farrer Herschell, a distinguished lawyer, took up the subject of the coroner's court in an address to the National Association for the Promotion of Social Science (SSA).⁴⁰ He pointed out that inquests were still conducted almost as they had been 400 years earlier and produced 'extraordinary and ludicrous verdicts, rivalling in their absurdity the law laid down by the coroner'.⁴¹ He referred to the recent Bravo case which he believed would 'prove a disgrace to the annals of

³⁹ Ibid.

⁴⁰ See: Brian Rodgers 'The Social Science Association, 1857-1886' *The Manchester School of Economic and Social Studies* XX., No.3 September, 1952 283-310

⁴¹ Farrer Herschell 'Jurisprudence and the Amendment of the Law' *Transactions of the National Association for the Promotion of Social Science* 1876 pp.22-32. See also A Herbert Safford 'On the Office of Coroner.' and Discussion *Sessional Proceedings of the National Association for the Promotion of Social Science* 10: (1) Dec 11 1876 pp.1-20 and *Transactions of the National Association for the Promotion of Social Science* 1876 pp.302-309

jurisprudence'.⁴² But his criticism was also directed at Parliament and the Home Office, as the *BMJ* reported:

. . . the evils have not been unnoticed or unfelt, but in this country there is a constitutional apathy to change, and it is this which renders reform an impossibility. Some glaring cases come before the public, showing the ignorance and incompetency of men holding these appointments; the subject is, perhaps, noted in Parliament, and for a time discussed in the channels of information. The Home Secretary promises that it shall be "taken in consideration", and there the matter ends.⁴³

Herschell believed that the point had been reached where revision and reform were urgently required and made suggestions that leaned towards the secret Scottish system. But his suggestions were hardly new, they were very similar to those put forward by the Middlesex magistrates in 1851.

He was not prepared to argue the case for medical or legal coroners, though he appeared to favour lawyers since he insisted that 'certain legal and judicial qualities [we]re essential to the efficient discharge of a coroner's duty.'⁴⁴ He suggested that coroners should be appointed by the Home Secretary rather than by the traditional process of election by the freeholders or by the town council. GPs would be replaced by competent medical assessors with special training and skill to perform post mortem examinations. The dual proceedings in magistrate's and coroner's courts would be eliminated. Finally, he believed that if these changes were implemented, the coroner's jury could be abolished.

He admitted that, at one time, the coroner's jury had afforded a much-needed protection to the public. But in 1876, he did not see its necessity:

⁴² *BMJ* 2: Nov 4 1876 p.593

⁴³ *Ibid.*

⁴⁴ Herschell *op.cit.* p.27

The press is now our real protection against such an abuse. So long as our courts are open, reporters as assiduous and eager, and newspaper editors as ready to open their columns to complaints as they are at present, I do not think there is anything to fear on this score.⁴⁵

The *BMJ* gave their support and confirmed the appeal of the Scottish system to the medical profession:

. . . under the proposed system of nominating competent men by the Secretary of State, juries would not be necessary. The verdict might be safely left to the coroner and his [medical] assessor, as it is now to the Procurator-Fiscal in Scotland.

. . . elements of good are to be found in the suggestions made [by Herschell] . . . and we trust that, in the next session of Parliament, some practical effect may be given to them by a new Act of the Legislature.⁴⁶

But Herschell's suggestions were not universally accepted. The comments by Hicks-Beach during the debate on the Irish Coroners Bill in 1875 had indicated unease with any system that removed the ancient rights and traditions of the freeholders, and excluded 'the people' from the justice system. The appointment of coroners by the Home Secretary was criticised. First because it could be seen as another centralising tendency. Second because it would also have compromised the independence of the coroner as a judicial officer because he had to investigate deaths of individuals in police custody and in prisons—the Home Secretary had responsibilities for both operations. A magistrate considered that the Home office was 'more accessible to public opinion and more likely to choose well'⁴⁷ and suggested that the only acceptable alternative was the Lord Chancellor who had traditional responsibilities for coroners.⁴⁸

But Herschell's intervention in the debate was important because he was another MP showing a real interest in the coroner and his office.

⁴⁵ Ibid. p.32

⁴⁶ *BMJ* 2: Nov 4 1876 pp.593-4

⁴⁷ *The Times* Jul 18 1876 p.11d, *BMJ* 2: Jul 22 1876 p.115-116

He had the potential to be influential in the Commons, having gained the ear of Parliament ‘unusually early’⁴⁹ after his entry in 1874. He could also expect backing from the SSA,⁵⁰ one of the more powerful and influential pressure groups of that generation.⁵¹

The Staunton case had again exposed the shortcomings of the medical profession, and the mounting negative publicity could no longer be ignored. At the end of 1877, the Parliamentary Bills Committee of the BMA met to discuss ‘The Law of Coroners’ Inquests.’ Dr. Alfred Swaine Taylor who was unable to attend, submitted a twelve point memorandum in which he pointed out that ‘A change is urgently required, not merely for the sake of the public, *but of the profession*’.⁵² [emphasis added] A leading article in the *BMJ* agreed with this, but expressed something new:

It is very desirable therefore, at this juncture, that the questions raised should be very carefully considered by the medical profession, with the view of obtaining, if possible, some *general consensus of opinion* on the direction in which these reforms should point, and the shape which they should take.⁵³ [emphasis added]

The Parliamentary Bills Committee attempted to get that consensus at the meeting in November 1877.⁵⁴ Several professors of medical jurisprudence were invited to attend with five members of the Coroners’ Society committee—including S.F. Langham, a lawyer and Secretary of the Society and Dr. Hardwicke, coroner for Central Middlesex.

Dr. A. S. Taylor believed that his proposals would ‘prevent the scandals which so frequently result[ed] from the present loose manner of

⁴⁸ Ibid.

⁴⁹ *DNB* Supplement Vol.XXII Herschell p.838

⁵⁰ See: Rodgers op.cit. pp.283-310

⁵¹ S.E. Finer *The Life and Times of Sir Edwin Chadwick* (London: Methuen 1952) p.488

⁵² *BMJ* 2: Dec 1 1877 p.778

⁵³ Ibid. p.771

⁵⁴ Ibid. pp.778-784

conducting inquests'.⁵⁵ He concentrated particularly on the appointment of expert pathologists and public analysts. Hardwicke was critical and pointed out that he and Lankester (both doctors) had attempted to have the 1836 Medical Witnesses Act amended years before. The medical profession had not supported them, but had responded with a 'wet blanket' and the accusation of 'tampering with the privileges of the profession'.⁵⁶

Hardwicke went on to review the draft of a coroners' reform Bill that, almost certainly, had the approval of the Coroners' Society. The Bill contained a number of changes to the inquest system which included: the definition of cases requiring an inquest, limits placed on the view of the body, and the jury reduced in number for most cases. It would have retained the provisions of the 1836 Medical Witnesses Act, but given the coroners more freedom to employ special pathologists and public analysts.⁵⁷ These changes were significant, but the climate at the end of 1877 was strongly influenced by the *causes célèbres* and, particularly, the Bravo and Staunton cases.

The two organisations were not too far apart. But the criticisms expressed by Hardwicke appear to have prevented a conciliatory response. Consensus was possible, but not achieved. The BMA printed the various suggestions in a thirty two page booklet, without any specific recommendations, and simply sent it to the Home Secretary.⁵⁸ He was believed to be close to introducing significant alterations to the law and an agreed set of recommendations from the interested parties might have influenced him. But as one realist at the meeting pointed out:

⁵⁵ Ibid pp.779-80

⁵⁶ Ibid. p.780

⁵⁷ Ibid. p.779

⁵⁸ BMA *Suggestions for the Amendment of Coroners Inquests being a Preliminary Report of the Parliamentary Bills Committee of the British Medical Association* See: HO45/9560/71638 1878-85 Coroners Bill 1878, Amended Coroners Bill 1879

They must not only consider the subject as it affected the medical profession, but as it would be accepted and was likely to be *dealt with by the legislature*.⁵⁹ [emphasis added]

Nevertheless, it was an important event because it was the first time that an attempt was made by the medical profession to find a way forward *by consensus* with people from outside the profession. The BMA and the Coroners' Society were similar organisations, with a similar objective—the protection of the interests of their members. Co-operation between them and the SSA could have had an enormous influence on the Government. But each one preferred to work independently.

With the failure of the meeting to achieve consensus, the BMA turned to its members and invited them to give their views to achieve a 'free expression of *medical opinion*'.⁶⁰ [emphasis added]. This consultation was important because the majority of the members were GPs. They were concerned by the potential threat to their fees if pathologists took over their role in performing post mortem examinations. The specialists had already caused dissent in the profession by continuing to accept fees in the lower ranges—'no patient would pay a guinea to a GP when he could get advice from an eminent consultant for the same fee'.⁶¹ In the struggle for status and income in an overcrowded profession 'the hard-pressed rank and file . . . looked to the upper ranks of the profession for support in their efforts—and they found none'.⁶² If pathologists were to take over performing post mortem examinations at inquests, an adverse response from the GPs could have been expected. This made it difficult for the BMA to follow a policy that fully supported the use of pathologists to provide medical services for inquests. The proposal put forward by Hardwicke would probably have been acceptable to the GPs.

⁵⁹ *BMJ* 2: Dec 1 1877 p.781

⁶⁰ *Ibid.* p.771-2

The tide of concern raised by the *causes célèbres*, which resulted from their treatment in the press, had highlighted the problems associated with the coronatorial system. Although an expectation of reform had developed, the Government appeared reluctant to get involved and did nothing. The SSA, perhaps prompted by Herschell, sent formal resolutions to the Home Secretary that 'imperatively demanded' a 'Parliamentary inquiry into the mode of appointment, the office, duties, and jurisdiction of coroners'.⁶³ After drawing attention to the 'high antiquity and high utility' it continued that the office had become:

. . . in the process of time, to be attended with inconveniences in respect of constituencies by which the coroner is elected, the manner of election, the mode of administration and procedure, the place for holding the court, as well as many points relating to the functions, procedure, and responsibility. The Council are of opinion that in consequence of various social changes since the time of the original creation of the coroner's office, the expediency of obtaining a coroner's jury, either at all or in its present form, the existing relations of the coroner to the justices of the peace, the provisions for the use of expert witnesses, have become matters requiring fresh and special arrangements.⁶⁴

The SSA had identified the problems, but had made no suggestions on how they might be overcome, apart from 'a Parliamentary inquiry'.⁶⁵

The Home Secretary was not short of suggestions with respect to the coroners. He had received them from the BMA, the Coroners' Society, Herschell, the SSA, the magistrates and the press. Cross wanted certainty when he legislated⁶⁶ but there was no consensus on what should be done. However, there was general agreement, stated directly or implied, that there was a need for *some* form of investigation of

⁶¹ M. Jeanne Peterson *The Medical Profession in Mid-Victorian London* (Berkeley, Los Angeles and London: University of California Press 1978) p.227

⁶² *Ibid.* pp.227-8

⁶³ *BMJ* 1: Jun 30 1877 p.822, *The Times* Jul 19 1877 p.7f

⁶⁴ *BMJ* 1: Jun 30 1877 p.822

⁶⁵ *Ibid.*

⁶⁶ F.J. Dwyer *The Rise of Richard Assheton Cross and His Work at the Home Office, 1868-80* (unpublished University of Oxford BLitt thesis 1969) p.447

⁶⁶ *Ibid.* p.443

unexplained deaths. Cross had to contend with three main proposals. First, the appointment of a public prosecutor and the adaptation of the office to incorporate procedures from the Scottish and Continental systems. Second, to deal with individual problems on an *ad hoc* basis, such as those indicated by the SSA. Third, to establish some form of Parliamentary inquiry to move the process forward.

A move towards the Scottish or Continental system commended itself because it overcame some of the specific drawbacks of the coroner's office. It could be adapted to provide a broader basis for the investigation of deaths and had the advantage of efficiency because a prosecutor could also operate in other courts. It had particular appeal to a section of the medical profession. But the introduction of a modified Scottish system was not universally accepted. Although there was concern over the anticipated increase in costs that would arise, there was significant opposition to a secret investigation from those demanding publicity and openness in the coroner's court.⁶⁷

The second proposal was to deal individually with specific elements that were causing problems, such as the election of county coroners, dual investigations etc. on an *ad hoc* basis. Such measures had been attempted many times with private members bills, but they had never succeeded. Government support for such measures had never been forthcoming and, as Dwyer reports, Cross specifically stated in the Commons that he disliked *ad hoc* authorities and *ad hoc* legislation.⁶⁸ But he did see the value of private members bills to parliamentary government. Any MP who felt that the Government was overlooking an important subject for legislation could call attention to it with such a Bill:

Concrete proposals which suggested possible lines of enquiry did not merely help a Government to frame a policy, but in the Home

⁶⁷ Parl. Deb. 3rd Series 224: cols.527-8 May 12 1875

⁶⁸ Ibid. 244: col.751 Mar 11 1879 cited in Dwyer op.cit. p.447

Secretaries opinion, they compelled an administration to adopt an official attitude.⁶⁹

The third proposal had come from the SSA and the BMA—to have some form of parliamentary inquiry to make a general review of the office.⁷⁰ This would probably have been welcomed by those who had put forward ideas, though much would have depended on the members of the committee or commission that made the review.⁷¹ The state had already played a prominent role in tackling problems in poor law, health, women and children working in manufacturing industry, and so on. These measures had derived mainly from the recommendations of Royal Commissions.⁷² Although neither the process⁷³ nor the recommendations were acceptable to everybody, they provided sufficient consensus to institute legislation. Cross certainly saw finished legislation as the result of expressed opinion. Ideas arose from prior discussion in the country and MPs reflected these opinions in the Commons. The opinions could also be expected to be discussed in select committee or other parliamentary inquiries and influence recommendations in the reports. Although Cross recognised that such reports compelled ministerial attention, he never thought of them, in themselves, as sufficient to justify legislation.⁷⁴ If he thought that further discussion was necessary, he preferred reference to a select committee. When this was done 'he always hoped to see the House lay down some clear principle for their guidance.' His own Bills always contained a single clear purpose and he liked to have it incorporated in the first few lines of the draft Bill.⁷⁵

⁶⁹ Dwyer op.cit. pp.443-4

⁷⁰ *The Times* Jul 19 1877 p.3f

⁷¹ Hugh McDowall Clokie and J. William Robinson *Royal Commissions of Inquiry. The Significance of Investigations in British Politics* (Stanford: Stanford University Press 1937) p.156

⁷² David Walker *The Oxford Companion to Law* (Oxford: Clarendon Press 1980) pp.1089-90

⁷³ J. Toulmin Smith *Government by Commissions* (London: S. Sweet 1849) pp.168-9

⁷⁴ Dwyer op.cit. pp.443-4

⁷⁵ *Ibid.* p.450

In fact, the Bravo case had been more influential in securing action than anything else. Early in 1877, the Home Secretary had informed Lord Francis Hervey that a Bill had been prepared to consolidate and amend the law relating to coroners and coroners' inquests.⁷⁶ The Bill would show whether the Government was imposing its own policy or providing a base for a select committee to consider and make recommendations.

THE 1878 AND 1879 CORONERS BILLS:

Despite all the pressures generated by the publicity, lobbying by vested interest groups and the Staunton case, the Home Secretary did not introduce his reform Bill into Parliament in 1877. However, an air of expectation had been generated as the *Lancet* announced:

Prominent among the subjects which are likely to engage the attention of Parliament *early next session* is the Coroner's Court, with the laws relating to that remarkable institution, as notable for its survival as for the extraordinary state of confusion into which its practice has lapsed. . .⁷⁷ [emphasis added]

Although that expectation was not fulfilled, the President of the Local Government Board, the Home Secretary and the Chancellor of the Exchequer jointly introduced a Bill into Parliament in February 1878 to set up County Boards.⁷⁸ The primary purpose of the Bill was to improve the management of the county business and start the process of remodelling local government to bring it in line with the 1830s municipal reform.⁷⁹ Since the coroners were paid from the county rates, the Bill had to include clauses relating to the transfer of that responsibility to the new financial boards. However, the Bill went well beyond that to include the provision to abolish the 'antiquated mode of electing coroners by the

⁷⁶ *The Times* Mar 9 1877 p.7a

⁷⁷ *Lancet* 2: Dec 22 1877 p.930

⁷⁸ PP 1878 (93) I.543 A Bill to amend the Law relating to the Administration of County Business, and to make further Provision for County Government. Parl. Deb. 3rd Series 237: col.583 Jan 28 1878

⁷⁹ Eastwood Community op.cit. p.107

freeholders' and make the new Boards responsible for their selection and appointment⁸⁰ like borough coroners.

The *BMJ* expressed 'great satisfaction' that the Government had taken 'this important subject in hand' with the first instalment of reform.⁸¹ It appeared to believe that the Government had decided to follow the *ad hoc* process to reform the office of coroner. It anticipated that the change would lead to the requirement that qualifications would in future be required of candidates for the office.⁸²

The election process for county coroners had vexed the Coroners' Society for many years, but it was more concerned about a proposed amendment to give power to the County Board to reprimand or suspend a coroner.⁸³ The Society seemed unconcerned that one of its ancient and traditional links to the people was to be severed. The LGB President believed that this major break with tradition was the most radical of all the provisions of the Bill. However, he expected it to meet with 'very little opposition on either side of the House',⁸⁴ which proved to be the case. Despite that, there were lengthy debates⁸⁵ on the other provisions of the Bill and some opposition to them. There was concern that it was a centralising measure and would have the effect, like the tendency of other modern legislation, 'to absorb all local power and to place it under London Boards'.⁸⁶ One MP wanted to avoid change and maintain the role of traditional elite interests, suggesting that the proposals were not an improvement:

. . . the existing system of county government worked well; it was the most economical and most orderly of any that he had known in any part of the world. They must . . . go for something better or

⁸⁰ *BMJ* 2: Feb 2 1878 p.163

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *BMJ* 2: Feb 2 1878 p.163, Parl. Deb. 3rd Series 237: col.591 Jan 28 1878

⁸⁵ Parl. Deb. 3rd Series 237: cols.1651-1691 Feb 14 1878, 237: cols.1853-1915 Feb 18 1878, 238: cols.893-943 Mar 7 1878

⁸⁶ *Ibid.* 237: col.606 Jan 28 1878

leave well alone. . . The existing county government was to be displaced by a sort of hybrid body, composed of county magistrates and men elected by Boards of Guardians, who belonged to different classes and were not likely to work well together.⁸⁷

This was echoed by another MP who commented that it should be no surprise that the existing system was satisfactory:

. . . because those now entrusted with the management of local affairs [the magistrates] were the first men in the county, and the system . . . could not be arrived at better than by leaving things as they were.⁸⁸

The Bill was eventually withdrawn and things were left as they were—as the MP wanted.

The year 1878 passed by with the usual complaints about the coroners in the medical journals⁸⁹ but there were no sensational inquests and only one question in Parliament. The Home Secretary had had a busy Parliamentary session in which priority was given to the revision of the law on factories and workshops, and the attempt to codify the complex criminal law in the Criminal Code (Indictable Offences) Bill.⁹⁰ At the very end of the session he unexpectedly introduced the long-awaited Coroners Bill.⁹¹ It was little more than a minimal intervention, as the *Lancet* disappointedly reported:

The changes indicated in the new Bill are neither very numerous nor very considerable, its tendency being rather to consolidate than amend.⁹²

It left the selection of a county coroner in the hands of freeholders, but for the first time defined that no one was eligible unless a barrister,

⁸⁷ *Ibid.* col.1666 Feb 14 1878

⁸⁸ *Ibid.* cols.1667-8

⁸⁹ *BMJ* 1: Feb 16 1878 p.236, 1: May 18 1878 p.722

⁹⁰ Leon Radzinowicz and Roger Hood *A History of English Criminal Law and its Administration from 1750* (London: Stevens and Sons 1986) vol. 5 p.738

⁹¹ PP 1878 (303) I.435 A Bill to consolidate and amend Law relating to Coroners, Parl. Deb. 3rd Series 242: col.1867 Aug 13 1878

solicitor, or a duly qualified medical practitioner of five years standing.⁹³ Most coroners already met that requirement. But as the *causes célèbres* had illustrated, genuine professionalism required more than being simply a member of a profession. Honesty, integrity and devotion to the public interest were qualities of greater importance. As *The Times* commented, the competing demands of the legal and medical professions were more about the interests of one as opposed to the other rather than about the office of coroner.⁹⁴ This was confirmed by the *BMJ* which was relieved that the Bill did not 'deprive the medical profession of any important relations to the office'.⁹⁵

The Bill was introduced only three days before the end of the 1878 parliamentary session and withdrawn on the last day.⁹⁶ It appeared that the objective was to show that a Bill had been drafted and allow full consideration of the provisions during the recess. The Home Secretary was expected to reintroduce the Bill early in the next session and then refer it to a select committee for consideration and amendment.

The Coroners' Society was active during the recess. A meeting of coroners from all parts of the country discussed and agreed alterations to the Bill, though the only recorded requirement was for superannuation.⁹⁷ The Society's President met the Home Secretary and attempted 'to ascertain whether any arrangements could be come to with the Government to adopt the suggested alterations . . . proposed'.⁹⁸ Cross promised to consider the alterations and confirmed that the Bill would be referred to a select committee, though he did not expect evidence to be taken.⁹⁹

⁹² *Lancet* 2: Nov 23 1878 p.738

⁹³ PP 1878 (303) I.435 op.cit. Clause 19

⁹⁴ *The Times* Sep 30 1876 p.4d

⁹⁵ *BMJ* 1: Aug 31 1878 p.331

⁹⁶ Parl. Deb. 3rd Series 242: col.2091 Aug 16 1878

⁹⁷ *CorSoc* Vol.2 Nov 15 1878 Vol.2 pp.20-22

⁹⁸ *Ibid.* Annual Report 1879 Vol.2 p.41

⁹⁹ *Ibid.*

As anticipated, the 1878 Coroners Bill¹⁰⁰ was reintroduced unchanged at the beginning of the new Parliamentary session in February 1879.¹⁰¹ The *Solicitor's Journal* report stated that 'Viewed as a consolidation Bill, this is an admirable measure'.¹⁰² It was not greeted with much enthusiasm by the medical profession which considered it a disappointing piece of 'legislative energy'.¹⁰³ The Bill was quickly referred to a select committee for amendment. Cross was requested to widen the remit to include examination of the duties and payment of coroners, and to permit the taking of appropriate evidence. He suggested that the Committee should review the Bill in the light of 'valuable information' that he would provide. He thought that might serve as useful a purpose as taking evidence, though he agreed that it could be considered if necessary at a later date.¹⁰⁴ The problem with this 'valuable information' was that it undoubtedly included all the diverse and well-worn suggestions for change put forward since the 1850s. The Committee was under the chairmanship of Sir Matthew Ridley, the Parliamentary Under Secretary of State at the Home Office. The influence of the department could be expected to carry more weight than that of vested interest groups.

The referral to a select committee was not a good omen because it was not an ideal agency for change. These committees were essentially *ad hoc* bodies made up of MPs who were brought together for a specific piece of work, such as consideration of a private Bill or the elaboration of a public Bill which had been accepted in principle. They were also used for all manner of inquiries and the study of any subject upon which the House desired definite information.¹⁰⁵ As already noted, in the Victorian period the Royal Commissions were the main agencies that

¹⁰⁰ PP 1878-79 (67) II.47 A Bill to consolidate and amend Law relating to Coroners

¹⁰¹ Parl. Deb. 3rd Series **243**: col.1188 Feb 14 1879

¹⁰² *Solicitor's Journal* **23**: Mar 1879 p.334

¹⁰³ *Lancet* **1**: Mar 1 1879 p.312

¹⁰⁴ Parl. Deb. 3rd Series **243**: col.1656 Feb 24 1879

¹⁰⁵ Hugh McDowall Clokie and J. William Robinson *Royal Commissions of Inquiry. The Significance of Investigations in British Politics* (Stanford: Stanford University Press 1937) p.61

dealt with difficult subjects which had attracted public attention and where there was insufficient accurate information to form a preliminary to legislation.¹⁰⁶ A select committee was not a forum that could develop a genuine strategy for change through lateral thinking or by taking a theoretical approach to the issue in hand. It was more likely to look for administrative coherence and tidiness rather than attempting to break the culture and common sense perceptions which the office had built up around itself 'like a protective shell.'¹⁰⁷

The Committee consisted of seventeen members of whom four had not only considerable knowledgeable on coroners, but also very specific ideas on reform. Albert Pell and Gabriel Goldney, both magistrates, had introduced private members Bills on coroners in the past. Lord Francis Hervey and Farrer Herschell, both barristers, had made their views known on the topic in the past in Parliament and outside.

The first six meetings of the committee were spent 'deliberating'—presumably reviewing the written material provided by the Home Secretary and examining the details in the Bill. In May, the Committee unexpectedly requested 'power to send for Persons Papers and Records'¹⁰⁸ which was quickly granted. The Committee called only two witnesses, both from Scotland: W.A. Brown, a Procurator Fiscal from Lanarkshire and Douglas Maclagan, the Professor of Medical Jurisprudence and Clinical Medicine at the University of Edinburgh. Since both were intimately involved with the Scottish system, there was a clear indication of the thinking of the Committee. The Secretary of the Coroners' Society had been in the Commons for every meeting of the committee hoping to give evidence. But the meetings were held behind closed doors except when the two witnesses came before the

¹⁰⁶ PP 1910 [Cd.5235] LVIII.371 Report of the Departmental Committee on the Procedure of Royal Commissions [The Balfour Report] cited in Clokie and Robinson *op.cit.* p.97

¹⁰⁷ David Garland *Punishment and Modern Society: A Study in Social Theory* (Oxford, Clarendon Press, 1990) p.277 [Hereafter: Society]

committee.¹⁰⁹ The BMA was also keen to give evidence to the committee and nominated Dr. A.S. Taylor to attend.¹¹⁰ Despite several attempts to do so, both organisations were informed that they would not be heard.¹¹¹

The Select Committee held twelve meetings at a rather leisurely pace over four months and produced a short Report.¹¹² The Committee reported in the first sentence that it had made ' . . . the assumption that the office was not to be abolished or merged with another jurisdiction'— a clear indication of the protective influence of the Home office. As anticipated, the Committee was:

. . . of opinion that valuable suggestions as regards the medical investigation into the cause of death may be derived from the Scotch [sic] system; . . .¹¹³

The main recommendations were that only legal coroners should be appointed, that all deaths reported to the coroner should be accompanied by a medical report and that competent medical men should be employed to perform the post mortem examinations. It also recommended that if a 'system of efficient salaried legal officers were established throughout the country' they could become stipendiary magistrates to avoid dual proceedings. These measures would have allowed consolidation of many coroners' districts, reduced the number of coroners and have them working whole-time. Despite the apparent appeal of the Scottish system, the Committee reached the conclusion that it was not 'expedient to inquire into the desirability of assimilating the English practice to that of Scotland'.¹¹⁴

¹⁰⁸ PP 1878-79 (279) IX.433 Special Report, Proceedings, Minutes of Evidence of Select Committee on Coroners Bill p.iii Report was dated Jul 10 1879.

¹⁰⁹ CorSoc Annual Report 1879 Vol.2 p.41

¹¹⁰ *BMJ* 1: Apr 12 1879 p.568

¹¹¹ *Ibid.* 2: Jul 5 1879 p.26

¹¹² PP 1878-79 (279) IX.433 op.cit. pp.2-3

¹¹³ *The Times* Jul 17 1879 p.5f

¹¹⁴ PP 1878-79 (279) IX.433 op.cit. p.3

The Report made proposals very similar to those put forward by Herschell at the SSA Congress in 1876 and suggests that he had been influential in the discussions and in the drafting of the recommendations in the final report. Although he may have influenced the Committee towards the Scottish system, he was unable to extend that to the amendments to the Bill. The provisions of the 1836 Medical Witnesses Act were incorporated unchanged, despite the clear need of amendment, and the *only* recommendation to be included was the appointment of legal coroners.¹¹⁵ The *Lancet* considered this proposal to be 'unique as a piece of effrontery to the profession which ha[d] preserved the office of coroner from utter worthlessness'.¹¹⁶ *The Solicitors' Journal* saw it differently:

. . . in future medical men shall be disqualified from holding the office; and if so, we hope that effect may speedily be given to the recommendation by legislation.¹¹⁷

However, the Bill did include some important changes. It incorporated the 1860 Select Committee recommendation for the conditions under which a coroner had to hold an inquest. This was an improvement, but the application of such general rules to particular cases would still pose problems of judgement and discretion¹¹⁸ for the coroners as to whether to hold an inquest or not. Two specific problems associated with the 1870s inquests were dealt with. The view of the body was to be limited to the coroner alone (unless a jury expressed a desire to view),¹¹⁹ and only one inquest would be necessary where several deaths arose from one accident.¹²⁰ The appointment of coroners was to be made by the local authority—in effect, the magistrates at that time.¹²¹ But an

¹¹⁵ PP 1878-79 (243) II.87 Bill to consolidate and amend Law relating to Coroners [as amended by Select Committee]

¹¹⁶ *Lancet* 2: Jul 5 1879 p.24

¹¹⁷ *Solicitors' Journal* 23: Jun 28 1879 p.675

¹¹⁸ Blau and Scott op.cit. p.6

¹¹⁹ PP 1878-79 (243) II.87 op.cit. Clause 6

¹²⁰ *Ibid.* Clause 8

¹²¹ *Ibid.* Clause 13

important omission in the Bill was that there was still no system established for informing the coroner of violent or unnatural deaths.¹²²

The slow pace of the select committee ensured that the amended Bill had no chance of becoming law and was withdrawn without debate. It was assumed that the Home Office would employ the recess to redraft the Bill to include the recommendations in the Committee's Report, 'otherwise Mr. Secretary Cross and his legal colleagues had better have left the coroners alone.'¹²³

Early in 1880, the metropolitan medical coroners met to discuss 'the impending legislation'¹²⁴ indicating clear expectations that the Bill would be quickly reintroduced into Parliament. But considerable time and effort were going to be required to make the Bill acceptable since it would not, and could not, satisfy the demands of all the interested parties—particularly the recommendation for legal coroners. Indeed, in February, the BMA Political Bills Committee met the Home Secretary to press the medical profession's aspirations. This was mainly to ensure its continued direct involvement in the coronatorial system by appointing medical coroners or medical assessors.¹²⁵ Cross avoided giving a direct answer by saying that he was 'anxious himself to give effect to the wishes of the medical profession' but that he could not make any changes without consulting the committee on the reasons for the changes they had introduced.¹²⁶

All the indications were that the Bill would be re-introduced early in the new session. Although the administration had another year to run, Disraeli judged it an opportune moment to announce a dissolution of

¹²² Havard op.cit. p.85

¹²³ *Lancet* 2: Jul 26 1879 p.133

¹²⁴ *Ibid.* Jan 17 1880 p.112

¹²⁵ *Solicitors' Journal* 24: Feb 21 1880 p.316

¹²⁶ *Ibid.* p.304

Parliament. He had hoped to win another term in office, but Gladstone was returned to power.¹²⁷

As had occurred in 1860, after a burst of legislative activity the coroners receded into the background. Between 1880 and 1886 there were no inquests of sufficient interest for the press to sensationalise and not a single related question was raised in Parliament. The only Parliamentary proceedings involving coroners was an Irish Coroners Act that was quickly passed in 1881, but no Government or private members Bills on English coroners were introduced until 1887.

Behind the scenes the Coroners' Society made regular inquiries to the new Home Secretary, Sir William Harcourt. But each time the reply was that the Government had no plans to deal with coroners.¹²⁸ The Society asked his permission to introduce its own Bill, but he refused to entertain the idea.¹²⁹ The government stated publicly that its hands were so full that no new business could be undertaken.¹³⁰ In other words, coroners' problems were of low priority compared particularly with those associated with Ireland.¹³¹ Foreign affairs quickly became top priorities, so that virtually all domestic parliamentary business was obstructed or receded as interest focused on these areas.¹³²

A completely unrelated event, a change of government, combined with the government's preoccupation with other problems of a higher priority, had brought coroners' reform to a complete halt.

Two Governments came and went between June 1885 and August 1886. In the latter, Herschell was raised to the peerage and briefly held

¹²⁷ Robert Ensor *England 1870-1914* (Oxford, Oxford University Press 1992) p.64

¹²⁸ CorSoc Annual Report 1880 Vol.2 p.49, Annual Report 1881 Vol.2 p.61, Annual Report 1882 Vol.2 p.71, Annual Report 1883 Vol.2 p.77, Annual Report 1884 Vol.2 p.85

¹²⁹ *Ibid.* Annual Report 1882 Vol.2 p.71

¹³⁰ *Ibid.* Annual Report 1881 Vol.2 p.61

¹³¹ Ian Machin *Disraeli* (London: Longman 1995) p.135, pp.148-9

the office of Lord Chancellor with responsibilities for the coroners. Suddenly and unexpectedly in 1887, activity on coroners recommenced. Early in the year, two private members Bills were introduced into the House. One dealt with non-fatal fire inquests and was promoted by the MP on behalf of the City of London.¹³³ The other was another attempt to deal with the problems surrounding the election of coroners.¹³⁴ Neither Bill made progress.

The Home Secretary, Henry Matthews, was asked about the necessity of juries viewing bodies in certain cases, and answered:

I have no power to dispense with the obligation imposed by the law from a very early period on a coroner's jury to proceed only on view the body; and I should not feel justified in recommending to Parliament any such proposal as the hon. member suggests.¹³⁵

Matthews failed to take the opportunity to inform the Commons that a Coroners Bill would shortly be introduced into Parliament as result of the statute law revision process.

In 1869, Henry Thring had moved from the Home Office to become the first Parliamentary Counsel. This was a 'major step in the inexorable movement away from the individualistic style of legislation in the eighteenth century'. The responsibility for drafting government Bills was transferred from individual departments to the Parliamentary Counsel's Office.¹³⁶ Thring had another task—he also chaired the Statute Law

¹³² Michael Bentley *Politics Without Democracy* Second edition (London: Fontana 1996) pp.232-3

¹³³ PP 1887 (165) I.221 Bill to define Jurisdiction, and to regulate Proceedings of Coroner of City of London with regard to Inquests on Fires within City, Parl. Deb. 3rd Series **237**: col.186 Mar 31 1887

¹³⁴ PP 1887 (193) I.589 Bill to amend Law relating to Election of Coroners

¹³⁵ Parl. Deb. 3rd Series **311**: cols. 578-9 Feb 25 1887

¹³⁶ Gavin Drewry 'Lawyers and statutory reform in Victorian government' in Roy MacLeod (ed.) *Government and Expertise* (Cambridge: Cambridge University Press 1988) p.40

Revision Committee¹³⁷ which was formed to produce a 'Revised Edition of the Statutes'.¹³⁸ In order to achieve that:

. . . certain enactments . . . which may be regarded as spent, or have ceased to be in force otherwise than by express and specific repeal by Parliament, or have, by lapse of time and change of circumstances, become unnecessary, should be expressly and specifically repealed.¹³⁹

The vast and chaotic mass of existing statutes had to be brought into some sort of order by removing unnecessary Acts and consolidating Acts that still obtained.¹⁴⁰

The work of Thring and his committee was the primary impetus for the 1887 Coroners Bill¹⁴¹ which consolidated the law relating to coroners. It was presented to the Lords in July 1887 by the Lord Chancellor, and was based on the work done by the Home Office and the Parliamentary Counsel's Office for the 1879 Bill. However, the Bill codified a few common law provisions which the 1879 Select Committee had approved. For example, it included the obscure common law provision, used by the Gosport coroner in 1875, to adjourn an inquest to the assizes.

The Coroners' Society was resistant to any change in the law. As a result, the Secretary had several interviews with the Lord Chancellor's secretary and the draftsman of the Coroners Bill. It was agreed that the Bill would be amended 'so as to conform in all respects with the existing laws and be simply a consolidating Bill' and all significant alterations were excluded. The Society was still somewhat concerned and left it in

¹³⁷ Parl. Deb. 3rd Series 317: col.1580 Jul 21 1887

¹³⁸ 37 & 38 Vict. c96 Statute Law Revision Act [7th August 1874]

¹³⁹ Ibid.

¹⁴⁰ *DNB* Supplement 1901-1911 Thring p.522

¹⁴¹ PP 1887 (378) I.551 Bill intituled an Act to consolidate Law relating to Coroners

the hands of the Secretary 'to do what was necessary to protect the interests of the Society and coroners generally'.¹⁴²

The Society appeared to have had sufficient influence to prevent changes that it considered detrimental to the coroners' interests. In fact, the Society was probably pushing against an open door. Thring had established an important principle when he set up the Parliamentary Counsel Office. He had defined that before any amendments to the law were undertaken, it was essential to consolidate the existing Acts and ensure that they did not materially alter the existing law.¹⁴³ Only when that process was complete should changes be considered. It was therefore more likely to have been Thring, rather than the Coroners' Society, that ensured that very few amendments were included in the 1887 Bill.

At the second reading of the Bill there was a short debate in which Lord Herschell:

. . . hoped that with this consolidation Bill the subject of the amendment of the law would not be lost sight of. He could not help feeling impressed by the slow way in which we moved in matters of this sort.¹⁴⁴

He pointed out that he had recommended an amendment of the law many years earlier which was incorporated in the law of at least two States in the USA and was reportedly working extremely well. But 'In this country where [the] observations had been made the law stood just as it had ten years ago'.¹⁴⁵ Lord Thring pointed out to him that experience had shown that successful amendment of the law could follow consolidation Acts.¹⁴⁶

¹⁴² CorSoc Aug 5 1887 p.131

¹⁴³ Parl. Deb. 3rd Series 317: cols.1580-1 Jul 21 1887

¹⁴⁴ Ibid. cols.1580

¹⁴⁵ Ibid.

¹⁴⁶ Ibid. cols.1580-81

The Bill quickly completed its passage through the Lords in early August 1887, shortly before the Parliamentary session ended. When it was introduced in the Commons,¹⁴⁷ an MP complained that it was 'an incomplete Bill, and the Lords had had plenty of time to make it a perfect measure'.¹⁴⁸ But the Attorney-General, Sir Richard Webster, made it clear that he would not accept amendments and believed that 'most valuable work had been done'.¹⁴⁹ After a short debate in each House, in which there had been no substantive discussion on any clause, the Act quickly reached the statute book. It repealed thirty three Acts or sections of them dating back to Edward I.¹⁵⁰ It was almost entirely consolidating and, for the most part, removed much of the archaic language of the original statutes.¹⁵¹

The Act had some inconsistencies. It repealed the long obsolete requirement for a coroner to be a knight of the shire, but retained the undefined, and equally irrelevant, qualification of 'having land in fee'¹⁵² defined in the 1340 Act.¹⁵³ More importantly, two important Acts were excluded because they raised questions that could not be dealt with late in the session:¹⁵⁴ the Coroners Act of 1844 (the division of counties into coroners' districts) and the 1860 Act (the payment of county coroners' salaries).¹⁵⁵ Similarly a number of Acts that included important provisions regarding the duties of coroners were not mentioned. For example, the Births and Deaths Registration Act of 1874, the Explosives Act of 1875, and the Coal Mines Regulations Act of 1887. As a result, the legal profession considered the Act to be

¹⁴⁷ PP 1887 (378) I.551 op.cit.

¹⁴⁸ Parl. Deb. 3rd Series 321: col.214 Sep 10 1887

¹⁴⁹ *Ibid.* cols.214-5

¹⁵⁰ 50 & 51 Vict. c.71 op.cit. Third Schedule pp.365-69

¹⁵¹ *Solicitors' Journal* 33: Nov 5 1887 p.4

¹⁵² 50 & 51 Vict. c.71 op.cit. s.12

¹⁵³ 14 Ed.III stat.1 c.8 [1340] cited in Havard op.cit. p.31

¹⁵⁴ 1887 (378) I.551 Bill, intituled, an Act to consolidate Law relating to Coroners

[Lords] Preamble

¹⁵⁵ 7 & 8 Vict. c.92 An Act to amend the Law respecting the Office of County Coroner [9th August 1844] ss.1-8, 23 & 24 Vict. c.116 An Act to amend the Law relating to the Election, Duties and Payment of County Coroners [28th August 1860] s.4

unsatisfactory¹⁵⁶ and the exclusions and omissions created an expectation of an amending statute.¹⁵⁷

Burney describes the 1887 Act as:

. . . an important landmark in the history of the modern inquest, as it codified much of the standing common law precedents governing inquest procedure, and made the office of coroner an appointed rather than an elected office.¹⁵⁸

This is somewhat misleading since Burney is in error on two points. First, it is generally agreed that the Act was 'no more than a great consolidating measure' and not a codification.¹⁵⁹ Thring's definition of the difference between the two is clear:

Codification is the reduction into a systematic form of the whole of the law relating to a given subject, that is to say, of Common Law, the Case Law, and the Statute Law; while consolidation differs from codification in this alone, that it omits the Common Law and comprises only the Statute Law relating to a subject as illustrated or explained by judicial decisions.¹⁶⁰

As noted above, the 1887 Act codified only minor aspects of the common law. Second, the Act made *no change* in the process of appointment of a coroner to his office—that resulted from the 1888 Local Government Act which is dealt with below.

Brodrick described The 1887 Act as a 'watershed in the development of the office of coroner'.¹⁶¹ There are four reasons for that. First, it gave a considerable boost to the security of tenure of the coroners. Much of the consolidation work had been completed in 1878-9, but it still required

¹⁵⁶ *Solicitors' Journal* 33: Nov 5 1887 p.5

¹⁵⁷ *Ibid.*

¹⁵⁸ Ian Adnan Burney *Decoding Death: Medicine, Public Inquiry, and the Reform of the English Inquest, 1836-1926* (unpublished University of California at Berkeley PhD thesis 1993) pp.27, 117 [Hereafter: Burney Thesis]

¹⁵⁹ Anderson 1987 *op.cit.* p.36

¹⁶⁰ Henry Thring *Practical Legislation; or the composition and language of Acts of Parliament* (London: Clowes & Sons, Longman & Co., Trübner & Co., Knight & Co., Stevens & Sons, Shaw & Sons 1878) p.v

¹⁶¹ Brodrick *op.cit.* p.114

much time and effort in preparation even before the Parliamentary proceedings. If there had been any likelihood of abolition of the office, the Parliamentary Office would not have wasted time on the process.

Second, the coroners' responsibilities for financial aspects had declined over the years:

. . . the Act confirmed that the emphasis of the office was no longer on protecting the financial interests of the Realm, but rather on providing a service for the investigation of both the cause and the circumstances surrounding deaths, for the eventual benefit of the community as a whole.¹⁶²

The coroner retained only the relatively minor financial responsibility for treasure trove. Most importantly, the Act defined in a broad and comprehensive manner the cases in which an inquest had to be held, so that the coroner gained sufficient powers and authority to enable him to perform his duties efficiently. However, just providing such powers and authority did not guarantee that the provisions would be any better interpreted or acted upon by the coroners.

Third, as pointed out by Lord Bramwell (and Thring), 'the best way to see what Amendments were required in any body of law, was to consolidate the existing laws'.¹⁶³ The 1887 consolidating Act provided a platform for genuine reform.¹⁶⁴

Fourth, although the 1887 Act was a very positive development for the potential reform of the office of coroner, that was not its primary aim. It came about as a result of the changes that were taking place in the way central government operated and the need to up-date the statute book. The driving force was completely unrelated to the coroners, but it had a powerful tangential effect on them. The 1887 Act made it clear that, despite resistance to any significant change and attachment to ancient

¹⁶² Brodrick op.cit. p.114

¹⁶³ Parl. Deb. 3rd Series 317: col.1580 Jul 21 1887

¹⁶⁴ Brodrick op.cit. p.114

traditions and procedures, the coroners were not able to avoid the changes associated with the developments in government.

LOCAL GOVERNMENT REFORM AND THE CORONERS:

As argued in chapter three the professional and personal qualities of the coroner were of paramount importance in investigations into unexplained deaths. There was a need for a high level of honesty, integrity and independence with considerable inter-personal skills. The problems of the 1870s, particularly the Bravo inquest, demonstrated that these qualities were not always present and raised questions about the qualification, selection and process of election of county coroners. The problems were not new and had long existed. Parliament was already familiar with the problems as a result of many attempts to amend the system by private members' initiatives.

The method of election and appointment of county coroners was essentially the same as it had been in the mediaeval period¹⁶⁵—election by the freeholders at the hustings. But the whole process was notoriously corrupt and extremely expensive.¹⁶⁶ An election to office could only be won with the aid of an organisation resembling that of a parliamentary election using all the related tactics, including bribery and impersonation. As one candidate reported, for many of the electors the '*argumentum ad argentum*' was the only one that commanded attention.¹⁶⁷ Dr. Lankester had thought it objectionable that any medical man 'with a purse sufficiently long, and a conscience sufficiently easy to bribe the largest number . . . should be allowed to hold the office.'¹⁶⁸ The election process frequently cost £10,000 to £12,000¹⁶⁹ and this was exorbitant when compared with the potential rewards for office.¹⁷⁰

¹⁶⁵ Havard op.cit. p.65

¹⁶⁶ *BMJ* 2: Sep 5 1868 pp.254-5

¹⁶⁷ *Lancet* 1: Jan 26 1867 p.135

¹⁶⁸ *BMJ* 2: Sep. 5 1868 p.254-5

¹⁶⁹ Parl. Deb. 3rd Series 230: col.1301 Jul 11 1876

¹⁷⁰ 'The Costs of a Coronership' *Pall Mall Gazette* Feb 26 1868 p.5a

Lankester spoke from bitter experience. His estate went into receivership on his death¹⁷¹ and Hardwicke was declared a bankrupt when he first attempted to achieve office in 1868.¹⁷² The expense discouraged well-qualified and professional candidates from standing for election. Others withdrew because of the poor rewards when compared to the benefits of private medical practice.¹⁷³ These factors may explain why there were relatively few medical coroners in office in the 1880s.

Apart from expense there were two more problems that presented difficulties in raising the standards of coroners. First, the qualifications required for a coronatorial candidate were minimal. The qualifications for a franchise coroner depended on the conditions prescribed in the charter (usually undefined). A borough coroner was required only to be 'a fit person'¹⁷⁴ and that raises the question: to what degree of fitness did men appeal when recruiting coroners?¹⁷⁵ For a county coroner the only requirement was an indefinite holding of land that could be met by the possession of 'a grave in a churchyard'.¹⁷⁶ Although there had been demands since the 1850s that candidates should have a relevant qualification, such as 'a diploma, certifying the possession of a competent knowledge of medical jurisprudence',¹⁷⁷ no change had resulted. Second, there was no income requirement and no register of those qualified to vote as there was for parliamentary voters. Every freeholder could vote for a coroner—even the 'owner of a pigsty'.¹⁷⁸ The

¹⁷¹ Mary English *Victorian Values: The Life and Times of Edwin Lankester* (Biopress, Bristol 1990) p.161

¹⁷² *London Gazette* 1: 1869 p.700 and p.1434. KB12/91 King's Bench writ to Diplock 1868; B6/116 Court of Justice in Bankruptcy and Predecession; London District General Docket Book 1869 Jan-Dec A-K

¹⁷³ *Lancet* 1:Jan 18 1868 p.95

¹⁷⁴ 5 & 6 Will. IV c.76 An Act to provide for Regulation of Municipal Corporations in England and Wales [9th September 1835] s.62,

¹⁷⁵ Ernest Peter Hennock *Fit and Proper Persons* (Edward Arnold, London 1973) p.1. This book was brought to my attention by G.H.H. Glasgow

¹⁷⁶ Parl. Deb. 3rd Series 230: col.1313 Jul 11 1876

¹⁷⁷ William Farr 'Suggested Improvements in the Coroner's Inquest' PP 1857-8 (2431) XXIII.1 Nineteenth Annual Report of the Registrar-General p.205. See also: HO45/6554 Registrar-General's circular to coroners, CorSoc Oct 5 1858 Vol.1 p.491

¹⁷⁸ *The Times* Sep 30 1876 p.4d

problem was that there were men who were prepared to accept bribes to perjure themselves by claiming to be a freeholder in order to vote.¹⁷⁹

These points had been made concisely at the time of the Bravo scandal:

This [election] process entails heavy expenses upon the candidates, and is certainly ill-calculated to secure for the office the person best able to perform its important duties. Further, the qualification of the electors is such as to secure the exclusion from the constituency of those persons who may be most likely to form a competent opinion of the merits of the candidates in relation to the requirements of the office.¹⁸⁰

This is clearly an appeal for the selection to be made by an elite class. However, there was a more important factor which made the election of coroners an early target for reform after the passing of the 1887 Act. The disreputable and corrupt practices of parliamentary elections, which had been reflected in coroners' elections, had been virtually eradicated by the mid-1880s.¹⁸¹ MPs could no longer tolerate the abuses in coronatorial elections.

In March 1888 the Lord Chancellor presented a Bill in the Lords concerning the election and appointment of coroners.¹⁸² The main objective of the Lord's Bill was to place the appointment of *all* coroners in the hands of the Lord Chancellor to bring them in line with county court judges and recorders.¹⁸³ Such reform had been suggested in the past. The Parliamentary Bills Committee of the BMA had passed a

¹⁷⁹ *Hertfordshire Guardian* Jun 12 1852 p.3e and *Hertford Mercury* Jun 12 1852 p.3e/f, *Hertfordshire Guardian* Jun 10 1854 p.8e and *Hertford Mercury* Jun 10 1854 p.3f

¹⁸⁰ *The Times* Sep 30 1876 p.4d

¹⁸¹ Cornelius O'Leary *The Elimination of Corrupt Practices in British Elections 1868-1911* (Clarendon Press, Oxford 1962) pp.229-30

¹⁸² *Parl. Deb.* 3rd Series 326: col.287 May 15 1888

¹⁸³ *Lancet* 1: Apr 7 1888 p.685, *BMJ* 1: Apr 12 1879 p.568, *The Times* Sep 30 1876 p.4d

resolution in 1879 to that effect¹⁸⁴ and Mr. Serjeant Cox had made the same proposal a year or two earlier.¹⁸⁵

Lord Herschell stated the problems associated with the proposal:

The mode of popular election was an unsatisfactory one; but there was a widespread feeling that the coroner ought to be regarded to some extent as a representative of the people, and should not be appointed by the Executive. If they did away with popular election altogether in this matter as it now existed, they were not likely to carry public opinion with them in attaining the end which they had in view by substituting for the present system a system of appointment by the Lord Chancellor or any other officer of the Government of the day.¹⁸⁶

To preserve the representative aspect, he suggested vesting the appointment in an elected body, such as the proposed, but still non-existent, county councils.¹⁸⁷ The Lord Chancellor commented that:

. . . he had read a great number of communications, which all concurred in condemning the present [electoral] practice as an intolerable nuisance, there was *no such unanimity as to the system to be substituted for it.*¹⁸⁸ [emphasis added].

The lack of agreement was not new and that had prevented progress in the past. But the comment tends to support the suggestion that the Government was attempting to remain 'neutral' and unwilling to impose a solution without the consensus of the interested parties.

The Coroners' Society attempted to visit the Lord Chancellor with amendments, but he would not agree to a meeting. The management committee of the Society had made a significant change of policy. It agreed that *if an opinion was requested*, then it would state that:

¹⁸⁴ *BMJ* 1: Apr 5 1879 p.526

¹⁸⁵ *The Times* Jul 18 1876 p.11d

¹⁸⁶ Parl. Deb. 3rd Series 326: col.289 May 15 1888

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.* col.288

. . . the Society considered the appointment of County Coroners should be in the hands of the proposed County Councils and Borough Coroners in the hands of the Corporations.¹⁸⁹

This decision represented a fundamental break with the ancient tradition of freeholder election, apparently without any consultation with the members. This was a remarkable change considering that the Society had opposed all reforms to the office of coroner for many years. The reason for the Committee's reluctance to 'express an opinion' is not clear. The members of the committee may have felt that they had not kept faith with the ancient traditions of the office by agreeing to such a change. Had the Lord Chancellor agreed to a visit by the Society, he could hardly have failed to ask their opinion on the electoral provisions of the Bill. The change in stance may have been the reason the Society sought a meeting with him.

There is no indication as to what caused the concession of such an important principle, but two factors can be considered as particularly influential in the decision. First, it appeared that reform of some sort was inevitable. During the Lords' debate, the Lord Chancellor referred to the recent election in Hackney that had been 'the subject of the greatest possible complaint'.¹⁹⁰ As Anderson notes, this 'seemed to show yet again the impossibility of allowing election by the freeholders to continue'.¹⁹¹ Second, the Society was very aware of the severe financial difficulties that had been imposed, and continued to be imposed, on county coroners as a result of the election processes. The Society had no alternative to offer and, albeit reluctantly, accepted the proposed change.

The Parliamentary Committee of the BMA considered the proposed Lords' Bill and changed the stance adopted in 1879. It now believed that the proposal in the Bill:

¹⁸⁹ CorSoc May 30 1888 Vol.2 p.169

¹⁹⁰ Parl. Deb. 3rd Series 327: col.958 Jun 22 1888

¹⁹¹ Anderson 1987 op.cit. p.258 n.78

. . . to transfer the power of selection to the Lord Chancellor . . . add[ed] a most undesirable mass of patronage to that already possessed by that high functionary. Nor is there any doubt that the patronage so vested would . . . [be] . . . exercised almost exclusively in favour of lawyers; so that the opportunity of office for medical aspirants for coronerships have so often succeeded in obtaining . . . would have been swept away.¹⁹²

The BMA was expressing its usual concern that 'the profession may easily and quickly be deprived of almost its only public emolument outside the routine of practice.'¹⁹³

In the debate the Lord Chancellor responded to the objection to him appointing coroners by saying that his mind was 'quite open upon this matter, and he certainly should not jealously claim the patronage which the Bill gave him.'¹⁹⁴ However, it was generally agreed that the problem needed resolution and the proposal in the Bill appeared to be an effort to find an acceptable answer.

Dr. G. Danford Thomas, the coroner for Central Middlesex and a member of the Coroners' Society Management Committee, informed the BMA's Parliamentary Bills Committee that the Society had changed its policy. For once, the two organisations were in full agreement.¹⁹⁵ Ernest Hart, who dominated the BMA for over thirty years as editor of the *BMJ*,¹⁹⁶ was authorised by the Committee to 'endeavour to obtain' the transfer of the selection of coroners from the Lord Chancellor to the proposed, but still non-existent, county councils.¹⁹⁷ The Society's change was almost certainly communicated to the Lord Chancellor by

¹⁹² *BMJ* 2: Jul 21 1888 p.130

¹⁹³ *Ibid.* 1: May 1 1869 p.401

¹⁹⁴ *Parl. Deb.* 3rd Series 326: col.287 May 15 1888

¹⁹⁵ *BMJ* 1: Jul 21 1888 p.131

¹⁹⁶ Peter W.J. Bartrip *Mirror of medicine, a history of the British medical journal* (Oxford: Clarendon Press 1990) p.36

¹⁹⁷ *Ibid.* p.130

Lord Herschell since it was acknowledged in the Lords that he had made the suggestion.¹⁹⁸

The Lord Chancellor was now presented with the 'unanimity' that had previously been missing and an opposition amendment at the Committee Stage incorporated the proposal into the Bill.¹⁹⁹ The principle had been accepted by the Government that the county councils should appoint county coroners. The Bill completed all its stages in the Lords and passed to the Commons,²⁰⁰ but proceeded no further because of legislative activity related to local government.

At the same time as the coroners Bill appeared in the Lords, a long Bill of 109 pages, with 125 clauses and five schedules²⁰¹ had been introduced into the Commons. The objective was to transfer the administrative duties of local government from the justices of the peace in quarter sessions to county councils. The Bill dealt with the most complicated and difficult questions associated with the reform of local government and affected many conflicting interests,²⁰² as shown in the twenty-two long and late sessions at the Commons committee stage of the Bill.

The Bill appeared to be relatively innocuous as far as the coroners were concerned since it contained only two clauses that referred to them. The new county councils would be responsible for the payment of salaries and expenses²⁰³ and for the appointment of some borough

¹⁹⁸ Parl. Deb. 3rd Series **328**: col.1373 Jul 16 1888

¹⁹⁹ Ibid. **327**: cols.956-8 Jun 22 1888

²⁰⁰ House of Lords *Journal* Jul 26 1888 p.341

²⁰¹ PP 1888 (182) IV.37 A Bill to amend the Laws relating to Local Government in England and Wales and for other purposes connected therewith.

PP 1888 (338) IV.155 Bill to amend Laws Relating to Local Government in England and Wales and for other purposes connected therewith [as amended in Committee]

PP 1888 (373) IV.271 Bill to amend Laws Relating to Local Government in England and Wales and for other purposes connected therewith [Lord's amendments]

²⁰² Parl. Deb. 3rd Series **330**: col.354 Aug 10 1888

²⁰³ PP 1888 (182) IV.37 op.cit. clause 3 (xii)

coroners.²⁰⁴ At an early stage in the Bill, the LGB President, Mr. Ritchie, stated that:

. . . the Bill does not propose any alteration in the mode by which County Coroners are appointed. The words of the clause are, no doubt, liable to misconstruction and I will take care so that it is amended in Committee so as to make the matter clear.²⁰⁵

The Coroners' Society had carefully studied the Bill. It recognised a problem for coroners relating to the creation of the London County Council (LCC) from parts of the three counties of Middlesex, Surrey and Kent. There was no provision for the coroners to continue operating in the new county, so that inquests could only take place when the coroners were re-appointed after the LCC had been elected at some time in the future.²⁰⁶ The LGB President, Charles T. Ritchie, was informed of the details,²⁰⁷ and appropriate amendments made later in committee.²⁰⁸ In the same session, a backbench MP proposed an amendment to transfer the appointment of county coroners to the county councils.²⁰⁹ Ritchie stated that the Government had already accepted the principle, and the clause was quickly agreed within minimum debate.²¹⁰

In the same session, a new clause was agreed to permit county councils to appoint medical officers of health. There were two related clauses. The first required that no person could be appointed to the post without being registered as qualified to practise medicine, surgery or midwifery. The second required that in future, the person had also to be 'in the medical register as the holder of a diploma in sanitary science, public health, or State medicine . . . ' if there were more than 50,000

²⁰⁴ Ibid. clause 34

²⁰⁵ Parl. Deb. 3rd Series 324: cols.1741-2 Apr 19 1888

²⁰⁶ CorSoc May 30 1888 Vol.2 p.151

²⁰⁷ Ibid. pp.151-2

²⁰⁸ Parl. Deb. 3rd Series 328: cols.1652-3 Jul 18 1888

²⁰⁹ Ibid. col.1720

²¹⁰ Ibid. col.1723, cols.1724-29

inhabitants.²¹¹ This clause was also incorporated into the Bill with minimum debate²¹² and must have had the support of the Government. The clause was proposed by Sir William Foster, a member of the medical profession, with the intention of raising the professional level of future medical officers of health. However, it also had the effect of introducing an element of specialisation. No similar definition of a qualification requirement for future coroners was incorporated.

The Local Government Act reached the statute book in August 1888²¹³ and the *BMJ* claimed that:

. . . the Parliamentary Bills Committee of the British Medical Association has been able to exercise an *important influence on the course of legislation*; and that influence has been exercised in accordance with principles and on lines already discussed and approved by the Association.²¹⁴ [emphasis added]

It claimed to have influenced the sections giving powers to the county council to appoint county coroners and county medical officers of health.²¹⁵

When the Bill was introduced into Parliament, it 'did not propose any alteration in the mode by which County Coroners are appointed'. Yet with minimum debate in either House, no resistance, and almost unnoticed, a measure was enacted that made a fundamental break with the 700 year old tradition of election of coroners to office by the freeholders. As Eastwood says, 'Parliament venerates itself and its antiquity',²¹⁶ but it showed little sentiment for the traditions and antiquity of the coroners in 1888—or local government.²¹⁷

Lord Herschell believed there was little to fear from the change:

²¹¹ 51 & 52 Vict. c.41 Local Government Act 1888 s.18 (1), (2)

²¹² *BMJ* 2: Jul 21 1888 p.131

²¹³ 51 & 52 Vict. c.41 op.cit.

²¹⁴ *BMJ* 2: Jul 21 1888 p.130

²¹⁵ *Ibid.* pp.130-1

²¹⁶ Eastwood Community op.cit. p.167

²¹⁷ *Ibid.*

In the boroughs the coroner was appointed by the Borough Council, and he trusted that County Councils about to be created would be no less worthy of confidence.²¹⁸

Nevertheless, the Coroners' Society had conceded an important principle. How long would it be before it was prepared to concede the other traditional practices and principles: the custody of the body, the view of the body and the coroner's jury?

*

The sensational inquests of the 1870s brought sufficient pressure to bear on the Home Secretary to introduce legislation to reform the office of coroner. The amendments introduced by the select committee would have moved the system towards the Scottish system, with a secret preliminary inquiry and concentration on criminal activities. That would have been satisfactory to the medical profession which wanted to avoid lay judgements and adverse publicity. However, as Lord Herschell pointed out, 'there was a widespread feeling that the coroner ought to be regarded to some extent as a representative of the people'.²¹⁹ It was impossible to reconcile the Scottish system with the demands of society—the right to public knowledge and the participation of 'the people' in the justice system. The demands for change were not universally welcomed by either the coroners or the medical men, though there were those who saw that change was necessary—even inevitable. A general election brought the process to a complete halt, though the efforts of the Home Secretary were not entirely wasted because the 1879 Bill came to fruition in the statute law revision process and provided the basis for the 1887 Coroners Act. The Act was important because it essentially confirmed that the office would not be abolished, but it also provided the coroner with sufficient power and authority to enable him to perform his duties efficiently. The following year a Government Bill to amend the 1887 Act acted as a catalyst to

²¹⁸ Parl. Deb. 3rd Series 327: col.957 Jun 22 1888

achieve consensus that county councils should appoint county coroners. This measure was incorporated in the 1888 Local Government Act. It was the first time that the Coroners' Society accepted a significant change to their ancient constitution and the first break with the ancient traditions of the office. However, the changes did not remove any of the coroners' traditional powers or authority

This chapter provides evidence of centralisation and the emerging administrative state with the establishment of the Parliamentary Counsel's Office and especially the LGB. The task of the Parliamentary Counsel was to improve the drafting of government Bills. The LGB's task was to take over the administration of the Poor Law. The LGB eventually became the Ministry of Health in 1919. The changes that were taking place in government at both national and local level were unrelated to the coroners' affairs, but they had a significant tangential effect on them. Despite clinging to their ancient traditions and practices, the coroners were unable to avoid the changes associated with these developments.

In this period, there was no attempt to think in any systematic way about the office, no attempt to stand back to find the best way of investigating unexplained deaths, to figure out what the investigation involved, to reflect on the institution and how it worked, what it meant and where it fitted in to the social scheme of things.²²⁰ There was no disagreement that unexplained deaths needed to be investigated, but with a system so plagued by obvious mundane problems and practical defects which were obvious to everybody²²¹ it was easy to put forward what appeared to be straightforward practical solutions. The problem was that, apart from the resistance to change, these solutions were too diverse to permit reasonable compromise that would have provided a way forward. The government appeared to want to remain 'neutral' and

²¹⁹ *Ibid.* 326: May 15 1888 col.287

²²⁰ Garland Society *op.cit.* p.277

was reluctant to devise or impose its own policy or solutions. It appeared to be prepared to act only when there was a consensus between the interested parties—as on the election of coroners.

It has been seen that there was no single cause or functional purpose in this process of change, the process was fragmentary, fitful and without a strategist.²²² Lord Herschell was undoubtedly an important figure throughout the period and *influenced* reform, but he was not a strategist or driving force behind the reform. He was only one part of the process of change that involved input from the magistrates, the BMA, the Coroners' Society, the SSA, the press, the Local Government Board and the Registrar-General's Department, the Home Office and a number of individuals. The haphazard way in which the legislation reached the statute book²²³ is emphasised by the effect that three completely unrelated events had on the reform of the office of coroner. In 1880, a general election brought reform to a complete standstill for several years. The 1887 Coroners Act and the change in the 1888 Local Government Act resulted from indirect, unrelated, tangential changes in the processes of national and local government.

1888 marked the end of an important period in the history of the office of coroner and inquests with an Act that provided a solid basis for reform. The coroner and inquest system had survived and increased in importance. The London County Council (LCC) came into existence in 1899 and started quietly to deal with the coroners it inherited. The next chapter is devoted to the period up to 1907. It concentrates on the LCC's efforts to integrate the coroners into its bureaucratic administrative system, the policy that it developed to deal with the coroners and the problems that resulted from it.

²²¹ *Ibid.* op.cit. p.277

²²² Garland Welfare op.cit. pp.161-2, Brodrick op.cit. p.xii, n.2

²²³ Brodrick op.cit. p.xii, n.2

CHAPTER 6

THE LONDON COUNTY COUNCIL AND THE CORONERS

[The Report] contains so much controversial matter and involves such important changes in the law, . . . it is not advisable for the coroners to make any further observations, or to offer suggestions thereon.¹

The London County Council (LCC) came into being in 1889 as a consequence of the legislation discussed in the last chapter and was immediately confronted with the requirement to amalgamate and unify the administrative processes of the parts of Middlesex, Kent and Essex it comprised. This included dealing with the twelve coroners that it inherited. They brought into focus problems that had been all too familiar to the magistrates and others who had been attempting to reform the inquest system for many years. This chapter covers the period from 1889 to 1907 and examines the policy developed by the LCC to deal with the London coroners and the implementation strategy. It also examines related aspects of the bureaucratic approach that was gaining ground in both local and national government, and the resistance in society to change emanating from 'looking back' to traditional values and customs.²

The new county of London was created without any attention being paid to population or any other factors, but simply by adopting the 'boundaries fixed over thirty years earlier for the Metropolitan Board of Works'³ (MBW). As a result of the elections in 1899, the LCC came under the control of 'a loose alliance of Liberals, Radicals, and

¹ *Lancet* 2: Nov 17 1894 p.1171, *BMJ* 2: Nov 24 1894 p.1214

² Martin J. Wiener *English Culture and the Decline of the Industrial Spirit 1850-1980* (Cambridge 1981) p.43

³ R.C.K. Ensor *England 1870-1914* (Oxford, Oxford University Press 1992) p.296

Socialists' who co-operated as 'Progressives'.⁴ They, and the many officers who served them, believed that municipal activity could provide an efficient collective response to contemporary social problems without undue dependence on the state. As Davis points out:

The LCC Progressives added to the traditional elements of provincial municipalisation an emphasis upon the local authority's role in tackling social problems—a direct response to the widespread public concern about London's poverty, overcrowding, unemployment and sweated labour in the 1880s.⁵

Their opponents chose to call themselves the 'Moderates', which emphasises the potentially contentious nature of the 'Progressives' agenda. That agenda was a potential source of problems because of the developing similarity between local and national politics.⁶ A further difficulty was that the national governments were 'notorious for their reluctance to let London look after itself'.⁷ In fact, between 1889 and 1907 there were only two periods (1892-5 and 1906-7) when sympathetic administrations held power at Westminster.⁸ Of course, much routine work could be carried out without reference to Parliament, but local authorities worked within a statutory framework with ground rules that were set in Westminster.⁹ Therefore, in any central-local relations, the government 'would always have the whip hand over the LCC'.¹⁰

There were other difficulties. The LCC was limited in its scope to perform because of the local boroughs and the unusual split of

⁴ Gloria C. Clifton 'Members and Officers of the LCC, 1899-1965' in Andrew Saint (ed.) *Politics and the People of London: The London County Council 1889-1965* (Hambleton Press, London and Roncerverte WV 1989) p.2

⁵ John Davis 'The Progressive Council, 1889-1907' in Saint op.cit. p.28

⁶ Ibid.

⁷ Andrew Saint op.cit. 'Introduction' [Hereafter: Intro.], see also: Ken Young and Patricia L. Garside *Metropolitan London: Politics and Urban Change, 1837-1901* (London: Edward Arnold 1982) especially Chapters 3 and 4.

⁸ William A. Robson *The Government and Misgovernment of London* Second edition (London, George Allen and Unwin 1948) p.87

⁹ John Davis 'The Progressive Council 1889-1907' [Hereafter: Progressive] in Saint op.cit. p.28

¹⁰ Saint Intro. op.cit. p.xii

responsibilities with them. The LCC's authority was reduced further in 1899 by the creation of new boroughs with increased powers.¹¹ There were also numerous *ad hoc* bodies over which the LCC had no control, such as the Boards of Guardians and the Metropolitan Police.¹² A further anomaly was created by the exclusion of the City of London from the LCC's jurisdiction in 'deference to its unique character and tradition'.¹³ These were major weaknesses which prevented the LCC from functioning as a completely autonomous body. Nevertheless, it possessed more extensive power than any of its predecessors¹⁴ and grew rapidly in stature, soon becoming the most progressive council in the country.¹⁵

The main driving force for the reformed county government was administrative efficiency¹⁶ and that encouraged the formation of a centralised, bureaucratic system in order to achieve uniformity. In the case of the LCC, the image of a 'new start' concealed many continuities with the habits and policies of the supposedly discredited MBW¹⁷ which it inherited in its entirety. This provided a ready made hierarchical bureaucracy that became the basis of an administrative organisation to deal with the different county systems it inherited from Kent, Middlesex and Surrey. Some services which the LCC had inherited and was supposed to run, like the fire-brigade, enjoyed semi-independent status and proved difficult to direct and control.¹⁸ The coroners were essentially in the same category.

¹¹ David Cannadine *The Pleasures of the Past* (London: Collins 1989) [Hereafter: Past] p.160, see: 62 & 63 Vict. c.14 An Act to make better provision for local government in London [London Local Government Act] [13th July 1899]

¹² Tony Byrne *Local Government in Britain* Sixth edition (London: Penguin 1994) p.110

¹³ *Ibid.* p.19

¹⁴ John Davis *Reforming London: The London Government Problem 1855-1900* (Oxford: Clarendon Press 1988) p.103

¹⁵ Robert Pearce and Roger Stearn *Government and Reform 1815-1918* (London: Hodder & Stoughton 1994) p.95

¹⁶ Eastwood Community p.167

¹⁷ Saint Intro. *op.cit.* p.x

¹⁸ *Ibid.*

The twelve London coroners were highly independent individuals, with relatively no supervision and limited accountability to the Lord Chancellor. Only two or three of the coroners worked full-time, the remainder combined their office with practice as solicitors,¹⁹ and several still held office in two counties as a result of the 1888 Local Government Act. The London coroners were unusual in that their districts were in close proximity and they could easily get together for discussions. Several of them were on the Council of the Coroners' Society which gave them some influence over its policy. The task of dealing with the coroners was delegated by the LCC to the Public Control Committee (PCC), which had wide responsibilities for what is now termed social policy.²⁰ The Committee was probably unaware of the amount of time it would spend on such a small group of people.

At an early stage, it was necessary to define a common scale of fees and expenses at inquests for the new county. Rumours of corruption at the MBW²¹ made the LCC particularly vigilant in respect of cash payments. The high level of expenses in the old Surrey area were investigated and showed that the coroners were placing too much trust in their officers. At nearly every inquest fees were charged whether a service had been performed or not and, even when fees charged were valid, the coroner's officers retained a proportion for themselves. The cases involving these frauds ended in penal servitude sentences.²²

The PCC appeared to have no intention of interfering with the coroners' traditional role, but it wanted to centralise the administrative power that would give it bureaucratic control over the coroners and fit them into a standard grade within the organisational hierarchy of other county

¹⁹ LCC: *Minutes of Proceedings* Jan 29 1895 pp.87-8

²⁰ Susan D. Pennybacker *A Vision for London 1889-1914: labour, everyday life and the LCC experiment* (London & New York: Routledge 1995) p.12

²¹ Gloria C. Clifton *Professionalisation, patronage and public service in Victorian London: the staff of the Metropolitan Board of Works 1856-1889* (London: Athlone 1992) p.158

²² *BMJ* 1: May 28 1892 p.1151, See also LCC: *Minutes of Proceedings* Dec 23 1891 p.1335, Mar 1 1892 p.197 and Apr 24 1894 p.455

officers. To achieve this it was first necessary to reduce the number of coroners so that they all worked full-time with an approximately equal amount of work. Two distinct stages would be required. The first requirement would be a reorganisation of the coroners' districts. The second requirement would be legislation to amend the 1860 Coroners Act (which related salaries to the number of inquests held)²³ so that a salary scale could be defined.

The coroners' districts presented the greatest difficulties. The problems associated with the London coroners who still had part of their district in the new county and part in the old county were resolved using the processes provided in the Local Government Act.²⁴ The Privy Council eventually approved the changes after an agreement between the three counties and the Duchy of Lancaster to separate the coroners' districts.²⁵ However, that left wide variations between coroners' districts:

The circumstances vary somewhat in the several London districts, not only on account of the differences in the sizes of the districts, the number of inquests held, but in the density of the populations. For instance, in some of the southern districts, although the districts are of large area, the number of inquests held is between 200 to 300 per annum, whilst on the northern side of the Thames some of the districts are so densely populated that the number of inquests reaches up to 1,500 per annum.²⁶

The LCC had powers to divide, alter and name county coroners' districts under an early Victorian Act²⁷ which appeared to permit them to make changes in the boundaries of the county coroners' districts so that the number of inquests in each was approximately the same. However, the inconvenient franchise coroners' districts within the county hindered rational reorganisation. In these districts, the LCC neither appointed the

²³ 23 & 24 Vict. c.116 An Act to amend the Law relating to the Election, Duties and Payment of County Coroners [28th August 1860]

²⁴ 51 & 52 Vict. c.41 Local Government Act [August 15, 1888] s.5 (4) and (3) respectively

²⁵ LCC: *Minutes of Proceedings* Sept 27 1892 pp.789-90

²⁶ *Ibid.* Oct 18 1891 p.986

franchise coroners nor had any responsibility for them except to pay the salaries and related expenses.

Franchise coroners came into existence in the thirteenth century²⁸ and individual lords of the manor appointed the majority of them; universities, cathedral chapters, the Admiralty etc appointed the others. In London, some jurisdictions were very small, even minute²⁹ (see Map I), and these, with the three large franchise jurisdictions in Westminster, Southwark and Clapham, made it particularly difficult to reorganise the districts. The only attempt to change the process of appointment of franchise coroners was in the Lord Chancellor's 1888 unsuccessful Bill.³⁰ But when that failed to proceed, no consideration was given to them or the problems they posed to reorganisation when the 1888 Local Government Bill was debated. Indeed, as was seen in chapter 5, the reforms associated with coroners in that Bill, though important, were minimal.

The PCC quickly discovered that its plans for reorganisation were going to be more difficult to implement than had been anticipated. In 1889, the PCC attempted to take over the appointment of the new coroner for the Liberty of the Tower of London and associated franchises. The vacancy provided the opportunity to integrate these small, isolated jurisdictions (See Map I) into the adjoining county coroner's district and eliminate one London coroner. The Privy Council did not believe that it had the power to approve the change under the 1888 Local Government Act and the case was referred to the High Court. The judgement confirmed that the Constable of the Tower retained the traditional right to appoint the coroner,³¹ clearly establishing that the franchise districts were inviolable without a change in the law. However, it was realised that

²⁷ 7 & 8 Vict. c.92 An Act to amend the Law respecting the Office of County Coroner [9th August 1844]

²⁸ R.F. Hunnisett *The Medieval Coroner* (Cambridge: Cambridge University Press 1961) p.1.

²⁹ *BMJ* 1: Mar 24 1894 p.650

³⁰ *Lancet* 1: April 7 1888 p.685

such a change was unlikely to be achieved for London alone.³² Whenever a vacancy occurred, the boundaries of the coroners' districts were rearranged as permitted by the 1844 Act.³³ However, the changes that could be made were relatively minor.³⁴

In 1901, the LCC appealed to the Local Government Board (LGB) to have the Westminster and Southwark franchise districts abolished and the jurisdictions transferred to the county coroners. The LGB Commissioners, like the Privy Council, asserted that they had no power to make such changes. More significantly, with respect to Westminster, the proposals met with considerable opposition and resistance from the Dean and Chapter of Westminster Abbey. They had appointed the coroners for around 600 years and had heard them swear the ancient oath in great ceremony in the Jerusalem Chamber of the Abbey.³⁵ Unexpectedly, the Council of the City of Westminster also opposed the transfer to the LCC. It urged that if there were to be *any* change, the ancient franchise should be transferred to the Council and the jurisdiction extended to the *whole* of the city area.³⁶

The Southwark jurisdiction, where the Common Council of the City of London appointed the coroner, caused even more problems for the LCC. It did not comprise the entire borough and isolated a section of the south eastern district. The coroner had to hold his inquests within this small area (bodies could not be transported across the boundary) for which the LCC was reluctant to provide a court and other facilities. The City of London, still a bastion of 'tradition and ancient splendour',³⁷ was

³² Ibid. Jul 28 1891 p.844

³³ 7 & 8 Vict. c.92 op.cit.

³⁴ LCC: *Minutes of Proceedings* Sept 27 1892 pp.789-90, Jun 5 1894 p.598-9

³⁵ S. Ingleby Oddie *Inquest: A Coroner Looks Back* (London: Hutchinson 1941) p.106

³⁶ LCC: *Minutes of Proceedings* Jan 29 1901 p.110

³⁷ Gwilym Gibson and Reginald W. Bell *History of the London County Council 1889-1939* (London: Macmillan 1939) p.76

opposed to giving up the right to appoint the Southwark coroner which it was granted by Edward VI in 1550.³⁸

Resistance to the loss of these ancient and traditional rights even occurred in cases where the franchise jurisdiction was obsolete. The Queen's Coroner could be traced back to the ancient office of Clerk to the Crown who had held inquisitions on all deaths in the King's Bench Prisons until 1842, when the Fleet and Marshalsea prisons were closed,³⁹ leaving the coroner without a jurisdiction.

When it was proposed in 1892 to abolish the office of Queen's coroner . . . on the ground that he no longer performed any particular duty, since there was no prison in which he had jurisdiction, Lord Halsbury [Lord Chancellor] and the Lord Coleridge L.C.J. declined to entertain the proposal on the grounds of *the great antiquity of the office*.⁴⁰ [emphasis added]

The powers to appoint the Queen's Coroner still exist.⁴¹

When an appeal was made many years later to the Chancellor of the Duchy of Lancaster regarding the franchise coronerships under his jurisdiction, he replied:

It is unlikely however that . . . concurrence as desired by the Secretary of State [to abolish franchise coronerships] can be given in the near future, as a decision in this sense could only be come to after careful consideration by a Chancellor of the Duchy of his

³⁸ F.J. Waldo 'The Ancient Office of Coroner' in HO45/10581/18146/2 Powers, duties and qualifications of Coroners 1903-12

³⁹ Ben Weinreb and Christopher Hibbert *The London Encyclopedia* Revised second edition (London & Basingstoke: Pan Macmillan 1993) pp.292, 515

⁴⁰ John Jervis *On the Office and Duties of Coroners. With an appendix of forms and precedents* Ninth edition (London: Sweet & Maxwell 1957) p.3 cited in McHugh Thesis p.56

⁴¹ Paul Knapman and Michael J Powers *Thurston's Coronership: 3rd edition. The Law and Practice on Coroners* (Chichester: Barry Rose Publishers 1985) p.21; Jervis op. cit. John Paul Matthews and John Foreman (eds.) Eleventh edition (London: Sweet & Maxwell 1993) p.11; 1972 c.70 An Act to make provision with respect to local government and the function of local authorities in England and Wales; etc. [Local Government Act 1972] [26th October 1972] s.220 (2)

duty to *safeguard the ancient rights and privileges* of His Majesty.⁴² [emphasis added]

These examples illustrate that not only was there a desire to resist the loss of the ancient rights and traditions still surviving in the late nineteenth century, but also the desire to acquire them. Indeed, the wish to retain traditions and customs existed in the wider social environment. Wiener has argued that, in the latter part of the Victorian period:

. . . shapers of middle- and upper-class opinion, in disenchantment with continual change, turned more and more to the past, and to elements of the past surviving in the present, as a source of alternative values.⁴³

There was a realisation that a precious heritage was in danger of being obliterated. This generated an increasing concern to protect and reforge links with that heritage which was described as 'the pull of the past, seen as tradition'⁴⁴ as noted in respect of the franchise coroners. As Yates observed,

Victorian medievalism . . . had its roots embedded very deeply in a strand of romanticism that had been present within English intellectual circles since at least the mid-eighteenth century— . . . there was a significant burst of medievalism in the 1830s and 1840s, the impact of which lasted through the rest of the century.⁴⁵

Those continuities from the mediaeval world⁴⁶ and reverence for things ancient had an impact in many different spheres. As Lubenow points out, the debate over government growth was 'often conducted in the

⁴² HO45/20002/428832/2 Appointments: Proposals to Abolish Franchise Coronerships 1908-1932 Mitchell to Under Secretary of State at Home Office Feb 23 1922

⁴³ Wiener op.cit. p.43

⁴⁴ Ibid. p.42

⁴⁵ Nigel Yates 'Pugin and the Medieval Dream' in Gordon Marsden *Victorian Values: Personalities and Perspectives in Nineteenth-Century Society* 2nd edit. (Harlow: Longman 1998) pp.65-6

⁴⁶ J.A. Sharpe *Crime in Early Modern England 1550-1750* (London: Longman 1984) p.176

language of the Common Law tradition . . . and historical precedent⁴⁷ and lawyers were still dominated by a 'common law frame of mind' that extended well into the nineteenth century.⁴⁸ There are many other examples ranging from the considerable influence of Augustus Pugin on the Gothic Revival to William Morris who constantly looked back to the Middle Ages for 'an integration of taste, style, and social purpose'⁴⁹ in his work.

Additionally, in the late nineteenth and early twentieth century, traditions were considered to be so important that if genuine traditions did not exist, they were invented,⁵⁰ or in some cases reinvented on the basis of relatively little evidence.⁵¹ After 1890, there was also an increasing interest in the history of the office of coroner.⁵² This looking back was some sort of attempt 'to call in the old world to redress the balance of the new'⁵³ and a concern to protect and reforge links with that heritage. As Wiener states:

An elite separating itself from the sources of dynamism in existing society and striving to attach itself to an older way of life promoted

⁴⁷ William C. Lubenow *The Politics of Government Growth* (Newton Abbott: David and Charles Archon Books 1976) p.26

⁴⁸ Michael Lobban *The Common Law and English Jurisprudence 1760-1850* (Oxford: Clarendon Press 1991) p.258

⁴⁹ Asa Briggs *The Age of Improvement 1783-1867* (London: Longman 1986) p.474

⁵⁰ Eric Hobsbawm 'Introduction: Inventing Traditions' in Eric Hobsbawm and Terence Ranger *The Invention of Tradition* (Cambridge: Cambridge University Press 1983) p.1

⁵¹ Daniel Leech-Wilkinson 'The Invention of Medieval Music in the Twentieth Century' Seminar at the British Library Nov 30 1999

⁵² For example: Charles Gross *Early History and Influence of the Coroner* (New York: Ginn 1892); H.F. Galpin 'The antiquity and development of the office of coroner: a study in English legal history' (unpublished University of Oxford DCL 1896); HO45/13618/592180 Alexander Johnson 'The Origins of the Office of Coroner'. (unpublished University of Edinburgh thesis 1929); James Brook Little in 1909 [Cd.4782] XV.389 First Report of the Departmental Committee appointed to inquire into the Law relating to Coroners and Coroners Inquests: Part II, Evidence and Appendices Q.2 p.1; F.J. Waldo 'The ancient office of coroner' *Transactions of the Medico-Legal Society* 8: (1910-11) 101-133 [Hereafter: TMLS]

⁵³ David Cannadine 'The Context, Performance and Meaning of Ritual: The British Monarchy and the 'Invention of Tradition', c.1820-1977' in Hobsbawm and Ranger op.cit. p.124

a change in collective self-image from that of a still-young and innovative nation to one ancient and peculiarly stable.⁵⁴

The Coroners' Society was formed in 1846 during the 'significant burst of medievalism'.⁵⁵ It would provide considerable support to the coroners in their resistance to any change to their ancient office and traditional authority. As already seen in chapter 3, the coroners' authority was 'legitimated by the sanctity of tradition'.⁵⁶ In 'this "traditional" authority, the present social order is viewed as sacred, eternal, and inviolable' and tends to perpetuate the existing social order.⁵⁷ Antiquity, real or manufactured, was one of the greatest appeals of the age⁵⁸ and was a source of opposition to inhibitions, restrictions or changes to ancient institutions and resistance to the loss of traditional rights. The attitude changed from 'You must adapt Gothic to modern life' to 'You must change modern life to produce true Gothic'.⁵⁹

The prevailing attitude in society strengthened the coroners' resistance—they had no need to change, they were still using mediaeval law, procedures and practices.

THE LCC'S POLICY FOR CORONERS:

The integration of the coroners into the LCC organisation had not been as easy or as successful as it had hoped. In 1894, the chief officer of the Public Control Department devoted time to an extensive examination of all aspects of the coroners, their courts and inquests. This resulted in an extensive report containing twenty one recommendations that clearly defined a policy for the London coroners.

⁵⁴ Wiener op.cit. p.43

⁵⁵ Yates op.cit. p.66

⁵⁶ Peter M. Blau and W. Richard Scott *Formal Organizations* (London: Routledge & Kegan Paul 1970 reprint) p.30

⁵⁷ Ibid.

⁵⁸ Yates op.cit. p.75

⁵⁹ Kenneth Clark *The Gothic Revival* (London: John Murray 1995) p.218, see also Basil F.L. Clarke *Church Builders of the Nineteenth Century: A study of the Gothic Revival in England* (London: SPCK 1938/1938)

The report was presented to the Public Control Committee (PCC) in January 1895.⁶⁰ As noted above, the main driving force for reformed county government was administrative efficiency⁶¹ and that encouraged the formation of a centralised, bureaucratic system in order to achieve uniformity. The policy was developed with the objective of integrating the coroners into that bureaucratic system and to improve efficiency.

The committee made some minor amendments before adding a final recommendation that a deputation should visit the Lord Chancellor in support of the amendment of the law relating to coroners' inquests in London.

The recommendations were then adopted as policy. This was a significant event and the recommendations are reproduced in full:

- a) *That in no case should a death be registered without production of a certificate of the cause of death, signed by a registered medical practitioner, or by a coroner, after inquest.*
- b) *That a medical practitioner in attendance should be required, before giving a certificate of death, to personally inspect the body and identify it as the body of the person he has attended; and should included in his certificate a statement pointing to the absence of accident, poison, violence, or criminal neglect.*
- c) *That a form of certificate of death should be prescribed, and that in giving a certificate medical practitioners should be required to use such form.*
- d) *That medical practitioners should be required to send certificates of death to the registrar instead of handing them to representatives of the deceased.*
- e) *That it should be made a penal offence to bury, or otherwise dispose, of a body without an order from the registrar stating the place and mode of disposal, which order, after it has been acted upon, should be returned to the registrar who issued it.*
- f) *That it should be made a penal offence to bury, or otherwise dispose, or otherwise legally disposed of, beyond a period*

⁶⁰ LCC: *Minutes of Proceedings* Jan 29 1895 p.90

⁶¹ Eastwood Community p.167

not exceeding eight days, except by permission of a magistrate.

- g)* That the certificate should be endorsed by the burial authority, with the date of interment or disposal, and the place where the body is buried, and returned to the registrar by the burial authority.
- h)* That when the medical practitioner is unable to certify, he should be required to report direct to the coroner. Relations, friends, and others having cognizance of suspected cases should also be required to report them to the coroner.
- i)* That every case of death after surgical operation should be reported to the coroner with a view to preliminary inquiry, and, if necessary, the holding of an inquest.
- j)* That medical investigators should be appointed:
 - i)* To inquire into causes of all uncertified deaths, assisted by qualified and responsible inquiry officers.
 - ii)* To examine the body in all such cases, and make a post-mortem examination where necessary.
 - iii)* To report the results to the coroners sitting in court, who will then decide as to necessity for holding formal inquest.
 - iv)* To give evidence at inquest and act as medical advisor to the coroner.
- k)* That London should be divided into districts so arranged as to give approximately equal amount of work, and that coroners be paid by salary, not dependent on the number of inquests held.
- l)* That franchise districts should be abolished.
- m)* That a court or courts should be provided for each district, with a coroner, clerk, inquiry officers, and other necessary officials as in police-courts.
- n)* That one or more medical investigators should be attached to each court, and be paid by salary.
- o)* That the office of deputy-coroner be abolished as unnecessary in London.
- p)* That inquests should be held and evidence taken by coroners in all cases where the reports of medical investigators show further inquiry is necessary, and in cases of violent or suspicious death.
- q)* That viewing the body, except by the medical investigator and for purposes of identification, should no longer be required.

- r) That the number of jurymen should be reduced to one-half the present number, i.e., to not less than six or more than eleven.
- s) That in cases involving subsequent criminal proceedings, such as murder or manslaughter, or other criminal offence, the coroner should have full power to bind over all witnesses; and further investigation by the magistrates in such cases should not be required.
- t) That proper records of all cases dealt with by the court, whether inquests be held or not, should be kept as records of the county.
- u) That the court should have jurisdiction in cases to which it is attached, except in cases of accident, &c., where more than one death has taken place, when the jurisdiction should be with the Court for the district in which such accident, &c., occurred.
- v) That the Committee be authorised to attend as a deputation before the Lord Chancellor in support of the amendment of the law relating to coroners' inquests in the County of London in accordance with these recommendations.⁶² [original italics]

The main elements of the policy fall into three main groups:

The first group comprises recommendations (a) to (g). The first five were taken directly, without change, from the recommendations of the 1893 Select Committee Report⁶³ on death certification and the sixth added to close the registration loop with the burial authorities. The Select Committee showed the dependence of the registration system on the doctors and the coroners. However, like many other such reports, a practical approach to the problems dominated and resulted in essentially administrative, tidy solutions. There were neither recommendations for harmonisation of the two systems, nor for any consideration of a new or theoretical approach to the problems.

The second group comprises recommendations (h) to (j), (n) and (p) to (u). These, it was admitted, were not original but were the proposals

⁶² LCC: *Minutes of Proceedings* Jan 29 1895 p.90

⁶³ PP 1893 (373) XI.195 First Report of the Select Committee on Death Certification
PP 1893-4 (402) XI.195 Second Report of the Select Committee on Death Certification p.iii

made by Lord Herschell to the SSA in 1876.⁶⁴ They had also appeared in the Select Committee Report on the 1879 Coroners Bill (see chapter 5) and had, for the most part, been in circulation since the Middlesex magistrates' inquiry in 1850 (see chapter 2).

The third group comprises recommendations (k) to (m) and (o). These were directed towards improving the efficiency of the coroners within the LCC's bureaucratic system.

The recommendations concentrated on administrative rather than judicial issues but they gave a clear indication of the PCC's attitude. The coroners' role was not only the traditional detection and prevention of crime, but also to meet the requirements of the death registration system. Although the need for this linkage had been recognised for many years, it was the first time that they had been brought together in one policy document. Although the PCC was strongly supporting the objectives of the Registrar-General for improved statistics, it was not entirely altruistic. Statistics were a bureaucratic tool that could be used in the development of enlightened social policies and had been one of the objectives of the sanitarians in the 1850s and 1860s.⁶⁵ Accurate mortality statistics were an important tool for the LCC to develop policies to deal with some of the difficult social problems associated with some districts within the county.⁶⁶

The second group of recommendations leaned heavily on the Scottish system with the preliminary, secret investigation by a medical assessor prior to the decision whether or not to hold an inquest. However, the basics of the English system were retained with a jury, albeit reduced, still required for any subsequent inquest.

⁶⁴ Ibid. p. 87, *Lancet* 1: Apr 6 1895 p.881 and PP 1910 [Cd.5139] XXI.583 Second Report of the Departmental Committee appointed to inquire into the Law relating to Coroners and Coroners' Inquests, and into the practice in Coroners' Courts Q.11,541

⁶⁵ Olive Anderson *Suicide in Victorian and Edwardian England* (Oxford: Clarendon Press 1987) pp.24-5

⁶⁶ Davis *Progressive* op.cit. pp.28-9

The overall policy provided the LCC with the potential to impose a considerable degree of bureaucratic control over the coroners. At the beginning of 1894, the PCC had required the London coroners to complete new forms to include entries for 'cause of death' and 'verdict of jury'. The coroners raised objections complaining that they had not been consulted before the new forms were introduced.⁶⁷ They indicated that they were prepared to complete the necessary parts in connection with their accounts, but refused to complete the required new sections because that information was already supplied to the Registrar-General. Although it was not clear at the time, it can be seen that this requirement foreshadowed the PCC's comprehensive policy.

The collection of such information would have achieved two things for the LCC. First, it would have permitted the LCC to check whether the information being supplied to the registrars was acceptable for registration, and if not, to put pressure on the coroner to produce what was required. Second, it could be seen as a stage towards collecting and compiling data to evaluate the individual performance of each coroner for comparative purposes—an impersonal mechanism of bureaucratic control.⁶⁸ Figures on 'unnecessary' inquests, post mortem examinations relative to the number of inquests, number of convictions relative to the number of inquests, cost per inquest, number of uncertified deaths, and so on, could be easily collected. However, the derived statistics were not necessarily meaningful because of the significant differences between the various coroners' districts within the LCC. Also, some elements that the coroners considered important were impossible to measure, such as the amount of crime that a coroner had prevented. The drawback of using such statistics was that they were directed towards the measurement of efficiency rather than judging the social value of each coroner within the community in which he worked.⁶⁹

⁶⁷ CorSoc Jan 3 1894 Vol.2 pp 277-279

⁶⁸ Blau and Scott op.cit p 178

⁶⁹ David Garland *Punishment and Modern Society: A Study in Social Theory* (Oxford: Clarendon Press 1990) p 288 [Hereafter Garland Society]

Despite the objections of the coroners, the LCC collected the data and published the derived statistics.⁷⁰

Perhaps the most important aspect of control in the recommendations was the limit imposed on the coroner's freedom to act. The medical investigator would, with his inquiry officers, make the preliminary inquiries into the uncertified deaths and he, rather than the coroner, would in effect be deciding whether an inquest was necessary or not. The investigators and officers would have been LCC employees and therefore under its direct control (as the LCC wanted)⁷¹ and subject to any rules it laid down. This would have been an administration based on a combination of expertise and discipline.⁷² A similar situation existed with the coroners being urged in 1893 to use metropolitan policemen as coroner's officers rather than civilians.⁷³ At that time, the coroner's officer carried out the preliminary inquiry and there was some suspicion that cases concerning families who knew how to tip discreetly were dropped—though the officers always denied this.⁷⁴ It was considered that the police were less likely to succumb to this temptation because, if they were found guilty of any offence, they could lose both their job and pension.

By the early twentieth century there was an additional incentive to have policemen perform these duties. The police force was becoming increasingly professional (especially in the metropolis). It was progressively improving its investigative role as scientific techniques (such as the use of fingerprints)⁷⁵ were developed and applied to achieve its objectives. It also had the effect of undermining the

⁷⁰ For example see: LCC *London Statistics 1911-12* vol.xxii pp.297-99

⁷¹ LCC: *Minutes of Proceedings* Jan 17 1893 p.11

⁷² Alvin W. Gouldner *Patterns of Industrial Bureaucracy* (Glencoe, Illinois: Free Press 1954) p.22 cited in Blau and Scott op.cit. p.35

⁷³ LCC: *Minutes of Proceedings* Jan 17 1893 p.11

⁷⁴ Anderson op.cit. p.25

⁷⁵ H.R. Oswald *Memoirs of a London County Coroner* (London: Stanley Paul 1936) p.65. See also: J.G. Garson 'Finger-print evidence' TMLS 3: (1905-6) pp.1-18

⁷⁵ *Justice of the Peace* Jul 21 1912 See: HO45/11214/403923/29 Suggested Amendments of Coroners' Law 1919-1923

coroners' authority because the police were carrying out a covert preliminary investigation. Taken to the extreme, the inquest would have become a formality, with the jury left only to 'dot the i's and cross the t's of the police investigations' in reaching the verdict.⁷⁶ Nevertheless, the relationship between a policeman acting as coroner's officer and the local constables on the beat was valuable because, in the cities and largest towns, the police were often particularly shrewd in using their wide experience to decide which deaths to report to the coroner.⁷⁷

The appointment of medical inspectors, and policemen as coroner's officers to a lesser extent, would have had the effect of raising the effectiveness of the court because they would have provided more accurate evidence on which to base decisions. As the *Lancet* pointed out:

If this system were adopted, the obvious results would be to prevent uncertified deaths being registered and to ensure a more efficient method of recognizing [*sic*] the causes of death, and thus remove what may be termed a passive incentive to crime, which the existing statutes are to a great extent powerless to effect. . . . [and] . . . the number of inquests would be materially less than at present.

The reduction in the number of inquests would not only have had a direct and significant effect on costs, but also would have placed a high priority on the reorganisation of the coroners' districts and a reduction in the number of coroners.

The extension of bureaucratic control was not limited to coroners and other aspects of local government, but can also be seen in the expansion of the central government bureaucracy. In addition to the already existing registration requirements and the various inspectorates, the 'scope of official work was widening all the time,

⁷⁶ *Justice of the Peace* Jul 21 1912 in HO45/11214/403923/29 Suggested Amendments of Coroners' Law 1919-1923

⁷⁷ Anderson op.cit. p.21

especially at the Home Office.⁷⁸ This can also be seen in the establishment of new government departments, such as the Board of Agriculture and the Board of Education. As Ensor stated:

The Local Government Board naturally expanded its personnel in order to deal with the army of newly-elected local authorities set up for the counties, districts and parishes by the acts of 1888 and 1894.⁷⁹

One result was that local government independence began to weaken as the central government gradually extended its activities and intruded into local affairs. That occurred especially in the Edwardian years⁸⁰ and was another hindrance to the plans of the LCC. But localism, which in part was a reflection of the common law traditions in England, persisted well into the twentieth century and was a source of resistance to central state power.⁸¹ It also provided support for the coroners' resistance to change which stemmed from the same traditions.

Another result of the centralisation was the expansion of legislative activity in Parliament, pushing any potential legislation on coroners even further down the priority list. After 1902 the government arranged virtually all the work in the Commons and although private members retained some influence behind the scenes, their business was restricted to one afternoon each week.⁸² Private members Bills rarely reached the statute book and the limited time allocation considerably reduced the possibility of successful legislation on coroners by that route.⁸³ For example, in 1905 358 MPs wanted to introduce a private

⁷⁸ Ensor op.cit. p.294-5

⁷⁹ Ibid.

⁸⁰ Donald Read *The Age of Urban Democracy: England 1868-1914* Revised edition (London and New York: Longman 1994) p.339, Christopher Dandeker *Surveillance, Power and Modernity* (Cambridge: Polity Press 1990) p.121

⁸¹ Dandeker op.cit. p.121

⁸² Read op.cit. pp.314-5

⁸³ *BMJ* 2: July 12 1902 p.110, *BMJ* 1: Feb 25 1905 p.434

members Bill, of which perhaps only the top twelve had any chance of success in the ballot.⁸⁴

In analysing the LCC's resolutions, it is possible to see the characteristics of a typical bureaucratic organisation that took into consideration the existing body of law already governing coroners' activities. The LCC was aware that these had not caused problems for the integration of the borough coroners under their councils.⁸⁵ The LCC wanted to copy the 'dignified arrangements associated with the stipendiary magistrates'⁸⁶ by appointing a limited number of whole-time coroners working in reorganised districts and a court with mortuary facilities and appropriate officials. The coroner could then be treated as an expert public official (despite being appointed by local and not central government)⁸⁷ within an organised hierarchical bureaucracy of disciplined functionaries. It would provide the opportunity for a stable and genuine career with related remuneration and benefits. The coroner would operate under a formally established system of rules and regulations governed by official decisions and actions. With his officials, he would be expected to assume an essentially impersonal orientation in any contacts with the public and others in the courts.⁸⁸ If the LCC could implement the necessary changes, it was considered that 'the dignity of the coroner's court would be raised to the level of other courts'.⁸⁹

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The PCC had made no effort to involve the London coroners (or the Coroners' Society) in the development of the policy. It simply submitted the twenty-two recommendations to them as a *fait accompli* for their

⁸⁴ Ibid.

⁸⁵ Anderson op.cit. p.15 n.24

⁸⁶ LCC: *Minutes of Proceedings* Oct 11 1910 p.488

⁸⁷ Anderson op.cit. p.37

⁸⁸ Blau and Scott op.cit. pp.32-33

comments.⁹⁰ The coroners 'carefully considered the report' before sending a short reply to the PCC, part of which was published in both the *Lancet* and *BMJ*:

[The report] contains so much controversial matter and involves such important changes in the law, many of them, in the opinion of this meeting, detrimental to the public interests, have decided that at the present stage it is not advisable for the coroners to make any further observations, or to offer suggestions thereon.⁹¹

They gave no indication of their concerns, but it is not difficult to guess what these might have been. Ever since the formation of the Coroners' Society in 1846, the coroners, like other groups with a vested interest in maintaining the *status quo*, could be relied upon to oppose 'any suggestion that might disturb their domain'.⁹² Perhaps the most important objection was that a reduction in the number of inquests, combined with the reorganisation of jurisdictions, would have led to a significant reduction in the number of coroners. The method of calculating salaries would also need revision, otherwise incomes would be reduced considerably. However, the most important concern was the potential limits to their freedom to act if they were fully integrated into the LCC hierarchy. Although appointed and paid by the LCC, they investigated unexplained deaths on behalf of the Crown, not the local authority—and this could see the threat to their status as *independent* judicial officers.

Apart from their loss of independence, the recommendations were the thin end of the wedge leading to the loss of the remainder of their traditional practices. In particular, with the medical profession taking over their responsibilities for many preliminary investigations, the coroners would almost certainly lose custody of the body. The

⁸⁹ *BMJ* 1: Mar 2 1895 p.500

⁹⁰ *Ibid.* 2: Nov 10 1894 p.1086

⁹¹ *Lancet* 2: Nov 17 1894 p.1171, *BMJ* 2: Nov 24 1894 p.1214

⁹² David Garland *Punishment and Welfare: A history of penal strategies* (Gower: Aldershot 1985) p.164 [Hereafter: Garland Welfare]

importance of 'the body' to the coroners had been confirmed by a Coroners' Society resolution passed at the end of 1894 in response to a Commons Bill⁹³ to dispense with the view of the body:

That this Council is decidedly of opinion that no alterations in the existing law on this subject is required, or is desirable, and that any attempt to do away by law of the view of the body by the coroner and jury, would be *prejudicial to public interest* and policy, and detrimental to public confidence in the Court.⁹⁴ [emphasis added]

The Coroners' Society had discussed the necessity for the view of the body several times since 1878.⁹⁵ By the 1890s 66% of the coroners who responded to a questionnaire favoured an alteration in the law to abolish the view for the jury.⁹⁶ Despite a majority of coroners favouring the change, the Council of the Society (which included several London coroners) was reluctant to take any action to support the Bill. The body had been 'the symbolic and operational centre of every inquest'⁹⁷ since the mediaeval period. The Society's concern was not the loss of the body as evidence (long seen to have been irrelevant) but of jurisdiction. As Burney comments 'They at once wanted to be rid of bodies and needed to have them at their command.'⁹⁸

The London coroners would also have objected to the reduction in the number of jurors—reduction was the first step to eventual abolition and the second significant break with their traditional link to the people. Indeed, the PCC had expressed a strong feeling that the coroner's jury was superfluous. However, it compromised and recommended only a reduction in the number of jurors,⁹⁹ probably having recognised, like the

⁹³ PP 1894 (67) III.55) Bill to amend Coroners Act, 1887

⁹⁴ CorSoc Nov 1894 Vol.2 p.306

⁹⁵ Ibid. Nov 15 1878 Vol.2 p.434-5

⁹⁶ Ibid. Annual Report 1892 Vol.2 p.255

⁹⁷ Ian Adnan Burney 'Viewing Bodies: Medicine, Public Order, and English Inquest Practice' *Configurations* 1:33 1994 p.35

⁹⁸ Ian Adnan Burney *Decoding Death: Medicine, Public Inquiry, and the Reform of the English Inquest, 1836-1926* (unpublished University of California at Berkeley PhD thesis 1993) p.196 [Hereafter: Burney Thesis]

⁹⁹ LCC: *Minutes of Proceedings* Jan 18 1895 p.89

medical profession, that the total exclusion of the public element was unlikely to be accepted.

The traditional role of the inquest was the protective service that it performed for the community which was achieved by the prevention, detection and punishment of crime. In this sense, the public-at-large was the prime beneficiary, although not necessarily, to the exclusion of the people who were the object of an inquest.¹⁰⁰ The 1887 Coroners Act had confirmed that the emphasis was no longer on protecting the financial interests of the Crown. The emphasis had moved to providing a service for the investigation of both the cause of, and the circumstances surrounding, deaths for the eventual benefit of the community as a whole. The important problem posed by the inquest was the need for democratic mechanisms that permitted external control by the public—the *public* needed some means of controlling the ends served by the inquest,¹⁰¹ *not* the state or the local authority. The challenge was to maintain efficient bureaucratic mechanisms that effectively implemented the objectives of the community by democratic methods.¹⁰²

In the case of the inquest, the jury basically supplied this public control. The jury returned the verdict (not the coroner) and it therefore provided a control over a coroner who attempted to impose a verdict. The jury's verdict was final however perverse it might have been. After reviewing the evidence and the relevant law, the coroner usually indicated a verdict, but if the jury chose to ignore it, he could do nothing about it. However, while such external democratic control is essential, the internal structure of these organisations is expected to be bureaucratic, not democratic, and the governing criterion is administrative efficiency.

¹⁰⁰ Blau and Scott op.cit. pp.54-8

¹⁰¹ Ibid. pp.54-5

¹⁰² Ibid. p.55



The challenge facing these organizations, [sic] then, is the maintenance of efficient bureaucratic mechanisms that effectively implement the objectives of the community, which are ideally decided upon, at least in our society, by democratic methods.¹⁰³

Clearly, there was a tension between these objectives. Administrative efficiency would have been achieved by the implementation of the LCC's policy for the London coroners. However, that could be seen as a threat to the objectives of the inquest and have made LCC the prime beneficiary rather than the public-at-large. This is reminiscent of the approach taken by the magistrates in the 1850s

One resolution that should have been very welcome to the coroners was that when a medical practitioner was unable to certify a death, he should be required to report direct to the coroner. The registrars had been instructed to report to the coroners all deaths that required investigation as defined in the 1887 Coroners Act.¹⁰⁴ However, the registrars were considered to be unreliable and 'ignorant men',¹⁰⁵ not possessing the necessary skills or judgement to decide what should be sent to the coroners, especially concerning uncertified deaths. In 1905, John Troutbeck, the Westminster and South West London coroner, reported that:

During many years I have been a coroner I have never had a case referred to me from the Registrar-General's office; but I have on several occasions received information from other sources, and held inquests in cases which have already been registered.¹⁰⁶

Many medical practitioners communicated deaths in doubtful cases directly to the coroners but, to avoid problems, it was necessary for *all* to do so. But there was no legal definition of those whose *duty* it was to

¹⁰³ Ibid.

¹⁰⁴ PP 1897 [C.8591] XXI.735 59th *Annual Report* p.xxx

¹⁰⁵ William Wynn Westcott 'The coroner and his medical neighbours' TMLS op.cit. 8: (1910-11) 15-26 p.16

¹⁰⁶ John Troutbeck 'Modes of ascertaining the fact and cause of death' TMLS op.cit. 3: (1905-6) 86-117 p.89

inform the coroner.¹⁰⁷ *Jervis on Coroners* stated that the duty 'devolves upon persons who are in attendance in or about the deceased at the time of death'.¹⁰⁸ The Coroners' Society believed that a doctor attending his patient was clearly such a person and that it was his common law duty to see that he did nothing to assist directly or indirectly in an evasion of the law.¹⁰⁹ The *BMJ* reported that the Registrar-General had informed one of his registrars that medical practitioners were 'under *no obligation to report cases to the coroner*'.¹¹⁰ [original emphasis] But even if the medical practitioners reported all doubtful cases to the coroners, it would not necessarily have eliminated uncertified deaths altogether. An inquest still depended on the discretion of the coroner and many failed to hold one when an uncertified death was referred to them.

The subject was dealt with in a leading article in the *BMJ*.¹¹¹ In the correspondence that followed, a medical coroner pointed out that 'the tone . . . does not seem to me calculated to throw oil on troubled waters'.¹¹² This was an emotive subject and he went on to say:

. . . it would be a matter for regret if any feeling of *hostility* were encouraged to grow up between coroners as such and members of the medical profession, *a feeling already observed* in some letters of your correspondents on this subject.¹¹³ [emphasis added]

One of the PCC's recommendations that could have been expected to draw a hostile response from the medical profession was:

¹⁰⁷ *Jervis op.cit.* Fourth edition (London: H. Sweet & W. Maxwell, and Stevens & Sons 1880) p.197

¹⁰⁸ *Ibid.*

¹⁰⁹ *BMJ* 1: Mar 24 1900 p.717-8 *Lancet* 1: Mar 17 1900 p.805

¹¹⁰ *BMJ* 2: Dec 23 1899 p.1770 Noel A. Humphrey, Chief Clerk at the General Register Office to E.H. Crusha, Registrar for Tottenham. See also *BMJ* 2: Dec 23 1899 pp.1750-1

¹¹¹ *BMJ* 1: Mar 24 1900 pp.717-8

¹¹² *Ibid.* 1: Mar 31 1900 p.804

¹¹³ *Ibid.*

j) that every case of death after surgical operation should be reported to the coroner with a view to preliminary inquiry, and, if necessary, the holding of an inquest.¹¹⁴

This would have given considerable power to the coroners and their juries to make investigations into the activities of members of the medical profession. In the past, the profession had protested against such interference but, remarkably, there was no reaction. The opinion of the Coroners' Society was that it was unwise to hold an inquest if the operation had been for the relief of disease, but in the case of an operation following an injury, then it was appropriate. It is not clear why the PCC included this in their recommendations since inquests into surgical procedures were rare (see chapter 7).¹¹⁵

The requirement that no death should be registered without a certificate from a registered medical practitioner or a coroner did not present a problem. But the requirement that a doctor had *personally* to inspect the body, to ensure correct identification and the absence of criminal activity, was not accepted by the profession. It was not unreasonable perhaps in a town to make such a visit, but in a large, sparsely populated country district, a doctor might have had to travel many miles to do an inspection—and without a fee. However, the policy had been devised for London rather than the country at large—and that was a major drawback to its being accepted by the Government.

The medical profession could see some advantages. It would have welcomed the recommendation that when a medical practitioner issued a death certificate, it was to be sent directly to the registrar instead of being handed to the representatives of the deceased. This added an element of secrecy into the process which protected a doctor from the immediate displeasure of relatives and friends since they would not know the cause of death. A doctor could enter the *true* cause of death,

¹¹⁴ LCC: *Minutes of Proceedings* Jan 29 1895 p.90

¹¹⁵ *BMJ* Nov 10 1888 p.1088

though the truth would be eventually discovered. The 'secrecy' would have avoided unnecessary embarrassment by drawing 'a kindly veil . . . over human frailties'¹¹⁶ and not exposing deaths following illnesses due to syphilis, gonorrhoea and alcoholism. However, the process could potentially still leave a residue of unfounded suspicion.¹¹⁷

The *BMJ* specifically noted one recommendation and observed that:

Post-mortem examinations would always be made by competent pathologists—a reform devoutly wished for by many members of the profession, despite the pecuniary loss thereby entailed.¹¹⁸

The members of the profession who would lose were the GPs.

The *BMJ* welcomed the LCC's policy:¹¹⁹

There can be no question that these proposals are worthy of every consideration, and although in some points they might need modification, they ought not to be lightly condemned; as a whole they offer an admirable means of giving the ancient office, which is not quite in touch with modern times, increased utility in the future.¹²⁰

Three months after the PCC approved its policy; a leading article in the *Lancet* made an interesting observation:

The important bearing which the scheme of the London County Council has upon the interests of medical men as a body seems curiously to have been so *far* entirely overlooked by the profession.¹²¹ [emphasis added]

A response from the profession would only arise if the policy were to be implemented. The Report of the chief officer of the PCC was adopted in 1895 as the key policy document to bring efficiency, order and

¹¹⁶ *Lancet* 1: Jun 10 1893 p.1393

¹¹⁷ *Ibid.* See also TMLS op.cit. 8: 1910-11 p. 17 cited in Burney Thesis Op.cit. p.88, 131

¹¹⁸ *BMJ* 1: Mar 2 1895 p.500

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

consistency to the organisational and operational aspects of inquests in London.¹²² The coroners' objections were ignored.

Many of the recommendations required legislative approval and the PCC acted quickly by sending a deputation to see the Lord Chancellor only four weeks after the adoption of the new policy. This took place in one of the periods when the administration at county hall had a sympathetic national government¹²³—and the LCC probably had high hopes for a positive response. The deputation pressed the Lord Chancellor to amend the coroners' law which it considered both expedient and necessary:

The Lord Chancellor expressed himself in general agreement with the recommendations. . . . it was His Lordship's opinion that the Council was wise in connecting amendment of the coroners' law with amendment of the law as to death certification, and he trusted he should have the opportunity of assisting in giving practical effect to the suggestions made.¹²⁴

The Lord Chancellor was none other than Lord Herschell, who, as seen earlier, had put forward many of the proposed suggestions for change,¹²⁵ so his support was hardly surprising. However, the potential problem was that parliamentary procedure offered too many openings to those anxious to obstruct local authority projects. As Saint points out:

Many London measures were intrinsically contentious, and many which were not were still faced politically motivated obstruction from backbench London Conservatives ('on whom the Council had the effect of a red flag on a bull') or from the House of Lords, which blocked six major LCC measures in the Council's first five years.¹²⁶

Whatever advantages were gained from its political stance at the local level, the LCC's militancy encouraged opponents to renew the battles in

¹²¹ *Lancet* 1: Apr 6 1895 p.881

¹²² LCC: *Minutes of Proceedings* Feb 12 1895 p.130

¹²³ Saint Intro. Op.cit p.xii

¹²⁴ LCC: *Minutes of Proceedings* Mar 19 1895 p.248

¹²⁵ *Lancet* 1: Apr 6 1895 p.881

Parliament, where its initiatives were most vulnerable.¹²⁷ As Davis observed:

Only Government support could obviate this difficulty. It was provided for as a matter of course . . . to keep the Council solvent, but there were limits to the parliamentary time that even a sympathetic government could devote to the ambitions of a single local authority.¹²⁸

Lord Herschell may have been able to persuade the Government to overcome its reluctance to get involved and provide the necessary support for the LCC's proposals. But even he could not guarantee success because of the legislative load on Parliament and other potential obstructions.

In looking at the PCC recommendations, they clearly apply to the London coroners. However, with minor changes in the wording, they could be applied generally to all coroners throughout the country. This wider application of the recommendations was implied at the meeting with Herschell in which it noted that the consolidating 1887 Coroners Act had paved the way for such amendment. Indeed, Herschell stated that ' . . . when he made his suggestions for reform nearly 20 years ago, it was with a view to *reform of procedure in this country*.'¹²⁹ [emphasis added] The point was so obvious that a leading article in the *Lancet* noted that 'if this scheme becomes law it will be made to affect, not only London, but the whole of England'.¹³⁰ This would have posed a problem for the LCC. Its primary objective was to integrate the London coroners into its bureaucratic system for administrative efficiency, but in order to achieve that it had to influence the Government to legislate on a national issue.¹³¹

¹²⁶ Davis Progressive op.cit. pp.46-7

¹²⁷ Ibid. p.47

¹²⁸ Ibid.

¹²⁹ *The Times* Mar 1 1895 p.11c

¹³⁰ *Lancet* 1: Apr 6 1895 p.881

¹³¹ Davis Progressive op.cit. p.29

It was not until 1909 that the chief officer of the PCC, Mr. James Ollis, confirmed the LCC's ambition when he gave evidence to a committee of inquiry:

Q. The London County Council have never promoted an Act of that kind, [to make the coroner a regular whole-time salaried officer] have they?

Ollis: They have not: not for the reason that it was not desirable but for the reason they felt *it was important that the coroners' law should be revised on a thorough basis*, and their whole efforts have been concentrated on trying to induce the proper Government Department or the Lord Chancellor *to initiate new legislation for that purpose*.¹³² [emphasis added]

However, there was an important consideration to be made with respect to the policy put forward by the PCC: it fitted the requirements for the London coroners very well, but it did not fit in with the two-tier coroner's system that existed in the country, as Anderson points out:

. . . no system could work well in practice unless it was flexible enough to be able to function both in some of the world's most highly developed cities and in the depths of the countryside.¹³³

The PCC either ignored the fact, or failed to realise, that pathologists and forensic experts outside the major centres of population were few. Taking London as an example, by the 1900s coroners with jurisdictions near the great teaching hospitals received up to a third of all their cases from them—and routinely received elaborate medical reports for each inquest.¹³⁴ This resulted from a significant social change that was taking place. An increasing number of people were dying in hospitals or infirmaries rather than in their own homes. By 1909 38.3% of all deaths

¹³² PP 1910 [Cd.5139] XXI.583 Second Report of the Departmental Committee on the Law relating to Coroners and Coroners Inquests, and into the Practice in Coroner's Courts Q.11,465 p.193 Evidence of Mr James Ollis, chief officer of the Public Control Department of the LCC

¹³³ Anderson op.cit. p.39

¹³⁴ Ibid. p.27

in London occurred in public institutions (compared to 18.2% of all deaths in England and Wales).¹³⁵ As Crowther relates:

London far surpassed the rest of the country in hospital provision, and its capacity increased faster in the period 1870-1920 than ever before or since. Most of the increase was in the general hospitals, including Poor Law infirmaries.¹³⁶

Despite that situation, the teaching of forensic medicine in England was still being criticised because it was largely presented as book learning by teachers without practical experience. The system in Scotland was considered far superior because the teachers had regular practical experience and knowledge of current medico-legal practice.¹³⁷

In mid-1895, history repeated itself—what appeared to have been the best opportunity for reform that had occurred for years was cut off as a result of a general election, and Lord Halsbury replaced Herschell on the Woolsack. Another PCC deputation visited the Lord Chancellor.

Lord Halsbury expressed much sympathy with the objectives of the deputation, but thought that grave difficulties might be experienced in any attempt to reduce the number of the jury. On the other hand he saw many advantages in the proposal to create medical investigators to make the preliminary investigation, and he undertook to give that and others of the proposals his careful and sympathetic attention.¹³⁸

Unlike his predecessor, he gave no indication that he would help to implement change—and, as with previous attempts, there appeared to be no progress.

¹³⁵ M.A. Crowther *The Workhouse System 1834-1929: The history of an English social institution* (London: Batsford Academic and Educational Ltd. 1981) p.57

¹³⁶ *Ibid.* p.58

¹³⁷ Henry Harvey Littlejohn 'Medico-legal post-mortem examinations' *TMLS* 1: (1902-4) 4-29 pp.14-29

¹³⁸ LCC: *Minutes of Proceedings* 8 Dec 22 1896 p.1451

The LCC was not the only organisation lobbying the Government. In 1894, the Parliamentary Bills Committee of the BMA¹³⁹ visited the Home Secretary, Herbert Asquith, to press for legislation based on the recommendations of the Select Committee on death certification. He was either evading the issue or showing departmental sensitivity in pointing out that 'The matter is one which really concerns the Local Government Board rather than the Home Office'. He had therefore asked Sir Walter Foster, Parliamentary Under-Secretary in the LGB (who had been the Chairman of the 1893 Select Committee on Death Certification) to discuss the topic with the BMA. But nothing resulted from that visit either.¹⁴⁰ A year later, the Coroners' Society President visited the LGB and was informed that a death certification Bill was in the course of preparation that followed the recommendations of 1893 Select Committee.¹⁴¹ Had that Bill reached the statute book it would have boosted the LCC's cause, but like many other Bills 'in preparation', it failed to appear in Parliament.

The next few years were relatively quiet concerning coroners' affairs, the PCC discussed them from time to time, but it was not until early in 1902 that the PCC made an extensive review of the previous recommendations for coroners.¹⁴² The policy agreed in 1895 was strongly reiterated, as well as the renewed desire to implement it.¹⁴³ A leading article in *The Times*, based on the PCC's report, provided publicity and support for the reform with its criticisms of the coroners and the constitution of their courts.¹⁴⁴ An attempt was made for a LCC deputation to visit the Home Secretary to discuss its reform programme,¹⁴⁵ but he replied that he was:

¹³⁹ *BMJ* 2: Nov 17 1894 p.1135

¹⁴⁰ *Ibid.* p.1139

¹⁴¹ *CorSoc* Jun 20 1895 Vol.4 p.110

¹⁴² *BMJ* 2: Oct 1 1904 p.843

¹⁴³ *LCC: Minutes of Proceedings* Jul 1 1902 pp.986-96

¹⁴⁴ *The Times* Aug 27 1902 p.7d, *BMJ* 2: Sept 6 1902 p.718

¹⁴⁵ *LCC: Minutes of Proceedings* Jul 1 1902 p.995

. . . unable to fix a day for receiving a deputation on the subject of the amendment of the coroners' law, but that he will carefully consider the question, although he cannot hold out hopes of legislation.¹⁴⁶

This had the effect of suspending action by the LCC on any further attempt to initiate legislation until 1906 when it reviewed its policy on coroners¹⁴⁷ yet again which resulted in several minor changes. A deputation attempted to visit the Home Secretary, Herbert Gladstone, to discuss the proposals,¹⁴⁸ but he thought it better to defer a meeting with them until there was a prospect of being able to introduce legislation.¹⁴⁹ However, the Lord Chancellor agreed to meet a joint delegation from the LCC and the Medico-Legal Society (MLS) in March 1907.¹⁵⁰ John Troutbeck and another London coroner, Dr. Wm. Wynne Westcott, were representing the MLS and were given the opportunity to address Lord Loreburn, the Lord Chancellor. They emphasised to him the need for medical investigators where an inquest seemed necessary. Other members of the delegation covered the problems associated with registrars and death registration etc. At the end of the visit:

The Lord Chancellor promised to give his most serious consideration to this matter, which he considered to be of real and great importance; without loss of time he would investigate the facts personally, and, in conjunction with the appropriate Minister, he would consult with all the authorities who might be able to aid him in a matter of such gravity.¹⁵¹

The delegates must have left the meeting with great satisfaction and with an expectation that there would be a positive outcome. Similar previous visits had not produced results and, again, there was no apparent action.

¹⁴⁶ Ibid. Oct 14 1902 p.1451

¹⁴⁷ Ibid. Oct 30 1906 pp.1023-5

¹⁴⁸ Ibid. p.1025

¹⁴⁹ Ibid. Apr 30 1907 p.919

¹⁵⁰ Ibid.

¹⁵¹ *The Times* Aug 27 1907 p.10f

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In 1899, the LCC inherited parts of three counties which it had to amalgamate and unify. The main driving force for the reformed county government was administrative efficiency and that encouraged the formation of a centralised, bureaucratic system in order to achieve uniformity. The primary objective of the Public Control Department was to integrate the coroners into that bureaucratic system. In order to achieve that, it looked back to ideas and recommendations made in the previous fifty years, particularly those made by Herschell and the select committee death certification reports. The PCC's policy was developed from these recommendations and additional proposals to meet specific local needs.

The LCC had to contend with London coroners' resistance to the policy and to change. They wanted to retain their ancient traditional practices and procedures associated with independence, individualism, strong localism and amateur administration.¹⁵² Throughout the period covered by this chapter (and beyond) the London coroners achieved this, as Anderson reports:

Even as late as 1911, the diversity of practice between the eight London coroners was a constant annoyance to the tidy bureaucrats of the London County Council.¹⁵³

The coroners discerned support for their stance from an elite in society that objected to constant change and wanted to reconnect with an older, stable way of life by the preservation of ancient and traditional elements still surviving in the present.

¹⁵² Dandeker op.cit. p.121

¹⁵³ Anderson op.cit. p.17

The policy adopted by the LCC was more sophisticated than it appeared at first sight. If had been implemented, it would have achieved four objectives:

First, it would have overcome many of the mundane problems that had persisted for many years. The difficulty for the reformers was that they had to deal with the problems of previous generations rather than the present.¹⁵⁴ The PCC was, in effect, still dealing with the diagnoses made and prescriptions offered in the 1850s by the Middlesex magistrates¹⁵⁵ and the ongoing problems associated with death certification. Had the government dealt with these earlier, the PCC would have been able to concentrate on innovative ideas and possibilities for the office, rather than having to deal with problems that should have been already resolved years before.

Second, if the policy had been fully implemented, the coroners would have been more closely integrated into the LCC's administrative and bureaucratic organisation. A significant degree of control could have been exerted over the coroners with the potential to interfere with their independence. The enhanced statistics that would have resulted from the proposed system would have been of value and would have provided the basis for developing social policies for London.

Third, the policy appeared to have been generally acceptable to the medical profession. At least, the GPs, who had the greatest interest and the most to lose, raised no objections. Certainly, with the appointment of expert pathologists, the involvement of the medical profession in the inquest system was guaranteed and its levels of responsibility and authority enhanced. As Burney's study confirms, the profession had been attempting to achieve this for many years.

¹⁵⁴ Cannadine Past op.cit. p.168
¹⁵⁵ Ibid.

Fourth, a practical policy had been developed which provided a basis for reform of the office in England and Wales.

The final point is most important. The LCC wanted to integrate the London coroners into its bureaucratic system to achieve administrative efficiency. However, it had a hidden objective that was only revealed in 1909. The LCC's *strategy* was to persuade the Government to make a general review of coroners' law and to initiate reform legislation. The LCC was attempting to influence the government to address a national issue in order to achieve a local objective. As already noted above, it showed the developing similarity between local and national politics, and that cut right across the Victorian assumption that they were separate spheres of activity.¹⁵⁶ It also showed the ambiguous nature of the office of coroner—an officer independently investigating deaths on behalf of the Crown, but with significant links to local government.

A potentially significant problem for implementation of the policy was that it was not entirely realistic to apply the policy across England and Wales. It could have been implemented in the cities and large towns without too much difficulty, but would have caused considerable problems in many country districts with low population densities, few doctors and even fewer specialists and hospitals.

It is important not to credit the LCC with too much influence. It had developed a viable policy for the London coroners and it provided a good basis for discussions about the office and potential reform. Although successive governments had listened with some sympathy to the LCC's appeals for review and appropriate legislation, they had not been persuaded to act. The possibility of success appeared briefly when Lord Herschell was Lord Chancellor, the only time in the first seventeen years of the LCC—and that was lost following a general election and a change of government.

¹⁵⁶ Davis *Progressive* op.cit. p.29

The next chapter goes back to 1902 to examine the effect of two decisions made by the PCC when it made a review of its coroners' policy. The decisions would have a far greater effect than could ever have been foreseen at the time.

CHAPTER 7

MR. TROUTBECK VERSUS THE DOCTORS

. . . this particular inquest held by Mr. Troutbeck can only be attributed to his specific animus against the medical profession.

Letter to *The Times*¹

The previous chapter focused mainly on the London County Council's (LCC) policy and the attempts that it made to persuade the government to have a general review of the office of coroner. This chapter covers the period from 1902 until 1908 and starts by examining two decisions made by the Public Control Committee (PCC) in mid-1902. It then goes on to deal with the resulting disputes between John Troutbeck, the coroner for the South Western District of London, and the medical profession. These disputes were significant because they persuaded the government to establish a departmental committee of inquiry into coroners and inquests. That achieved the first part of the LCC's strategy and was potentially a significant step along the road to reform. The medical profession was again exposed to the glare of publicity as a result of activities associated with the coroner's court. Apart from their importance in the reform process, they opened the debate on the use of experts to perform post mortem examinations and raised important questions regarding the accountability of the medical profession to the public.

The 1902 meeting of the PCC made a general review of its policy which 'raised far-reaching questions as to the reform of coroners' law'.² The

objective still appeared to be to influence the Government to revise the coroners' law on a thorough basis since the LCC had made no attempt to introduce a Bill to deal solely with the London coroners. Apart from endorsing the policy, two important operational decisions were made at the meeting, both directed towards improving administrative efficiency. The first decision was to appoint John Troutbeck as the coroner for the South Western District.

The 42 year old Troutbeck had been coroner for the large franchise Liberty of Westminster since 1888 and was not unknown to controversy. In 1891, he had conducted a virtually 'secret' inquest on the Duke of Bedford that led to some difficult questions for the Home Secretary to answer in the Commons (see chapter 4). He had also had a brush with reporters and, in 1901, had clashed with a house physician at the Westminster Hospital over the notification of the accidental death of the Rt.Hon. W.W.B. Beach, MP.³

The PCC chose to ignore those episodes and reported that:

. . . we have formed a high opinion of the manner in which he has performed his duties of the office [as coroner for Westminster]. . . he has had exceptional experience, for in addition to his being the coroner for a district in which many important inquests have been held, he has for the past ten years presided as Deputy High Bailiff at compensation cases in Westminster and thus has had an opportunity of dealing with and sifting evidence such as is not often afforded in a coroner's court.⁴

This appointment showed that the PCC was taking whatever steps available to implement its policy without a change in the law. It used the only process open to it to mitigate some of the problems associated with the franchise coroners' districts—it appointed a franchise coroner

¹ *The Times* Jun 9 1908 p.6c Letter to the Editor from Donald F. Shearer, FRCS, Joint Hon.Secretary, South-West London Medical Society

² *BMJ* Jul 5 1902 p.73

³ *Lancet* 2: Oct 19 1901 pp.1064-5 cited in D. Zuck 'Mr Troutbeck as the Surgeon's Friend: The Coroner and the Doctors - An Edwardian Comedy' *Medical History* 39: 1995 259-287 p.264

to a county district. It achieved five objectives. First, the Westminster franchise coronership held by Troutbeck was combined with the South Western District to make one jurisdiction, though geographically it was still not an ideal district (see Map I). Second, it had the effect of reducing the number of coroners. Third, it established another whole-time coroner as Troutbeck agreed to relinquish his professional work as a solicitor. Fourth, with Troutbeck's agreement, the opportunity was taken to limit the overall salary so that costs were reduced. Finally, it indicated the importance the PCC was placing upon professionalism in the coroners' courts emphasising the quality of his performance as a lawyer. That emphasis suggested a move in the direction of the Scottish system which employed only lawyers in the post of procurator fiscal.

The second decision made by the PCC was:

That the coroners be informed that in the opinion of the Council it is desirable that post mortem examinations in inquest cases of a special nature should be entrusted to a specially skilled pathologist.⁵

The PCC considered that the GPs who made the post mortem examinations were rarely qualified by experience to do the work and that a large proportion of the examinations were of little value in deciding the cause of death⁶ and a waste of money. It was reported that one member of the PCC 'had some hard things to say as to the incompetence of general practitioners in performing necropsies'.⁷ Troutbeck⁸ and some members of the medical profession agreed with that opinion.⁹

⁴ LCC: *Minutes of Proceedings* Jul 1 1902 p.989

⁵ *Ibid.* p.993

⁶ *Ibid.* 1902 pp.992-3

⁷ *BMJ* 2: Jul 5 1902 p.73

⁸ John Troutbeck 'Modes of Ascertaining the Fact and Cause of Death' [Hereafter: Modes] in *Transactions of the Medico-Legal Society* 3: (1905-06) 86-117 p.96 [Hereafter: TMLS]

⁹ *Ibid.* 2: Jul 26 1902 p.300

To employ a doctor to perform a post mortem examination, the coroners were restricted by the provisions in the 1887 Coroners Act:

21.—(1) Where . . . the deceased was attended at his death or during his last illness by any legally qualified medical practitioner, the coroner may summon such practitioner as a witness; but . . . if the deceased person was not attended at his death or during his last illness . . . the coroner may summon any legally qualified practitioner who is at that time in actual practice in or near the place where the death happened, and . . . [he] may be asked to give evidence as to how, in his opinion, the deceased came to his death.

(2) The coroner may . . . direct such medical witness to make a post-mortem examination of the body of the deceased with or without analysis of the contents of the stomach or intestines.¹⁰

The LCC accepted that the coroner had to call the local GP as a witness under section (1), but believed that he could select a better qualified doctor to perform the post mortem examination. Counsel advised that a second doctor could only be employed if there were a change in the law¹¹ and, in these circumstances, the more limited decision was taken to have post mortem examinations performed by a pathologist in cases of a *special* nature.¹²

The LCC requested all the important London hospitals to provide the names of well qualified pathologists who would be prepared to make post mortem examinations and to give evidence in special inquest cases.¹³ The *BMJ* was concerned that, if specialists accepted the standard fee permitted under the 1887 Act, a non-medical coroner might be tempted to believe that cost was the only important consideration and choose the expert rather than the GP. It continued:

. . . if the fees are equal the employment of these two persons will be a matter solely for the discretion of the coroner. We wish that

¹⁰ 50 & 51 Vict. c.71 An Act to consolidate the Law relating to Coroners [The Coroners Act] [16th September 1887] s.21 (1) & (2)

¹¹ LCC: *Minutes of Proceedings* Jul 1 1902 p.993

¹² *Ibid.*

¹³ *BMJ* 1: Apr 18 1903 p.945, 1: Apr 25 1903 p.979

we could say that our profession could safely rely upon this discretion. Unfortunately this is by no means the case.¹⁴

The hospitals also had some reservations but they helped the LCC to compile a list of pathologists¹⁵ who were prepared to make post-mortem examinations and give evidence in special inquest cases at the standard fee'.¹⁶

When the two decisions were taken in 1902, to appoint Troutbeck and to have special case post mortem examinations performed by a pathologist, they appeared to be independent and unrelated. Troutbeck was among fifteen candidates who were interested in the vacant office of coroner.¹⁷ However, the LCC did not invite applications and interviewed only Troutbeck before appointing him to the post.¹⁸ According to the *BMJ*, one of the questions asked was:

Are you prepared to entrust post-mortem examinations to a skilled pathologist, as desired by the Council, in all cases except where you are satisfied that the medical man connected with the case is competent to make a trustworthy post-mortem examination?¹⁹

It was reported that Troutbeck had 'agreed to give effect to the Council's resolution',²⁰ though he later denied that.²¹ However, in view of the PCC's resolution, there is a strong possibility that there was a discussion on the topic with respect to his experience in Westminster and his general attitude towards the continental and Scottish systems. As Burney points out:

¹⁴ *Ibid.* 1: Apr 25 1903 p.979

¹⁵ *Ibid.* 1: Apr 18 p.945, 1: Apr 25 1903, *LCC Minutes of Proceedings* May 12 1903 p.761

¹⁶ *LCC Minutes of Proceedings* May 12 1903 p.761

¹⁷ Zuck *op.cit.* p.262. See also Oswald *op.cit.* p.55 and pp.55-7

¹⁸ *BMJ* 2: Nov 29 1902 p.1730

¹⁹ 'The Relation of Coroners to the Medical Profession. Conferences as to the Action of the Coroner for South-West London' *BMJ* Supplement 2: Jul 16 1904 p.53, cited in Burney Thesis *op.cit.* p.264

²⁰ *BMJ* 2: Dec 20 1902 p.1937

²¹ *Ibid.* Supplement 2: Jul 16 1904

This phrasing of the question implicitly shifted the standard for admitting expert post-mortems, setting as the decisive variable the coroner's subjective assessment of the practitioner's competence instead of the nature of the case.²²

This was another aspect of the coroner being given the power to use his traditional discretion to make the decision—and the implementation of the policy depended ‘upon coroners’ willingness to champion the expert cause.’²³ None of this appears in the records of the PCC meeting when Troutbeck was appointed. But it may have been an important factor in his selection and subsequent application of the policy. Following his appointment as coroner, Troutbeck defined his mission:

In his own words, and with a fairly explicit criticism of his predecessor, he regarded it as his duty, “. . . to restore in the South-Western District the independence and authority of the coroner”²⁴

The PCC’s decision provided him with the necessary backing to do that. However, he went far beyond the recommendation of the PCC by having practically all his post mortem examinations performed by one particular Austrian pathologist, Dr. Ludwig Freyberger. He ceased to call GPs as witnesses at inquests, implying that they were not ‘competent to make a trustworthy post-mortem examination.’²⁵ The fees that they received for performing post mortem examinations were of sufficient magnitude to be ‘taken into account when [GP] practices were being sold or purchased’.²⁶ As a result, within weeks he was involved in a major dispute with the medical profession as the GPs in his district began to feel the effects of his new regime.²⁷

²² Burney Thesis op.cit. p.264

²³ Ibid.

²⁴ *BMJ* Supplement 2: Jul 16 1904 pp.53-4 cited in Zuck op.cit. p.264

²⁵ ‘The Relation of Coroners to the Medical Profession. Conferences as to the Action of the Coroner for South-West London’ *BMJ* Supplement 2: Jul 16 1904 p.53 cited in Burney Thesis p.264

²⁶ A. Douglas Cowburn ‘Experiences of a London Coroner’ *Medico-Legal and Criminological Review* 8: (4) October 1940 p.246

²⁷ The episode is covered in some detail particularly by D. Zuck op.cit. pp.259-287, but also by Burney Thesis op.cit. p.258 et seq., and Priyanka Saran ‘Ludwig Freyberger

Troutbeck probably chose Freyberger as his expert for three reasons. First, Freyberger was a pathologist recommended to the coroners by the PCC.²⁸ Second, they were already acquainted, both being members of the Medico-Legal Society (MLS).²⁹ Third, *because* of his foreign origins—Troutbeck was clearly in favour of the use of pathologists as pioneered by Virchow on the continent. But Freyberger's nationality compounded the dispute since there was a general prejudice against foreigners and foreign systems in England.³⁰ This can be seen in the evidence given by Sir Victor Horsley, the eminent brain surgeon, to the Royal Commission on Vivisection in 1907:

We are concerned here only with our work in English medical schools, and it does not matter what goes on on the continent; we have nothing to do with it from a legislative point of view, and therefore it always seems to me utterly irrelevant to the subject, so far as we are concerned as a profession.³¹

The other London coroners did not follow Troutbeck's lead but applied the recommended policy more or less to the letter, using expert pathologists only in special cases. For example, H.R. Oswald, a doctor and the coroner for the South Eastern District of London, appears to have ignored the LCC's list. When he needed a pathologist he consulted the Home Office for a recommendation (rather than the LCC) and subsequently used Sir Bernard Spilsbury on a regular basis.³² In his *Memoirs*,³³ Oswald does not even mention Troutbeck or the disputes with the medical profession.

At a meeting of the LCC towards the end of 1902, the Chairman of the PCC commented that the employment of Freyberger to perform post

and the Crisis in the Coroners' Courts 1902-1913' (London BSc, History of Medicine dissertation, 1998)

²⁸ *BMJ* 2: Dec 20 1902 p.1937, LCC: *Minutes of Proceedings* May 12 1903 p.761

²⁹ TMLS op.cit. 1: (1902-4) pp.v-vi cited in Saran op.cit. p.16

³⁰ *Wandsworth Borough News* May 22 1903 p.8c cited in Burney Thesis p.273. See also Jeremy Paxman *The English* (1998)

³¹ PP 1908 [Cd.3955] LVII.559 Royal Commission on Vivisection, Fourth Report. Minutes of Evidence Q. 16,126

³² H.R. Oswald *Memoirs of a London Coroner* (London: Stanley Paul 1936) p.140

mortem examinations had 'excited some comment, especially in the medical journals'. He went on to confirm a desire for administrative efficiency and reform of the law:

For many years past the Public Control Committee have been of opinion that there has been great waste of public money owing to the fact that post-mortem examinations are frequently of little value from being performed by inexperienced persons, and the scheme for the reform of the coroners' inquests prepared by the Committee and approved by the Council in 1895, provided for the appointment of special investigators for this work. Although the scheme has been pressed upon successive Governments no alteration in the law has yet been effected, and the Committee therefore considered in what way improvement could be made by the Council under the existing law . . .³⁴

The PCC was on safe ground recommending the use of pathologists in special inquest cases since the Home Office permitted their use.³⁵

Within a few months of Troutbeck's appointment, two deputations had visited the PCC to register protests with respect to his activities. The deputation from St. Thomas's Hospital complained that Troutbeck had entrusted two hospital post mortem examinations to the special pathologist without due cause. The South-West London Medical Society, which represented the local GPs, complained that Troutbeck was employing a pathologist in *ordinary* rather than *special* cases:

. . . this was not only a [financial] loss to the medical practitioners of the district, but to some extent reflected on their competency to perform work of this nature.³⁶

Both deputations accepted the validity of the LCC's published resolution. The LCC responded with what appeared to be a conciliatory gesture regarding the *special* cases where an expert pathologist was employed. It agreed that a GP who had attended the deceased prior to

³³ Ibid.

³⁴ *BMJ* 2: Dec 20 1902 p.1937

³⁵ See: Douglas G. Browne and E.V. Tullett *Bernard Spilsbury: His Life and Cases* (London: George G. Harrap 1951)

death *could* be summoned to give evidence and be paid the statutory fee.³⁷ However, it appears to have been a hollow gesture. The decision whether to call the GP or not was still left to the discretion of the coroner who had to be satisfied that the evidence would be material.

In 1906, the LCC made a further conciliatory gesture towards the GPs by changing the LCC's policy. It recommended that the 1887 Act should be amended so that a doctor could supply the coroner with a written report on the death of a person he had attended professionally, attend the post mortem examination and receive the related fees.³⁸ This recognised the financial burden that had been imposed on the GPs in the district and appeared to be an attempt to calm the situation. These gestures did nothing to limit Troutbeck's discretion and indirectly supported his use of an expert pathologist at his inquests. There does not appear to have been any attempt by the LCC to limit Troutbeck's use of his chosen expert or the number of post mortem examinations he performed.

The medical profession was inconsistent in its attitude towards the use of specialist pathologists. In the mid-1880s the *BMJ* had stated that:

. . . very few [doctors], except those who engaged in pathological work at the larger hospitals, are fully competent to make post mortem examinations and to interpret its results correctly.³⁹

In 1895, it went further supporting the implementation of the LCC's new policy (see chapter 6) and recognised that, if it were implemented:

Post-mortem examinations would always be made by competent pathologists—a reform devoutly wished for by many members of

³⁶ LCC: *Minutes of Proceedings* Mar 3 1903 pp.338-9

³⁷ *Ibid.* p.339

³⁸ *Ibid.* Oct 30 1906 p.1024

³⁹ *BMJ* 2: Dec 11 1886 p.1175

the profession, despite the pecuniary loss thereby entailed [for GPs].⁴⁰

During the dispute with Troutbeck however, the *BMJ* changed its tune in order to support the GPs (who made up the majority of its members) and stated that:

A post-mortem examination is ordered by a coroner in order that the jury may have . . . adequate evidence upon which to arrive at a sound conclusion as to the cause of death, and in the majority of cases the medical man called to the deceased before death is . . . *quite competent to make the necessary post-mortem examination* . . .⁴¹ [emphasis added]

Support for the GPs also came from what might have been considered an unexpected source—Sir Victor Horsley. He had a reputation as a belligerent, impatient and absolute autocrat who did not suffer fools gladly. He was always fighting something or somebody. When he was elected to the Council of the General Medical Council (GMC) in 1897⁴² he was soon involved in controversy and conflict with the other council members. In 1900 he had serious clashes with the BMA regarding its new constitution⁴³ and, on one occasion, he burst into the office of the editor of the *BMJ* to accuse him of lying.⁴⁴ Nevertheless, he became an influential member of the BMA, serving on the Council until 1912 and filling nearly every post except President and Chairman of Council. He was an important member of the BMA's Medico-Political Committee and took the leading part in forming the Association's policy with regard to

⁴⁰ Ibid. 1: Mar 2 1895 p.500

⁴¹ Ibid. 1: Jan 10 1903 p.93. See also: *Lancet* 1: Mar 28 1903 pp.901-2

⁴² The comments, with respect to the character of Horsley, are extracted from two biographies: Stephen Paget *Sir Victor Horsley: A Study of His Life and Work* (London: Constable & Co 1919) and John Benignus Lyon *The Citizen Surgeon: a biography of Sir Victor Horsley* (London: Peter Dawnay 1966)

⁴³ Lyon op.cit. p.198

⁴⁴ BMA mss. Signed Committee Minutes, 1910-13, Journal Committee, Mar 29 1912, 5-18 cited in Peter W.J. Bartrip *Mirror of medicine, a history of the British medical journal* (Oxford: Clarendon Press 1990)

reform in a number of areas, including coroners' law and death registration.⁴⁵

Even though Horsley was considered to be 'a consultant of consultants', he had a clear vision of what he wanted to achieve for the BMA. He had set himself the task of helping the Association to become 'the Doctors' Union, powerful and effective and well-organised on modern lines.'⁴⁶ That dream was eventually realised in 1971 when the BMA became a registered trade union and was recognised by government as 'the sole bargaining agent' for hospital doctors and GPs.⁴⁷ Since trade unions tend to concentrate on pay and conditions, it is not surprising that Horsley sympathised with the GPs. He held a deep conviction that it was necessary to improve their economic position, particularly in the poorer districts.⁴⁸ This explains his strong support for the South-West London Medical Society GPs against Troutbeck and his vigorous participation in the BMA's efforts and visits to Government ministers on their behalf.⁴⁹

However, the LCC and Troutbeck had authoritative support for the use of pathologists at inquests from some members of the medical profession. This came, in particular, from Dr. Littlejohn, a lecturer in Medical Jurisprudence at Edinburgh University, a member of the MLS and a strong supporter of the Scottish system in which he worked.⁵⁰ The *Lancet* published his views on medico-legal post-mortem examinations, but then strongly challenged them:

. . . we are not in accord with Dr. Littlejohn when he discusses the competency of medical practitioners in general to conduct

⁴⁵ Paget op.cit. pp.222-3

⁴⁶ Ibid. p.222

⁴⁷ Peter Bartrip *Themselves Writ Large: The British Medical Association 1932-1966* (London: BMJ Publishing Group 1996) p.69

⁴⁸ Paget op.cit. p.224

⁴⁹ Ibid. p.223 note

⁵⁰ Henry Harvey Littlejohn 'Medico-legal post-mortem examinations' in *TMLS* 1: (1902-4) pp.14-29, *Lancet* 1: Mar 28 1903 pp.862-866. See also Zuck op.cit. p.268 and Saran op.cit. pp.28-30

necropsies . . . We are not . . . able to accept as matters of universal experience, in England at any rate, all the facts with which his individual observation has supplied him and from which he draws his conclusions.⁵¹

The medical profession believed that Section 21 of the 1887 Coroners Act defined a *mandatory* requirement on the coroner to call the GP involved with the deceased or a local GP if the person was unattended. In this they were supported by counsel's opinion that 'Troutbeck . . . is not in conformity with the statutory duties imposed on him'.⁵²

Dr. George Bateman of the Medical Defence Union did not attack Troutbeck directly. He targeted the LCC in a perceptive letter to the *BMJ*:

The interference of the Public Control Committee . . . in matters connected with coroner's law is detrimental to the *interest of the public* and the attempts made by that body lately, and the City of London at a late election, to require coroners to contract out of the Coroners Act, and to subscribe as candidates to various regulations and requirements quite apart from the Act, is a scandal.⁵³ [emphasis added].

He raises several important points. First, he understood that if the coroners were made to adhere strictly to the LCC's bureaucratic rules and regulations, there was a risk that the interests of the prime beneficiaries of the inquest, the public, might be subordinated to those of the county council. This leads to the second point that if the coroners contracted out of the Coroners Act, then the LCC could define the deaths that should be investigated—which recalls the attempts of the magistrates in the 1840-50s. It was particularly important that a coroner retained his independence to investigate any death that might occur in any recognised authority—including the police, the government, or the

⁵¹ *Lancet* 1: Mar 28 1903 p.901

⁵² Zuck op.cit. p.266

⁵³ *BMJ* 1: Mar 14 1903 p.644

local authority.⁵⁴ The third point arises from the reference to the City of London. It indicates not only that the policy adopted by the LCC had an appeal to other councils, but also that Bateman realised the potential for it to spread and threaten the fees of the GPs across the country.

Bateman clearly considered that the root of the problem was the LCC's policy. As seen in the previous chapter, the LCC wanted to treat the coroner as an expert public functionary within an organised hierarchical structure. This would give, on the one side, an administration based on the expertise of the coroners and, on the other, an administration based on the discipline of the LCC's rules and regulations as applied to the coroners.⁵⁵ Strictly speaking, there should be no conflict between these two principles. But the implication is there that, in any disagreement between the two sides, the final word would be with the LCC since it set the rules.⁵⁶ Bateman saw that this could lead to the coroners becoming instruments⁵⁷ of the LCC and he called upon them to resist and not to compromise their independence:

Coroners must, if they desire to retain the dignity of their ancient and honourable office, stand by the Coroners Act, and refuse to make terms with any appointing authority. Coroners are officers of the Crown—not servants of any County Council—and any coroner who accepts office under terms which are not in accordance with the Coroners Act, is . . . lowering the dignity of his office.⁵⁸

Bateman was astute to appeal to the coroner's 'ancient and honourable office' since it was a source of their resistance to change. He was also unusually perceptive in seeing the potential problems that could result if the LCC's policy was followed through to its conclusion. He may have exaggerated the problems in order to advance the interests of the medical profession, and the GPs in particular. But in doing so he

⁵⁴ Christopher P. Dorries *Coroner's Courts: a guide to law and practice* (Chichester: John Wiley & Sons 1999) p.7

⁵⁵ Alvin W. Gouldner *Patterns of Industrial Bureaucracy* (Glencoe, Illinois.: Free Press 1954) p.22 cited in Blau and Scott op.cit. p.35

⁵⁶ Ibid.

⁵⁷ Burney Thesis op.cit. p.272

ignored the fact that the LCC had made no effort to interfere in the traditional role of the coroners. Indeed, although the LCC's policy was directed towards integrating the coroners into its bureaucratic organisation, it was also attempting to raise the professional standing of the coroner and his court.

Troutbeck had not been long in office when Sir Victor Horsley and Dr. Bateman with representatives of the BMA, the South West London Medical Society and the Medical Defence Union visited the Lord Chancellor. They wanted his interpretation of the requirements of Section 21 of the 1887 Act.⁵⁹ He considered that there was no contravention of the Act. It was only directory and not therefore an 'absolute statutable obligation' on the coroner to call in the local GP.⁶⁰ However, he provided no evidence to support his opinion. The BMA was unhappy with his response and wrote to him with more evidence to justify its case. This again failed to influence the Lord Chancellor, but in his reply he indicated that, although he was not in favour of the coroner's practice, he did not think it justified using his only sanction—removing Troutbeck from office. The government appeared to be very reluctant to get involved in the dispute and preferred to do nothing.⁶¹ That may have been because there was a difference of opinion between the Lord Chancellor and the Home Office—it was reported that Mackenzie Chalmers (the permanent under-secretary, who had previously served as a judge and parliamentary counsel) agreed with the BMA's interpretation of the law.⁶²

The BMA supported a number of ratepayers (GPs affected by Troutbeck's activities) who raised objections to some specific payments during the audit on the LCC's accounts for the year 1904-5. These payments were made by the LCC to Freyberger for post mortem

⁵⁸ *BMJ* 1: Mar 14 1903 p.644

⁵⁹ *Ibid.* 1: May 16 1903 pp.1178-9

⁶⁰ 50 & 51 Vict. c.71 op.cit. s.21

⁶¹ Zuck op.cit. pp.272-3

examinations performed at Troutbeck's request.⁶³ The district auditor, Mr. T. Barclay Cockerton, investigated these payments. In January 1906 he gave his ruling that the LCC was justified in charging the fees to the accounts as Section 21 of the 1887 Coroners Act was directory only. Cockerton was asked to give his reasons for his ruling⁶⁴ and when he did so, like the Lord Chancellor, he indicated that his ruling was also reached with an element of reluctance:

In giving my [earlier] decision in favour of the [London County] Council I expressed my sympathy with the members of the medical profession who were affected by the mode of procedure adopted by Mr. Troutbeck. . . in my opinion the Coroners Act 1887 on which the objectors relied never contemplated the employment of a special pathologist in the manner adopted by Mr. Troutbeck.⁶⁵

He would have preferred to find in favour of the medical profession but he made it clear that he was:

. . . convinced that the Public Control Committee and the coroner ha[d] been solely influenced by the desire to ascertain effectually the cause of death . . . and to act generally in the public interest.⁶⁶

With respect to the payments made to Freyberger, he ruled that since these were not in excess of those quoted in the 1887 Act, they were legal and the LCC had the full authority to pay them.⁶⁷ A minute in a Home Office file recorded that it thought there might have been a greater problem if Freyberger had been paid higher fees.⁶⁸ 'The great Mr. Cockerton' (as the Home Office described him)⁶⁹ may have had difficulty in finding in favour of the LCC, but unlike the Lord Chancellor, he provided the basis for his decision. He referred to a judgement made

⁶² *BMJ* 2: Nov 22 1902 p.1675, 1: Jan 10 1902 p.93

⁶³ *Ibid.* 2: Supplement Dec 2 1905 pp.312-9

⁶⁴ *Ibid.* 2: Jul 28 1906 pp.205-6, LCC: *Minutes of Proceedings Finance Committee Report Jul 24 1906 p.291* (Refers to: Finance Committee Presented Papers, District Auditor's Report pp.cccxxxi-cccxxxii)

⁶⁵ *BMJ* 2: Jul 28 1906 p.205

⁶⁶ *Ibid.*

⁶⁷ *Ibid.* pp.205-6

⁶⁸ HO45/12285/453044/70 1923-26 Coroners Bill Memorandum: to Ram, Feb 2 1926 see Clause 19 pp.2-4

by Lord Campbell in an obscure 1877 legal case⁷⁰ respecting the 1871 Ecclesiastical Dilapidations Act⁷¹. Lord Campbell ruled that statutes creating public duties are directory only and that 'in the absence of an express intention of the legislature' it was to be decided by 'weighing the consequences of holding a statute to be directory or imperative'.⁷² In other words:

We must . . . be sufficiently capable of putting ourselves in the position of those who drafted a rule to know what they thought "ought to be". It is in the light of this "ought" that we must decide what the rule "is".⁷³

The opinion of the Lord Chancellor and Cockerton was based on the provisions in the relevant section of the 1887 Act, which was a straightforward consolidation of Wakley's original 1836 Medical Witnesses Act. In 1836 the medical profession was still based on class rather than expertise⁷⁴ and pathologists were essentially non-existent. Wakley, who had framed and introduced the original Bill into the Commons, had admitted that he had had to compromise in order for it to reach the statute book.⁷⁵ Wakley's Act had long been demonstrably out-of-date and any attempt to put themselves in his position was fraught with difficulties. Bearing in mind the substantial advances in medical knowledge, technology and techniques that had occurred subsequently, there was little doubt about the necessity for a revision of the law. As Cockerton noted, the LCC had been trying to achieve that for eleven years.

⁶⁹ Ibid.

⁷⁰ *Caldow v. Pixell*, 2 C.P. 562

⁷¹ 34 & 35 Vict. c.43 An Act for the Amendment of the Law Relating to Ecclesiastical Dilapidations [Ecclesiastical Dilapidations Act] [13th July 1871]s.29

⁷² *Caldow v. Pixell* op.cit.

⁷³ H.L.A Hart 'Positivism and the Separation of Law and Morals' *Harvard Law Review* 7: 1958 p.593 cited in J.W. Harris *Legal Philosophies* (London: Butterworths 1980) p.129

⁷⁴ Mary English *Victorian Values: The Life and Times of Dr. Edwin Lankester M.D.*, F.R.S. (Biopress, Bristol 1990) p.6

⁷⁵ *Lancet* 1: May 6 1882 p.769

There appears to have been no appeal against Cockerton's decision.⁷⁶ That is surprising since there seemed to be a general feeling in the medical profession that Troutbeck's interpretation of the 1887 Coroners Act was incorrect. After four years of effort the medical profession had accepted that 'nothing, or next to nothing', had been achieved by their efforts.⁷⁷ With the 'point of legality' effectively decided in Troutbeck's favour by Cockerton, he was finally protected from any further action against him by the profession. The government had been reminded of the need for reform, but had avoided getting involved and 'the scandal died out'.⁷⁸

Although the GPs in south west London were still discontented, a period of relative calm followed the auditor's report in 1906. It was shattered in 1908 when Troutbeck sprang a surprise on the medical profession⁷⁹ which quickly developed into another dispute.

One of the LCC's recommendations had gone by almost unnoticed since it was originally published in 1895, even though it had been re-affirmed at each review:

That every case of death after surgical operation should be reported to the coroner with a view to preliminary inquiry, and, if necessary, the holding of an inquest.⁸⁰

The Coroners Society had discussed the question of such inquests on several occasions and the general opinion was that it was unwise to hold an inquest if the operation had been for the relief of disease, but in

⁷⁶ HO45/12285/453044/70 op.cit. Memorandum: to Ram, Feb 2 1926 see Clause 19 pp.2-4

⁷⁷ Paget op.cit. p.223n

⁷⁸ HO45/12285/453044/70 op.cit. Memorandum: to Ram, Feb 2 1926 see Clause 19 pp.2-4

⁷⁹ *The Times* Mar 1 1912 p.11c.

⁸⁰ LCC *Minutes of Proceedings* Jan 29 1895 p.90 Recommendation (i)

the case of an operation following an injury, then it was appropriate. In fact, inquests into surgical procedures were rare.⁸¹

Troutbeck suddenly and unexpectedly decided that an inquest 'was appropriate' on a death following a surgical operation at the Bolingbroke Hospital in June 1908. The local registrar had notified Troutbeck of the death and, since this was the first time that had happened, he felt justified in holding an inquest. The operation was performed by Sir Victor Horsley⁸² and Troutbeck added insult to injury by having the post mortem examination performed by Dr. Freyberger.⁸³ The dispute soon became public knowledge as a surgeon wrote to *The Times* suggesting a link to the earlier problems and a strong element of personal vindictiveness in Troutbeck's action:

In the absence of a reasonable cause of suspicion against Sir Victor Horsley's skill and good faith, this particular inquest held by Mr. Troutbeck can only be attributed to his specific animus against the medical profession. Year by year hundreds of death certificates have been registered in Mr. Troutbeck's district in which an operation has been set down among the "causes of death." Yet till he could attack Sir Victor Horsley, who took part in the agitation against him some years ago, Mr. Troutbeck let them pass.⁸⁴

Horsley was called to give evidence at the inquest. Troutbeck limited his questions to asking whether it was a necessary operation and whether there had been any want of skill on the part of the operator—essentially the same criteria as applied today.⁸⁵ Horsley made it clear that it was such an ordinary case that he could not understand why an inquest was necessary. In other words, the work of a surgeon of his standing did not need investigation. Troutbeck responded that, with the advances in

⁸¹ An example was an inquest on a child following an operation at the Royal Free Hospital in 1854. See HO45/5413 Charge against Middlesex Coroner of suppressing an inquest 1854

⁸² HO45/24529/128774/8 Feud between coroner and local general practitioners in Wandsworth, London 1923

⁸³ *The Times* Jun 12 1908 p.20c

⁸⁴ *Ibid.* Jun 9 1908 p.6c Letter to the Editor from Donald F. Shearer, FRCS, Joint Hon. Secretary, South-West London Medical Society

surgery, operations were much more frequent than previously, and since the deaths could not be considered natural, they came within the 1887 Coroners Act. Horsley interjected, somewhat unwisely, that if that were the case 10,000 inquests would have to be performed every year. Troutbeck picked up that point in his address to the jury. The public was in a state of complete ignorance as to the proportion of deaths that were accelerated by surgical operations, and this was because the registrars failed to inform coroners of such deaths. He had made further inquiries at the Bolingbroke Hospital and found that such deaths were not uncommon. This he considered to be a serious situation and extremely important from a public point of view because the coroner represented the public. Finally, he commented that they 'could not leave these things to any profession, however honoured or skilled.'⁸⁶

Horsley decided to take his grievance to the public with a letter⁸⁷ to *The Times*:

A long correspondence in the columns of *The Times* followed, and in a leading article Mr. Troutbeck's attitude was described as intolerable to the whole medical profession.⁸⁸

Horsley criticised the involvement of Freyberger with the comment that 'As this was the only medical evidence taken by the coroner, an erroneous verdict was naturally returned by the misdirected jury.'⁸⁹ He noted that Freyberger was 'a specialist whom the profession do not recognize [*sic*] as such, but who [*wa*]s universally employed by Mr. Troutbeck.'⁹⁰ He went on to repeat many of the earlier problems with Troutbeck, the GPs and post mortem examinations. He complained that the government and the Lord Chancellor had failed to take action against the 'misuse of power by a coroner.' He considered that

⁸⁵ Zuck *op.cit.* p.280 n.88

⁸⁶ *Ibid.* p.280

⁸⁷ *The Times* Jun 6 1908 p.14d

⁸⁸ *Ibid.* Mar 1 1912 p.11c

⁸⁹ *Ibid.* Jun 6 1908 p.14d

⁹⁰ *Ibid.* Jun 12 1908 p.20a

Troutbeck's extension of his practice into such matters as surgical operations was 'disquieting' and went on to question the technical competence of the court to judge medical matters. He ended:

May I say, in conclusion, that the responsibilities which every operating surgeon has to bear at the present day are heavy enough? If to these is to be added the prospect that in every case which terminates in death the propriety of his technical methods will be publicly adjudicated upon by incompetent persons, his position will be an intolerable one.⁹¹

He appeared to be doing little more than raising the medical profession's usual arguments against interference in what it considered to be its affairs and discomfort with lay judgements. But as Zuck points out:

The objection to publicity in Horsley's letter was significant; but why should it exist? Was it because some operations would never be undertaken at all if there was any possibility that the surgeon would have to explain publicly why he had operated and why his patient had died? A Select Committee had concluded that our system of death certification was so imperfect that we did not know what was happening.⁹²

Troutbeck in his comments to the jury at the Bolingbroke inquest had implied that Horsley had practised experimental surgery.⁹³ Later, this implication was specifically denied by the GP involved in the case (who had not been called as a witness at the inquest).⁹⁴ Anti-vivisectionist agitation had started in the 1870s with encouragement from Queen Victoria,⁹⁵ and this led to the formation of a Society for the Protection of Hospital Patients towards the end of the nineteenth century. It complained that 'Modern surgery . . . indulged a "habit of experimenting on patients for purposes other than those of their own immediate benefit

⁹¹ Ibid. Jun 6 1908 p.14d

⁹² Zuck op.cit. p.282

⁹³ Ibid. p.282

⁹⁴ *The Times* Jun 10 1908 p.8e

⁹⁵ Porter Benefit op.cit. p.335

or relief”.⁹⁶ Horsley had represented the BMA before the Royal Commission on Vivisection in 1907 and called attention to the inconsistencies of his opponents:

Anti-vivisectionist parties say that that it is immoral to try a new operation, or a new drug, upon a human being in a hospital. They call it an experiment. But, then, they also say that it is immoral to do it upon an animal. The only conclusion, of course, is that there should be no more new operations and no more new drugs used in the endeavour to relieve suffering or avert disease.⁹⁷

In his letter to *The Times*, Horsley had stated that Troutbeck:

. . . had put forward in his address to the jury a claim for coroners' jurisdiction in general which, if universally carried into effect would put an end to the practices of medicine as well as surgery . . .⁹⁸

Dr. Greenwood in a letter to the *Lancet* went even further. He disapproved of Troutbeck holding inquests on surgical deaths because they would be a 'fatal bar to all progressive surgery'.⁹⁹ Such comments suggest that the accusation of experimental surgery had a degree of truth in it.

The medical profession failed to recognise that there were advantages to be gained from inquests. As Burney points out:

. . . what was most appealing about recourse to the inquest for advocates of medical professionalization [*sic*] was the exemplary discipline the threat of an inquest might bring to bear upon a public unwilling to recognize [*sic*] the self-evident value of having orthodox medicine at its deathbeds.¹⁰⁰

But also, if a doctor or a surgeon were to be accused of malpractice or incompetence by relatives or friends of the deceased, the coroner could protect the medical profession from unwarranted attack by holding an

⁹⁶ Burney Thesis op.cit. p.313 citing *Verulam Review* 6: 1896-7 p.358

⁹⁷ PP 1908 [Cd.3955] LVII.559 cited in Lyon op.cit. p.145

⁹⁸ *The Times* Jun 6 1908 p.14d

⁹⁹ *Lancet* 1: Jun 13 1908 p.1714 cited in Zuck op.cit. p.281

¹⁰⁰ Burney Thesis op.cit. p.141

inquest. Troutbeck held such an inquest following a surgical death in 1909 which reached the conclusion that the operation was fully justified. But the *BMJ* was not prepared to accept the potential benefit. It dismissed the process with the comment that 'No surgeon would care to submit his highly skilled work to the judgement of men utterly incompetent to form an opinion of its value.'¹⁰¹

The question of deaths following the administration of an anaesthetic did not arise in the Horsley case, but it was not far away since these deaths had increased significantly in recent years. The Registrar General published the figures for the first time in 1912 (for the year 1911) in which 276 people died in connection with the administration of various anaesthetics. However, the significance of that number cannot be judged since there was no record of how many operations were carried out.¹⁰² Inquests on anaesthetic deaths had always taken place, with the usual concerns by the medical profession about the effect of the publication of uninformed lay judgements on the profession.¹⁰³

Horsley's contention that the coroner's court did not have the technical competence to judge medical matters had been put into context early in 1908 by the highly respected judge and President of the TMLS, Mr. Justice Walton.¹⁰⁴ He gave his opinion at a meeting of the Society that:

If death by chloroform was an unnatural death—and therefore, if the coroner had reason to think the death was a death by chloroform, he must hold an inquest—it seemed to him . . . to follow that, if the death was caused by an operation, that plainly would be an unnatural death, and there would be an inquest in every case in which a man died from an operation. The two things seemed to be on the same footing.¹⁰⁵

¹⁰¹ *BMJ* 1: Apr 10 1909 p.915

¹⁰² PP 1912-13 [Cd.6578] XIII.493 Registrar-General's 74th *Annual Report* Table LXXV p.xciii

¹⁰³ *BMJ* 2: Nov 10 1888 p.1088

¹⁰⁴ TMLS op.cit. 7: (1909-10) pp.180-81

¹⁰⁵ L. Freyberger 'An analysis of seventy-four cases of sudden death while under the influence of an anaesthetic' TMLS op.cit. 5: (1907-08) 21-77, p.76 [Note: Zuck refers

This opinion may well have influenced Troutbeck a few months later to hold the inquest on Horsley's patient. Coming from such an influential figure, the opinion would have been of great significance for the medical profession. But the *BMJ* ensured that the judgement did not reach the profession by failing to include it in its report on the MLS meeting.¹⁰⁶ It only came to the attention of the profession almost a year later when it was published in the *Transactions* of the MLS¹⁰⁷ and then covered in a *BMJ* article.¹⁰⁸ Zuck suggests that following Walton's comments, the tone of the reports in subsequent issues of the *BMJ* changed, indicating that the medical profession appeared to have become resigned to the extension of the coroner's jurisdiction to surgical operations.¹⁰⁹ However, it did nothing to resolve the continuing dispute between Troutbeck and Horsley which had evolved into a very personal affair.

In April 1908, two months before the death at the Bolingbrook Hospital, the Parliamentary Under Secretary of State at the Home Office, Herbert Samuel, reported in a Commons debate that:

. . . the Home Secretary had long since had his attention drawn to the workings of the law relating to coroners' inquests and the possibility of its amendment in many directions and he had under consideration the advisability of appointing a Committee to inquire into various matters.¹¹⁰

This announcement almost certainly resulted from two factors. First, Dr. Brend, who had regular contacts with the Home Office in the period, believed that Troutbeck's dispute 'gave rise to considerable criticism and eventually led to the appointment of the Departmental Committee

to the TMLS meeting in 1908, but quotes the report ('Proposed Legislation on Anaesthesia' *BMJ* 1: Jan 2 1909 pp.45-6) rather than the original in the TMLS. See Zuck op.cit. n.106 p.284]

¹⁰⁶ *BMJ* 1: Mar 28 1908 pp.747-8 cited in Zuck op.cit. n.106 p.284

¹⁰⁷ TMLS op.cit. 5: (1907-08) 21-77

¹⁰⁸ *BMJ* 1: Jan 2 1909 pp.45-6

¹⁰⁹ Zuck op.cit. n.106 p.284

¹¹⁰ Parl. Deb. 4th Series 187: col.870 Apr 3 1908

on Coroners.¹¹¹ Second, the visit of the joint deputation from the LCC and the MLS to the Lord Chancellor in August 1907 which had urged him to introduce early legislation on death certification and coroners¹¹² (see chapter 6). The Lord Chancellor had promised:

. . . to give his most serious consideration to this matter, which he considered to be of real and great importance; without loss of time he would investigate the facts personally, and, in conjunction with the appropriate Minister, he would consult with all the authorities who might be able to aid him in a matter of such gravity.¹¹³

Although there was no apparent action, it appears that the Lord Chancellor kept his pledge and reviewed the subject with the Home Secretary, and his intervention was important.

The second dispute between Troutbeck, Horsley and the medical profession over the Bolingbrook death started in June 1908. It escalated rapidly into a very public dispute and was undoubtedly the final spur for the Home Secretary, Herbert Gladstone, to announce in December 1908 that he had decided to establish a departmental committee to inquire into coroners, inquests and the coroner's court.¹¹⁴

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Almost fourteen years after the LCC defined its policy for coroners, it achieved the first part of its strategy: the government had been persuaded to make a general review of coroners' affairs, which was a significant step towards reform. The appointment of the departmental committee resulted from a combination of events and activities: the

¹¹¹ William A. Brend 'An Enquiry into the Statistics of Deaths from Violence and Unnatural Causes in the United Kingdom; With Special Reference to Deaths from Starvation, Overlaying of Infants, Burning, Administration of Anaesthetics and Poisoning' (unpublished University of London MD thesis, 1915) p.64, see HO45/10564/172763/30 1908-1915 Departmental Committee on Coroners.

¹¹² *Lancet* 1: Mar 30 1907 p.900

¹¹³ *The Times* Aug 27 1907 p.10f, *Lancet* 1: Mar 30 1907 p.900

¹¹⁴ HO45/10564/172763/3 1908-1915 Departmental Committee on Coroners, Letter appointing the Departmental Committee, H. Gladstone, Dec 15 1908

ongoing efforts of the BMA, the MLS and the LCC to lobby the government, the PCC's two decisions in 1902 and the resulting disputes with the medical profession, and finally, a Home Secretary who was prepared to take action.

It is important to recognise Troutbeck's contribution to the process. His activities allowed his opponents to depict him as 'a radical centralizing reformer'¹¹⁵ prepared to exchange the ancient and traditional English inquest for the Scottish or continental system. In fact, the papers¹¹⁶ he delivered to the MLS show that the description was far from realistic. He accepted the traditional role of the coroners, including the use of a jury, but saw the need for the court to change and use up-to-date procedures. He recognised that the traditional criminal role of the court was diminishing because of the increasing efficiency of police investigations. He saw the opportunity to transform the inquest into an up-to-date and valuable institution to serve the community with the coroner's court as the bridge between the law, the public and the medical profession—something Wakley had tried to establish in the previous century.¹¹⁷ But his views were out-of-step with the other London coroners, the Coroners' Society and most of the medical profession, who all had 'vested interests in the status quo . . . oppos[ing] any suggestion that might disturb their domain.'¹¹⁸ Nevertheless, his activities had the effect of moving the reform process forward.

Troutbeck also played a central role in exposing to wider public debate some important aspects of the ambiguities associated with the medical profession. He exposed the ambivalence of the medical profession. In 1895, it had supported the LCC's policy for all post mortem examinations to be made by competent pathologists, but that was quickly discarded when the GPs complained about loss of fees to

¹¹⁵ Burney Thesis op.cit. pp.271-2

¹¹⁶ John Troutbeck 'Inquest juries' TMLS op.cit. 1: (1902-4) 49-58, Troutbeck Modes op.cit.

¹¹⁷ Burney Thesis op.cit. pp.39-40

specialists. Troutbeck's activities had shown that the GPs' concern for fees was interfering with the advance of the logical process of development of medical specialists. Indeed:

The BMA, with its public service voice, called for improvements, but campaigned against them whenever the income of its members were threatened.¹¹⁹

Troutbeck's inquest on Horsley's dead patient was very important for two reasons. First, it can be seen to mark the end of the autonomy of the surgeon and, at least, the beginning of public accountability.¹²⁰ Secondly, it raised the question of informed consent. Neither of these problems has been completely resolved at the beginning of the twenty first century. These two problems and the culture of secrecy associated with the medical profession have a 'remarkably modern ring, resonating with present day discourse'¹²¹ that still focuses on experimental medicine.¹²²

The next chapter examines the role of the Home Office in dealing with the coroners and attempts to explain the reasons for the decision to set up the departmental committee inquiry. It goes on to examine the resulting inquiry, the most far reaching on the subject ever to have been undertaken up to that time, and the important recommendations of the committee which show the continuing influence of the LCC.

¹¹⁸ Garland Welfare op.cit. p.164

¹¹⁹ Zuck op.cit. p.287

¹²⁰ Ibid. p.286

¹²¹ Ibid.

¹²² See Mary Patricia McHugh *The Influence of the Coroner's Inquisition on the Development of the Common Law and the Medico-Legal System* (unpublished University of London PhD thesis 1976) p.284

CHAPTER 8

THE HOME OFFICE AND THE DEPARTMENTAL COMMITTEE

The law relating to coroners is antiquated. Much of it dates from the thirteenth century, and is of great historical interest, but it is not well suited to the changed conditions of modern life.

Report of the Departmental Committee, 1910¹

It has been seen that the limited reform of the coroner's system that had been achieved after 1860 came about indirectly and mainly as a result of changes in the processes of local and national government. The main themes from the diverse ideas and suggestions for reform that had been put forward in that period were eventually brought together by the LCC into its coroners' policy. To these it added several new recommendations, mainly to overcome the practical problems associated with integration of the London coroners into its bureaucratic administrative system.

However, the LCC did not attempt to implement the policy by promoting a private Bill that would have applied to London alone. Its strategic objective was to influence the government to make a general review of the office of coroner in the hope that it would lead to comprehensive reform. The government seemed reluctant to do that or even to become involved in resolving the dispute between Troutbeck and the GPs regarding post mortem examinations. The joint deputation from the LCC and the MLS convinced the Lord Chancellor in 1907 to examine the problems and he appears to have persuaded the Home Office to consider setting up the desired inquiry. A firm decision to establish a

¹ PP 1910 [Cd.5004] XXI.561 Second Report of the Departmental Committee appointed to inquire into the Law relating to Coroners and Coroners Inquests: Part I, Report, p.4 [Hereafter: [Cd.5004]]

departmental committee of inquiry was made by the Home Secretary shortly after the second very public dispute between Troutbeck and Horsley erupted in 1908.

This chapter covers the period from the beginning of 1908 until 1914. It first briefly examines the way in which the Home Office operated before moving on to suggest how this influenced the decision to set up the departmental committee inquiry on coroners. It then turns to the Committee Report, published in 1910, to examine the key recommendations and their significance. The inquiry was the most far reaching on the subject ever to have been undertaken up to that time. It was therefore of considerable importance because, apart from examining the problems which had dogged the office for many years, the recommendations provided a basis from which a government policy could be developed for reform. Finally, the attempts to implement reforms between the publication of the report and the beginning of the First World War are examined.

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The statutory responsibilities of the Home Office for coroners were limited to receiving the inquest returns made by county and borough coroners, and to deal with any appeals made in relation to county coroners' salaries where the parties failed to reach agreement.² The Home Secretary was, of course, responsible for handling any legislation relating to coroners in the Commons and answering MPs questions. But if action was required, he passed the details to the Lord Chancellor. Even the latter's responsibilities were very limited and he did little more

² See: Home Office *Statement of the Powers and Duties of Her Majesty's Principal Secretary of State for the Home Department* (London: HMSO 1875) s.7 p.170 and s.14 p.317, 23 & 24 Vict. c.116 An Act to amend the Law relating to the Election, Duties and Payment of County Coroners [28th August 1860] s.4, and 50 & 51 Vict. c.71 An Act to consolidate the Law relating to Coroners [The Coroners Act] [16th September 1887] s.28

than prescribe forms and issue writs to appoint or remove a coroner³— and removals were very rare events.⁴ Nevertheless, coroners frequently sent their questions relating to procedure, practice and interpretation of the law directly to the Home Office.⁵

The Home Office always made its responsibilities clear to any coroner who requested advice, as can be seen in the reply to the Somerset coroner regarding an inquest on a nun held in a public house:

The Coroner is not under the control of the Secretary of State, but under that of the Lord Chancellor, and the Court of Queen's Bench; therefore the practice of the Secretary of State is to decline to advise that Officer as to the proper performance of his duties . . .⁶

Subsequent home secretaries reaffirmed this,⁷ and even today, it is still pointed out that coroners 'are independent judicial officers, with a responsibility to the Crown rather than the government'.⁸ Nevertheless, the coroners always received a helpful reply (including the Somerset coroner) composed after consultation with the Lord Chancellor. Occasionally there were also consultations with other officials such as the Treasury Solicitor or the Law Officers.⁹ The replies usually confirmed that the Home Office had no responsibility for coroners.

At the beginning of the twentieth century, the work of the Home Office was divided between four departments until 1904 when the work-load

³ See: 50 & 51 Vict. c.71 op.cit. ss.8, 11, 18 (4) and 37

⁴ For examples, see LCO2/61 Removal of Coroner 1893, and LCO2/203 Coroners 1908 - Conviction of Coroner for embezzlement and removal

⁵ For examples see: HO45/11039/B20365 Rights and Duties of Coroners 1896-1922, HO45/12605 1918-1927 Coroner (Emergency Provisions) Act - number of Jurors, HO45/10581/18146 Powers, duties and qualifications of Coroners 1903-12

⁶ HO45/4856 Control of Coroner under Lord Chancellor, not Secretary of State. Draft letter from Secretary of State to the Coroner of Somerset, Feb. 1853

⁷ For example see: Parl. Deb. 3rd Series 222: cols.1050-2 Mar 2 1875

⁸ Christopher P. Dorries *Coroner's Courts: a guide to law and practice* (Chichester: John Wiley & Sons 1999) p.7

⁹ See: HO45/4856 op.cit., HO45/11039/B20365 op.cit.

had increased sufficiently for the addition of a fifth.¹⁰ The already massive work-load continued to increase and prompted Sir Mackenzie Chalmers, who had become permanent under-secretary in 1903, to write to Gladstone in 1907 that 'I think that you will find you will want a younger man to keep pace with it efficiently'.¹¹ In January 1908, Chalmers complained again that:

Our hours of work have considerably increased since I came to the Office, and Saturday, in particular instead of bringing an early day, is now often a late day for many of the higher division men.¹²

A month after this complaint he was replaced by the 51 year old Edward Troup¹³ who was highly valued by Gladstone.¹⁴ Troup had entered the Home Office in 1880 as the first open competition recruit to a junior clerkship. He was a member of the new professional generation that had begun to permeate the whole civil service where brains and intellectual talent were more important than family connections.¹⁵ Troup also brought a different leadership style. He was more in contact with the office as a whole compared to his predecessors and gained a reputation for delegating work and generally utilising his staff to the maximum.¹⁶

The criminal justice system had long been the core of the work of the Home Office¹⁷ and was handled by the criminal department. The head of this department was Herbert B. Simpson, a principal clerk who reported to an assistant under-secretary. These positions became important under Troup as Pellew makes clear:

¹⁰ Criminal, domestic, parliamentary, industrial and S (the new department for 'special subjects') see Jill Pellew *The Home Office 1848-1914* (London: Heinemann 1982) p.65

¹¹ Gladstone Papers, Add. MSS 45994, f.3 Chalmers to Gladstone Mar 30 1907 cited in Pellew op.cit. p.71

¹² Ibid. p.77

¹³ Ibid. p.71

¹⁴ Charles Mallet *Herbert Gladstone: A Memoir* (London: Hutchinson 1932) p.208

¹⁵ Pellew op.cit. p.33

¹⁶ Ibid. p.72

¹⁷ Paul Rock *Helping Victims of Crime* (Oxford: Clarendon Press 1990) p.9

. . . the permanent head of the office was no longer an official who believed in the nineteenth-century departmental virtue of dealing personally with as much work as possible which gave authority and status to the under-secretaries and principal clerks.¹⁸

Simpson was a barrister, regarded in the office as ‘a great authority on criminal law’¹⁹ and an acknowledged expert on coroners’ affairs.²⁰ His perceptive comments can be seen in the minutes of most files relating to coroners and inquests between 1900 and 1925—his initials and bold, child-like handwriting are unmistakable.

The spotlight of public attention was focused on the Home Office from time to time. On occasion, to deal with the publicity and related criticism, departmental inquiries were established to deal with any problems arising. The resulting inquiry reports provided a basis for legislation. For example, the 1894 inquiry into prisons was set up following severely critical articles in the press²¹ and led to the Prison Act of 1898.²² The considerable newspaper publicity given to the wrongful conviction in the Beck case²³ persuaded the Home Secretary, Aretas Akers-Douglas, to set up a committee of inquiry. The Home Office came out of the report badly having failed in its role as ‘the reviewing authority to detect the flaw and redress the wrong’.²⁴ There was specific criticism for some senior civil servants, including the under-secretary and Herbert Simpson, which confirmed their involvement in giving advice to their superiors.²⁵ The Beck case and the subsequent committee inquiry renewed earlier discussion about the need for a court of appeal. The

¹⁸ Pellew op.cit. pp.62-3

¹⁹ Harold Scott *Your Obedient Servant* (London: A. Deutsch 1959) pp.61-2 cited in Pellew op.cit. p.69

²⁰ Ian Adnan Burney *Decoding Death: Medicine, Public Inquiry, and the Reform of the English Inquest, 1836-1926* (unpublished University of California at Berkeley PhD thesis 1993) p.186

²¹ *Daily Chronicle* Jan 23 1894 p.4c, 5e, Jan 25 1894 p.5b, Jan 29 1894 p.5b and correspondence in following editions

²² Leon Radzinowicz and Roger Hood *A History of English Criminal Law and its Administration from 1750* vol.5 (London: Stevens & Sons 1986) p.581

²³ Radzinowicz and Hood op.cit. pp.765-6

²⁴ PP 1905 [Cd.2315] LXII.465 Report of the Committee of Inquiry into the Case of Mr. Adolphus Beck p.vii cited Pellew op.cit. p69

²⁵ Pellew op.cit. pp.69

publicity generated by another wrongful conviction (the George Eidalji case) persuaded the Home Secretary, Herbert Gladstone, to introduce the necessary legislation for a court of criminal appeal to avoid further escalation and criticism:²⁶

The Court of Criminal Appeal was thus established in 1907,²⁷ not because of one argument of principle overriding another, but through political necessity born of a traumatic experience.²⁸

To outsiders, the Home Office appeared to be 'a Still Centre'²⁹ and reluctant to intervene. It had a tendency to steer and encourage rather than to issue orders, and had a preference for dealing quietly with individual cases and ironing out inconsistencies.

A certain conservatism was also the result of the crisis aspect of the department's work which put civil servants on their guard and made them cautious.³⁰

Paul Rock emphasises an aspect of that, suggesting that the Home Office reacted to 'pressures, cases, petitions, and crises',³¹ and that it 'intervened only in a crisis'³² or when events suggested an escalation towards a crisis. This is, perhaps, an exaggeration, but the work-load at the beginning of the twentieth century noted above was such that the Home Office had little choice but to *react* to situations. It just did not have time available to be proactive. This explains the use of the device of appointing a departmental inquiry to which the bulk of the investigation work could be transferred. The Home Office staff would have had to be involved to some extent, but it was an additional rather than a main task. As well as relieving the staff and gaining time, the recommendations provided a basis for the development of a policy.

²⁶ Ibid. p.70

²⁷ 7 Edward c.23 An Act to establish a Court of Appeal and to amend the Law relating to Appeals in Criminal Cases [Criminal Appeal Act] [28th August 1907] cited in Radzinowicz and Hood op.cit. p.766

²⁸ Radzinowicz and Hood op.cit. p.766

²⁹ Rock op.cit. p.8

³⁰ Pellew op.cit. p.90

A new Secretary of State usually found himself in charge of a department of which he knew nothing.³³ Gladstone was unusual in this respect. He had worked as parliamentary under-secretary in the Home Office in the mid-1890s under Asquith and chaired the Departmental Committee on prisons in 1894.³⁴ He was appointed in December 1905, a few weeks before the publication of the auditor's report on payments made by the LCC to the pathologist used by Troutbeck. As noted in the previous chapter, the Lord Chancellor had informed the LCC and the MLS that, 'in conjunction with the *appropriate Minister*, he would consult with all the authorities' [emphasis added] who might be able to help to resolve the problems they had raised regarding coroners law.³⁵ Gladstone, if he had not already been informed of these problems when he was appointed, would certainly have been briefed on them and the LCC's policy by Sir Mackenzie Chalmers, his permanent under-secretary, before the discussions with the Lord Chancellor early in 1908. As indicated in the previous chapter, these discussions led to the announcement in April of that year that a departmental inquiry into coroners was under consideration.³⁶

Coroners touched only a minority of the population and carried little political weight and were, therefore, apparently low on the priority list for the government.³⁷ It had been reluctant to intervene in the dispute between Troutbeck and the medical profession and was probably relieved when Cockerton's ruling (see previous chapter) brought the dispute between them to an end. However, the dispute and tensions were reignited in 1908 with the personal conflict between Troutbeck and Horsley. William Brend, a doctor who took an interest in coroners'

³¹ Rock op.cit. p.35

³² Ibid. p.39

³³ Patrick Gordon Walker 'On being a Cabinet Minister' in Richard Rose (ed.) *Policy making in Britain: A Reader in Government* (London: Macmillan 1969) p.117

³⁴ Radzinowicz and Hood op.cit. pp.765-6

³⁵ *The Times* Aug 27 1907 p.10f, *Lancet* 1: Mar 30 1907 p.900

³⁶ Parl. Deb. 4th Series **187**: col.870 Apr 3 1908

³⁷ Phil Scraton and Kathryn Chadwick *In the Arms of the Law: Coroners' Inquests and Deaths in Custody* (London: Pluto 1987) p.35

affairs and had contacts with the Home Office, reached the conclusion that Troutbeck's actions 'gave rise to considerable criticism and eventually led to the appointment of the Departmental Committee on Coroners.'³⁸ It appears that Gladstone had followed the precedent of establishing an inquiry in order to prevent the conflict escalating further and to avoid potential criticism of the Home Office. It was the first time that the Home Office had made such a direct and open intervention into coroners' affairs. In view of his previous interest in the subject, the Lord Chancellor must have been involved in the decision to establish the inquiry, but it made sense for the Home Office, with its criminal law responsibilities, to institute it.

Gladstone was considered to be a conscientious administrator of justice³⁹ and had already shown that he was willing to introduce legislation, when it was appropriate, to overcome specific problems. With the establishment of the inquiry on coroners, and based on the precedent set by the previous departmental committees, he created the expectation that legislation would follow.

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The Departmental Committee to Inquire into the Law relating to Coroners and Coroners Inquests and the Practice in Coroner's Courts was appointed on 15th December 1908.⁴⁰ Nine days later, on 24th December, the Committee's remit was expanded to include special inquiries into the question of deaths arising from anaesthetics and flannelette fires. The drawback of this expansion was that it would dilute the efforts that could be directed towards the coroners and associated

³⁸ William A. Brend. *An Enquiry into the Statistics of Deaths from Violence and Unnatural Causes in the United Kingdom; With Special Reference to Deaths from Starvation, Overlaying of Infants, Burning, Administration of Anaesthetics and Poisoning* (Unpublished University of London MD thesis 1915) p.64 The examiner's Copy is in HO45/10564/172763/30 1908-1915 Departmental Committee on Coroners p.64

³⁹ *DNB* 1922-1930 Gladstone p.337

problems. On the same day, the Home Office sent out a letter and carefully prepared questionnaire to all the coroners in England and Wales.⁴¹ The speed with which this followed the appointment of the Committee confirms that preparations for an inquiry must have been in progress for some time.

It was particularly noticeable that the subject of death certification was not included in the remit. The 1893 Select Committee Reports and the LCC's policy had clearly indicated the important inter-relationship between the two, as the BMA confirmed:

Any scheme for reform of the law relating to coroners that does not include amendment of the Registration Acts must . . . be insufficient, and may be said to begin in the middle.⁴²

Brend suggests a reason for this omission. He reported that the correspondence and interviews that he had conducted with the Registrar-General's office (a responsibility of the LGB) and the Home Office left:

. . . a strong impression of lack of co-ordination between different Departments under the present system. In calling the attention of the two to a discrepancy between the figures relating to the same class of deaths, I have received two different and sometimes quite inconsistent explanations of the fact. The difficulty of getting further coordination appears to arise from *the reluctance of each office to take any action which might have the appearance of interfering with another department.*⁴³ [emphasis added]

Relative to a Select Committee or a Royal Commission, a Departmental Committee had a number of advantages that were mainly related to the control of the Committee by the Home Secretary. He could decide the precise terms of reference, the scope of the inquiry, the size and

⁴⁰ HO45/10564/172763/3 Departmental Committee on Coroners 1908-1915
Departmental Committee appointed by Gladstone 15th December 1908

⁴¹ PP 1909 [Cd.4782] XV.389 Appendix No.1, Letter and Questions addressed by the Committee to the Coroners of England and Wales p.219 [Hereafter: [Cd.4782]]

⁴² *BMJ* 1: Jun 14 1913 p.1288

⁴³ Brend op.cit. p.80

composition of the committee, and set a time for its existence. Strictly speaking, there were no limits on the time such a committee could deliberate. For example, the Brodrick inquiry on coroners issued its Report in 1971 almost seven years after the Committee was appointed.⁴⁴ It is fairly certain that Gladstone intended to use the outcome of the inquiry for legislative purposes. If he had in mind simply satisfying public demand for an investigation on coroners, he could have chosen a group of distinguished nonentities to serve.⁴⁵ But he selected capable and experienced men who understood the legislative and parliamentary processes, had practical experience of the topic and sufficient weight to satisfy the interested public.

Gladstone appointed Sir Mackenzie Chalmers, his recently retired permanent under-secretary, as Chairman.⁴⁶ He was an obvious choice with his previous experience in the department, as a judge and parliamentary counsel. He had also been a member of the Royal Commission on Vivisection in 1907 at which he became acquainted with some of the leading members of the medical profession, including Sir Victor Horsley.⁴⁷

There were four other members. Sir Horatio Shephard, a barrister who had held various legal appointments in India and, since retirement, had taken a special interest in legislative affairs. Sir Malcolm Morris, the eminent dermatologist who had been educated in London, Berlin and Vienna and would have had knowledge of the German system of investigating unusual deaths. William H. Willcox, a doctor and an expert on forensic medicine and public health was an 'insider' because he held

⁴⁴ PP 1971-2 [Cmnd.4810] XXI.367 Report of the Committee on Death Certification and Coroners [The Brodrick Report] Appointed Mar 17 1965, Report Published Nov 1971 [Hereafter: [Cmnd.4810]]

⁴⁵ Hugh McDowall Clokie and J. William Robinson *Royal Commissions of Inquiry. The Significance of Investigations in British Politics* (Stanford: Stanford University Press 1937) p.156, see also J. Toulmin Smith *Government by Commissions* (London: S. Sweet 1849)

⁴⁶ HO45/10564/172763/3 op.cit. Dec 15 1908

⁴⁷ 1908 [Cd.3955] LVII.559 Royal Commission on Vivisection, Fourth Report. Minutes of Evidence p.118

positions as scientific adviser and senior scientific analyst to the Home Office. The fifth member was the MP, Thomas Bramsdon, a solicitor, the coroner for Portsmouth and a member of the Coroners' Society. A Home Office clerk, J.F. Moylan, was appointed as committee secretary.

The Committee members appointed appeared to have had credibility with all the interested parties. There was only one minor protest against its composition from the flannelette lobby⁴⁸—which was not acted upon.⁴⁹ But no protests came from the LCC, the medical profession or the Coroners' Society.

In addition to the strong association of two members of the Committee (and the secretary) with the Home Office, all the meetings took place there. Some of the staff of the criminal department may have attended the meetings—they would certainly have been involved in the collation of the mass of data and could have influenced the recommendations. The Home Office and the Lord Chancellor's Office were certainly involved in selecting the issues to be dealt with by the Committee and the witnesses. An example of this can be seen in a letter from Troup to Muir MacKenzie in the Lord Chancellor's office regarding a problem with the Canterbury coroner:

I find that they [the members of the Departmental Committee] have not heard anything of these complaints. Do you think they should go into them? If so would you kindly send me any paper you think the Committee should see or give me the names of persons who should be asked to give evidence or information?⁵⁰

⁴⁸ [Cd.5139] op.cit. Qs. 7908-7910

⁴⁹ Ibid. Q. 7911

⁵⁰ HO45/10564/172763/7 op.cit. Muir MacKenzie to Troup Jun 23 1909

THE INQUIRY AND REPORTS:

Sixty nine witnesses⁵¹ gave evidence, answering around 12,000 questions in the thirty three meetings that took place. It appears that the Committee wanted to get as wide a view as possible and were prepared to spend time even with witnesses from relatively minor organisations who had a particular axe to grind. These ranged from the treasurer of the People's League of Medical Freedom, an organisation with only 120 members throughout the country, to the relatively new National Union of Journalists. However, other witnesses appeared because of their special knowledge or expertise. Doctors, pathologists, anaesthetists, dentists, coroners, coroner's officers, academics, representatives from the Registrar-General's Office, the Medical Defence Union and organisations concerned with flannelette, premature burial, fire prevention, etc.

The disputes between Troutbeck and the medical profession had been instrumental in precipitating the inquiry. As a result:

The British Medical Association was very active in the matter in 1908 . . [and was] prepared to offer evidence to the Committee . . but owing to the sudden closing of the taking of evidence [on 9th November], the witnesses for the Association were not heard.⁵²

The BMA was able to present what it described as 'a carefully considered memorandum of its views and suggestions'.⁵³ Each member of the Committee received a copy of the memorandum and it was published as an appendix to the report.⁵⁴ The memorandum devoted a significant section to death certification, which was not included within the remit of the Committee, to restating its grievances with respect to

⁵¹ The full list of witnesses can be found in [Cd.4782] op.cit. p.ii and [Cd.5139] op.cit. p.iii

⁵² *BMJ* 1: Apr 26 1913 p.889

⁵³ *Ibid.*

⁵⁴ PP 1911 [Cd.5492] XIII.649 Second Report of the Departmental Committee appointed to inquire into the Law relating to Coroners and Coroners Inquests. Part III, Evidence and Appendices Appendix No. III p.35-38 [Hereafter: [Cd.5492]]

Troutbeck and dissatisfaction with the attitude adopted by the Lord Chancellor. Overall, it was directed more at providing what the medical profession wanted from the inquest than to the reform of the office of coroner.

It is remarkable that no official representative of the BMA was called to give evidence. The Association represented almost 21,000 medical practitioners and claimed 'to represent the opinion of the medical profession in the United Kingdom.'⁵⁵ The BMA's views and suggestions for change were well known to some witnesses, especially Horsley. He had not only helped to prepare the memorandum submitted but also, for the most part, presented the opinions it contained when he was giving evidence—but time was devoted to his personal grievance with Troutbeck. Similarly, no representative from the influential Medico-Legal Society was called to give evidence even though the Committee Chairman had indicated that he wanted its opinion.⁵⁶

The President of the Coroners' Society and fourteen other coroners gave evidence. But the most knowledgeable person, the honorary secretary, Walter Schröder, was not called. Perhaps that was because of the considerable input of information derived analysis of the answers given by the coroners to the questionnaire sent out by the Home Office before the inquiry began. There was an incredibly high return of almost 85% and the answers confirmed the wide diversity of opinion and practice among the rank and file coroners throughout the country.⁵⁷

The last person to be called to give evidence was James Ollis, the chief officer of the Public Control Department, who represented the LCC.⁵⁸ Clearly, the Committee could not ignore such an influential body. It had

⁵⁵ Ibid. p.35

⁵⁶ PP 1909 [Cd.4782] XV.389 First Report of the Departmental Committee appointed to inquire into the Law relating to Coroners and Coroners Inquests: Part II, Evidence and Appendices Q. 5012 [Hereafter: Cd.4782]

⁵⁷ [Cd.5492] op.cit. Appendix No.I pp.11-21

⁵⁸ [Cd.5139] op.cit. Qs. 11,455-606

not only produced a viable policy for reform of the office of coroner, but had also made significant efforts in the previous seventeen years to change the law. A detailed memorandum⁵⁹ was also submitted which included the policy confirmed by the PCC in 1906.⁶⁰ When he gave evidence, Ollis made it clear that the policy applied only to London and that it represented the 'mature views of the Council'.⁶¹ He quickly announced one significant change in the policy indicating that administrative efficiency had become a higher priority for the LCC:

One feature . . . relates to medical investigators. The Council does not wish to submit any evidence in support of that feature of the scheme at this stage.⁶²

The reason for that is that almost at the last moment the Public Control Committee had some doubt as to whether or not it was practicable on economical grounds. There has been no suggestion that the provision of medical investigators may not be a wise course to take, but the objection is entirely upon the economical grounds as to whether or not it would be introducing a new feature of expense into coroners' inquiries which would considerably add to the cost.⁶³

No alternative to medical investigators was proposed. But the increased concerns for economy were linked to the change in the political make-up of the LCC.⁶⁴ The policies of the 'Progressives' and their 'hopes of the early years proved too expensive'.⁶⁵ They were replaced in 1907 by the 'Moderates'⁶⁶ who were left with 'no choice but to raise the rates' and to consider economies wherever possible.⁶⁷

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⁵⁹ [Cd.5492] op.cit. Appendix No. II pp.21-35

⁶⁰ Ibid. p.23

⁶¹ [Cd.5139] op.cit. Qs. 11459

⁶² Ibid. Q.11456 [sic] [Q. 11457]

⁶³ Ibid. Q. 11458

⁶⁴ James Gillespie 'Municipalism, Monopoly and Management: The Demise of 'Socialism in One County, 1918-1933' cited in Saint op.cit. p.105

⁶⁵ Susan D. Pennybacker *A Vision for London 1889-1914: labour, everyday life and the LCC experiment* (London and New York: Routledge 1995) p.243

⁶⁶ James Gillespie 'Municipalism, Monopoly and Management: The Demise of 'Socialism in One County, 1918-1933' in Saint op.cit. p.105

⁶⁷ Pennybacker op.cit. p.243

The first twenty one pages of the Second Report⁶⁸ containing the recommendations on coroners and inquests were the most important. The Report was produced in a remarkably short time and appeared only forty two days after Ollis completed his evidence to the Committee on 19th November. The speed of production tends to suggest that preparation had been going on as the inquiry progressed and involved the participation of the Home Office staff. But that process was made easier by the use of LCC's policy which had a considerable influence on the final Report.

The relatively short report on anaesthetics did not appear until 18th March 1910 and the recommendations applied mainly to the medical profession.⁶⁹ A single recommendation out of the six concerned the coroners which stated that:

Every case of death under an anaesthetic ought to be reported to the coroner, whether it occurs in a public institution or a private house. If the coroner on inquiry is satisfied that all due care and attention has been used, we think that it is undesirable that there should be an inquest.⁷⁰

The BMA Memorandum had made no comment on anaesthetic or surgical deaths. Horsley had proposed that inquiry into such deaths should be limited to a medical tribunal consisting of two medical assessors sitting in open court with a judge—but without a jury.⁷¹ That was ignored, but a more limited interpretation was recommended for the requirements of the 1887 Act.⁷² The requirement that such deaths should be considered “unnatural” and required a mandatory inquest

⁶⁸ [Cd.5004] op.cit. Part I, Report

⁶⁹ The report on flannelette took much longer to produce and appeared on 23rd August 1910. It contained no recommendations. The Committee believed that the true cause of accidents was, in the majority of cases, carelessness and leaving children without competent supervision. The inquiry, though material in some respects, had diverted attention away from the coroners' problems and taken up time that could be devoted to hearing evidence that was of greater importance. PP 1910 [Cd.5376] XXI.793 Report of inquiry into the question of the danger from the use of flannelette for articles of clothing [Hereafter: Cd.5376]

⁷⁰ [Cd.5004] op.cit. Part I, Report p. 11

⁷¹ [Cd.5139] op.cit. Q. 9609

was to be relaxed. Coroners were required to make a preliminary inquiry and then use their discretion to decide whether an inquest was necessary or not.⁷³ It was an important indication that the doctors had accountability outside the medical profession, as Troutbeck had made clear at the Bolingbroke inquest (see previous chapter.)

In the Introduction to the Report on coroners and inquests, the Committee admitted that the antiquated law was 'not well suited to the changed conditions of modern life'. It went on to absolve the coroners from blame with the comment that: 'On the whole we have been astonished at the good work done by coroners with out-of-date and imperfect machinery.'⁷⁴ With that expression of protection and general satisfaction, the overall tone of the report was likely to be reformist rather than radical. The recommendations could be expected to be a balanced compromise intended to satisfy the diverse inputs. It could also be expected to be dominated by practical solutions to the problems exposed with emphasis on administrative coherence and bureaucratic tidiness. That can be seen in the whole report which was significantly influenced by these factors in the LCC's policy. However, if the recommendations had been implemented, many of the basic problems that had dogged the coroner's court and inquests for many years would have been removed.

The inquiry had shown that the scope of the inquest had widened beyond being an institution devoted primarily to the detection and prevention of crime. It had moved towards becoming a 'forensic forum for the sifting of medical, legal and scientific issues'⁷⁵ related to unexplained deaths. The increasing complexity of evidence from medical and other expert witnesses at inquests raised the question

⁷² 50 & 51 Vict. c.71 op.cit. s.1

⁷³ [Cd. 5004] op.cit. p.11

⁷⁴ *Ibid.* p.4

⁷⁵ Mary McHugh 'The Influence of the Coroner's Inquisition on the Common Law and the Medico-Legal System.' (unpublished University of London PhD thesis 1976) Abstract p.2.

whether the members of an inquest jury had the ability to comprehend what they heard and to reach realistic judgements related to it. But as the Committee had heard, 'the general public put great faith in the jury system'⁷⁶ and the 'desirability of abolishing inquest juries was a deeply controversial issue'.⁷⁷ Nevertheless, the Committee had been forced to consider seriously the advantages of the Scottish system and its possible implementation. These issues were dealt with in the final words of the penultimate paragraph in the Report that had greater significance than the final conclusion:

There is a good deal to be said for the Scottish system, under which deaths which would form the subject of an inquest in England are inquired into in private by the procurator-fiscal, who in any case of doubt reports the facts to the Lord Advocate. A public inquest is required only in the case of industrial accidents, or in the case of a death in prison. However, the jury system is so deeply rooted in English life and history, that we do not see our way to advocate change.⁷⁸

There was a very similar statement in the 1879 Select Committee Report. It is also quite remarkable because, if implemented, the recommendations would have moved the English system *significantly* towards the Scottish system in three ways: First, the number of jurors would have been reduced in number and their powers limited.⁷⁹ Second, the powers of a magistrate conferred on a coroner⁸⁰ would have moved him closer to the position of a procurator fiscal. Third, and most importantly, the coroner would have the power to order a post mortem examination before deciding whether it was necessary to proceed to an inquest or not.⁸¹ The inability to do that had caused problems since the 1836 Medical Witnesses Act. It was a sensible and practical solution. But it was also a compromise between the demands

⁷⁶ Cd.4782 op.cit. Q. 4592 See also: A.H. Manchester *A Modern Legal History of England and Wales 1750-1970* (1980) p.94

⁷⁷ Anderson, Olive *Suicide in Victorian and Edwardian England* (Oxford: Clarendon Press 1987) p.28 n.56 [Hereafter Anderson 1987]

⁷⁸ [Cd.5004] op.cit. pp.20-1

⁷⁹ *Ibid.* pp.13-6

⁸⁰ *Ibid.* pp.8, 18

of the medical profession to avoid unnecessary and undesirable publicity, and the need for an independent and public inquiry. Overall, the discretion of the coroner would be considerably increased. But it would also impose a higher level of responsibility on both the coroner and any doctor involved since the public was excluded from preliminary inquiries.

The Committee had, rather cleverly, managed to retain the ancient and traditional coroner's court with its jury as an institution. But it had also effectively removed the jury from involvement in the *majority* of cases—these would be dealt with in the preliminary inquiry without any publicity. It also provided the possibility of a more professional approach to investigating the medical cause of death as in Scotland and throughout Europe. The thorough preliminary inquiry, involving appropriate experts, would also have facilitated proceedings that had to take place before an inquest jury. The Committee had felt unable 'to advocate any change' to the jury system. But it had taken the first significant step towards the 'second long-mooted break with the populism of the office—the statutory empowering of coroners to hold an inquest alone, without a jury'.⁸²

The old problem associated with dual proceedings and conflict between the coroner's and magistrate's court was dealt with very simply. The Committee had already recommended that coroners should be professionally qualified as lawyers or doctors and stated that, if that were approved, then every coroner should be included in the appropriate commission of peace. The coroner could then act as a magistrate—it also considered that this might also 'enhance the attraction of the post for good men'.⁸³ The Committee found that there was considerable conflict of opinion as to whether the jury should or

⁸¹ *Ibid.* pp.10, 17

⁸² Anderson 1987 *op.cit.* p.258. The first break had been the abolition of popular election by the freeholders as a result of the 1888 Local Government Act (see chapter 5)

should not 'view the body'. The Committee accepted the almost unanimous opinion of the witnesses that the coroner should view, but that the jury should only view in special cases if the coroner required it.⁸⁴

The report was an important attempt to suggest a compromise between the medical profession, the local government, the coroner and the public. But the Committee chose to play down most of the report and to emphasise the 'special importance' of three bureaucratic recommendations:

We have made a considerable number of suggestions for amending the law relating to coroners and their courts, and in conclusion we desire to point out that we attach special importance to three recommendations, namely, the abolition of franchise coroners, the payment of all coroners by salary instead of fees, and the bestowal on a central authority of a power to make rules of practice and procedure.⁸⁵

If these alone had been implemented, the tensions within the system would have been ignored, significant change avoided and emphasis placed on control and administrative tidiness.

Before moving on, I want to consider briefly the idea of a rule-making authority. This was obviously of importance—it appeared at the end of the third paragraph of the introduction:

Some of our suggestions would require direct legislation, but the greater number could be carried into effect by an enactment giving some central authority a general power to make rules of practice and procedure. There is at present no rule-making authority or power for the coroner's court.⁸⁶

The reason for that last sentence had been made clear from the evidence submitted to the Committee that the:

⁸³ [Cd.5004] op.cit. p.8

⁸⁴ Ibid. pp.15-16

. . . rules of practice and procedure are either contained in the cast-iron provisions of the statute [the 1887 Coroners Act] or are left to the individual discretion of the coroner, who in this matter is a law unto himself.⁸⁷

The idea was not new. It had been foreshadowed in the clauses recommended by the Select Committee for a Bill on the Office of Coroner in 1860.⁸⁸ No Act could define all the procedures to deal with the practical, every-day problems of the coroner's court and there was a general trend, from 1896 onwards, for Home Office officials to be:

Increasingly . . . delegated by parliament the power to formulate regulations according to basic principles of the [new] acts and this work took up a good deal of time.⁸⁹

The 1910 Report indicated the awareness of the Committee of the need for flexibility in defining rules in order to deal with the considerable differences between urban and rural coronerships. In London (even with its inconvenient districts) and the major provincial towns, the number of inquests was large, but the coroner's districts comparatively small and compact. The coroners usually had access to properly equipped mortuaries and post mortem rooms as well as to important hospitals with expert medical advice, and to chemical and pathological laboratories. In the country, however, districts were usually very large, with relatively few inquests and frequently distant from expert help. The recommendation was that where conditions were similar, the procedure should be uniform.⁹⁰

However, the establishment of a rule-making authority can be seen as a further move towards centralised direction by the Government which had accelerated considerably in the twenty two years between 1887

⁸⁵ *Ibid.* p.21

⁸⁶ *Ibid.*

⁸⁷ *Ibid.* p.11 See also: [Cd.4782] Q.3526, [Cd.5139] Q.8361, Qs.8694-5

⁸⁸ PP 1860 (193) XXII.257 Report from the Select Committee on the Office of Coroner together with the Proceedings of the Committee, Minutes of Evidence and Appendix. p.v Items 2 and 3

⁸⁹ Pellew *op.cit.* p.64

and 1909. This can be seen in the thirty outlying statutes passed in that period which directly affected the duties of coroners, some of which were of general application.⁹¹ This is remarkable when it is recalled that only thirty three acts were consolidated into the 1887 Act covering the previous 600 years.⁹²

As noted above, coroners often wrote to the Home Office for advice on procedure. At a later date, when the recommendations were being considered, a Home Office minute stated that the Committee:

. . . suggested that there should be an advisory Committee of Coroners, the Coroners' Society agree; so does the Home Office. The matter is of some consequence. Coroners nowadays tend to look to the Home Office as a central authority. A rule-making power would strengthen its position.⁹³

The final sentence is particularly important. It indicates that the Criminal Department was not averse to adopting a more prominent centralised statutory role to deal with the coroners as part of its criminal law responsibilities—indeed, it may have influenced the recommendation in the Report.

The precise nature and organisation of the central authority was only loosely defined by the Committee and appears to have had little detailed attention. It had suggested that the rule-making body might consist of the Lord Chancellor and the Home Secretary, 'assisted by a small advisory committee of coroners'.⁹⁴ But in recommending a centralised body, the Committee appears to have overlooked two potential problems. As shown in the preceding chapters, the coroners had become increasingly identified with local rather than central

⁹⁰ Ibid. pp.11-12

⁹¹ Ibid. p.19

⁹² 50 & 51 Vict. c.71 op.cit. Third Schedule pp.365-9

⁹³ HO45/11214/403923/8 Suggested Amendments of Coroners' Law 1919-1923. Notes Prepared for members of the Inter-Departmental Conferences on Death Certification 1920-21

⁹⁴ [Cd.5004] op.cit. p.11

government since the 1830s. A central body with the suggested composition would have completely by-passed local government. There might have been the suspicion that such a body would have had the authority to impose charges on the county rates without having the related responsibility. The point had been made as early as 1860 when the Home Secretary was given the power to override the magistrates in fixing a coroner's salary.⁹⁵ The second problem was compliance. The evidence presented to the Committee had confirmed practices were in operation that contravened statutory law—for example, the President of the Coroners' Society stated that:

. . . one Lancashire coroner is in the habit of holding inquiries on oath without a jury, and, after taking these inquiries of dispensing (in cases where he is satisfied that death is natural) with the holding of a formal inquest. . . This practice has for a great many years been recognised by the paying authority.⁹⁶

If the objective was to have uniform procedure where conditions were similar, a method of ensuring this would have to be addressed. The Home Office, like other departments, had established teams of inspectors to deal with the management of dispersed institutions,⁹⁷ for example, inspectors working for the Prison and Police Commissioners. However, as Edward Troup noted in 1925:

When the executive work is given to local authorities, the Home Secretary's position as central authority may be such as to enable him to give instructions and directions, or advice and guidance only.⁹⁸

The LGB inspectors, for example, had had difficulty in drawing the line between their local independent activities and their status as servants of

⁹⁵ Parl. Deb. 3rd Series **157**: col.83 Mar 7 1860

⁹⁶ [Cd.5139] op.cit. Q.10619

⁹⁷ Rock op.cit. p.12

⁹⁸ Edwin Troup *The Home Office* (London: Putnam 1925) pp. 249-50 cited in Rock op.cit. p.12

a ministerial department.⁹⁹ Indeed, supervision of local professionals by centrally appointed inspectors was considered 'incompatible with the responsibilities of elected local authorities'.¹⁰⁰ Local government had little real authority over the coroners and the introduction of centrally appointed inspectors would introduce further ambiguity. Anything that compromised or interfered with the independence of the coroner in his duties and his freedom to act was likely to cause more problems than it cured. It would have been relatively easy to establish a central body. But considerable creativity would have been required to define the processes for implementation of, and compliance with, any new rules. And creativity was something that had been absent from coroners' affairs.

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By the 24th December 1909, a week before the Report was signed by the Committee, the Home Office staff had already made a detailed examination of the recommendations. Its overall reaction was minuted:

The Report contains a number of recommendations for alterations in the law and practice with regard to Coroners' inquests, to most of which *no objection can be taken by anyone*. Some of the recommendations, however, require special consideration.¹⁰¹
[emphasis added]

The last sentence appeared to refer to the changes in the jury system and the diminution of public involvement.

The statement was the first paragraph in several sheets of detailed typewritten notes containing the recommendations that appeared in the final report. The sheets had been scrutinised by several people in the Home Office who had made hand-written notes in the margins and

⁹⁹ Christine Bellamy *Administering central-local relations 1871-1919: The Local Government Board in its fiscal and cultural context* (Manchester: Manchester University Press 1988) p.125

¹⁰⁰ *Ibid.*

some amendments within the paragraphs. Although the notes are undated, it suggests that the recommendations were not going to be simply put to one side. The indications were that the Committee Report provided a serious base from which the Home Office could define an acceptable policy and legislation for reform.

The PCC considered the proposals and reported to the LCC that:

. . . the recommendations of the Departmental Committee . . . embodied substantially the proposals made by the Council through a deputation to the Lord Chancellor and the Home Secretary in October, 1906, . . . There were only three points on which the Departmental Committee disagreed with the Council.¹⁰²

The LCC had got almost everything it wanted. It is clear that Ollis, being the last witness to give evidence to the Committee, had made an impact. But more importantly, the policy that he had presented was the only realistic and viable policy that existed. It would have been remarkable if it had not influenced the Committee. Nevertheless, the LCC was not entirely satisfied, hence its desire to change three 'unacceptable' points, two of which were concerned with reduction in costs. First, it considered that the London coroners were well paid and objected to them delegating work to deputies, which it wanted to abolish. Second, although it agreed that the coroner should have wider discretion to pay medical witnesses, it did not want that extended to doctors in medical institutions. Third (and least important), the Departmental had recommended that the coroner should decide whether the jury viewed the body, but the LCC would have preferred that the jury made the decision.¹⁰³ Although the PCC reached the conclusion that the implementation of the recommendations would not 'make any savings in expenditure',¹⁰⁴ it still believed that:

¹⁰¹ HO45/10564/172763/11 op.cit. Memorandum: 24 Dec 1909 p.1

¹⁰² *BMJ* 2: Jul 16 1910 p.166

¹⁰³ *Ibid.*

¹⁰⁴ LCC: *Minutes of Proceedings* Nov 8 1910 p.871

. . the proposals of the Departmental Committee would result in valuable reforms of the existing law, and recommended that the Lord Chancellor and the Home Secretary be so informed, and be asked to promote legislation to give effect to the recommendations.¹⁰⁵

Although articles appeared in the newspapers and the legal and medical journals,¹⁰⁶ giving the details of the recommendations, unusually, there was no real comment or reaction. Indeed, it was not until 1913 that the attitude of the medical profession to the Report came to light:

Recommendations were made by the [Departmental] Committee . . and it is satisfactory to notice that these recommendations were largely in accord with the views put forward in the memorandum submitted by the British Medical Association, . .¹⁰⁷

It appeared that the Home Office staff had judged the situation correctly—the recommendations were generally acceptable for legislation. And an expectation that legislation would follow had been created by the significant Report so closely linked with the relevant government department. However, a report was one thing, legislation was another. Perhaps the press was holding back its comments until a Bill appeared which would provide a better opportunity for criticism.

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As noted above, the inquiry was unexpectedly curtailed. The last witness gave evidence on 19th November and the report was completed with remarkable speed before Christmas. This was in the period when the constitutional crisis with respect to the 1909 budget was reaching its climax. It had been decided that the answer to the Lords could only be achieved by an appeal to the country in the form of a general election. The outcome of an election could never be certain and it appears that

¹⁰⁵ Ibid.

¹⁰⁶ *Solicitors' Journal* 54: Apr 2 1910 p.387, *BMJ* 1: Apr. 2 1910 pp.826-9, 1: Apr 16 1910 pp.940-2, *Lancet* 1: Apr 2 1910 pp.942-4, *The Times* Mar 25 1910 p.4a

Gladstone put pressure on the Committee to produce the report before the anticipated dissolution of Parliament. The general election took place in January 1910.¹⁰⁸

Although that is a reasonable explanation for the curtailment, there was another factor which may also have influenced Gladstone. He had a good record for legislation, but his administrative competence and judgement were given a serious knock in the Parliamentary recess in 1908. This resulted from the 'carelessness and indecision'¹⁰⁹ he showed when dealing with a projected Roman Catholic procession. The King and Prime Minister Asquith became involved in the problem that bequeathed a legacy of difficulties for the Government. Gladstone showed no enthusiasm for resignation and 'when offered the sinecure of Lord Presidency of the Council, he refused the change. 'He thought this would be too obvious a demotion.'¹¹⁰ The attempt to move him from the Home Office clearly indicated a considerable loss of confidence in him by the Government. Nevertheless, Asquith allowed him to remain as Secretary of State for over a year—until 19th February 1910¹¹¹—fifty days after the report was completed. Winston Churchill was appointed Home Secretary and shortly afterwards the newly ennobled Viscount Gladstone departed for South Africa as governor-general.¹¹² It is possible that Gladstone knew of the impending change and wanted to have the report 'attached' to him rather than his successor.

The point is that, whether it was the constitutional crisis or Gladstone's departure (or a combination of both), it was another example of unrelated events having an effect on the coroners' law reform process.

¹⁰⁷ *BMJ* 1: Apr 26 1913 p.891

¹⁰⁸ R.C.K. Ensor *England 1870-1914* (Oxford: Oxford University Press 1992) p.417

¹⁰⁹ Roy Jenkins *Asquith* (London: Collins 1964) p.192. The full story is found on pp. 189-192

¹¹⁰ *Ibid.* p.192

¹¹¹ Ensor *op.cit.* p.614

¹¹² *The Times* Mar 7 1930 p.21d

In April 1910 Sir William Collins asked the still relatively new Home Secretary whether he had considered the Departmental Committee Report and 'whether he propose[d] to take any action thereon?'¹¹³ Churchill replied:

I have now under my consideration two valuable Reports made by this Committee, but I fear that as matters now stand I cannot give any pledge as to when it will be possible to propose legislation to carry out its recommendations.¹¹⁴

Gladstone had had an unceasing interest in the prison system¹¹⁵ and Churchill followed with an ambitious programme of penal reform which was never completed.¹¹⁶ His period in office coincided with major outbreak of industrial unrest, accompanied by riots and the risk of violent conflict between trade unionists and strike-breaking workers.¹¹⁷ He concentrated his efforts on those and related problems¹¹⁸ and gave Collins a standard ministerial response. In June 1910, the Home Office still thought that a Bill 'could be drafted on the lines of the Committee report'.¹¹⁹ By November, it was accepted that there was 'no chance'¹²⁰ of the coroners reform project progressing and it was 'shelved'. Just as in 1880, the departure of the Home Secretary had brought coroners' law reform to a halt.

The significance of Sir William Collins' question only came to light later in the day. Almost certainly as a result of Churchill's negative comments, Collins introduced a private member's Bill to amend the law related to coroners and death certification.¹²¹ The source of the Bill is

¹¹³ HC Deb. 5th Series 17: Apr 28 1910 cols. 639, 765

¹¹⁴ *Ibid.* col.765

¹¹⁵ Charles E. Mallett *Herbert Gladstone: A Memoir* (London: Hutchinson & Co. 1932) p.204

¹¹⁶ Paul Addison *Churchill on the Home Front 1900-1955* (London: Jonathan Cape 1992) p.110

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ HO45/10564/172763/11 op.cit. Minute: June 22 1910

¹²⁰ *Ibid.* Minute: Nov 23 1910

¹²¹ PP 1910 (163) I.265 Bill to Amend the Law relating to Coroners' Law and the Certification and Registration of Deaths and Burial

not clear and it may have been a tactic designed to put pressure on the Home Secretary to act. That method was unlikely to succeed—Churchill's obduracy was well-known.¹²² Collins almost certainly recognised that the possibility of success for the Bill was not high. Parliamentary business had been severely disrupted as a result of the constitutional crisis, but the death of the King in May had a greater effect and brought about a long period of inactivity. Of the 223 Bills introduced into Parliament, forty two were Government Bills of which only thirty two reached the statute book. The remaining 181 Bills were private members Bills of which only nine became law.¹²³

Collins' Bill had the stated intention:

. . . to remove certain anomalies in the law relating to coroners and inquests and to the certification of deaths, disclosed by reports of several committees during recent years.¹²⁴

The Bill emphasised the important link between inquests and death certification. It included many of the recommendations from the Departmental Committee Report on coroners and the 1893 Report on death certification. It was not a complete Bill, but more of a step towards improving the system. As a result, it received a mixed response.

The Coroners' Society informed the Home Secretary that the Bill did not cover recommendations of the 1909 Committee and appeared to believe that it would not advance very far in the legislative process. In these circumstances, it decided to take no further action—considering that it was 'safe to leave as matters stood'.¹²⁵ The *BMJ* published a review of the proposals in the Bill¹²⁶ and complained that the Bill had

¹²² Charles T. King *The Asquith Parliament: 1906-1909* (London: Hutchinson 1910) p.204

¹²³ *BMJ* 2: Dec 10 1910 p.1879

¹²⁴ PP 1910 (163) I.265 Coroners' Law and Death Certification (Amendment) Bill Memorandum p.i

¹²⁵ CorSoc Oct 4 1910 Vol.3 p.16

¹²⁶ *BMJ* 2: Jul 9 1910 pp.98-100, *BMJ* Supplement 2: Jul 9 1910 pp.90-3 contained the full text of the Bill

not incorporated all recommendations made for the coroners or those made by the 1893 Select Committee on death certification.

The lively correspondence in the columns of the *BMJ*¹²⁷ suggests that Collins' Bill was not well received by the medical profession. It was considered particularly galling that a Bill introduced by a member of the medical profession failed to deal adequately with fees.¹²⁸ The correspondence indicated that the doctors believed that, by withdrawing their services, they could persuade the Government to meet their demands. The doctors appeared not to have remembered a lesson learned in the 1870s:

. . . great as the BMA's influence had become in matters of professional organisation, it was only influence; power resided elsewhere.¹²⁹

Collins, as a doctor, was unlikely to have been opposed to increased fees. But as an experienced MP, he would have realised that a level of diplomacy was necessary by avoiding contentious aspects that would doom the Bill. Despite the objections by some sections of the medical profession, by the time of the annual meeting of BMA delegates in 1910, the doctors appeared to have become more realistic. Collins' Bill was 'accepted, approved, and . . . blessed'.¹³⁰

The Bill was also reviewed by the LCC General Purposes Committee which considered it acceptable if it were amended to include the points noted above.¹³¹ A resolution was sent to the Lord Chancellor and the Home Secretary requesting the Government to provide facilities for the

¹²⁷ *BMJ* 2: Jul 16 1910 pp.172-3, 2: Aug 13 1910 p.410, 2: Aug 20 1910 p.494, 2: Sept 3 1910 pp.659-61, 2: Sept 17 1910 p.818

¹²⁸ *Ibid.* 2: Aug 13 1910 p.410, 2: Aug 20 1910 p.494

¹²⁹ Peter Bartrip *Themselves Writ Large: The British Medical Association 1832-1966* (London: BMJ Publishing Group 1996) p.101

¹³⁰ *BMJ* 1: Jan. 28 1911 p.193

¹³¹ LCC: *Minutes of Proceedings* Nov 8 1910 p.871-2

Bill in the Autumn Session of Parliament.¹³² In the event, Collins' Bill did not even have a second reading and was dropped without explanation.

The 1911 AGM of the Coroners' Society, somewhat unrealistically in view of Churchill's comments, unanimously approved the resolution:

That the Coroners' Society recognizes [*sic*] the intention of H.M. Government to amend the law relating to coroners as shown by the appointment of the Departmental Committee of the Home Office and hope that the Report of that Committee will be followed by speedy introduction of legislation.¹³³

In October 1911, Reginald McKenna replaced Churchill at the Home Office. The Coroners' Society contacted him and was again informed that there was no prospect of legislation.¹³⁴ As a result the Society decided to prepare a Bill that expressed the views of the Society—which were in broad agreement with the recommendations of the Departmental Committee. It was recognised that no private Bill was likely to get beyond a second reading. However, it considered that the Bill could be of great value because it would always be open for the Home Office to refer to it and use it as a basis for future legislation.¹³⁵ The Bill was completed by 1913¹³⁶ and, although not known at the time, it achieved its objective. A copy was deposited in the Home Office files with Simpson's opinion in a minute: 'The draft has been carefully drawn & affords an excellent foundation for legislation.'¹³⁷

Lloyd-George introduced his National Insurance Act in 1911 which put the medical profession into crisis¹³⁸ and dominated its affairs. Initially the GPs were up in arms against the Bill—'They would not become

¹³² Ibid. Ibid. p.872

¹³³ CorSoc Mar 1912 Vol.7 p.276

¹³⁴ Ibid. Annual Report 1910-1 Vol.7 p.313

¹³⁵ Ibid.

¹³⁶ HC Deb. 5th Series Dec 13 1926 col.2591. CorSoc Vol.3 pp.50-51, p.59, pp.61-62, p.64, pp.65-9, pp.77-78, pp.85-86, pp.88-89.

¹³⁷ HO45/11214/403923/1 Suggested Amendments of Coroners' Law 1919-1923 Minute Nov 26 1919

¹³⁸ *BMJ* 1: Apr 26 1913 p.891

cogs in a bureaucratic machine run by the state! Doctors would be reduced to the status of petty civil servants.¹³⁹ Horsley was one of the few doctors who realised that 'the Insurance Bill was going through over the heads of the profession'.¹⁴⁰ His realism was at odds with the profession and with the BMA.¹⁴¹ In the end, most GPs participated and found the relationship with the state was 'secure and remunerative' resulting in a steady increase in their income.¹⁴² This, in effect, would remove the problem that had existed between Troutbeck and the GPs who were so concerned at the loss of their fees from inquests. But the Act had 'long-term repercussions for the structure of the profession'¹⁴³ and had an effect on the inquest system.

As early as 1840 the real distinction within the medical profession was between GPs and doctors who held hospital appointments.¹⁴⁴ The divide had been growing steadily, but it was widened significantly by the National Insurance Act which removed the right of GPs to attend patients in hospital.¹⁴⁵ However, the primary care of patients remained firmly with the GPs and they retained considerable power—'his letter of referral alone gave access to the hospital'.¹⁴⁶ But from 1911 onwards, the GPs were cut off from the growth in knowledge, innovation and progress in hospital science.¹⁴⁷ In their careers as GPs, they relied for the most part, on the knowledge and experience that they had gained during their training. Hospital doctors, with their continuing exposure to the significant advances in medicine, progressively developed their expertise and specialisations. These included an expanding group of pathologists and forensic scientists upon whom the coroners could call

¹³⁹ Roy Porter *The Greatest Benefit to Mankind: A Medical History of Humanity from Antiquity to the Present* (London: Fontana 1999) (London: Fontana Press 1999) p.639

¹⁴⁰ Stephen Paget *Sir Victor Horsley: A Study of His Life and Work* (London: Constable 1919) p.227

¹⁴¹ *Ibid.* p.229

¹⁴² Porter *op.cit.* p.639

¹⁴³ *Ibid.*

¹⁴⁴ Peter W.J. Bartrip *Mirror of medicine, a history of the British medical journal* (Oxford: Clarendon Press 1990) p.5

¹⁴⁵ Porter *op.cit.* p.639

¹⁴⁶ *Ibid.* p.684

as expert witnesses at inquests. The majority of the progressive hospitals were in the towns and cities, so that the divide also widened between coroners working there and those in the country districts who would not have access to these experts. But, even where such experts were accessible, a change in the law was needed in order to give coroners wider discretion to employ them—as the Departmental Committee had recommended. The 1911 Act was another example of an unrelated event having an effect on the coroner and the inquest system.

Between 1911 and 1914, a number of private members Bills¹⁴⁸ related to coroners and inquests were introduced into Parliament, but failed to proceed. The Coroners' Society claimed that this occurred because it made efforts to have them blocked,¹⁴⁹ though it did not record how that was achieved. In fact, with the limited time available for private members Bills, a sympathetic MP or two could easily 'talk out' a Bill. More importantly, even if a private member's Bill passed the early stages, it was almost certainly doomed to failure unless it had Government support.

The medical profession had had its attention almost totally focused upon the crisis caused by the Government's National Insurance Act, but it had not entirely forgotten coroners' law reform as the final paragraph of a 1913 *BMJ* article confirmed:

It is much to be hoped that, when the present crisis that has overtaken the profession has passed away, the [British Medical] Association will once more put its shoulder to the wheel in order to prevent the work it has done from being wasted, and will agitate

¹⁴⁷ *Ibid.* p.683

¹⁴⁸ PP 1911 (226) I.599, PP 1912-13 (116) I.537, PP 1913 (107) I.839, and PP 1914 (156) I.665 All: Bills to amend Law relating to Coroners' Inquests in Case of Fatal Accidents on Railways, PP 1912-13 (257) I.643, PP 1913 (58) II.5, PP 1914 (144) I.889 All: Deaths Registration and Burials Bill [printed 27 March 1913]

¹⁴⁹ *CorSoc Oct 1910 Vol.3 p.50*

until the whole subject is rescued from that limbo of forgotten things to which it seems to be at present consigned.¹⁵⁰

'The years from 1910 to 1914 constituted a turbulent period in domestic politics'¹⁵¹ in which the Home Secretary was pre-occupied with the resolution of a constitutional crisis, a series of violent strikes and riots, serious unrest in Ireland which came close to civil war and suffragette agitation. These were 'constantly overshadowed by international tensions'¹⁵² which led to the First World War. It is not surprising that coroners' affairs fell into a 'limbo of forgotten things' as other events overshadowed them—and coroners' reform was pushed much lower on the priority list. Nevertheless, the LCC had achieved the first part of its strategy—the Departmental Committee had made the far reaching inquiry it had wanted—the most important undertaken up to that time. The recommendations provided a solid basis for the Home Office to develop a policy for reform at some time in the future.

The next chapter takes up the story in August 1914, but concentrates mainly on the period following the 1918 Armistice in which halting, but steady and relatively rapid progress was made towards reform. It investigates several related but independent 'strands' of influential events that finally led to the enactment of the Coroners (Amendment) Act in 1926 which was based on the 1909 Departmental Committee Report.

¹⁵⁰ *BMJ* 1: Apr 26 1913 p.891

¹⁵¹ K.W.W. Aiken *The Last Years of Liberal England 1900-1914* (London: Harper Collins 1992) p.138

¹⁵² *Ibid.*

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CHAPTER 9

WAR, PEACE AND REFORM

After a long voyage the Coroners (Amendment) Bill, embodying reforms recommended many years ago by Sir Mackenzie Chalmers's Committee, has at last reached harbour.

Lancet 18th December 1926¹

In the last chapter it became clear that the considerable number of practical recommendations in the 1910 Departmental Committee Report² provided a basis for the Government to define a policy for the reform of the office of coroner and inquests. Although there were differences of opinion with respect to some of the recommendations, they were widely accepted as a basis for legislation and it was considered that there was 'every possibility' that a material change in the coroners' law could be expected within a reasonable time.³ Following the departure of Gladstone from the Home Office, Churchill indicated that this expectation was unlikely to be fulfilled. From then until the end of 1914, the Government was too busy dealing with the constitutional crisis, a series of industrial strikes, serious unrest in Ireland and foreign affairs, to progress coroners' law reform.

This very detailed chapter covers the period from the beginning of the war in August 1914 until the end of 1926. It investigates five related but fragmentary 'strands' that interweave to make up the complex path to the 1926 (Coroners) Amendment Act. Together they expose

¹ *Lancet* 2: Dec 18 1926 p.1280

² PP 1910 [Cd.5004] XXI.561 Second Report of the Departmental Committee appointed to inquire into the Law relating to Coroners and Coroners Inquests: Part I, Report

³ *BMJ* Aug. 20 1910 p.481

complexities, tensions, frustrations, pressures, endeavours, negotiations and compromises that were involved in the process that led to reform.

The first strand looks at the introduction of emergency measures to deal with coroners' juries that were catalysed by the war. The second examines the endeavours of the pressure groups to persuade the Government to take action following the Armistice. The third deals with the Ministry of Health's attempt to reform the law regarding death certification and the difficult relations with the Home Office that resulted. The fourth examines the influence of several murders on the process of reform, particularly the dual proceedings in coroners' and magistrates' courts. The final 'strand' covers the consultations and actions leading up to the enactment of the bill to amend the law relating to coroners in 1926.

I THE EFFECT OF WAR:

Problems for the coroners did not cease with the advent of war and the usual complaints continued to appear in the medical press and elsewhere.⁴ Although some were noted in the Home Office files,⁵ the dominant concern for the Government from the year 1915 onwards was the shortage of manpower as military casualties mounted. Conscription was a very controversial measure that caused the resignation of one Home Secretary, Sir John Simon, who opposed it.⁶ It was introduced in 1916 and from then until the end of the war there was an increasing

⁴ For Example, see: *BMJ* Mar 25 1916 p.471, Mar 10 1917 p.347. See also: William A. Brend 'The Necessity for the Amendment of the Law relating to Coroners and Inquests' *Transactions of the Medico-Legal Society* 10: 1912-13 April 22 1913 pp.143-197, Edward Nundy 'Coroner's Courts. Their Uses and Abuses' *Medical World* Feb 25 1915, Mar 4, 11, 18, 25 1915, Apr 1 1915

⁵ See: HO45/10564/172763/28 1908-1915 Departmental Committee on Coroners

shortage of men in offices and factories as they were conscripted into the forces. As one correspondent commented: 'The pressure on businessmen was acute . . . and it was important that their depleted staffs should not be called away unnecessarily' for jury service⁷—women were still barred from serving on juries.

Mr. Ingleby Oddie (Troutbeck's successor as coroner in south west London) estimated that about 30,000 men were required each year for inquest jury service in London alone. Towards the end of 1916, he made some suggestions to overcome the problems:

How can the serious loss of time of these business and working men be avoided during the war? It can be effected with the greatest ease by a short Act of Parliament in any one of three ways:—

Let coroners in London sit without juries, for they are expert officials quite capable of doing the work alone; or (2) reduce the size of juries from 14 to seven; or (3) give the coroners power to order *post-mortem* examinations in cases of sudden death, and if the death prove to have been due to natural causes let the coroner have power to dispense with an inquest.

As to the first method, it should be borne in mind that the verdict of a coroner's jury is not conclusive for any legal purpose.⁸

The *Lancet* applauded these 'Three sane and useful suggestions' because of the 'money, time and man-power effected'. It pointed out that the third suggestion had already had strong support from the Departmental Committee and was often recommended by the coroners. It extended Oddie's proposals in a very practical way. It suggested that if the first and third suggestions were simultaneously adopted for the

⁶ Robert Rhodes James *The British Revolution: British Politics 1880-1919* vol.2 p.48 and p.51, Taylor, A.J.P. *English History 1914-1945* (Clarendon Press, Oxford 1965) pp.53-4

⁷ *The Times* May 16 1918 p.3b and 8a. See also: Jun 22 1918, Jan 10 1917 p.10c, Jan. 24 1917 p.3e

⁸ *Ibid.* Dec 28 1916 p.2d

period of the war only, they would be a useful 'experiment which need not be continued if it should prove unsuccessful.'⁹

At the Home Office, Simpson was well aware of the significance of such potential changes on the inquest system if coroners sat without a jury:

If this power were given to Coroners for the duration of the war as a measure of economy I have little doubt that that it would be retained after the war for its own sake.¹⁰ [original emphasis]

The mounting military losses forced the Government to introduce further measures early in 1917. An Act was passed to suspend temporarily the use of grand juries to commit an accused for trial—though the Government was not prepared to implement a committee recommendation made two years earlier to abolish them completely.¹¹ Later in the year a Bill was introduced to reduce the number of a coroner's jury to a minimum of seven and a maximum of twelve until the end of the war.¹² The LCC, seeing the opportunity to take another step towards the implementation of its policy, attempted to get the Bill amended to include Oddie's third suggestion: to give the coroners power to order *post-mortem* examinations in cases of sudden death and dispense with an inquest if appropriate.¹³ This would have been a significant step towards the Scottish system. But the Government was not prepared to accept the LCC's amendment because it was outside the scope of the Bill.¹⁴ The Act reduced the number of jurors, but the

⁹ *Lancet* 1: Jan 13 1917 p.74

¹⁰ HO45/10815/313374/14 Coroners' Jurors—alteration in numbers. Coroners (Emergency Provisions) Act 1917 cited in Burney Thesis op.cit. p.367

¹¹ *The Times* Feb 15 1917 p.12f, Feb 20 1917 p.12c, Feb 28 1917 p.10b

¹² 1917-18 I.299 (34) Bill to reduce, in connection with the present War, the number of Jurors at Coroners' Inquests [Passed c.19]

¹³ LCC: *Minutes of Proceedings* Jul 31 1917 pp.799-800

¹⁴ *Ibid.*

measure would operate only until six months after the official ending of the war.¹⁵

The manpower problems persisted and in 1918 the Government, somewhat belatedly, had to introduce another Juries Bill with wider applications.¹⁶ This limited the right to a trial by jury in certain civil cases, raised the maximum age for jury service and gave the coroners the discretion to hold inquests without a jury, though not for deaths in prison, or involving murder or manslaughter. Schröder, of the Coroners' Society, stated that 'in the main I am strongly in favour of the proposal to leave it to the coroner to summon a jury or not as he thinks expedient.'¹⁷ The Bill had originally included a clause that gave the coroners the power to order a preliminary post mortem examination and dispense with an inquest if appropriate. But this was considered to be too radical by Schröder and the officials in the Lord Chancellor's office.¹⁸ This was surprising since 80% of the coroners who replied to the departmental committee's questionnaire in 1908 were in favour of the proposal¹⁹ and there were no objections when it was recommended in the 1910 Report. Nevertheless, the clause was dropped from the Bill and the 1918 Juries Act²⁰ quickly reached the statute book.

But the provisions to limit the inquest jury were not universally accepted. Attention was drawn to the enduring link between democracy and ancient liberties in a letter to the *Lancet*:

¹⁵ 7 & 8 Geo.V c.19 An Act to reduce, in connection with the present War, the Number of Jurors at Coroners' Inquests [Coroners (Emergency Provisions) Act] [24th May 1917]

¹⁶ *The Times* Jun 22 1918 p.10b

¹⁷ LCO2/354 Coroners. Juries Bill 1918. Alteration of form of Inquisition. Schröder to Troup May 25 1918.

¹⁸ Burney Thesis op.cit. pp.374-5

¹⁹ PP 1911 [Cd.5492] XII.649 1911 Second Report of the Departmental Committee appointed to inquire into the Law relating to Coroners and Coroners Inquests: Part III, Evidence and Appendices. Appendix I p.13

²⁰ 8 & 9 Geo.V c.23 An Act to limit the right to a jury in certain civil cases, to raise the age for jury service, to amend the Law with respect to the preparation and publication of jury lists, and to enable coroner's inquests in certain cases to be held without a jury (Juries Act 1918) [30th July 1918]

. . . at a time when Democracy (spelt with a very large D) is more and more obtaining power and influence in legislation it should be quite content to deliver up without a murmur its most ancient and honourable court. The removal of liberty from the citizens of this country is in the air, and the interference with the coroner's court is one of the many signs of what is in store for us.²¹

Despite the previous support for limiting the jury, a leading article in the *Lancet*, 'Juries on Trial', commented that 'the general public . . . d[id] not realise how much the jury had [already] been dispensed with.' It continued:

It would seem . . . as if the jury, once the bulwark of the people against the aggression of the Crown or the executive or any other oppressor, was coming to be regarded as a cumbrous survival.²²

A number of coroners failed to use the provisions in the Act and continued to summon inquest juries for all inquests²³ because they still attached great value to the jury. One such was the coroner for the City of London, Dr. F.J. Waldo, who considered that the confidence of the public would be best guaranteed by their retention in all cases. He 'did not look forward with much favour' to sitting in cases involving violent or unnatural deaths without a jury. It was his:

. . . opinion that where fatal accidents occurred, it was a great protection to the public to have a full inquiry before a jury who represented the popular point of view.²⁴

Waldo's concerns were expressed at an inquest reported in the *Morning Advertiser*:

He . . . also could foresee problems where many relatives, for instance, would not like a verdict of insanity given officially by the coroner any more than one of felo-de-se or self-murder by a jury.²⁵

²¹ *Lancet* 2: Jul 13 1918 p.56

²² *Ibid.* 2: Oct 26 1918 p.560

²³ HO45/12285/453044/27 1923-26 Coroners Bill Feb 1925

²⁴ *Morning Advertiser* Jun 7 1918 p.6c

Such verdicts might lead to proceedings in the high court to quash the verdict so that a coroner might be placed in an invidious position with the dispensation of the jury.²⁶ Waldo, like many others, found it difficult to separate the jury from its traditional involvement in reaching the verdict.

However, the changes so reluctantly introduced would quickly show that the inquest system performed without problems or apparent detriment to the public at large. As Oddie had pointed out, the verdict of a coroner's jury was not conclusive for any legal purpose.²⁷

*

Concern was raised in the Home Office in 1920 when it was discovered that the two war-time emergency Acts applying to coroners might be lost. The legislative programme was heavy and, in order to relieve the pressure, a general expiring laws continuance Bill had been drawn up by the Treasury to permit all temporary war-time Acts to continue until there was time to deal with them. But the Parliamentary Council's office had failed to include the emergency Acts reducing the number of inquest jurors and allowing the coroner to preside over an inquest alone. The Treasury was not prepared to spend time adjusting the draft to include the coroners' Acts²⁸ and, since the continuing disagreements with Turkey were delaying the official end of the war, the Home Office considered that there was no urgency.²⁹ However, it realised that it would probably have to make an effort to produce its own Bill in due course. Introduction of the emergency provisions in a general Bill would have been preferable because they would have been 'hidden' in the verbiage and probably have passed through unnoticed. The Home

²⁵ *Ibid.* and *City Press* Jun 8 1918 p.2d See: LCO2/354 Coroners. Juries Bill 1918. Alteration of form of Inquisition

²⁶ *Ibid.*

²⁷ *The Times* Dec 28 1916 p.2d

²⁸ HO45/11214/403923/3 Suggested Amendments of Coroners' Law 1919-1923 Minute: Aug 5 1920

Office was aware that a stand-alone Bill would focus attention specifically on the coroners' juries and was likely to raise the entire subject of coroners law reform.³⁰

Inquest juries had been under discussion since the early 1920s in the medical journals.³¹ Towards the end of 1921 the debate widened with an article by 'a legal correspondent' in *The Times* with 'a plea for economy' with respect to inquests.³² Dr. Waldo, still opposing the measures in the war-time emergency Acts, responded with his view that the inquest jury provided safeguards with its publicity and could not just be dispensed with.³³ Both letters ended up in the Home Office files, with a minute that stated:

Dr. Waldo has pronounced views on many matters & it is not always possible to agree with him, but on this matter of dispensing with juries I think there is much to be said for his statement of a view which, though it is not likely to be put before Secretary of State by many coroners or public bodies, is held strongly by many, especially the more inarticulate sections of the public. It is a view which is sure to be expressed if Secretary of State has to propose, as a temporary expedient, simply to re-enact the emergency provision, & it will be desirable to make it quite clear that it is only a temporary expedient & does not represent a considered view of the permanent necessities of the case. (The alternative under consideration is to enable a coroner to hold preliminary inquiries instead of inquests in certain cases, but to require him to hold inquests in more cases than under the emergency law.)³⁴ [original emphasis]

Shortly before this, an article by an unnamed King's Counsel had appeared in the *Cornhill* magazine on the jury system.³⁵ The article delivered 'a damaging attack'³⁶ on the system which was illustrated by

²⁹ Ibid.

³⁰ HO45/12605/62 1918-1927 Coroner (Emergency Provisions) Act—number of Jurors Minute: A. Locke Jan 3 1922

³¹ See: *Lancet* 1: Mar 27 1920 p.727, 1: Apr 10 1920 p.834, 1: May 15 1920 pp.1079-80

³² *The Times* Nov 7 1921 p.4b

³³ Ibid. Dec 23 1921 p.5f

³⁴ HO45/12605/62 op.cit. A. Locke Minute: Jan 3 1922

³⁵ *Cornhill* Nov 1921 cited in *Lancet* 1: Jan 7 1922 p.42

³⁶ *Lancet* 1: Jan 7 1922 p.42

examples of its failure to maintain the cause of justice. It was pointed out that ‘ . . . in the Chancery Division and in a large number of cases in the King’s Bench Division and county courts . . . justice is satisfactorily administered by a judge sitting alone.’³⁷ This would have suited the medical profession very well, and the *Lancet*:

. . . could hardly believe that . . . [doctors] would not rather . . . appear before a judge sitting alone, and would not consider him better able to understand their evidence and give effect to it than even a special jury.³⁸

The Home Office was still undecided as to whether it could support abolishing the jury for most inquests. On the one hand it could see all the advantages of the emergency provisions regarding inquest juries supported by the King’s Counsel. On the other, despite all the logical arguments put forward, there was a reluctance to make the provisions permanent because of the unarticulated view ‘held strongly by many’ of the need to retain the jury system.³⁹ It was also ‘consecrated by ancient usage’ and abolition was still unacceptable to some coroners. Although it was considered that the re-instatement of juries for all inquests was a ‘reversion to a wasteful system’⁴⁰ it was thought unlikely that the Home Office would make the war-time measure permanent.⁴¹ Despite that, the LCC, the Municipal Corporations Association and the Association of County Councils and others⁴² urged the Home Secretary to act. The main thrust of the LCC’s argument submitted to the Home Office was that the increased efficiency of the courts had resulted from the emergency laws and especially the reduction in expenditure:

Not only have there been a complete absence of complaints by reason of the adoption of this procedure, but a considerable

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ HO45/12605/62 op.cit. A. Locke Minute: Jan 3 1922

⁴⁰ *The Times* Feb 7 1922 p.4g

⁴¹ *Ibid.*

⁴² *Lancet* 2: Dec 10 1921 p.1234, HO45/12605/53 1918-1927 Coroner (Emergency Provisions) Act—number of Jurors Dec 1921, HO45/12605/94 Somerset County Council Jan 28 1922

saving in cost has been effected. Before 1917, jurors' fees in the County of London amounted to more than £3,000 a year, but this was reduced in 1919 to £533 10s⁴³ . . .⁴⁴

The London coroner, Oddie, confirmed he was satisfied from his experience of operating without a jury and that, in ninety per cent of the cases, the post-mortem examination revealed a verdict of death from natural causes.⁴⁵

Early in February 1922 the Home Secretary was asked in the Commons:

[Percy]: . . . whether, in view of the economy and efficiency derived under the provisions of the Coroners Act, 1917, and the Juries Act, 1918, the Government will continue such Acts as permanent measures?

[Shortt]: I hope to bring in shortly a Bill to continue the Coroners Act, 1917, and so much of the Juries Act, 1918, as relates to Coroners.⁴⁶

He failed to say that it would extend the Acts only for a further year. The Home Affairs Committee agreed to this Bill and it quickly passed through the Lords where it was first presented. It arrived in the Commons the day before the Emergency Acts expired (on 28th February 1922)—which led to the complaint from the MP, Major Lowther:

[Lowther]: I feel they [the Home Office staff] have acted in a rather slipshod manner in allowing the Act to get so near its expiry that we are left with only one day in which to take action.

We have been accustomed in this Parliament to promises which have not been fulfilled, and the Home Secretary, in saying he

⁴³ £533 50

⁴⁴ HO45/12605/367567/53 1918-1927 Coroner (Emergency Provisions) Act—number of Jurors, LCC: *Minutes of proceedings* Nov 29 1921 p.730, 733, HO45/12769/505762 Cost of inquests—economies due to non-jury system 1918-1926

⁴⁵ *The Times* Feb 7 1922 p.4g

⁴⁶ HC Deb. 5th Series 150: col.338 Feb 9 1922

hopes to give legislative effect to what everybody must urgently desire, is not going quite far enough.⁴⁷

The Home Secretary confirmed that permanent legislation was being considered.⁴⁸ However, he failed to confirm that it was the intention 'to introduce in the present session a bill consolidating and amending the law relating to coroners'—as had been stated two weeks earlier in the Lords.⁴⁹ In the short debate, there was general agreement on the continuation of the measures, though there was a question as to whether 'the position of poor people involved in accidents was being prejudiced in some way by the abolition of juries'.⁵⁰ Although the Home Secretary was criticised because of his unfulfilled promises,⁵¹ he had indicated, yet again, that the whole subject was under consideration for lasting legislation and had agreed that the temporary jury provisions had worked very well.⁵² The measures were extended only until the end of 1923⁵³, which guaranteed debate if it came up for re-enactment before a comprehensive coroners Bill was introduced.⁵⁴

The Home Secretary had to deal with several questions relating to coroners in 1922 and these focused attention on the promises that had been made for a comprehensive coroners Bill.⁵⁵ In August of that year, an official spokesman for the Government 'expressed the pious hope that it might be produced before Christmas'.⁵⁶ It was not.

The First World War was a significant watershed in British society and acted as a catalyst for change in many areas. It had presented the

⁴⁷ *Ibid.* **151**: Feb 27 1922 col.95

⁴⁸ *Ibid.* col.93

⁴⁹ *The Times* Feb 16 1922 p.7b

⁵⁰ HC Deb. 5th Series **150**: col.338 Feb 9 1922

⁵¹ *Ibid.* cols.93-97

⁵² *BMJ* **1**: Mar 4 1922 p.366

⁵³ 12 & 13 Geo.V c.2 Coroners (Emergency Provisions Continuance) Act 1922 [2nd March 1922]

⁵⁴ HC Deb. 5th Series **151**: col.96 27 Feb. 1922

⁵⁵ *Ibid.* **151**: col.2002 Mar 14 1922, **152**: col.2015 Apr 4 1922, **153**: col.252 Apr 11 1922, **157**: col.1486 Aug 2 1922

⁵⁶ *Lancet* **1**: Jun 30 1923 p.1321. See also HC Deb. 5th Series **157**: col.1486 Aug 2 1922

opportunity for a trial of reforms of the inquest system which had long been resisted by the coroners. The Home Office recognised that the coroners' emergency powers had proved successful. Despite that and the logical arguments in their favour, there was a reluctance to make the reforms permanent. Until the Home Office overcame its ambivalence towards this element of the inquest system, permanent implementation of the reforms was unlikely.

II LOBBYING AFTER THE ARMISTICE:

Within a very short time of the signing of the Armistice in 1918, the first attempts were made to lobby the Government to deal with the problems of coroners and coroners' inquests. The pressure came mainly from three sources, the LCC, the BMA and the Coroners' Society, but two new players came on the scene—the Municipal Corporations Association (MCA) and the Association of County Councils (ACC). All were anxious for the Government to introduce reform, though the general consensus achieved by the 1910 Departmental Committee recommendations was less secure and each group chose to follow its own sectional interests. There was probably enough common ground for all groups to reach a consensus and present a unified front to the Government, but no apparent effort was made to achieve that.

The LCC was quickest off the mark. Early in 1919 it sent resolutions to the Home Secretary requesting that the temporary emergency laws concerning juries should be permanently enacted and that other important matters which it had put forward in the past should be tackled. The LCC believed that the war-time operation of the inquest system had operated efficiently with minimum problems and that making the changes permanent 'would not meet with serious opposition.'⁵⁷ The

⁵⁷ LCC: *Minutes of Proceedings* Apr 15 1919 pp.430-1



LCC's concerns for economic efficiency had become more general in local government and were echoed by the MCA, the ACC and others who wrote to the Home Office.⁵⁸

Walter Schröder, the secretary of the Coroners' Society, had become a regular visitor to the Home Office during the war and was often consulted on relevant Bills. The Society was requested to give an opinion on the LCC's proposals and replied that making the 1917 and 1918 Emergency Acts permanent met with its approval. It generally agreed with the other resolutions with respect to restricting the view of the body, abolishing franchise coroners' districts and changing the method of calculating salaries. However, it took the opportunity to remind the Home Office of its own interests by indicating the relevant clauses in the pre-war Bill it had submitted which was in broad agreement with the recommendations of the Departmental Committee. It added that any changes should be applied nationally rather than be limited to London.⁵⁹ The views of the Home Office were not very different from those of the Society or those of the LCC. Simpson confirmed this and indicated that he had accepted the aims of the LCC to achieve administrative efficiency:

There are points on which a difference of opinion exists, but there are more points on wh. there is general agreement . .

From the point of view of economy of time & money, administrative efficiency & constitutional principle 'reconstruction' is as much wanted in regard to Coroners as in any branch of the law, while the subject has been so much discussed for the last 10 years or more that little doubt is left as to what ought to be done—it would be easy to go through the draft Bill & see whether there is anything to be added, omitted or amended. The draft has been carefully drawn & affords an excellent foundation for legislation.⁶⁰

⁵⁸ HO45/11017/385202/25, 1920-21 Coroners Remuneration Bill 1921 Letter May 23 1921, /2 Letter Mar 27 1920, /24 Letter May 7 1921

⁵⁹ HO45/11214/403923/1 op.cit. Walter Schröder to the Under Secretary. of State to the Home Office, Nov. 26 1919

⁶⁰ Ibid. Minute: H.B. Simpson Nov 26 1919

A change in attitude can be detected in both the Coroners' Society and the Home Office. The Society had been influenced by the Departmental Committee recommendations upon which it based its pre-war Bill and was prepared to accept the proposed reforms. The recommendations were generally acceptable to other interested groups and this, combined with the experience gained from the war time emergency measures, provided the Home Office with the opportunity to implement the Departmental Committee recommendations. The concerns relating to restrictions on the jury were certainly still present. Nevertheless, in November 1919, the Home Office officials were sufficiently confident to allow Edward Shortt, the Home Secretary, to make a statement in the Commons. He hoped that it might 'be possible to introduce legislation on this subject next Session after more urgent matters have been dealt with.'⁶¹ The LCC had achieved the first part of its strategy with the pre-war Departmental Committee review and, if the Government did follow through with its commitment to reform, the LCC would have satisfied its objective.

It was too soon for the LCC to celebrate. A great deal of work had been done, but only three months after the statement, the Home Office still appeared to be uncertain on the timing of any Bill and, more importantly perhaps, the acceptability of its proposals. Simpson minuted in February 1920:

Legislation is presumably impossible this session but it would be of very great advantage to have a Bill introduced to wh. reference could be made in discussing any of the questions that arise in connection with Coroners & wh. could be conveniently used for the purpose of eliciting opinions on them. Even if the Bill did not get so far as Committee it would be at least one step towards the *much needed amendment of the law*.⁶² [emphasis added]

In making his statement committing to legislation 'in the next session', Shortt was making a rod for his own back—and for future secretaries of

⁶¹ HC Deb. 5th Series 121: col.1935 Nov 27 1919

state who would be reminded of the commitment from time to time. In March 1920, he was asked:

[Gilbert]: . . . whether, having regard to his question in this House on 27th November last, he is now in a position to introduce legislation to amend the law relating to coroners and coroners' inquests.

[Shortt]: I regret that, owing to pressure of other work, it has not been found possible to introduce the Bill, but the Home Office are working out the details, and the Bill will be produced without any avoidable delay.⁶³

Despite that statement, Treasury permission was still needed to employ a draftsman to prepare a draft 'when he had time'⁶⁴ and, since it was not considered to be urgent, the delay was unlikely to be of short duration.

In May 1921, the LCC wrote to the Home Secretary:

We understand that it is the intention of the Government to initiate legislation dealing with the whole question of the amendment of the law relating to coroners' inquests. We regard it as a matter of the utmost importance, in the public interest, that this long-overdue reform should be accomplished without delay . . .⁶⁵ [original underlining in red pencil by the Home Office]

The LCC received the standard reply from the Home Secretary that pressure of other work had prevented progress, but that 'the Home Office are working out the details, and the Bill will be introduced without any avoidable delay.'⁶⁶ The PCC minutes record its reaction:

. . . legislation cannot be anticipated in the near future and suggest that the Council promote legislation in the next session. If the Government have not introduced a Bill by that time, there is good

⁶² HO45/11214/403923/2 op.cit. H.B. Simpson Feb 6 1920

⁶³ HC Deb. 5th Series 126: col.1104 Mar 9 1920

⁶⁴ HO45/11214/403923/3 op.cit. Minute: Mar 17 1920

⁶⁵ Ibid /9 Letter from the LCC May 11 1921. LCC: *Minutes of Proceedings* May 10 1921 p.711

⁶⁶ LCC: *Minutes of Proceedings* May 11 1921 p.711

reason to believe the proposals would be supported by the Secretary of State.⁶⁷

The continuing delays proved too much for the LCC and it decided to take the action that it had avoided for many years—to introduce its own private General Purposes Bill which would devote a complete section to achieving the objectives it had set for the London coroners. The most important issues were to abolish the franchise coroners, to have power to fix salaries, abolish deputy coroners, and provide retirement benefits.⁶⁸

The LCC's Bill was introduced into the Commons and referred to the Local Legislation Committee which adopted a favourable attitude to the proposals. Nevertheless, it rejected most of the clauses because it considered that the provisions should not be limited to London alone, but applied nationally.⁶⁹ This had been the objective of the LCC for many years until its loss of patience.

A Home Office minute reveals that:

. . . the LCC dropped the salary clause and what little else was left of the Coroners provisions, most of this part of the Bill having been lost through *fractious opposition of the coroners*.⁷⁰ [emphasis added]

The total loss of the section of the Bill dealing with salaries was not appreciated by the LCC. There is no indication how the London coroners opposed the Bill but the LCC made its displeasure very clear to them. The whole-time coroners had requested the LCC to compensate them for the inflationary effects following the war. In 1921, the LCC had responded favourably by increasing temporary allowances to cover expenses for services of a deputy, printing, stationery etc. The

⁶⁷ Ibid

⁶⁸ Ibid.

⁶⁹ HO45/11214/403923/9 op.cit. Minute: May 23 1921

⁷⁰ Ibid. /18 Memorandum: A Locke, H.B. Simpson July 17 1922, LCC: Minutes of Proceedings May 10 1921 p.711

coroners were required to justify their actual out of pocket expenses with a certified quarterly statement. The LCC wrote to the Home Secretary stating that the 'representations of the coroners had not been fully borne out' and had decided not to continue with the payments.⁷¹

Simpson minuted his opinion:

I cannot help feeling that the granting of these increases was very well timed for the passage of the Bill, and that the failure to pass the Coroners provisions in their original form played some part in the [London County] Councils' decision not merely to reduce the increases but to cancel them altogether.⁷²

In other words, the LCC had increased the payments in order to influence the London coroners to accept the provisions in the LCC's Bill. However, they were 'punished' for their fractiousness with a reduction of approximately 17% in their total income.

Although the LCC had not managed to achieve change through the private legislation process, its efforts were not entirely wasted. The Local Legislation Committee had indicated that the majority of the clauses in the Bill were acceptable for implementation *nationally*.⁷³ The Home Office acknowledged (internally) that the 1921 session had confirmed the need for a Coroners Bill and Locke minuted:

It would be a good thing if, this Autumn, we could at any rate get a Bill drafted. Good progress was made with the preparation of material early last year [1920]; it could soon be brought up to date; . . . The Bill, once in draft, could be referred to various Depts. concerned; we might ask the Coroners' Society to set up an (interim) advisory committee such as was recommended by the Coroners Committee; and we could consult the LCC and the Assocn. of County Councils who this Session have taken up parts of the subject.⁷⁴

There is a handwritten note beside the paragraph:

⁷¹ HO45/11214/403923/18 LCC to Home Secretary Jul 5 1922

⁷² Ibid. A Locke, H.B. Simpson July 17 1922

⁷³ Ibid. H.B. Simpson May 23 1921

⁷⁴ Ibid. Minute: A. Locke May 23 1921

There is sure to be some loss of time in consulting the Ministry of Health, and it wd. be better for this to occur before SoS is seeking to introduce a Bill.⁷⁵

The need for consultation, and the potential for problems to arise, had been recognised (see section III below).

In August 1920, a deputation from the BMA and the Parliamentary Medical Committee (this comprised all the medical MPs) visited the Home Secretary, the Minister of Health (Dr. C. Addison) and the Deputy Registrar-General.⁷⁶ The deputation specifically urged amendment of the law. On death certification, there was objection to handing the certificate to the relations—the suggestion was to have a dual certificate, one part certifying the fact of death, the other confidential part, with the cause of death going to the proper authorities. On coroners' inquests, it objected to the court operating beyond criminal matters and to the wide differences in the practices within the courts. It clearly favoured the Scottish system, complaining that the inquest was:

. . . a mediaeval anachronism. The coroners' court was public and full of sensations; his jury were uninstructed in matters of medicine; their verdict was of little value . . . and the verdict was sometimes accompanied by riders which were unreasonable or offensive to the medical profession.⁷⁷

Shortt suggested that it was not right to generalise from one or two exceptional cases. He was well aware of the interdepartmental conferences in May 1920 (see below) at which the medical profession had attempted to eliminate the inquest system. He pointedly asked whether 'all coroners should be doctors?' As might have been anticipated, the deputation answered affirmatively and stated that the

⁷⁵ Ibid.

⁷⁶ *BMJ* Supplement 2: Aug 14 1920 pp.62-3

⁷⁷ Ibid. p.62

'legal side of the coroner's work seemed unnecessary and the publicity of the court undesirable',⁷⁸ but:

. . . if it proved a case for legal investigation the coroner should hand over the documents and evidence to the proper authorities, instead of himself holding a pseudo-trial . . .⁷⁹

Such a transfer of jurisdiction would have freed the coroner from criminal responsibilities which would have strengthened the case for medicalisation. But there was another, unspoken, significance in the words which was understood by both sides. The reference to the coroner's pseudo-trial was related to the problems associated with dual proceedings between the two courts. These had become prominent as a result of a number of murder trials following the Armistice,⁸⁰ though the more sensational cases were yet to come (see Section IV below).

Apart from the medicalisation of the inquest system, the statements also showed the ongoing desire to maintain control of medical matters within the profession and to exclude the possibility of lay judgements, especially by the inquest jury. The Home Secretary was quick to point out that the 'procedure of the procurator-fiscal in Scotland' to which the deputation was looking, 'was very different and not regarded as wholly suitable in England.' There were clear differences between the two sides, but the Ministers showed genuine interest in hearing the views expressed⁸¹—this was because the Home Office and the Ministry of Health were considering reforms.

In the next year or two, the BMA concentrated its efforts on death certification (see below), but it had not forgotten coroners. In July 1925, the BMA held its Annual Representative Meeting in Bath and a 'sub-

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Douglas G. Browne and E.V. Tullett *Bernard Spilsbury: His Life and Cases* (London: George G. Harrap 1951) p.113, E.A. Williams *Open Verdict* (London: Oyex Publications 1967) p.53

⁸¹ *BMJ* Supplement 2: Aug 14 1920 p.62

committee of the Medico-Political Committee sat for a good many sessions' dealing with revision of its coroners' law and death certification Bill.⁸² The committee was 'ably assisted by a very distinguished coroner, Sir Walter Schröder',⁸³ suggesting an attempt to co-ordinate policy. He appears to have made little impact and the discussion was mainly on death certification.

The annual meetings were not very influential. The main voice of the BMA was heard through the Parliamentary Medical Committee which very effectively looked after the interests of the medical profession in the legislature. A member of that Committee had already discussed a Bill on death registration with the Ministry of Health and had received an indication that there might be Government support for it (see below).

One of the significant effects of the Departmental Committee and its Report was the change in attitude of the Coroners' Society. It no longer resisted, but actively sought reform based on the Departmental Committee recommendations. But that became less important because of problems of inflation following the Armistice—most coroners' salaries were still based on the fees that had been set in the 1830s. The Society prepared a memorandum: 'Showing the urgent need of legislation on the subject of Coroners Remuneration'.⁸⁴

In June 1920, the Coroners' Society adopted a more assertive approach, as can be seen in the resolution passed at the AGM:

That the County Councils and the Municipal Corporations Association be approached with reference to the remuneration of Coroners, and that members of the Society should be urged to bring the matter before their MPs and individual members of County Councils with whom they are acquainted; and, further, that if thought necessary by the Council [of the Coroners' Society], the Home Office be asked to receive a deputation of Coroners on the

⁸² *Ibid.* 2: Aug 1 1925 pp.49-52

⁸³ *Ibid.* p.49. Schröder was awarded a KBE in the 1923 birthday honours list for his 'eminent services to the State'. *CorSoc.* Oct 16 1923 Vol.3 pp. 281-2

⁸⁴ HO45/11017/385202/3 op.cit. Sept 1920

question, should the result of the present correspondence be unsatisfactory.⁸⁵

This was circulated by the Society to all its members. A Home Office minute lamented this activity: 'It is a pity that the Coroners' Society is laying so much stress on the question of salary in the documents to be circulated to MPs'.⁸⁶

Like the LCC, a number of coroners were becoming frustrated by the delays and several had already written to the Society regarding salaries. The Yorkshire coroners group indicated that, if the Society did nothing, it would take unilateral action.⁸⁷ By March 1920, the Society had already decided to prepare a coroners' remuneration Bill. If it failed to get Government support for change it would have the Bill introduced into Parliament, probably by Sir Thomas Bramsdon. However, the parliamentary agents who were consulted held out very little hope for such private legislation.⁸⁸

At some point, the Home Office informed the Society that there was '... no prospect of it being possible in the near future to propose legislation on the question of Coroners' salaries'.⁸⁹ Early in 1921, and perhaps encouraged by the LCC's decision to institute legislation, the Coroners' Society's Bill⁹⁰ was introduced into the Commons by Bramsdon.⁹¹ Objections were raised because Bramsdon, as a coroner, would gain personally from the measure if it were enacted, though the objections were quickly over-ruled by the Speaker.⁹² The relatively short Bill provided for a mandatory increase of 50% in coroners' remuneration. With such a significant increase at a time when there were considerable

⁸⁵ Ibid. /3 Coroners' Society AGM Resolution, Jun 10 1920

⁸⁶ Ibid.

⁸⁷ CorSoc Mar 1920 Vol.3 p.204

⁸⁸ Ibid. pp.206-7 Mar 1920

⁸⁹ HO45/11017/385202/3 op.cit. Coroners' Society AGM Resolution, Jun 10 1920

⁹⁰ PP 1921 (24) I.227 Bill to amend the Law relating to the remuneration of Coroners
PP 1921 (73) I.229) Bill to amend the Law relating to the remuneration of Coroners -
As amended by Committee

⁹¹ HC Deb. 5th Series 142: col.2268 Jun 10 1921

concerns regarding public expenditure, the LCC, the County Councils Association and the Municipal Corporations Association all immediately opposed the Bill.⁹³ The LCC was particularly upset. In July 1919, it had set what it considered to be a fair salary for the full-time coroners—£1500, an increase of £400.⁹⁴

Despite knowing the Coroners' Society's concerns about salaries, the Home Office had not developed a policy on how to deal with the problem if it arose. When Bramsdon's Bill was introduced, the Home Office was undecided on how to respond: 'I think we shall have to decide whether to oppose the Bill. If we do not it may have a chance [of success].'⁹⁵ After some delay, it was decided that the Government would not oppose the Bill providing it was understood that substantial amendments in Committee would be necessary.⁹⁶ The Prime Minister was asked:

[Major Steel]: . . . whether he would give facilities for the 2nd reading and subsequent stages of the Coroners (Remuneration) Bill in order that this Bill may be passed quickly into law?

[Lloyd-George]: The Government do not oppose the second reading of this Bill, but it must take its chance with other private Bills.⁹⁷

Remarkably, bearing in mind the poor success rate for private members Bills, the measure reached the statute book. But a Home Office memorandum notes that 'The Government had to amend it almost beyond recognition'.⁹⁸ The provisions in the Act⁹⁹ were purely permissive and gave local authorities the power to revise coroners'

⁹² Ibid. col.2266

⁹³ LCC: *Minutes of Proceedings* Mar 1 1921 p.710, *Morning Post* Apr. 28 1921 p.10a

⁹⁴ Ibid. Jul 8 1919 p.804

⁹⁵ HO45/11017/385202/13 op.cit. Minute: Feb. 25 1921

⁹⁶ Ibid. /15 Minute: A. Locke Feb 28 1921

⁹⁷ HC Deb. 5th Series 139: col.2791 Mar 24 1921, See also *The Times* Jun 1 1921 p.6a and Jun 10 1921 p.6d

⁹⁸ HO45/11214/403923/9 op.cit. London County Council: Coroners Law Amendment. Memorandum: A. Locke May 23 1921

⁹⁹ 11 & 12 Geo.V c.30 An Act to amend the Law relating to the Remuneration of Coroners [28th July 1921]

salaries if they chose to do so.¹⁰⁰ A few authorities gave increases, but most did nothing.¹⁰¹

The Coroners' Society probably wished that it had not introduced the Bill because the resulting Act had failed to achieve its objective. In retrospect, it would have been better to have withdrawn the Bill at some stage in the proceedings. The Government would, at least, have been reminded that coroners' salaries were a problem. The failure prevented the Society even considering another remuneration Bill for several years.¹⁰² It appears that this Bill and a private members Bill on death certification in 1923 (see below) persuaded the Government to change the rules so that no '[private members] bill may contain any provision which imposes a charge on public funds, whether taxes or rates.'¹⁰³. The change was only discovered when the BMA attempted to introduce increases in fees in its 1926 private members Bill dealing with death registration.¹⁰⁴

The Government's satisfaction with the outcome of the 1921 Act, and its influence on parliamentary affairs, is neatly summed up in a Home Office minute relating to the Bill: 'the Whips have done their part.'¹⁰⁵ Despite that, and unknown to the Society, the legislative effort was not entirely wasted. An internal Home Office memorandum on the topic stated:

It would be a good thing if, this Autumn, we could at any rate get a Bill drafted. Good progress was made with the preparation of material early last year; it could soon be brought up to date; and if it would help matters forward.¹⁰⁶

¹⁰⁰ *BMJ* 1: Jun 18 1921 p.908

¹⁰¹ CorSoc Feb 27 1927 Vol.10 'Coroners' (Amendment) Act, 1926. Notes for Coroners in Reference to Salaries' p.140

¹⁰² J.D.K. Burton Personal communication

¹⁰³ *BMJ* 2: Dec 25 1926 p.1233

¹⁰⁴ *Ibid.* PP 1926 (20) I.109 Births and Deaths Registration Bill

¹⁰⁵ HO45/11017/385202/15 op.cit. Minute Apr 21 1921

¹⁰⁶ HO45/11214/403923/9 op.cit. Memo May 23 1921

The Coroners' Society had relied mainly on the good relationship between Schröder and the Home Office to look after its interests, but had also tried to get individual coroners to use the offices of local MPs to achieve its objectives in the parliamentary processes. Neither had been successful. Like the BMA, it had learned that it might have influence, but it did not have power—that clearly resided with the Government.

III THE HOME OFFICE AND THE MINISTRY OF HEALTH:

When the Registration Act was originally drafted in 1836 and then amended in 1874, little consideration was given on either occasion to the part to be played by the coroners in the registration process (as noted in chapter 3). These had led to financial and professional tensions between the two sides which still existed in 1920 when the Ministry of Health (previously the Local Government Board) organised a series of inter-departmental conferences to discuss the registration processes as applied to births, marriages and deaths. The Ministry was contemplating a complete reorganisation of the registrars and had to decide whether their duties should be of a mechanical or discretionary character.¹⁰⁷ Nevertheless, the Ministry of Health had to involve other government departments, especially the Home Office, because of the coroners' involvement in the system. Agreement on the changes between the departments would obviously improve the possibility of successful legislation on the topic.

The Registrar-General wanted to reduce significantly the number of uncertified deaths recorded. In the early 1900s there were around 10,000 uncertified deaths each year, of which a quarter resulted from

¹⁰⁷ Ibid. /8 'Notes Prepared for members of the Inter-Departmental Conferences on Death Certification' A. Locke May 23 1921

the registrars' failure to notify the coroner. In the other cases, the coroner had been notified by the registrar, but failed to hold an inquest.¹⁰⁸ A big improvement came in 1914 when the Registrar-General made a regulation requiring all deaths not medically certified to be reported to the coroner.¹⁰⁹ By 1919, the number of 'ill-defined' deaths had fallen to 5,980¹¹⁰ and by the simple process of requesting more information on doubtful cases from coroners and doctors, the number was further reduced to 1,442¹¹¹—0.29% of all deaths. But, even with this improvement, the law still offered 'every facility for the concealment of crime'¹¹² and the only real hope of removing the problem was by legislation to clarify roles and duties.

When the conferences started in 1920, according to the Home Office, the representatives of the medical profession were in a dominant position at the Ministry of Health.¹¹³ It was noted that even S.P. Vivian, who later became Registrar-General, 'was hampered by [internal] departmental relationships with them'.¹¹⁴ When the conferences started, the medical representatives concentrated on the objective of increasing the income of the doctors through payments for certificates and by performing more post-mortem examinations for coroners. As a result the focus of the conference was mainly on the proposal for an elaborate and expensive system of 'public certifiers' rather than, as initially stated, the role of the registrars in the registration process. The 'certifiers' would take over the complete investigation of all deaths that were not certified in the usual way by a medical practitioner in attendance.¹¹⁵ This proposal had appeared in the recommendations of the 1893 Select

¹⁰⁸ J.D.J. Havard *The Detection of Secret Homicide: A Study of the Medico-legal System of Investigation of Sudden and Unexplained Deaths* (London: Macmillan 1960) p.72

¹⁰⁹ HC Deb. 5th Series 192: cols.990-1 Feb 26 1926

¹¹⁰ PP 1920 [Cmd.1017] XI.1 82nd Annual Report of the Registrar-General of Births, Marriages and Deaths in England and Wales (1919) p.xcix

¹¹¹ Ibid. p.xcviii There were 504,203 deaths in 1919 *ibid.* p.ci

¹¹² [Cd.5004] *op.cit.* p.20

¹¹³ HO45/11214/403923/8 *op.cit.* A. Locke May 23 1921

¹¹⁴ Ibid. A. Locke May 23 1921

¹¹⁵ Ibid.

Committee on Death Certification and was based to a great extent on the French system where a 'Médecin Verificateur' investigated all deaths, though the system operated only in Paris and the large towns.¹¹⁶

The appointment of medical examiners was discussed at the Departmental Committee in 1909 and although there were differences of opinion, the two most influential bodies involved—the LCC and the BMA—did not support the idea. The preferred process was a preliminary inquiry with a post mortem examination which would have substantially reduced the number of inquests and the related costs. In its Report, the Committee had recommended the adoption of the preliminary inquiry process and greater freedom for the coroner in the selection of medical witnesses.

Some years earlier Brend had 'a strong impression of lack of co-ordination' between the Home Office and the Registrar's Department,¹¹⁷ and it still existed—as Burney notes:

The Home Office representatives, not unreasonably, viewed their counterparts from the Ministry of Health with a good deal of suspicion. They charged the Ministry of Health, and its allies in the BMA's Medico-Political section, with harboring [*sic*] plans for a complete program [*sic*] of medicalization, [*sic*] one whose ultimate aim was to eradicate the inquest altogether.¹¹⁸

The tensions between the two departments with respect to the 1920-1 conferences can be detected in the reasons each gave for their breakdown. The Home Office believed that the elaborate and expensive system of 'Public Certifiers' proposed:

¹¹⁶ PP 1893-4 (402) XI.195 Select Committee on Death Certification, Second Report pp.xi

¹¹⁷ William A. Brend 'An Enquiry into the Statistics of Deaths from Violence and Unnatural Causes in the United Kingdom; With Special Reference to Deaths from Starvation, Overlaying of Infants, Burning, Administration of Anaesthetics and Poisoning' (University of London MD thesis, 1915) p.80, see HO45/10564/172763/30 op.cit.

¹¹⁸ Burney Thesis op.cit. p.372

. . . would have been made a vehicle for destroying the whole system of Coroners' Inquests had Home Office representations not kept the proceedings to their original purpose. When it became clear that Home Office was 'not out' to dissect the inquest system, the conferences died of inanition.¹¹⁹

However, the Ministry of Health reported:

That committee explored the subject of amendment of the law as to death certification and registration, and *should have proceeded to consider the Coroners' Law*. The course of outside events, however, made it clear that there was little chance of obtaining legislation in the near future, on the lines the committee were disposed to recommend, on account of the expense that they would probably entail, and the Committee adjourned, sine die, without preparing a report.¹²⁰ [emphasis added]

The limitations on Government expenditure in 1921 resulted from the worst depression since the industrial revolution¹²¹ and Government expenditure was 'slashed fiercely'.¹²² There was, therefore, no hope of any increase in expenditure to members of the medical profession at that time.

The originally stated objective of the conferences was said to have been 'to discuss the registration processes as applied to births, marriages and deaths'. But the statement that the conferences should have proceeded to consider the coroners' law indicates a considerable difference of opinion between the two departments on the objectives of the meetings. On the one side was the medical profession attempting to usurp the responsibilities of the coroners by medicalising the inquest system. On the other was the Home Office, concerned to preserve the popular liberties of the inquest and maintain the independence of the coroner. With the objectives set by the medical elements at the Ministry of Health, the differences between it and the Home Office appeared to

¹¹⁹ HO45/11214/403923/8 'Notes Prepared for members of the Inter-Departmental Conference on Death Certification' Oct. 1920

¹²⁰ MH53/2 op.cit. Smith Whitaker to Sir George Newman Apr 13 1923 p.2

¹²¹ A.J.P. Taylor *English History 1914-1945* revised edition (Clarendon Press, Oxford 1976) p.238

be incompatible and irreconcilable, neither side being prepared to surrender its objectives.

In May 1921, a Home Office noted that:

The medical representatives of the Ministry [of Health] are not now in the same dominant position; Mr. Vivian who was hampered by departmental relationships with them, has now definite functions as Registrar-General; and it is probable that if the question of legislation comes up again it will be easier to make consultations with him—and the Ministry—and bear useful fruit.¹²³

Although the Home Office appeared to believe that consultations would be easier, by August it had adopted a more independent and assertive line to avoid interference from the Ministry:

It is not proposed to include in the first draft [of the Coroners Bill] any provision as to notification of deaths to Coroners. It will be for the Ministry of Health to raise the question when the draft is given to them for observations on other points. It seems very unlikely they can propose anything on notification, much less on certification, that should go in a Coroners Bill.¹²⁴ [original emphasis]

The underlying tensions between them resulted from the different objectives of each department. The Ministry of Health was attempting to improve its statistical records—with the medical representatives looking to take over the investigations. The Home Office would not allow the inquest system to be eliminated and was concerned to maintain the wider traditional role it performed. Despite the important link between death certification and inquests that had been established, the problems, tensions and significant differences of opinion had existed since the 1870s. The correspondence¹²⁵ indicates that polite consultations took place from time to time and there was some accommodation made to 'territorial' claims. But each department

¹²² Ibid. p.144

¹²³ HO45/11214/403923/8 op.cit. Minute: A. Locke May 23 1921

¹²⁴ Ibid. Minute: A. Locke Aug 4 1921

¹²⁵ See: MH53/1 1924-26 Coroners Amendment Bill 1926

pursued its own interests with the result that 1926 ended with independent statutes on the two topics.

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The objectives of the medical profession put forward in the conferences appeared in the 1923 Coroners Law and Death Certification Amendment Bill¹²⁶ introduced by an MP.¹²⁷ The broad object of the private members Bill was to implement the recommendations of the 1893 Select Committee on death registration, which included proposals for the appointment, on the lines of the French model, of 'public certifiers of death'.

The Ministry of Health was taken by surprise by the Bill and was uncertain whether it emanated from the BMA or the Coroners' Society. It eventually discovered that a medical MP had secured a favourable place in the ballot for private members Bills and had approached the BMA for a subject, which had selected this as its first choice.¹²⁸

The Home Office was hostile to the Bill and wanted it blocked. It considered that nearly all the provisions relating to the coroners were objectionable and, if the Bill reached the committee stage, they 'would have to be struck out or altered'.¹²⁹ According to the Home Office:

The Bill emanates from the British Medical Association—various speeches, letters, and articles that have marked the preliminary propaganda make it clear that the real objects are enormously to increase medical officialdom, regardless of expense, and then to *abolish Coroners' Inquests* on the grounds that, what with medical

¹²⁶ PP 1923 (26) 1.501 Bill to Amend the Law relating to Coroners' Law and the Certification and Registration of Deaths and Burial

¹²⁷ HC Deb. 5th Series 160: col.491 Feb 16 1923

¹²⁸ MH53/2 Smith Whittaker to Sir George Newman Apr 13 1923

¹²⁹ HO45/11214/403923/24 Minute: A. Locke

officials on one hand and magistrates on the other, Coroners are no longer required.¹³⁰ [emphasis added]

A cool response went from the Ministry of Health to the Home Office:

. . . we regard several of the provisions of the Bill as desirable on medical grounds, but the financial considerations are too serious to admit of our approving . . . progress . . . at the present time. . . . If the Home Office think it desirable to block the Bill we should not oppose this course, but . . . we regard it as essential that the BMA and the Medical Members of Parliament should not think that the Bill has been blocked at the instance of the Ministry of Health.¹³¹

Being able to blame the Home Office for the failure of the Bill was very convenient for the Ministry. It could not have supported the Bill because of ongoing 'financial difficulties' associated with the depression and high unemployment¹³²—as a department minute makes clear:

. . . the proposals of the Bill would constitute a valuable reform which would merit the support of the Ministry (subject, of course, to close scrutiny of details), but for the financial difficulties of the present time. In normal times, I should consider that the relatively small expenditure involved would be amply justified by the results to be expected.¹³³

It also confirms that relations between the Ministry and the Home Office were unlikely to improve since the former still supported the concept of a system of 'public certifiers' that had been put forward in 1920.

The Bill raised concerns and tensions *within* the Ministry of Health for three reasons. First, no effort had been made to implement the 1893 select committee recommendations on death registration. The Ministry was very concerned because successive governments had promised the medical profession and others that legislation would be introduced. The promise had been repeated as recently as August 1920 when a BMA deputation had visited the Minister of Health and the Home

¹³⁰ HO45 12192/125487/60 p.1 cited in Burney Thesis op.cit. p.373

¹³¹ MH53/2 Apr 28 1923 op.cit. Stanton to Prestige

¹³² Taylor op.cit. p.238

Secretary.¹³⁴ But nothing had been done and specific plans were still not forthcoming. Second, there was considerable sensitivity that these delays might lead to criticism of the department and adverse publicity in the press:

It seems not unlikely that a newspaper "ramp" might be started on the subject. There have been some recent cases, I understand, which might be utilized to illustrate the importance of the subject, and affording material for an attack on the "indifference of the Ministry to the protection of life and the improvement of knowledge as to the causes of death."¹³⁵

The third was the potentially negative reaction from the medical profession. The Ministry considered that the Bill was unlikely to progress, but wanted to avoid it being talked out without any statement because: 'This would be a snub to BMA and the medical MPs—and past history suggested this to be a regrettable choice.'¹³⁶ No reason was given, though it is not unreasonable to suggest that the failure of the relatively recent 1920-21 conferences was a factor. But the Ministry was clearly anxious not to upset the medical profession. In order to maintain a good relationship for the future, it believed that it could satisfy the BMA:

. . . with a promise of serious consideration, subject to the inevitable limitations imposed by finance, and if there were a debate in the House, not only medical members, but others might be surprised if such a promise were not given.¹³⁷ [original emphasis in pencil]

In the event, the Bill failed to reach the second stage and the Ministry avoided having to explain a further delay to its promises or to make new ones. Perhaps as a result of the failure of the Bill, at the end of May another private members Bill was introduced with very similar

¹³³ MH53/2 op.cit. Smith Whittaker to Sir George Newman Apr 13 1923 p.2

¹³⁴ See Ibid:

¹³⁵ Ibid. Smith Whittaker to Sir George Newman Apr 13 1923 Item 4

¹³⁶ Ibid. Smith Whittaker to Brock Apr 16 1923

¹³⁷ Ibid. Smith Whittaker to Sir George Newman Apr 13 1923 Item 3

provisions.¹³⁸ This did not cause such consternation and, like its predecessor, failed to proceed beyond a first reading.

In March 1925, another attempt was made to progress births and deaths registration legislation with a private members Bill.¹³⁹ It received a first reading, but was withdrawn when the proposer was invited to discussions with the Minister of Health, the Registrar-General and a representative from the Home Office. As a result, a sub-committee was formed with members from the Government departments concerned and from bodies representing various sections of the medical profession. The basis for a revised Bill was agreed that would be introduced in the following session as a private members measure and then be adopted by the Government as it proceeded.¹⁴⁰ The Home Office attended as an observer to protect, if necessary, its coroners' law reform Bill.

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The births and deaths registration Bill was introduced into the Commons in February 1926.¹⁴¹ At the second reading, Dr. Fremantle, one of the main sponsors, attempted to shame Parliament into action:

[Fremantle]: The history of the Bill is rather indicative of the work of the Houses of Parliament. It dates back first . . . to a select committee of 1893—and, indeed, before it. Who says that the Reports of Select Committees and Royal Commissions are pigeon-holed and nothing done? Here the 1893 vintage has matured for 33 years and we see it now brought into the House; and I have no doubt that the House of Commons will relish the blush that it has acquired during the period, and will straightway put it into law! There was another departmental committee in 1909. I suppose it was thought advisable to have fresh vintage, though the other was only half-matured after 16 years. The Report

¹³⁸ HC Deb. 5th Series **164**: col. 1012 May 29 1923

¹³⁹ PP 1924-5 (132) I.267 Births & Deaths Registration Bill, HC Deb. 5th Series **182**: Mar 26 1925 col.639

¹⁴⁰ *BMJ* **1**: Jun 27 1925 p.1196

¹⁴¹ HC Deb. 5th Series **191**: col.499 Feb 5 1926

of both these committees showed what grave defects there were in the law of death registration.¹⁴²

The Bill was not well received by the medical profession. In a leading article, the *BMJ* complained because it was introduced as a private members measure—and hence, ‘necessarily exclude[d] any proposal involving a call on the public purse.’¹⁴³ It went on to criticise its failure to include the recommendation of the 1893 death registration committee to have compulsory medical certification after personal inspection of the body by the certifying practitioner as the ‘essential preliminary to registration.’ It concluded that the Bill was:

. . . unjust because it imposes on any medical practitioner . . . [the requirement] to certify death without remuneration. It is inadequate because it does not require inspection of the body—that is, verification of death . . .¹⁴⁴

The Bill was ‘benevolently regarded by the Government’¹⁴⁵ (a prerequisite for it to progress) and it quickly passed through the early parliamentary stages and was under scrutiny by the Standing Committee by the end of March.

The difficulties in separating death registration from coroners’ law were demonstrated at this stage. An amendment was proposed that the local government authority:

. . . should arrange to make available the services of a registered medical practitioner for verifying, at the request of the coroner, the death of any person whose body had not been seen by a registered practitioner since death.¹⁴⁶

It was defeated because ‘the subject [wa]s more proper for consideration on the Coroners Bill’ and the other provisions relating to coroners were also deleted.¹⁴⁷ The process from there onwards was

¹⁴² *Ibid.* **192**: cols.978-9 Feb 26 1926

¹⁴³ *BMJ* **1**: Mar 27 1926 p.582

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.* **2**: Dec 25 1926 p.1233

¹⁴⁶ *Ibid.* **1**: Apr 2 1926 p.637

¹⁴⁷ *Ibid.*

very slow but it eventually reached the statute book on 15th December 1926, the day that parliamentary session was prorogued.

'The bogey of the uncertified deaths had finally been laid low'¹⁴⁸ because the Act defined that no death could be registered without a certificate of natural death from natural causes or a coroners' order for burial.¹⁴⁹ But the BMA was not satisfied. Although it clearly defined the duty of the certifying GP so long as he was able to sign the certificate, it did not define whether the GP had a duty to inform the coroner if he failed to issue a certificate. This had given rise to 'unfortunate misunderstandings' between the doctors and the coroners on many occasions in the past.

The BMA, somewhat grudgingly, commented that:

. . . something useful has been accomplished . . . [but] . . . the inadequacy of the law with regard to death certification and registration is by no means removed by it, and . . . further legislation is still urgently needed to carry out the policy of the British Medical Association in this regard, both for the safety of the public and to secure justice for the medical profession.¹⁵⁰

Although it expressed concern for 'the safety of the public', the real concern appeared to be for the financial well being of the profession.

IV DUAL PROCEEDINGS

The problems arising from dual proceedings in the coroners' and magistrates' courts had been highlighted by the Middlesex magistrates' report in 1851 (see chapter 2). There were two problems associated with dual proceedings. First, the aspect of publicity—if an inquest *did* indict somebody for murder, what chance was there of finding a jury

¹⁴⁸ Havard op.cit. p.73

¹⁴⁹ 16 & 17 Geo.V. c.48. Births and Deaths Registration Act [15th December 1926] s.1

¹⁵⁰ *BMJ* 2: Dec 25 1926 p.1233

that could try a person without prejudice?¹⁵¹ (see chapter 4). Second, the problems associated with the need for witnesses to appear before both the coroner and the magistrates, especially if the hearings were held concurrently (see chapter 2). A murder case in the early 1920s raised this particular problem and influenced the process of reform.

Coroners' inquests were almost always the early focus of attention of the press because the coroner was usually the 'first in the field' in his investigation of unexplained deaths. As seen in chapter 3, reporters had flocked to inquests in the 1870s, but it was the *Daily Mail* in the 1890s which 'broke out of the conventions of Victorian journalism and brought daily news to the breakfast tables of the British public'.¹⁵² Reporters flocked to inquests to hear the evidence which gave them the opportunity to ensure that the public's curiosity was fully focused on the proceedings at any later trial.

The main reason why the coroner was first in the field was the necessity to view the body and have a post mortem examination performed quickly. Although the early twentieth century saw the invention of various mortuary containers which claimed to delay putrefaction,¹⁵³ bodies still decayed rapidly—refrigerated units were still in the future. Immediately after the inquest was opened, the jury was sworn and the body was viewed. Having brought the jury together quickly for that purpose, it was normal for them to start hearing the evidence. Of course, inquests were often adjourned to await the results of the analysis and post mortem examination, but adjournments were usually of relatively short duration. The process leading to a hearing in the magistrates' courts was usually slower because there was no necessity for the view of the body and the police had not always completed their investigations or arrested any suspects to be charged.

¹⁵¹ *The Times* May 16 1879 p.12b

¹⁵² Matthew Engel *Tickle the Public: One hundred years of the popular press* (London: Victor Gollancz 1996) p.16

Usually, the two courts sat successively, with the coroner's investigation preceding and being completed before those of the magistrates. Problems could arise when the proceedings were simultaneous because witnesses had to appear at both hearings. This situation could result from a quick arrest following a murder; a person could be charged in the magistrate's court and committed to appear before the grand jury at the assizes before the coroner had completed the inquest proceedings.

There were differences in procedure between the two courts. In the coroner's court, there was no accused person and the procedure was inquisitorial. It was an open and continuous inquiry into an unexplained death without limits imposed by the application of rules of evidence. The objective was to ascertain the true facts of the case from the witnesses called to give evidence. Only when the true facts were established was the jury required to decide on a verdict. That verdict was incorporated into the inquisition and finally signed by the jury and the coroner. The process was started ostensibly with an open mind and the decision reached at the *end of the process* based on the evidence presented.¹⁵⁴ If the verdict was for murder or manslaughter, a person or persons would be indicted on the coroner's warrant for trial before the petty jury at the next assizes.

The magistrate's court adopted an accusatorial, assertive role. A person was brought before the magistrates charged with a specific crime at the *beginning* of the hearing and sufficient evidence heard to substantiate the charge. The justice of the peace or police magistrate was not bound to hear any evidence in favour of the accused—indeed, offering a defence to a charge suggested that there was a case to answer.¹⁵⁵ If the magistrates were satisfied that there was a case to answer, then the

¹⁵³ See Burney Thesis op.cit. pp.180-1, 'Viewing bodies: Medicine, Public Order, and English Inquest Practice' *Configurations* 1994, 1:33-46 pp.36-8

¹⁵⁴ John D.K. Burton 'Coroners under Fire' *Medico-Legal Journal* 51: (4) 1983 p.220

¹⁵⁵ Brian Block J.P. Personal communication.

charge was referred to a grand jury—whose proceedings were carried out in secret, in the absence of the defence. If the grand jury found a true bill, the accused was then tried before the petty jury.

Apart from the problems caused for witnesses having to appear at the coroner's court and the magistrate's court if the cases were dealt with simultaneously, it was also possible for the two courts to send the accused to different assizes.

The publication in the press of detailed evidence from either court could cause problems because of its potential to influence a jury. If somebody was charged with murder or manslaughter in the magistrate's court, or was already committed to appear before the grand jury on such a charge, then it was almost impossible for the inquest jury to be impartial.

As noted above, the period following the Armistice, and particularly in the early 1920s, featured a series of murders carried out in some cases with great brutality, though none have survived in popular memory today.¹⁵⁶ Some of the murders in the early 1920s were particularly prominent because they highlighted the problems associated with dual proceedings. They were also prominent because the inquest was 'turned into a virtual murder trial'.¹⁵⁷

Suspected people, euphemistically labelled witnesses at the inquest, were subjected to accusation and the semblance of trial in proceedings to which numerous and vital safeguards to which accused persons are entitled did not apply.¹⁵⁸

These cases would lead to the eventual 'pruning of the activities of coroners and their juries'.¹⁵⁹

¹⁵⁶ Browne and Tullett *op.cit.* p.113

¹⁵⁷ Williams *op.cit.* p.53

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

Three murder cases were particularly noteworthy, those of Holt, Vaquier and Mahon. They not only influenced the reform process, but also raised the issue which had constantly arisen since the early nineteenth century—the sensational newspaper reporting of inquests. A considerable number of reporters were attracted to the inquests. For example, sixty reporters were in the coroner's court at the Holt inquest in 1920. On the day the coroner's jury returned a verdict of wilful murder against him, the proprietors of the *Manchester Empire News* were appearing before the King's Bench of the High Court of Justice accused of publishing matters 'calculated to prejudice the fair trial of Holt.'¹⁶⁰ The paper was 'widely read . . . and circulated among people who were likely to be on the jury and who might be influenced by these comments.'¹⁶¹ At an early stage in the Mahon case, the *Evening Standard*, the *Daily Express* and the *Manchester Guardian* all appeared before the Court of King's Bench charged with contempt for matters 'calculated to interfere with the proper course of justice.'¹⁶²

The specific details of the above cases are not important, but the sensational treatment in the press had drawn attention to the problem of simultaneous dual proceedings and the publication of information that might be detrimental to an accused in any subsequent trial. The most important case, relative to coroners' reform, was that of Armstrong¹⁶³ in 1922. The influence of the case came as a result of a misunderstanding of the facts by the trial judge. It led to questions being asked in Parliament and demands made for reform of the system to prevent simultaneous proceedings in coroners' and in magistrates' courts. It also showed the Herefordshire county coroner taking a new, but

¹⁶⁰ *The Times* Jan 15 1920 p.6b

¹⁶¹ *Ibid.*

¹⁶² *Ibid.* May 22 1924 p.5f, May 16 1924 p.11f, May 23 1924 p.4a

¹⁶³ See: *Hereford Times* Jan 7 1922, Jan 14, Jan 21, Jan 28, Feb 11, Feb 18, Feb 25, Apr 8, Apr 15, Apr 22, *Hereford Journal*, Jan 7 1922, Jan 14, Jan 21 and *Hereford Mercury* Jan 11 1922, Jan 18, Jan 25, Feb 8, Feb 15, Mar 15, Mar 29. With reference to the trial see: Robin Odell *Exhumation of Murder* (Harrap, London 1975) pp141-185, Derek Walker-Smith *The Life of Lord Darling* (Cassell and Co., London 1938) pp.259-

practical, approach to the problem. This case this will be examined in some detail.

Major Herbert Armstrong, a pillar of society in Hay-on-Wye, was initially charged in the magistrate's court with attempting to murder a solicitor working in another local practice. As a result of the investigations prior to the charge, it was decided to exhume the body of Armstrong's wife which was found to contain significant quantities of arsenic. This led to the further charge of murdering his wife. The Armstrong case became the subject of intense public interest¹⁶⁴ and attracted substantial attention from the press: 'Hay was agog with excitement . . . , and received the attention of a battalion of journalists from all parts of the country'.¹⁶⁵ As with the other cases mentioned above, within days the editor of the *Daily Express* had to appear before the Court of King's Bench for contempt because the comments printed were 'calculated to prejudice' a fair trial.¹⁶⁶

At the second session of the inquest, the North Herefordshire coroner apologised to the jury for bringing them on 'what was apparently a fool's errand' since he was about to adjourn the inquest:

A lot of people think that our criminal procedure in this country is unnecessarily duplicated. As you are aware, the accused, Major Armstrong, is now on preliminary trial before the magistrates, and it appears that will have to be repeated before me. My object is to avoid expense. All you gentlemen are ratepayers, and you know what a critical time you have to face at present. It is my duty, as Coroner, to see that the expenses of these proceedings shall be no more than is absolutely necessary in the interests of justice, and I think the course I am going to take will materially diminish the cost.¹⁶⁷

66, Filson Young (ed.) *The Trial of Herbert Rowse Armstrong* (William Hodge, Edinburgh and London 1927)

¹⁶⁴ *Hereford Mercury* Mar 29 1922 p.1

¹⁶⁵ *Hereford Times* Jan 7 1922 p.5

¹⁶⁶ *The Times* Feb 4 1922 p.4d

¹⁶⁷ *Ibid.* Jan 28 1922 p.11g

'This was certainly an unusual practice at that time and considerable comment was excited in legal circles',¹⁶⁸ but expense was still a concern for the LCC and other local government authorities. The coroner's approach also avoided the necessity of either Armstrong or the many witnesses having to appear before him at the same time as the magistrate's court was sitting. He had also taken the trouble to go to an 'higher authority even than the Director of Public Prosecutions' (presumably the Lord Chancellor, the Home Secretary or the Law Officers) to satisfy himself that he was justified in his actions.¹⁶⁹

After a later inquest session, the *Hereford Mercury* reported:

The inquest on the death of Mrs Armstrong was adjourned over an interval of six weeks . . . the Coroner . . . , having then reason to believe that the Assize proceedings by that time would have been completed. It is probable that as it is not desired that the giving of evidence at the inquest should take place before the holding of the Assize, the inquest will be further adjourned.¹⁷⁰

The Herefordshire coroner had now taken the unique step of adjourning his inquiry, not only until the magistrate's court had completed its deliberations, but also until the termination of the subsequent assize trial.

Mr. Justice Darling was presiding over the Spring Assizes at Hereford and was anxious to include the Armstrong case if he were to be committed to appear before the grand jury. He was concerned that, if he could not hear the case within that session, it would have to be postponed until June or July, the man being held in prison with a charge of murder hanging over his head.¹⁷¹ Armstrong was eventually committed to the Assizes and Darling, in his address to the grand jury, stated that the length of the preliminary proceedings in the Armstrong case:

¹⁶⁸ Odell op.cit. p.219

. . . could be accounted for by the fact that at the same time that the justices were investigating the case, in which many witnesses had to be called, *the coroner was investigating the same matter*.¹⁷²
[emphasis added]

Darling had been misinformed or had misunderstood what was happening at Hay. The Herefordshire coroner pointed this out at the next session of the inquest—and his remarks were reported in the national press:

Mr. Justice Darling . . . had not been quite correctly informed as the cause of the delay in these proceedings. There has been no delay which is any way due to the action of the Coroner's Court. . . I am inclined to think that the Director of Public Prosecutions would have a very good answer to any suggestions that there has been any delay.¹⁷³

The problem was not with the coroner's but the magistrate's court where the hearings were extended over several weeks.¹⁷⁴ The latter court had no lamps, so that the hearings were limited to the relatively short winter daylight hours.¹⁷⁵ Also, there were lengthy adjournments while evidence was being collected to deal with the two separate charges and the absence of vital witnesses.¹⁷⁶ Dual proceedings were ostensibly taking place, but the coroner was not in any way responsible for delaying Armstrong's committal to appear before the grand jury at the assizes.

But it was not the coroner's but Mr. Justice Darling's comments¹⁷⁷ and his recommendation that caught the attention:

¹⁶⁹ *The Times* Feb 17 1922 p.7e

¹⁷⁰ *Hereford Mercury* Mar 15 1922 p.1

¹⁷¹ *Law Journal* 57: Feb 18 1922 p.54

¹⁷² *ibid.*

¹⁷³ *The Times* Feb 17 1922 p.7e

¹⁷⁴ Browne and Tullett *op.cit.* p.135

¹⁷⁵ *ibid.*

¹⁷⁶ Martin Beales *Dead Not Buried: Herbert Rowse Armstrong* (Robert Hale, London 1995) pp.144, 151, 161

¹⁷⁷ *The Times* Feb 15 1922 p.4g

. . . those who could alter the law might well consider, in the case of a prisoner once arrested and charged with a crime, the circumstances of which were being investigated by the magistrates, whether it would not be sufficient if the coroner's inquest be closed and the matter left to the justices.¹⁷⁸

This prompted the MP, Major Lowther, to ask the Home Secretary:

[Lowther]: . . . whether his attention had been drawn to the remarks by the learned judge on Saturday when he charged the grand jury at Hereford as to the unnecessary duplication of proceedings by coroners and magistrates courts in certain cases—and whether he was prepared to introduce legislation to give effect to the learned judges recommendations?

[Shortt]: The suggested amendment will be considered in conjunction with a Bill now being drafted.

[Lowther]: When may we expect the Bill?

[Shortt]: I regret that I cannot give the assurance asked for [*sic*].¹⁷⁹

Lowther repeated his question again in April and received the reply:

[Shortt]: It is proposed to deal with this question in the Coroners Bill, but I cannot at present say when it will be introduced.

[Lowther]: What is the cause of the delay in introducing the Bill, which the Right Honourable gent said is so urgent.

[Shortt]: There are a number of causes. One is pressure of other business.¹⁸⁰

After five adjournments, the inquest was finally completed on 28th April, shortly after Armstrong had been sentenced to death in Hereford. Referring to the trial in his address to the jury, the coroner pointed out that there was no argument that Mrs. Armstrong died from the effects of arsenical poisoning. He 'did not want to force the hand of the jury', but asked the members to return a verdict only to that effect—which they did.¹⁸¹ The coroner had set a significant precedent for the future. He had concentrated only on the cause of death and avoided reference to

¹⁷⁸ *Law Journal* 57: Feb 18 1922 p.54

¹⁷⁹ HC Deb. 5th Series 150: col.1709 Feb 21 1922

¹⁸⁰ *Ibid.* 152: Apr 4 1922 col.2015

¹⁸¹ *The Times* Apr 28 1922 p.11e

any aspect of criminality in the case—that had been left entirely to the petty jury at the assizes.

However, coroners' juries were not always so compliant. In 1926, a Wiltshire coroner, following the example set in the Armstrong case, had confined his inquiry to the nature of the dead man's wounds. He had then adjourned the inquest, leaving the question of criminal responsibility to the magistrates and the assizes. After the accused had been found guilty of murder, the coroner brought the jury together to record the formal verdict. The coroner's jury 'stood upon its dignity' and objected strongly to the process which removed its ancient and traditional right to examine fully the evidence and independently to decide the verdict:

Eventually, after a long absence, the suggested verdict was returned, but the foreman announced that the jury had decided to add a rider, and, when the coroner refused to accept any rider, said: "We are of opinion that there has been a grave miscarriage of justice."¹⁸²

The Departmental Committee had recommended that coroners should be appointed as magistrates to avoid dual proceedings. The Armstrong case demonstrated a different approach (copied by the Wiltshire coroner). The coroners had entirely avoided involvement in issues related to criminal liability. If the magistrates had failed to commit the accused to appear before the grand jury, the coroner could have reconvened the inquest and, with an appropriate verdict from the jury, have indicted the accused for trial on his warrant. Once a trial had taken place, then further proceedings before the coroner would probably have been unnecessary unless it had failed to deal with any wider aspects of public concern.

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¹⁸² *Lancet* 1: Feb 13 1926 p.361

For the first time the Labour Party formed an administration early in 1924 and in July the relatively new parliamentary under-secretary at the Home Office was asked:

[Richardson]: . . . if he will initiate legislation to . . . bring the office [of coroner] more into accord with modern needs, and to arrange that inquests should be adjourned until after trials at assizes, with a view to avoiding unnecessary expense and the inconvenience and hardship to witnesses giving evidence before the tribunals?

[Davies]: My Rt. Hon. Friend [the Home Secretary] now has under consideration a Draft Bill for amending the law relating to coroners and coroners' inquests. It deals with the points to which the hon. member refers.¹⁸³

The press had ensured wide publicity for the Vaquier and Mahon murder cases as they proceeded through the various courts in 1924. In August Sir Harry Poland wrote to the editor of *The Times*:

Sir,—Now that the trials of Vaquier and Mahon at the Assizes have been concluded, it may be convenient to consider whether any good purpose was served by the coroners continuing to take evidence after a prosecution had been begun against the accused in a criminal court, *i.e.*, before the Justices. . . it seems superfluous . . . that in the intervals of the hearings before the Justices the witnesses should be required to repeat their evidence before the coroner.¹⁸⁴

The Middlesex Magistrates in 1851, the Royal Commission on the codification of the criminal law in 1879 and the 1910 Departmental Committee had all drawn attention to the problem—though each had proposed different solutions. Poland suggested that, as soon as a prosecution was started for murder or manslaughter, the coroner's inquest should be suspended until the completion of the criminal trial. In the case of a guilty verdict, the coroner would then instruct the jury to defer to that verdict. He pointed out that the change did not need legislation¹⁸⁵—as the Herefordshire coroner had already demonstrated

¹⁸³ HC Deb. 5th Series 176: col.2272 Jul 31 1924

¹⁸⁴ *The Times* Aug 7 1924 p.18a

¹⁸⁵ *Ibid.*

at the Armstrong inquest in 1920. However, the problem would have been to persuade the coroners to implement the process voluntarily—the majority still believed the primary purpose of the inquest was to detect crime. In fact, only two coroners wrote objecting to the proposal.¹⁸⁶ Another correspondent called attention to the advantages of the Scottish system:

All will admit that nothing should be done to prejudice a case before the jury called upon to try him. But under the English system . . . the accused is already a convicted man when he takes his place in the dock. The Coroner's jury have heard the evidence and found him guilty of murder. If the case has attracted public attention, the jury . . . have, in all probability, read the evidence and made up their minds about it. To one . . . trained under the Scottish system, that of England seems preposterous.¹⁸⁷

Poland's letter had raised 'considerable public interest' in the subject, but he would not comment on the subsequent correspondence because the Government had already indicated that the subject would be dealt with in the coroners Bill.¹⁸⁸

In May 1925, almost a year after Poland's letter, Lord Darling (previously Mr. Justice Darling) raised the topic of dual proceedings in coroners' and magistrates' courts in the Lords. He pointed out that Magna Charta had specifically laid down that the coroner was not to try cases, but:

It may well happen, I think it often happens, that the evidence given before the coroner points to the guilt of some particular person who may or may not be under arrest.¹⁸⁹

He pointed out that the long adjournment of the Armstrong inquest had caused no harm, but rather than suggest that the coroner have the

¹⁸⁶ Ibid. Aug 11 1924 p.15a, Aug 12 1924 p.8d. See also Aug 13 1924 p.6b, Aug 20 1924 p.6e,

¹⁸⁷ Ibid. Aug 9 1924 p.6e

¹⁸⁸ Ibid. Aug 20 1924 p.6e

¹⁸⁹ HL Deb. 5th Series 61: col.331 May 19 1925

powers of a magistrate (as recommended by the Departmental Committee) he proposed that:

. . . if, on an inquest regarding the death of a person, the coroner is informed before the jury have given their verdict that someone has been charged before justices with the murder, or manslaughter, of the dead person, in the absence of a good reason to the contrary, it shall be the duty of the coroner to adjourn his inquest.¹⁹⁰

The Lord Chancellor referred to the comments made by Sir Harry Poland with respect to the 1910 Crippen case 'which gave rise to something like a scandal'¹⁹¹ as a result of dual proceedings.¹⁹² Adjournment would not prevent the coroner ordering a post mortem examination or the burial and, if a guilty verdict were reached, the verdict of the inquest jury became a formality. He continued:

As to the remedy to be applied, my noble friend has made a proposal in terms which make me suspect he is a master of thought reading, because the words he used were very much those that are to be found in the Government Bill, which was prepared before this question was put down.¹⁹³

Darling's thought reading ability resulted from somebody in the Home Office surreptitiously showing him a draft of the Bill before the debate.¹⁹⁴ Locke, the Home Office official, denied that *he* had been the source. But it appears that this may have been a deliberate leak to establish the acceptability or otherwise of the proposals in the Bill since he minuted that:

This was a most useful debate. . . It is comforting to find our solution acceptable to these two authorities, and not opposed by other Lords.¹⁹⁵

¹⁹⁰ *Ibid.* cols.332-3

¹⁹¹ *Ibid.* cols. 334-6

¹⁹² See also *Law Journal* 45: Sept 17 1910 p.588, Oct 6 1910 pp.631-2, Oct 29 1910 pp.681-4, Nov 12 1910 p.727, Nov 19 1910 p.742

¹⁹³ HL Deb. 5th Series 61: cols.335-6 May 19 1925

¹⁹⁴ HO45/12285/453044/42 op.cit. Minute: A. Locke May 20 1925

¹⁹⁵ *Ibid.*

The Lord Chancellor concluded by confirming what the Home Secretary had announced in the Commons a month earlier in April 1925¹⁹⁶—the Coroners (Amendment) Bill was almost ready for introduction. It was 'only awaiting approval by some local authorities in connection with financial matters'.¹⁹⁷

Behind the clause which Darling has so unerringly proposed, there was an implication of great significance: the detection of crime had passed decisively to the police. The developments in forensic science and technology, with the processes of crime detection, had advanced to such an extent that the detective police were sufficiently expert to take over the detection of crime from the coroners. That did not destroy the need for the coroner's court. It still existed in order to deal with deaths that the medical profession were unable to explain, that had evaded the skills of the police or that needed a public inquiry to remove suspicions or expose other public concerns.

V THE BILL TO AMEND THE CORONERS LAW

In the latter part of 1924 and in 1925, the Home Office officials worked on the coroners Bill with the Parliamentary Counsel,¹⁹⁸ the Coroners' Society,¹⁹⁹ the Director of Public Prosecutions,²⁰⁰ the officials in the Lord Chancellors Department,²⁰¹ the Registrar-General²⁰² and Ministry of Health.²⁰³ Arthur Henderson, who became Home Secretary at the beginning of 1924 in the first ever Labour Government, had to deal with several questions in the Commons regarding coroners and inquests during his 10 months in office and confirmed that a Bill for amending the

¹⁹⁶ HC Deb. 5th Series **182**: col.1862 Apr. 6 1925

¹⁹⁷ HL Deb. **61** cols 336 May 19 1925

¹⁹⁸ HO45/12285/453044/1 and /2 op.cit.

¹⁹⁹ *Ibid.*/6

²⁰⁰ *Ibid.* /4 and /17 op.cit.

²⁰¹ See: *Ibid.* /4, /5, /14 and /15, LCO2/748 op.cit.

²⁰² HO45/12285/453044/19 op.cit.

²⁰³ MH53/1 op.cit.

related law was under consideration.²⁰⁴ Although a Bill existed, there was still a considerable amount of work to be done before it could be introduced into Parliament—not least, the inter-departmental consultations.

A copy of the Bill was sent to the Ministry of Health with a pointed note stating that ‘the draft does not touch upon the law of death certification and registration, except incidentally’.²⁰⁵ During the consultations, the Ministry objected to the pension provisions clause because it did not want to amend the relatively recent 1922 Local Government Officers Act to accommodate the coroners. One clause contained some unnecessary provisions and was amended by the Home Office as requested. Apart from those two aspects, the Ministry appeared to want to avoid involvement:

There are points which may give rise to difficulty with the medical profession; but they can have their case put forward in Parliament, and I have come to the conclusion that the points are not such as the Ministry of Health are called upon to take up.²⁰⁶

The Home Office showed its sensitivity to the possibility of problems with the medical profession when the General Medical Council [GMC] requested to see a copy of the draft Bill ‘having heard that it was in preparation’. As Locke minuted:

It is just possible that the General Medical Assocn., also, may not be, on the whole, hostile; & that it would offer useful observations. But this is doubtful; & as regards most of the Bill, the medical profession . . . may take the unreasonable attitude of desiring the ending, rather than the mending of Coroners Law.

²⁰⁴ HC Deb. 5th Series **170**: col.2375 Mar 12 1924, **172**: col.1842 May 1 1924, **173**: col.610 May 8 1924, **173**: col.910 May 12 1924

²⁰⁵ MH53/1 op.cit. Blackwell to Ministry of Health Feb 9 1924

²⁰⁶ *Ibid.* Smith Whitaker to Ogden Jul 4 1924

It is therefore of doubtful wisdom to give the [General Medical] Council the opportunity of embarking on controversy before the Bill is introduced & printed.²⁰⁷

Although Simpson basically agreed with these comments, a copy of the Bill was sent, in confidence, to the GMC with a letter. It attempted to divert problems by pointing out that:

. . . the present Bill does not deal with death-certification or with the provision of places for post mortem examinations etc., these matters being for the Ministry of Health.²⁰⁸

In the event, there were no problems and process moved on to the next stage.

The inter-departmental consultations on the draft Bill were mostly completed when Sir William Joynson-Hicks replaced Henderson as Home Secretary in November 1924. He quickly circulated a draft of the Bill to the Home Affairs Committee with a note explaining its main provisions. He indicated that he had promised, as his predecessors had done, to introduce a coroners law amendment Bill and:

I contemplate, if the Cabinet approve my proposals, consulting representatives of local authorities upon the matters which more particularly concern them before the Bill is introduced. No new charge on imperial funds is involved.²⁰⁹

When the Bills²¹⁰ to extend the emergency measures were introduced into the Commons a few days later, an amendment was proposed to restore the coroner's jury.²¹¹ Apart from some necessary amendments before it went to the Home Affairs Committee and the Cabinet, the work

²⁰⁷ HO45/12285/453044/28 op.cit. Locke Mar 2 1925

²⁰⁸ Ibid. Letter to General Medical Council Mar 7 1925

²⁰⁹ Ibid. A. Locke Nov 17 1924 and /26 Feb 1925

²¹⁰ HC Deb. 5th Series 179: col.387 Dec 11 1924, PP 1924 (216) 1.985 Expiring Laws (Continuance) Bill

²¹¹ HC Deb. 5th Series 179: cols.512-3 Dec 12 1924

on the Coroners Bill was proceeding well²¹² so Joynson-Hicks could confidently reply:

[Joynson-Hicks]: I hope that the member will not press his amendment. There has been in preparation for some little time a Bill to deal with the whole question of coroners and it deals with the question of juries. I have before me now a draft of the Bill and I hope, if I find the Chief Whips fairly complacent, to introduce it at the beginning of the next session. It is not very controversial . . .²¹³

He did not reveal any of the provisions with respect to juries, but since the Bill would provide the opportunity for debate, the amendment was withdrawn. However, the MP had not quite finished and indicated opposition to continuance of the war-time provisions:.

[Morris]: . . . The Government . . . gave a pledge in 1923 with regard to the whole of this legislation for the restoration of coroners' juries. That pledge has not been carried out. The Acts are still repeated in the Schedule. However, an assurance has been given, and I hope the Government, while they know when to make a promise, also know the way to keep it.²¹⁴

As Joynson-Hicks had indicated to the Home Affairs Committee, the efforts in 1925 would be devoted to getting agreement with the local authorities. But it was also necessary to deal with the other organisations and to consult individuals such as Poland.²¹⁵ A minute made clear the intentions:

We were committed all along to shewing the draft to the Coroners' Society and when the new draftsman . . . has gone through the draft, it is to go to the Assocn. of County Councils & Municipal Corporations & to the LCC. All these bodies are concerned to promote legislation though they may have criticisms on detail.²¹⁶
[emphasis original]

²¹² HO45/12285/453044/26 op.cit. Locke minute Dec 23 1924

²¹³ HC Deb. 5th Series 179: col.513 Dec 12 1924

²¹⁴ Ibid.

²¹⁵ See: HO45/12285/453044/21 op.cit. HO45/12285/453044/21 Sir Harry Poland, HO45/11214/403923/4 op.cit. Graham (coroner for Sunderland), LCO2/7498 op.cit. Sir William M Smith (Royal Institute of Public Health)

²¹⁶ HO45/12285/453044/28 op.cit. A. Locke Mar 3 1925

The Home Office was aware that each body wanted to secure legislation that promoted its particular interests and that some compromises would probably be necessary.

One of the organisations that the Home Office had not anticipated having to deal with was the Labour Party. Unexpectedly, in August 1925 Arthur Henderson forwarded a memorandum on coroners' law and death registration. The Labour Party Advisory Committee on Public Health had prepared it—a combined group made up of representatives from the General Council of the Trades Union Congress and the Executive Committee of the Labour Party.²¹⁷ It claimed that the memorandum had been prepared after consultation with the Coroners' Society. Simpson considered that it was 'not based on a very thorough study of the subject'²¹⁸ and thought it unlikely that the Coroners' Society had been involved.²¹⁹ In fact, the Labour Party had contacted the Society as early as 1923 and there had been some additional contacts in 1924, but the Society was not very enthusiastic and they were not pursued.²²⁰ The memorandum raised some concerns with the Home Secretary. He minuted (in red ink) 'The Labour Party seems to be an active body. We must press our own Bill'.²²¹

Walter Schröder was making regular visits to the Home Office. He wanted to persuade the officials to include consolidation in the process and to codify the numerous aspects of the common law to provide authoritative direction for coroners. These were important because the Society realised that since the Government sponsored the Bill, it would be assumed to have dealt fully with the whole subject. Therefore, it would be practically impossible to secure any further legislation for

²¹⁷ *Ibid.* /50 H. Simpson Aug 17 1925

²¹⁸ *Ibid.*

²¹⁹ *Ibid.* A. Locke Aug 25 1925

²²⁰ *CorSoc* June 14 1923 Vol.3 p.277, Oct 16 1923 Vol.3 p.284, March 11 1924 Vol.3

p. 288

²²¹ HO45/12285/453044/50 op.cit. W. Joynson-Hicks Aug 20 1925

many years to come.²²² The Society was aware that, despite all the efforts, the last significant Act that had reached the statute book almost forty years earlier was the 1887 Coroners Act, the only consolidation Act on coroners' law in 600 years. In 1891, when the LCC had first attempted to abolish franchise coroners, the Home Office minuted:

'It seems doubtful, *after such recent legislation* [the 1887 Act] on the subject, whether H.M. Gov. will think it necessary to take up the question . . .²²³ [emphasis added]

The LCC, the County Councils Association, the Association of Municipal Corporations and coroners' representatives were invited to an informal conference in May 1925 to discuss the various related measures in the Bill.²²⁴ All went well except for the provision of pensions²²⁵—these were the 'financial matters' referred to by the Lord Chancellor in the debate with Lord Darling in May 1925.²²⁶ A clause was eventually agreed²²⁷ but it caused even more problems for the Home Office because it raised tensions with another department—the Treasury. In December, the Treasury wrote to the Minister of Health (not the Home Office):

The Home Office have *without consulting us in any way* introduced a Coroners Bill which contains a clause (6) giving pensions to Coroners on terms we consider most unnecessarily generous. This is going to get us into worse trouble than ever with the Procurators Fiscal, who are the Scottish analogues of the Coroners, and who are agitating for all back service as against the 7 years offered by the Sheriff Courts Bill.²²⁸ [emphasis added]

The Scottish system was indirectly having an influence on the coroners. Although there were tensions between the Treasury and the Home Office, they agreed that there was no reason why the 1922 Local

²²² Ibid. /15 Coroners' Society Observations upon the Coroners Bill 1924 July 8 1924.

²²³ HO45/9843/B11593/1 Surrender of Franchise Coronerships to the Crown, Minute: Nov 14 1891

²²⁴ HO45/12285/453044/43 op.cit. Minute: Jun 2 1925

²²⁵ Ibid.

²²⁶ HC Deb. 5th Series 61: col.336 May 19 1925

²²⁷ MH53/1 op.cit. Memo: Jun 4 1925

²²⁸ Ibid. Miller to Ellis (Ministry of Health) Dec 16 1925. See also HO45/12285/453044/70 1923-26 Coroners Bill

Government Officers' Superannuation Act could not be amended to include the coroners. But the process of reform was held up because the Ministry of Health resisted change to the relevant section of the Act. Consultation with the local authorities continued until a clause was finally agreed to pay pensions from county or borough funds.²²⁹ This potentially compromised the independence of the coroners because it gave the local authorities a mechanism to impose a control over a coroner (see chapter 6).

In April 1925, the Home Secretary had again confirmed that he hoped to introduce a Bill to deal with coroners' law in the near future,²³⁰ and in the following month, Lord Darling brought up the problems associated with dual proceedings.²³¹ Although by this time the Home Office had achieved general agreement on the Bill, real progress would only become possible when parliamentary time was made available. A Home Office minute in October 1925 confirmed the situation:

Draft of Coroners Bill—nearly ready for introduction. There is cabinet authority for introduction and the Home Affairs Committee has approved introduction when the House meets, though no progress can be made.²³²

It was recognised that the Bill could not complete all the stages of the process before the year-end and would fail, but an element of political expediency indicated that it *would* be introduced:

Introduction will facilitate the passage of 2 items in the Expiring Laws Continuance Bill, it will fulfil pledges, please various sections and produce useful expressions of opinion.²³³

On 1st December 1925, the long-awaited Bill²³⁴ was introduced into Parliament for its first reading²³⁵ and permitted all the interested groups

²²⁹ *Ibid.*

²³⁰ HC Deb. 5th Series **182**: col.1862 Apr. 6 1925

²³¹ HL Deb. 5th Series **61**: cols.329-34 May 19 1925 See also *The Times* May 20 1925 p.8b, *Manchester Guardian* 13 May 1925 p.8f, and HO45/12285/453044/42 op.cit.

²³² HO45/12285/453044/51 op.cit. A. Locke Minute: Oct 23 1925

²³³ *Ibid.*

the opportunity to examine the detailed provisions of the Bill. But, as anticipated, it proceeded no further because of the congested state of parliamentary business in the Commons.²³⁶ To overcome the problem, the Cabinet agreed that the Bill should be first presented in the Lords²³⁷ and that took place on 10th February 1926.²³⁸ One week later, an MP unwittingly asked whether it was intended to introduce the Coroners' Bill during the current session.²³⁹

At the second reading in the Lords, the Lord Chancellor outlined the main objects of the Bill:

(1) to carry out the recommendation of a Committee which reported in 1910 upon coroners; (2), to replace by permanent provisions the provisions of an Act of 1917, the Coroners (Emergency Provisions) Act, which reduced the minimum number of a coroner's jury to seven, and provision of the Juries Act 1918, which enabled a coroner to dispense with a jury altogether in certain limited classes of cases; and (3), to deal with a point which was raised in debate in this House in the month of May last year, and to prevent the unnecessary duplication of proceedings before coroners and before justices. This is really an amending Bill, and, if it is passed, consolidation will become necessary, but it is proposed to reserve the consolidation for a later Bill.²⁴⁰

The Coroners' Bill passed through the Lords quickly, with minimum debate on the few amendments relating to pensions, franchise coroners, salaries, fire inquests, and the Lord Chancellor being able to make rules.²⁴¹ It must have been satisfying to the Coroners' Society that it was generally agreed that, if the Bill passed, a consolidation Bill

²³⁴ PP 1924-25 (264) I.617 Bill to Amend the Law relating to Coroners

²³⁵ HC Deb. 5th Series **188**: col.2053 Dec 1 1925

²³⁶ *The Times* Dec 2 1925 p.14g

²³⁷ CAB.23/52 Feb 10 1926 pp.50 and 58

²³⁸ HL Deb. 5th Series **63**: col.95 Feb 10 1926

²³⁹ HC Deb. 5th Series **191**: col.2103 Feb 18 1926

²⁴⁰ HL Deb. 5th Series **63**: col.556 Mar 11 1926

²⁴¹ *Ibid.* cols.556-66 Mar 11 1926, cols.699-707 Mar 18 1926, cols.818-824 Mar 25 1926, col.842 Mar 29 1926, **65**: cols.1641-2 Dec 14 1926, **65**: col.1708 Dec 15 1926

should follow without delay in order to bring all the relevant statutes together²⁴² as had happened in 1887.

The Bill was sent to the Commons at the end of March.²⁴³ Although parliamentary business in 1926 was very disturbed by industrial unrest,²⁴⁴ the Coroners Bill initially progressed well. However:

. . . progress was interrupted at the Committee stage in the House of Commons , consideration had to be postponed twice for the tiresome and not very creditable reason that a quorum of 20 Members of Parliament could not be found.²⁴⁵

As a result, the Bill returned automatically to the bottom of the list. The Committee failed to achieve a quorum on a second occasion and consideration was postponed until after the recess—a decision that might have wrecked the entire process. Fortunately, the committee completed its other work and a third attempt was made in late November, but it again failed to achieve a quorum and was adjourned indefinitely.²⁴⁶ These failures suggest that the Committee MPs had little or no interest in the reform of the coroners' law. It might have been expected that the Government Whips would have become involved to ensure that a Government Bill progressed. But this task fell instead to the Bill's supporters who made strenuous efforts to persuade sufficient Committee members to attend the fourth and final meeting on 8th December.²⁴⁷ That meeting was successful, mainly because the 'various proposers of alterations generously forebore to press their amendments.'²⁴⁸ At the third reading five days later, the Home Secretary was ill. The Bill was handled by the Under-Secretary of State who had to prevent a further attempt by the LCC to have the Bill

²⁴² *Ibid.* 63: cols.556, 564 Mar 11 1926

²⁴³ *Ibid.* col.842 Mar 29 1926

²⁴⁴ *BMJ* 1: Jan 1 1927 p.25

²⁴⁵ *Lancet* 2: Dec 18 1926 p.1280

²⁴⁶ *The Times* Nov 25 1926 p.8g

²⁴⁷ *Ibid.* Dec 4 1926 p.12g and Dec 9 1926 p.13c

²⁴⁸ *Lancet* 2: Dec 18 1926 p.1280

amended with respect to superannuation contributions and fire inquests.²⁴⁹

On 15th December 1926, on the last day of the session, the Coroners (Amendment) Act received the Royal Assent.²⁵⁰ The *Lancet* commented:

After a long voyage the Coroners (Amendment) Bill, embodying reforms recommended many years ago by Sir Mackenzie Chalmers's Committee, has at last reached harbour.²⁵¹

*

In the period 1914 to 1926, two significant elements influenced the Government to institute the process leading to reform.

The first and undoubtedly the most important was the necessity to impose the emergency provisions that were catalysed by the manpower shortages associated with the First World War. The limitations provided the opportunity to experiment with change that could be discontinued at an appropriate time if unsuccessful. In fact, the power of the coroners to hold inquests alone and the restrictions on jury numbers worked well, without problems and with few complaints. The long-standing concerns in the Home Office about the symbolic and traditional element provided by the presence of the jury at the inquest had been answered by the successful experiments.

The second important element was the financial efficiencies that resulted from the emergency measures. Administrative efficiency had long been a goal of the LCC and other local government authorities. The savings generated by the emergency legislation were sufficient reason for the LCC quickly to lobby the Government to implement the

²⁴⁹ HC Deb. 5th Series **200**: cols.2589-2615 Dec 13 1926, *The Times* Dec 14 1926 p.8e

²⁵⁰ HC Deb. 5th Series **200**: col.2972 Dec 15 1926

²⁵¹ *Lancet* **2**: Dec 18 1926 p.1280

measures on a permanent basis. The Coroners' Society and the medical profession brought additional pressure to bear on the Government by the introduction of private Bills into Parliament. The need to introduce legislation was spurred particularly by the Ministry of Health's attempt to eradicate the inquest,²⁵² but also by the publicity associated with the series of murders and the need to re-enact the emergency measures each year. By the end of 1919, the Government had accepted the need for reform²⁵³ and a preliminary Bill was drafted in early 1920.²⁵⁴

Despite the continuing internal debates within the important participating groups, the Home Office used the consultation process to obtain agreement that the provisions should be based primarily on the 1910 Departmental Committee Report recommendations but with some limited modifications. The processing of the Bill through Parliament was delayed for a variety of reasons including the general post-war legislative load on Parliament, industrial disputes and mustering a quorum to pass the Bill through the committee stage. The Bill eventually passed through both Houses of Parliament with little change from the original draft presented.²⁵⁵

Seventy five years had passed since the Middlesex magistrates published their report. The reform process that reached fruition in 1926 had been complex and long and incorporated four key measures that moved the English system *significantly* towards the Scottish system. (1) The coroner could hold an inquest without a jury in certain cases.²⁵⁶ However, when a jury was necessary, the coroner had to use the provisions of the 1887 Coroners (Amendment) Act²⁵⁷ to summon 'not less than twelve nor more than twenty three good and lawful men

²⁵² Burney Thesis op.cit. p.372

²⁵³ HC Deb. 5th Series 121: col.1935 Nov 27 1919

²⁵⁴ HO45/11214/403923/9 op.cit. Minute: A. Locke May 23 1921

²⁵⁵ *Lancet* 2: Dec 18 1926 p.1280

²⁵⁶ 16 & 17 Geo.V c.59 Coroners (Amendment) Act 1926 s.13 (1)

²⁵⁷ *Ibid.* s.13 (2)

[sic].²⁵⁸ (2) When a person was charged before examining justices with the murder, manslaughter or infanticide, he was required to adjourn the inquest until the conclusion of criminal proceedings.²⁵⁹ (3) In cases of sudden death or where the cause was unknown, the coroner had the power to order a post mortem examination to decide whether to proceed to an inquest or not.²⁶⁰ (4) The coroner was still required to view the body, and if he directed, or a majority of the jury wished to do so, the body was also viewed by the jury.²⁶¹

The final chapter first looks back over the period and the development of the LCC's policy on coroners and then explores the subdued dissatisfaction of the LCC, the BMA and the Coroners' Society to the 1926 Coroners Act. Before going on to draw conclusions it attempts to explain the resistance of the coroners and the reluctance of successive governments to introduce reforms.

²⁵⁸ 50 & 51 Vict. c.71 An Act to consolidate the Law relating to Coroners [The Coroners Act] [16th September 1887] s.3 (1)

²⁵⁹ 16 & 17 Geo.V c.59 op.cit. s20 (1)

²⁶⁰ Ibid. s.21 (1), (2)

²⁶¹ Ibid. s.14 (1)

CHAPTER 10

REACTIONS, RESISTANCE AND RELUCTANCE

The Coroners (Amendment) Act . . . introduces some necessary but minor reforms . . .

Law Journal 7th May 1927¹

This chapter first looks back briefly to the events that led to the 1926 Coroners (Amendment) Act before examining and accounting for the subdued dissatisfaction with which it was greeted. It then attempts to explain the slow progress of the reform process and to reach conclusions.

It would be easy to go directly to the role played by the London County Council (LCC) in the reform process that led to the 1926 Coroners Act. Important though that role was, it would present an unbalanced picture because preceding events had a significant influence on the policy that it adopted. The policy can be seen to have had its roots in three significant Acts of Parliament passed in the mid-1830s² that increased the number of inquests and the related costs. These and Wakley's activities brought the inquest system to the attention of the Middlesex magistrates who eventually instituted an inquiry into the duties and remuneration of their coroners in 1850. The recommendations for

¹ *Law Journal* 63: May 7 1927 p. 455

² 6 & 7 Will.IV c.86 An Act for registering Births, Deaths and Marriages in England [17th August 1836], 6 & 7 Will. IV, c.89 An Act to provide for the Attendance and Remuneration of Medical Witnesses at Coroner's Inquests [17th August 1836], 1 Vict. c.68 An Act to provide for Payment of the Expenses of holding Coroners Inquests [15th July 1837]

reform in the Report³ were ignored by the government and the conflict that followed between the magistrates and the coroners spread to many counties before being brought to an end by the 1860 County Coroners Act.⁴

Although attention was focused on the conflict between the coroners and the magistrates, a debate had started in the 1840s over the future of the coroners. Rather than abolish the office as the Middlesex magistrates wanted, the sanitarians saw the opportunity for the coroners to direct their efforts away from the detection and prevention of crime to the promotion of sanitary measures. The sanitarians' wanted to change the primary objective of the inquest from the investigation of criminal activities to the improvement of public health by having medical coroners and using experts and continental practices of investigation. The debates had their heyday in the 1850s and 1860s⁵ but they failed to gain the support of the majority of coroners. As a result of Government policy on health matters, most of the activities that the sanitarians had hoped to incorporate in the coroners' duties were progressively assimilated into the responsibilities of the medical officers of health. However, the idea of medicalising the office of coroner persisted into the twentieth century.⁶

Coroners' problems became prominent again in the 1870s as a result of a series of *causes célèbres*. The most significant were the two Bravo inquests in 1876 which focused attention specifically on the deficiencies and problems of the coroner's court. It persuaded Farrer (later Lord)

³ Middlesex Justices of the Peace: *Report of the Special Committee appointed at the Michaelmas Session 1850, as to the duties and Remuneration of Coroners, and Resolutions of the Court* (April Quarter Sessions 1851) [Hereafter: Middx. Report]

⁴ 23 & 24 Vict. c.116 An Act to amend the Law relating to the Election, Duties, and Payment of County Coroners [28th August 1860]

⁵ Olive Anderson *Suicide in Victorian and Edwardian England* (Oxford: Clarendon Press 1987) pp.24, 25, 110

⁶ F.W. Lowndes *Reasons why the Office of Coroner should be of Medical Profession* (London: J.A. Churchill 1892), Second edition (London: J.A.Churchill 1895), Third edition (London: J.A.Churchill 1900)

Herschell to put forward proposals for the reform of the office⁷ that had a strong resemblance to the recommendations made by the Middlesex magistrates and aspects of the sanitarians' approach. The publicity and calls for reform that resulted from the *causes célèbres* persuaded the Home Secretary to introduce a basic coroners Bill. It was referred to a select committee and the amendments it proposed would have moved the coroners towards the Scottish and continental systems. Although the Bill failed to progress at that time, in its original form it was used as a basis for the 1887 Coroners (Consolidation) Act. It was not until 1893 that a select committee inquiry into death certification delivered a set of recommendations for reform in a report that was very critical of both the registration process and the inquest system.⁸

When the LCC was set up in 1899, it was faced with the task of establishing a county government organisation to integrate the diverse operational systems from three counties and the existing Metropolitan Board of Works. The overall objective was to achieve administrative efficiency and uniformity by the formation of a centralised, bureaucratic system. Part of that process was to integrate the London coroners into the system and, as a result of the difficulties encountered, the PCC developed a policy to deal with them which it published in 1895.

The policy was not very original, being made up of ideas put forward by Herschell in the 1870s and most of the recommendations in the 1893 select committee report on death certification. These recommendations had emerged from a slow, complex, multi-layered and fragmentary process which started in the 1830s. There was no particular agenda, ideology, proposal or recommendation that completely succeeded or dominated. Instead, particular elements were adopted and established, while others were rejected or ignored or else adopted in a modified or

⁷ Farrer Herschell 'Jurisprudence and the Amendment of the Law' *Transactions of the National Association for the Promotion of Social Science* 1876 pp.22-32

⁸ PP 1893-4 (373) XI.195 First Report of the Select Committee on Death Certification, PP 1893-4 (402) XI.195 Second Report of Select Committee on Death Certification

compromised form.⁹ The PCC played its part in that process by adding its own recommendations that were intended to improve the administrative efficiency of inquests in London. Overall, the recommendations provided a realistic policy for the London coroners which, if implemented, would have removed the basic problems, reduced costs, improved efficiency and provided useful data for the LCC to develop its social policies.

The LCC realised that it was unlikely to achieve changes to the ancient office for London alone. Therefore, it covertly set a strategy to influence the government to implement a general inquiry into coroners and inquests. It anticipated that such an inquiry would lead to comprehensive reform for England and Wales and, at the same time, achieve the LCC's objectives. Considering the wide responsibilities of the PCC, the amount of time and effort that it devoted to coroners' affairs is remarkable. Thirteen years were to elapse before the first part of the strategy was achieved, probably with greater success than might have been expected. A significant factor in achieving that success can be attributed to John Troutbeck's enthusiastic implementation of the LCC's policy which persuaded the Home Office to establish the 1908 Departmental Committee inquiry. In addition, the resulting recommendations of the departmental committee were influenced by the LCC's policy. A change of Home Secretary, domestic problems, international tensions and the 1914-18 war interrupted the implementation of the recommendations. Immediately after the Armistice, the LCC (aided by other interested parties) pursued the second part of its strategy with considerable tenacity. It continued to urge changes to meet its needs as the Bill passed through the legislative process until the Act received the Royal Assent in 1926.

⁹ David Garland *Punishment and Welfare* (Aldershot: Gower 1985) pp.161-2 [Hereafter: Garland Welfare]

After thirty years of effort, the strategy adopted by the LCC was fully achieved with most of its policy objectives included in the 1926 Act. The LCC should have been delighted with its success—it was not, as can be judged from the comments in the LCC’s Minutes in 1927. They did not refer to success, but only to the four amendments that it *failed to achieve*—three concerned reduction of cost and the fourth a form of control over the coroners.¹⁰

The integration of the coroners into the LCC’s system was important and the ‘diversity of practice between the eight London coroners was a constant annoyance to the tidy bureaucrats of the London County Council.’¹¹ But in the 1920s, integration with *cost reduction* was required to limit the rates. Oswald, the senior coroner for London, understood the LCC’s dissatisfaction as he explained at an inquest:

Inquests, which hitherto cost the ratepayers of the County of London about £25,000 a year, will, I estimate, work out at about twice that figure. There are various radical changes under the new Act which will bring about this increase. Doctors, who before were paid one inclusive fee for attending an inquest, will now get sums for every time they have to attend the adjournments. Juries will have to be paid to attend all accident cases, and many others, too, some of which are almost formal affairs.¹²

The LCC had also wanted to impose direct control over the coroners by having ‘the paying authority empowered to pay all expenses of the coroner *if it thought fit*’¹³ [emphasis added]. That would have, in effect, re-imposed the powers given in the 1751 and 1830s Acts to the magistrates—the cause of so much strife in the 1840s and 50s. The Act, even allowing for the new powers of the Lord Chancellor to make rules, had ensured independence for the coroners.

¹⁰ LCC: *Minutes of Proceedings* Feb 8-9 1927 pp.209-10

¹¹ Olive Anderson *Suicide in Victorian and Edwardian England* (Oxford, 1987) p.17

¹² *Solicitors’ Journal* 71: May 7 1927 p.371

¹³ LCC: *Minutes of Proceedings* Feb 8-9 1927 pp.209-10

The LCC must also have been frustrated by the realisation that full implementation of the changes would take time. For example, the abolition of the franchise coroners and the easier process to change the boundaries of the county coroners' districts would allow the amalgamation of jurisdictions, reduce the number of coroners and make them all whole-time officers. But coroners were appointed for life so that it was necessary to wait for each coronership to become vacant—and coroners were notoriously long-lived.¹⁴ In fact, it was not until 1956 that the LCC finally achieved its objective of having only three whole-time county coroners.¹⁵

On Christmas Day 1926, ten days after the Coroners (Amendment) Act reached the statute book, a leading article in the *BMJ* opened:

It is now twenty-one years since the British Medical Association first drafted a Coroners Bill, and sixteen since a departmental committee . . . reported in favour of many reforms which had been advocated and attempted. Except for certain temporary war legislation, however, no substantial modification of the law had been accomplished when, last year, the Association reviewed the whole subject of the reform of the coroner's courts and of registration of births and deaths. As a result of this review a slightly modified policy was adopted . . . and pressure was once more brought to bear on Government departments with a view to legislation. This preparation and pressure has now borne fruit more speedily than might have been expected from the previous history of the matter. . . ¹⁶

Despite the latter comment, by the time the BMA had adopted a 'modified policy', the Government Bill had already been firmly drafted and, with little change, became the Act. The pressure from the BMA had not been as important as the article suggested but its role over the years cannot be ignored. It had spent a considerable amount of time on coroners' affairs in the form of discussions, preparing Bills and lobbying

¹⁴ D. Zuck 'Mr Troutbeck as the Surgeon's Friend: The Coroner and the Doctors - An Edwardian Comedy' *Medical History* 39: 1995 259-287 p.260 n.6

¹⁵ W. Eric Jackson *Achievement: A Short History of the London County Council* (Longmans, London 1965) p.210.

¹⁶ *BMJ* Dec 25 1926 p.1233

the Government. Yet it was probably the indirect aspects that had had the most effect. The *causes célèbres* of the 1870s had exposed the differences within the profession over specialisation and problems with the role of the GPs in the inquest process. The disputes between Troutbeck and the medical profession that these issues generated led to the appointment of the Departmental Committee on Coroners¹⁷ and eventually to the 1926 Act.

In fact, the medical profession was not happy with most legislative affairs affecting it in 1926 because of its inability to achieve the legislative changes it wanted. It complained that there was not ‘much evidence that Ministers and other members of Parliament [we]re ready to accept medical opinion as their guide’.¹⁸ With respect to the 1926 Coroners Act, it asserted, somewhat arrogantly, that it was not satisfactory because it failed to be ‘fully in conformity with the policy of the Association.’¹⁹ However, it was realistic enough to recognise that it was ‘very unlikely that any further alterations will be made in coroners’ law for a considerable time to come.’²⁰ The prophecy was accurate—significant change did not come for another fifty years.

The *BMJ* protested that:

. . . the Act follows the not very laudable practice of modern legislation in relation to the powers given to Government departments, and gives them authority to “make rules for regulating the practice and procedure at or in connexion [*sic*] with inquests and post-mortem examinations.”²¹

¹⁷ William A. Brend ‘An Enquiry into the Statistics of Deaths from Violence and Unnatural Causes in the United Kingdom; With Special Reference to Deaths from Starvation, Overlaying of Infants, Burning, Administration of Anaesthetics and Poisoning’ (unpublished University of London MD thesis, 1915) p.64, see HO45/10564/172763/30 1908-1915 Departmental Committee on Coroners.

¹⁸ *BMJ* Jan 1 1927 p.26

¹⁹ *Ibid.* Dec 25 1926 p.1233

²⁰ *Ibid.*

²¹ *Ibid.*

The BMA objected to having rules which could be arbitrarily changed by the Government without its knowledge, 'advice' or the involvement of the medical MPs. It appeared to prefer an Act where interpretations, which failed to meet its requirements, could be challenged by appeals to ministers, the Lord Chancellor or in the courts. The failure of such processes to deal with the Troutbeck disputes had been forgotten. Paradoxically, it:

. . . hoped that when such rules are issued the present arbitrary powers of the coroner, which have sometimes been gravely abused, will be found to have been wisely regulated.²²

The BMA had accepted that the full effects of the Act would only become evident when the Lord Chancellor had taken further action.

Despite the attitude adopted by the medical profession, it appears that the Government wanted to avoid controversy with the doctors and included two important provisions in the Act to achieve that.

First, with respect to the 100 year old demand for medical coroners, the Act permitted doctors with five years professional practice to be appointed as coroners. The legal profession had always criticised the idea that a court of law could be effectively presided over by a doctor who had no legal training, qualifications or experience.²³ There was a tendency for select and other committees to recommend that there should be only legal coroners. Generally, local government authorities followed that lead by appointing coroners with legal qualifications. This, and the difficulty in combining medical practice with the office, has resulted in a slow decline in the number of medical coroners which reached a peak in the 1880s. Since then, the number slowly declined

²² Ibid.

²³ For example: *Solicitors' Journal* 19: Nov 7 1874 p.1, 25: May 7 1881 p.501

until, at the end of the twentieth century, there were only twelve medical coroners.²⁴

Second, the coroner could still request any legally qualified practitioner to perform a post mortem or special examination. As a result of requests from the LCC and the Coroners' Society, the provisions were widened so that the coroner could involve 'any person whom he considers to possess special qualifications for conducting . . . a special examination . . .'.²⁵ That permitted the use of expert pathologists in special cases. The Lord Chancellor steered the clause into the Bill without problems²⁶ and it caused no offence to the medical MPs so that it passed into the Act without interference in the Commons. Though it is still legally possible for a coroner to request a GP to do the work, the increasing divide between the GPs and the specialists, which developed following the 1911 National Insurance Act,²⁷ allowed the expert pathologists to progressively take over performing post mortem examinations for the coroners. As Pilling reports, by the mid-twentieth century, the pathologist's duties had developed to such an extent that:

When one speaks of medico-legal investigations of death in England and Wales one thinks automatically of the partnership of pathologist and coroner.²⁸

Despite this, the inquest system was not genuinely medicalised. The profession failed to gain control of the body—that remained absolutely with the coroner. The doctors would certainly perform more post mortem examinations because coroners would use them in cases of

²⁴ Annual Report of the Coroners' Society, 2000 cited in G.H.H. Glasgow *Lancashire and the Campaign for Medical Coroners in the Nineteenth Century* (unpublished paper. n.d. 2000?) p.40

²⁵ 16 & 17 Geo.V c.59 An Act to amend the law relating to coroners [Coroners (Amendment) Act] [15th December 1926] s.22

²⁶ LCC: *Minutes of Proceedings* Jul 27 1926 p.317

²⁷ Roy Porter *The Greatest Benefit to Mankind: A Medical History of Humanity from Antiquity to the Present* (London, Fontana Press 1999) p.639

²⁸ H.H. Pilling 'Social Change and the Coronership' *Medicine Science and the Law* 10: (4) Oct 1970 p.238

sudden death to avoid inquests.²⁹ But again, control remained with the coroner because doctors only became involved if the coroner invited them to do so.

The doctors did obtain improved financial provisions with a 50% increase in fees,³⁰ a daily allowance for attendance at an inquest³¹ and for performing a post mortem examination (though the fees were still considered inadequate).³² These were the first changes since Wakley's Medical Witnesses Act in 1836.³³ The challenge to the fee increases, in the final stages of the passage of the Bill through Parliament, annoyed the *BMJ*. It considered that the amendments to maintain the existing fees and conditions would have denied 'even these small measures of justice to the medical profession.'³⁴

The move towards the secrecy associated Scottish system should have pleased the medical profession because, after 1926, the coroners conducted many more of the preliminary examinations in private. This resulted in a significant reduction in the number of inquests. In London, for example, in the years immediately following the Act, there was an increasing trend for cases reported to the coroner being disposed of by preliminary examination.³⁵ The absence of the jury in the majority of inquests further reduced the possibility of public censure to which the medical profession had so strongly objected. But the retention of a full jury, when required, with a minimum of twelve members (as defined in

²⁹ 16 & 17 Geo.V c.59 op.cit. s.21 (1)

³⁰ Burney is clearly mistaken with the statements made in his thesis that '... the fees for medical witnesses remained at their 1836 level' and a similarly in his book. See respectively Ian Adnan Burney *Decoding Death: Medicine, Public Inquiry, and the Reform of the English Inquest, 1836-1926* (unpublished University of California at Berkeley PhD thesis 1993) p.362 [Hereafter: Thesis] and Ian A. Burney *Bodies of Evidence: Medicine and the Politics of the English Inquest 1830-1926* (Baltimore: Johns Hopkins University Press 2000) p.167

³¹ 16 & 17 Geo. V c.59 op.cit. s.23 (a), (b) and (c)

³² *BMJ* Dec 25 1926 p.1233

³³ *Ibid.*

³⁴ *Ibid.* See also: HC Deb. 5th Series 200: Dec 13 1926 cols.2603-12

³⁵ LCC: *Minutes of Proceedings* Mar 1 1927 p.307, Mar 15 1928 p.426, Mar 26 1929 p.487, May 13 1930 p.815

the 1887 Act)³⁶ satisfied the Home Office's concerns for popular liberties and publicity for important cases. Apart from the improved financial provisions, the increase in post mortem examinations³⁷ and increased secrecy, the medical profession had gained little from the Act. It had failed to eliminate the inquest system or have it genuinely medicalised.

The attitude of the legal profession towards the 1926 Coroners Act was reflected in a comment made in a relatively short report in the *Law Journal* a week after it came into force:

The Coroners' (Amendment) Act, passed last December, which came into operation on May 1, [1927] introduces some necessary but minor reforms . . .³⁸

Of course, that was correct. The majority of the changes had been directed towards removing the basic problems that afflicted the office. The *Law Journal* considered that the most important provision of the Act was the requirement that a coroner had to 'adjourn the inquest until after the conclusion of the criminal proceedings' if a person was subject to a criminal charge.³⁹ It briefly reported the other main provisions⁴⁰ but the Act had been examined primarily to establish what effect it would have on the law and the judicial processes.

The legal profession dismissed the Act because the coroner's court was a minor part of the judicial system. It had minimal legal content and was of little interest or use to most lawyers. Coroners relied, for the most part, on practice, procedure and traditional authority rather than the law. That permitted arbitrary interpretation by individual coroners so that

³⁶ 50 & 51 Vict. c.71 An Act to consolidate the Law relating to Coroners [The Coroners Act] [16th September 1887] s.3 (1)

³⁷ In London, where coroners almost certainly had access to the best facilities and doctors, post mortem examinations were performed in 76% of cases in 1928 and 1929. *LCC Minutes of Proceedings* Mar 26 1929 p.487, May 13 1930 p.816

³⁸ *Law Journal* 63: May 7 1927 p. 455

³⁹ *Ibid.* p.456

⁴⁰ *Ibid.*

there are 'as many (correct) ways of approaching an inquest' as there are coroners.⁴¹

The Coroners' Society should have been very satisfied with the outcome. It had resisted change since the 1840s and its protective role had been successful. The basic problems that had dogged the office for years had been removed, but the ancient office had emerged with increased authority and responsibilities, and had retained its independence intact. The coroners were assured of their position, their salaries fixed by negotiation with the local authority and no longer linked directly to the number of inquests performed, and non-contributory pensions payable to future coroners.

With the majority of unexplained deaths being investigated without the involvement of a jury, the total exclusion of the lay element in the system became a possibility. The grand jury system was finally abolished in 1933⁴² and, since an inquest jury verdict was equivalent in every way to a grand jury verdict, it might have been expected that the inquest jury would also be eliminated. That did not occur, but with the disappearance of the grand jury and the magistrates increasingly handling criminal liability indictments, it might also have been expected that the coroner would lose his power to indict for trial. That only came in 1977 (see below).

When the 1926 Act came into operation, some coroners implemented the new inquest system with considerable enthusiasm and raised concerns for those who framed the legislation:⁴³

. . . the apparent tendency of some coroners to hold inquests without juries in closed courts, at times even in their own homes,

⁴¹ Christopher P. Dorries *Coroner's Courts: a guide to law and practice* (John Wiley & Sons, Chichester 1999) p.xxvii

⁴² 23 & 24 Geo.V c.36 An Act to abolish grand juries and amend the law as to the presentment of indictments . . . [Administration of Justice (Miscellaneous Provisions) Act] [28th July 1933]

⁴³ Burney Thesis op.cit. p.379

outraged representatives of the press and caused the Home Office some discomfort.⁴⁴

Whatever internal concerns there were in the Home Office, they were not relayed to the outside world. The Home Secretary, Sir William Joynson-Hicks, reported to the Commons in early 1928 that there had been certain difficulties in operation but:

No serious complaints have reached me. Such difficulties as have arisen are only such as might have been expected at the outset, and have been successfully overcome.⁴⁵

The majority of coroners also appeared to be very happy with the Act though there were some cautionary remarks. As Oswald, the London coroner stated: 'it is too early yet to express any definite opinion whether the Act is a good measure or not; I shall have to see how it works.'⁴⁶

Nevertheless, the Act did not remove diversity of opinion among the coroners, as illustrated by two of them who were unhappy with provisions relating to the jury. S.W. Morgan, a Staffordshire coroner, although highly satisfied with the removal of the jury for most cases, wanted this extended to all inquests. He asked his MP to send the Home Secretary the 'newspaper reports of certain observations he ha[d] seen fit to make during the conduct of inquests.'⁴⁷ He declared juries to be 'totally unnecessary' and 'a sheer waste of time'.⁴⁸ The Home Secretary, replying to the MP, pointed out that the limitations to the discretion of the coroner to hold an inquest without a jury had been carefully considered. For the more serious cases the decision was that questions 'of responsibility, precautions, negligence and liability . .

⁴⁴ *Ibid.*

⁴⁵ HC Deb. 5th Series 213: Feb 24 1928 col.730. See: PRO: HO45/20140/519955/1 Coroners Act (1887) Amendment Bill: abandonment 1928-34

⁴⁶ *Solicitors' Journal* 71: May 7 1927 p.371

⁴⁷ *The Times* Jul 4 1927 p.11f

⁴⁸ *Ibid.* See also *Law Journal* 64: Aug 6 1927 p.103

should not be decided by one man.’ The Home Secretary’s indirect admonition was reserved for his final sentence:

Most people will, I imagine, agree with the view that Parliament took, but in any case it is impossible to endorse the action of a coroner who, instead of carrying out the law with due respect for the Legislature, uses his office to stir up criticism of Parliament and then goes out of his way to have his dicta brought to the notice of the Home Secretary.⁴⁹

The letter was published in *The Times*, so that most coroners would have received the message.

Despite the letter to Morgan, Dr. F.J. Waldo, who had always supported public investigations with a jury and opposed the secret Scottish system,⁵⁰ chose to ignore the law. He held an inquest which disregarded the alternative procedure provided in the 1926 Act to deal with an apparently natural but sudden death.⁵¹ This led to a complaint from the solicitor of the family that Waldo had held an unnecessary inquest. The Home Office investigation revealed that, in the years 1927 and 1928, Waldo had carried out about 600 inquests but had used the law only once to avoid an inquest. In his report to the Corporation of London in 1928 he stated that *in no single instance* had he made use of ‘the dangerous discretionary power given to coroners’.⁵² He invariably called for a post mortem examination, but rather than make a decision on the outcome, he always had an inquest with a jury. This public rejection of the statutory requirements and potential influence on other coroners by the City of London coroner and a prominent member of the Coroners’ Society could not be ignored. The Home Office was very concerned and investigated the ‘various minutes on our files ancient

⁴⁹ *The Times* Jul 4 1927 p.11f

⁵⁰ PRO: HO45/12605/367567/62 and /149 Coroner (Emergency Provisions) Act—Number of Jurors 1918-1927. See also, for example, Waldo’s comments reported in *The Times* Dec 23 1921 on coroners’ juries and public safeguards

⁵¹ 16 & 17 Geo.V c.59 op.cit. s.21

⁵² HO45/13998/563027/1 and /3 Coroners discretionary powers of dispensing with inquests in cases of sudden death

and modern'⁵³—including the Lyell Case (see chapter four).⁵⁴ It noted that:

There is . . . room for addressing Dr. Waldo concerning his general attitude— . . . That might have some good effect on some other coroners.⁵⁵ [original emphasis]

Clearly, the Home Office felt the need to deal with coroners who were raising concerns and ignoring the requirements of the law. However, Waldo had a defence. First, he claimed that Sir Bernard Spilsbury, who had performed the post mortem examination, 'endorsed the view that an inquest was necessary';⁵⁶ second, that the inquest was necessary because the family wanted to cremate the person. Sir Claud Schuster, in the Lord Chancellor's office, was 'irritated' because he thought that:

. . . Waldo's excuses [we]re dishonest. Any sensible man would have been satisfied with a post mortem examination and it seems to me clear that his procedure [wa]s to refuse to obey the section by applying his mind to the question before him and then to find a pretext afterwards to justify his action.⁵⁷

Nevertheless, Waldo's defence changed the circumstances and made the Lord Chancellor reluctant to take action. The disappointment of the Home Office is reflected in a minute that notes: 'It looks as if the Lord Chancellor did not write & does not now intend to do so'.⁵⁸

Waldo escaped censure, just as Hardwicke had done in the 1876 Lyell case, because it was recognised that the responsibility was vested in the coroner, not the Lord Chancellor, to decide whether an inquest was necessary or not. The discretionary freedom granted by the law to the coroners could not bring consistency in the decision making process and different coroners would interpret their duty differently. Morgan, the

⁵³ HO45/13998/563027/3 Memo: to Sir C. Schuster Jul 8 1930

⁵⁴ Ibid. Locke minute Jun 26 1930

⁵⁵ Ibid.

⁵⁶ Ibid. Memo: Schuster to Locke Jul 15 1930

⁵⁷ Ibid. Memo: Schuster to Locke Jul 25 1930

Staffordshire coroner would probably have minimised inquests with a jury and Waldo maximised them. Such differences would always exist and Fenwick reported finding two coroners in the 1980s with similarly opposite points of view in respect of post mortem examinations.⁵⁹ He concluded that a coroner is still 'substantially influenced by that coroner's individual perceptions and attitudes'.⁶⁰ [original emphasis]

The new Act considerably extended the Lord Chancellor's executive role and responsibilities. He could, after consultation with the Home Office, deal promptly and efficiently with problems of procedure and practice without having to resort to legislation. However, no mechanism was introduced for him to ensure compliance. The new powers were quickly utilised by the Lord Chancellor—which brought the complaint from the editor of the new edition of *Jervis on Coroners* that his task had 'not been an easy one, and the recent flow of Rules and Orders ha[d] not simplified it.'⁶¹ The extension of the Lord Chancellor's powers can be seen as an indication of 'the *gradual* process by which the central state intruded into local affairs'⁶² [original emphasis]. However, the significant move towards centralisation only came in 1950 when a rules committee was established to examine and determine procedure for the conduct of inquests.⁶³

There was nothing really new in the 1926 Act. Most of the measures in the Act had been suggested in one form or another since the mid-nineteenth century. Officially or unofficially, several had been applied since 1917-18 and in some cases had become accepted practice. The changes made were practical and operational with minimum change in

⁵⁸ Ibid. Dec 31 1930

⁵⁹ Ibid. p.90

⁶⁰ John Fenwick *Accounting for Sudden Death: A Sociological Study of the Coroner System* (unpublished University of Hull PhD thesis 1984) p.121

⁶¹ John Jervis *On the Office and Duties of Coroners. With an appendix of forms and precedents* Seventh edition (London: Sweet & Maxwell; Stevens & Sons 1927). p.5

⁶² Christopher Dandeker *Surveillance, Power and Modernity* (Polity Press, Cambridge 1990) p.121

⁶³ Phil Scraton and Kathryn Chadwick *In the Arms of the Law: Coroners' Inquests and Deaths in Custody* (London: Pluto 1987) p.37

the law. Overall, it was an anticlimax, which accounts for the reaction of subdued dissatisfaction to the Act.

*

Throughout the thesis, the coroners' resistance to change has been an underlying theme and it is necessary to explain why it existed. The Coroners' Society was established in 1846 to protect the coroners and prevent abolition of their office.⁶⁴ That had an important bearing on the way it operated—it generated a *resistance* to change which had deep roots. The office of coroner was an ancient foundation, with the coroners' authority being legitimated by the sanctity of tradition. In "traditional" authority, the present social order is viewed as sacred, eternal and inviolable. The need to turn to past traditions for legitimation of present actions, however, sets this type of authority apart from others. The tendency is to perpetuate the existing social order, which makes it ill suited for adaptation to social change, indeed, change undermines its very foundation.⁶⁵

In the latter part of the nineteenth century, the coroners' resistance to change was encouraged and supported by sections of middle- and upper-class society who were disenchanted with continual change. They 'turned more and more to the past, and to the elements of the past surviving in the present, as a source of alternative values.'⁶⁶ These traditions and customs were seen as the roots of stability. As Lubenow observed:

The historical perspective on early Victorian state intervention and government growth stressed constitutional and legal concepts drawn from an appreciation of England's ancient institutions and

⁶⁴ J.D.K. Burton Personal communication

⁶⁵ Peter M. Blau and W. Richard Scott *Formal Organisations* (London: Routledge and Kegan Paul 1970) p.30, William C. Lubenow *The Politics of Government Growth: Early Victorian Attitudes Towards State Intervention 1833-1848* (Newton Abbott: David and Charles Archon Books 1976) p.186

⁶⁶ Martin J. Wiener *English Culture and the Decline of the Industrial Spirit 1850-1980* (Cambridge: Cambridge University Press 1981) op.cit. p.43

practices. At points this idealisation of England's past became transformed into mythological form. . . the critics of government growth hoped to return to a system of political and social purity by the re-establishment of the forms of local government which they believed were enshrined in tradition, Common Law and the 'ancient Saxon constitution'.⁶⁷

Joshua Toulmin Smith and others who supported the coroner's traditional role had as their watchwords 'popular liberties, the ancient constitution and no centralization'.⁶⁸ Indeed, localism was a significant feature of the argument persisting well into the twentieth century.⁶⁹ Overall, there was a concern to protect and maintain links with the ancient heritage. The 1910 Departmental Committee Report brought a significant change in the attitude of the Coroners' Society. The explanation for this was the recognition that the recommendations were not a threat to the office or its traditional authority. Rather than resisting the changes, it was therefore able to accept them as a basis for reform. It also attempted to persuade the Government to implement them. However, resistance was not entirely eliminated. Although the London coroners generally agreed with that change, in the 1920s they continued to resist the LCC's attempts to integrate them into its bureaucratic hierarchy mainly because they were concerned that their status as *independent* judicial officers might be prejudiced.

The Coroners' Society was formed in the mid-nineteenth century when groups of individuals working in a specific occupation were coming together to form new professional institutions (see chapter 2). Why did the Coroners' Society fail to develop into a genuinely professional body like other groups? There are four reasons to explain that:

First, there was no body of knowledge to provide a basis for a genuine profession. Membership of the Society was limited to coroners and deputy coroners—certainly exclusive, but there were no meaningful

⁶⁷ Lubenow *op.cit.* p.183

⁶⁸ Anderson 1987 *op.cit.* p.24

requirements for election or appointment as a coroner. Although the body of relevant statutory law was growing in the early twentieth century,⁷⁰ most aspects of the coroner's court depended on *practice* and *procedure*. These were 'dealt with to great effect by *Jervis on Coroners*, long regarded as the standard [reference] text on the subject.'⁷¹ Even with this, there was still considerable variation in practice and procedure from jurisdiction to jurisdiction. Unlike the upper courts, a binding legal precedent could never be set in a coroner's court. If an important legal point arose which a coroner was unable to deal with, he could adjourn to the assizes for the opinion of a judge, though this was an unusual event (see chapter 4, the *Mistletoe* inquest).

Acts of Parliament defined the qualifications for admission to the medical and legal professions.⁷² At no time did the government consider the definition of similar qualifications for admission to the coronership. It had been suggested in 1858 that a candidate for the office of coroner should 'be required to produce a diploma, certifying the possession of a competent knowledge of medical jurisprudence'.⁷³ No action was taken to implement the suggestion and there were still calls in 1940 for coroners to have a registrable qualification in forensic medicine.⁷⁴ By the end of the nineteenth century, although such a qualification may have been useful, the increasing breadth of coroners' inquiries demanded the use of a wide range of experts—from architects to toxicologists. Nobody could absorb such 'special or advanced learning' over such a wide area. It was therefore difficult, if not impossible, to define a body of knowledge which would provide a basis to limit entry by examination.

⁶⁹ Dandeker op.cit. P.121

⁷⁰ Ottaway op.cit. p.ix

⁷¹ Dorries op.cit. p.xxvii

⁷² Carr-Saunders and Wilson op.cit. pp.3, 19

⁷³ William Farr 'Suggested Improvements in the Coroner's Inquest' PP 1857-8 (2431) XXIII.1 Nineteenth Annual Report of the Registrar-General p.205, HO45/6554 Registrar-General's circular to coroners, CorSoc op.cit. Oct 5 1858 Vol.1 p.491

⁷⁴ A. Douglas Cowburn 'Experiences of a London Coroner' *Medico-Legal and Criminological Review* 8: (4) October 1940 p.254

Second, there were insufficient whole-time coroners to provide a basis for a profession. As noted in chapter 8, the Society had always been small and the vast majority of coroners were part-time amateurs with their primary employment elsewhere. In the early Victorian period, most coroners were attorneys or solicitors employed locally on public business, usually as clerks to the justices.⁷⁵ By 1910, the latter were very small in number and the majority worked as solicitors in group practices.⁷⁶ Legal practice has always been relatively easy to combine with the office, whereas with medical practice it is almost impossible—limiting the possibility of recruiting medical coroners. It is estimated that in 1926 there were only six or seven whole-time coroners in office.⁷⁷ In the year 2000, in the 140 coroners' districts which existed, only twenty five coronerships were recognised as whole-time.⁷⁸ There is a 'trend to see if further amalgamation of districts might be appropriate',⁷⁹ but even today that is difficult because of 'opposition from local people . . . and from the coroners themselves'⁸⁰—some resistance to change still persists in the twenty first century. With so few whole-time coroners, it is unrealistic to have expected the Society to act as a professional body.

Third, a profession usually acts as a central authority to which questions can be addressed. The minutes of the Society suggest that coroners had consulted it from time to time, but the absence of recorded details of the correspondence makes it impossible to draw any conclusions. The Home Office files show that, throughout the period, it had received coroners' enquiries and although it still claimed no responsibility for the coroners, it had always unofficially provided answers to questions relating to practice, procedure or the law. The fact that the Society

⁷⁵ Anderson *op.cit.* p.16

⁷⁶ *The Law List* 1910

⁷⁷ *Ibid.*

⁷⁸ Michael J. Burgess, Hon.Secretary of the Coroners' Society, personal communication. The 25 coronerships recognised as whole-time are: Greater London 7, Manchester 4, West Yorkshire 2, South Yorkshire 2. Birmingham, Liverpool, Hull, Stoke-on-Trent, Nottingham, Bristol, Bournemouth, Cheshire, Essex and Surrey have 1 each.

⁷⁹ *Ibid.*

⁸⁰ G.H.H. Glasgow Personal communication



recognised the Home Office as a rule-making authority was an admission that this was not part of its role.⁸¹ Unlike the BMA and similar institutions with large memberships which generated a significant income, it could neither afford full-time staff nor a central headquarters office to provide such services. This is still the case.⁸²

Fourth, the coroners probably considered that, since the majority of coroners were already members of either the legal or medical profession, another organisation was unnecessary. In fact, the Society never managed to persuade all coroners to become members and genuinely professional conduct was limited to relatively few coroners. The London coroners, with their colleagues in Liverpool and Manchester, were considered to have 'reached heights of coronatorial professionalism'.⁸³ These coroners were the busiest in the country and their 'professional' approach to their office was recognised. For example, Arnold Bennett when called to serve on a jury at a Fulham inquest noted the 'absolute thoroughness with which suspicious deaths [we]re inquired into'.⁸⁴ The coroners in Leeds, Sheffield, and Birmingham were probably not far behind their London colleagues.⁸⁵ But such levels were impossible for the majority who were part-time coroners devoting the majority of their time to their law practices and presiding over insufficient inquests to acquire practice and develop their skills. As a result, the amateurism and inefficiency of the coroners in early part of the nineteenth century⁸⁶ still existed in varying degrees.⁸⁷ Even today a coroner can be appointed without any previous experience or training.

⁸¹ HO45/11214/403923/8 Suggested Amendments of Coroners' Law 1919-1923. Notes Prepared for members of the Inter-Departmental Conferences on Death Certification 1920-21

⁸² J.D.K. Burton Personal communication

⁸³ Anderson 1987 op.cit. p.35

⁸⁴ Arnold Bennett *The Journals* (Harmondsworth, Penguin 1971) p.58

⁸⁵ Anderson 1987 op.cit. p.35

⁸⁶ *Ibid.* p.15

⁸⁷ A. Douglas Cowburn 'Experiences of a London Coroner' *Medico Legal and Criminological Review* 8: (4) October 1940 pp.246-7

It is not that the Coroners' Society resisted becoming a professional body—it was never in a position to do so. When the Society was formed its primary objective was to protect the office of coroner. As a result, its activities were more akin to trade union activities than those of a profession. That was still being demonstrated in 1927 when the focus was not on the new statute (accepted almost without comment) but on the revision of salaries.⁸⁸ At the AGM, it was suggested that 'Coroners will be much more successful in the applications [for increases] if they use the same arguments and present a united front':⁸⁹

Finally, the question arises as to what increase in salary should be asked for.

If the principle of the increased fees which are given under the new Act to medical practitioners is taken as an indication, then the Coroner's salary should be raised at least 50 per cent.⁹⁰

Looking back over the eighty years from the formation of the Coroners' Society in 1846, the role that it adopted (aided by successive governments) had protected the office. It had survived virtually intact, still based on common law and the ancient statutes consolidated in the 1887 Act, though somewhat modified by the Victorian ideas implemented in the 1926 Act.

If resistance describes the overall approach adopted by the coroners, then reluctance describes that of the government. Throughout most of the period the government failed to develop a policy to deal with the coroners and the responsibility for that lay with the Home Office, for which there are a number of reasons:

First, pressure of work. Overall, the Home Office had an enormous range of responsibilities which grew continuously throughout the

⁸⁸ CorSoc. op.cit. Bk.10 'Coroners' (Amendment) Act, 1926. Notes for Coroners in Reference to Salaries' Feb 27 1927 pp.139-142

⁸⁹ Ibid. Bk.10 Mar 31 1927p.162

⁹⁰ Ibid. p.141

period⁹¹ despite the transfer of some responsibilities elsewhere.⁹² By the 1880s, the Criminal Department had become 'clearly the superior department of the office'⁹³ with its own considerable work-load. As time progressed, and particularly in the first quarter of the twentieth century, many Acts imposed even greater burdens on the officials since there was no automatic increase in staff.⁹⁴ The few coroners, dealing with a fraction of the population and of little political importance, remained a low priority.⁹⁵ Coroners' affairs were considered as a subsidiary task in the department, and as a result, Home Office officials did not look for ways in which they could intervene or set abuses to right—they did not have time.⁹⁶ This also explains why there was no attempt to challenge 'established habits of thought and action' or to apply a theoretical approach in looking for alternative processes⁹⁷ for investigation of unexplained deaths.

Second, the Home Office was a reactive rather than a proactive department. The general view of it was as 'a Still Centre'⁹⁸ that 'intervened only in a crisis'⁹⁹ or when events suggested an escalation towards a crisis. As Pellew comments:

There was something inherent in the nature of Home Office work which made its officials particularly aware of reasons why changes should *not* be made. . . . A certain conservatism was also the result of the crisis aspect of the department's work which put civil

⁹¹ Jill Pellew *The Home Office 1848-1914* (London: Heinemann 1982) pp.37-41, pp.61-2

⁹² For example to the LGB (1871) and the Court of Appeal (1907)

⁹³ Pellew op.cit. p.57

⁹⁴ Ibid. p.77

⁹⁵ Scraton and Chadwick op.cit. p.35

⁹⁶ Paul Rock *Helping Victims of Crime: The Home Office and the Rise of Victim Support in England and Wales* [Hereafter *Victims*] (Clarendon Press, Oxford 1990) p.39

⁹⁷ David Garland *Punishment and Modern Society: A Study in Social Theory* (Oxford: Clarendon Press 1990) [Hereafter *Society*] p.277

⁹⁸ Rock *Victims* op.cit. p.8

⁹⁹ Ibid. p.39

servants on their guard and made them cautious.¹⁰⁰ [original emphasis]

Changes which emanated from the Home Office resulted from 'the impetus of public criticism.'¹⁰¹ For example, the changes in prison administration in the 1890s resulted from the 'storm of criticism [that] erupted in the national press'.¹⁰² Similarly with the establishment of the Court of Appeal in 1907 following the Beck and Eidalji cases. The Home Office reacted to the coroners' problems as they escalated to near crisis level—in the 1850s, the 1870s and the first decade of the twentieth century. But as publicity declined, so did the concerns and the bursts of activity did not lead to change. On the occasions when there was a real expectation for legislative reform, it was cut short by events which were irrelevant to the coroners—a general election, a new Home Secretary, a 'crisis' in another area. Indeed:

One characteristic in particular strikes the historian of the late nineteenth-century Home Office: its frequent inability to bring about desirable change.¹⁰³

The department's conservatism and caution noted by Pellew was present throughout the period. The manpower problems in the First World War forced the Home Office to react with two common sense changes—reducing the number of jurors and allowing coroners to sit alone in some cases. These impacted strongly on the popular liberties associated with the inquest—an area of great sensitivity and concern for the Home Office and where it showed the greatest caution. This was emphasised in the emergency legislation by the failure to permit coroners to have the power to call for a post mortem examination without proceeding to an inquest, something considered too radical because of its closeness to the secretive Scottish system.

¹⁰⁰ Pellew op.cit. p.90

¹⁰¹ Ibid.

¹⁰² Leon Radzinowicz and Roger Hood *A History of English Criminal Law and its Administration from 1750* (London: Stevens and Sons 1986) p.573

¹⁰³ Pellew p.63

Third was the approach adopted by the Home Office when considering change. It preferred to find solutions to problems which would be acceptable to all the parties concerned.¹⁰⁴ Throughout most of the period, there was no consensus or agreement on how to cure the coroners' problems. The solutions proposed were diverse and ranged from the Coroners' Society's view that little or nothing needed to be done, to abolition of the office. When consensus existed, action could be rapid. In 1888, there was consensus that county coroners should be appointed by the county authorities rather than elected by the freeholders. The principle was accepted by the Government and quickly enacted as a special section of the 1888 Local Government Act. It was not until 1910 that the recommendations made in the Departmental Committee Report were accepted generally by all the interested parties and raised expectations of legislation. But as on previous occasions, progress was halted by a change of Home Secretary, followed by public and industrial unrest, and the First World War.

These all hindered progress. For most of the period, the policy of the Home Office was to have no policy because of the low priority accorded to coroners' problems. In the absence of a government policy, various groups (and occasionally individuals) attempted to fill the void. Each group attempted to influence the development of a policy by advocating an approach that would meet its particular objectives. These ranged from the attempts of the medical profession to medicalise the inquest system, to the coroners who resisted change to protect their office. In consequence, a slow, complex, multi-layered and undefined fragmentary process took place in which elements were adopted in modified or compromised form to make up a policy for reform.¹⁰⁵

The policy adopted by the LCC for the London coroners emerged from this dynamic process. Ideas which had circulated over many years were

¹⁰⁴ *Ibid.* p.91

¹⁰⁵ David Garland *Punishment and Welfare* (Gower: Aldershot 1985) pp.161-2 [Hereafter Garland Welfare]

further modified to include the integration of the coroners into its bureaucratic organisation. The policy influenced the recommendations of the Departmental Committee, which were again modified as a result of the post-Armistice events. The haphazard, fragmentary and undirected nature of the process of policy formation explains why the 1926 Act failed to deliver on several key demands and the response to it from groups with vested interests.

The government's reluctance to act also puts the apparent success of the Coroners' Society's resistance into perspective. It was easier for the Home Office to agree to do little or nothing rather than get involved in potentially complex and time-consuming negotiations with the various groups that wanted to influence the process. An example is the 1887 Coroners (Consolidation) Act. The Government had originally included a number of reforms, but these were excluded when the Society objected to them. However, if at any time the government had decided to devise and implement a policy, the coroners' resistance would have been swept aside. Examples of this can be seen with the 1888 Local Government Act and the 1911 National Insurance Act. They were enacted by the government regardless of the magistrates and the medical profession respectively—and both had considerably more MPs in Parliament to represent their views directly than coroners.

The Home Office recognised the need for coroners' reform in 1919, as Simpson minuted:

From the point of view of economy of time & money, administrative efficiency & constitutional principle 'reconstruction' is as much wanted in regard to Coroners as in any branch of the law . . .¹⁰⁶

Despite the need for reform, coroners were still a low priority and just one of many branches of the law that needed 'reconstruction'. Even if

¹⁰⁶ PRO: HO45/11214/403923/1 Suggested Amendments of Coroners' Law 1919-1923. Simpson minute Nov 26 1919

the Home Secretary decided to raise the priority and proceed with a reform Bill, there were other obstacles to overcome. There were potential objections from other government departments (principally, the Ministry of Health), the need to obtain permission from the Treasury to employ a draftsman, and the approval of the Home Affairs, the Cabinet (and possibly other) Committees to proceed.¹⁰⁷ Finally, there was the problem in finding time to process the Bill in the busy legislative parliamentary programme. The low priority was further confirmed when the Home Secretary stated in the Commons, towards the end of 1919, that 'it may be possible to introduce legislation on this subject next Session after more urgent matters have been dealt with'¹⁰⁸

In the early 1920s there were constant reminders of the need to act. These came from the Ministry of Health joint conferences, a series of murders and the Armstrong case in particular, the Bills from the LCC and the Coroners' Society, the need to re-enact the war-time emergency measures on an annual basis, questions in Parliament, lobbying by local government organisations, and so on. Together, these did not amount to a 'crisis', but they maintained a significant level of publicity and put pressure on the Home Office. By the end of 1921, the basic content of a Bill had been decided.¹⁰⁹ However, the real efforts only came in 1924-25 and the final Act had to wait until the end of 1926. Even then, despite being a Government Bill, it almost failed to reach the statute book because there were problems in achieving a quorum at the final committee stage.

In one important respect, the failure of successive governments to act more decisively after 1860 is a surprise. From the mid-nineteenth century onwards, there was an increasing tendency in legislative measures to look to greater efficiency, settled procedures, better

¹⁰⁷ Mick Ryan *The Politics of Penal Reform* (London: Longman 1983) p.88

¹⁰⁸ HC Deb. 5th Series 121: Nov 27 1919 col.1935

¹⁰⁹ PRO: HO45/11214/403923/8 Suggested Amendments of Coroners' Law 1919-1923, 'Law as to Coroners and Inquests'

administration and bureaucracy.¹¹⁰ Indeed, these were the main driving force for the reformed county government.¹¹¹ It might have been expected, therefore, that coroners' reform would have been an obvious target for the central government. One explanation is that, throughout the period there was a concern in the Home Office not to interfere with popular liberties. This may have led to a reluctance to implement reform in order to maintain these liberties through a genuinely independent forum. It was necessary to allow the public to see that justice was being done¹¹² through an open investigation where families and friends could have an unexplained death investigated to remove unwarranted suspicion. An independent forum also permitted a coroner to investigate wider issues beyond an unexplained death that were outside the strict responsibilities of the court. In this respect, an inquest was used as a preliminary hearing that might resolve an industrial accident case or an insurance claim to avoid further action, or provide the basis for litigation¹¹³—a function 'nowhere envisaged in the Acts'.¹¹⁴

The most likely explanation for the reluctance to introduce reform was that coroners were always a low priority for governments because they 'apparently touched only a minority of the population and carried little political weight'.¹¹⁵ The Home Office only intervened if events escalated towards a crisis, but as the pressures declined, so did the priorities.

The low priority is confirmed because, between 1860 and 1926, only two important Acts affecting the office of coroner reached the statute book. Both resulted from indirect considerations relating more to

¹¹⁰ David Walker *The Oxford Companion to Law* (Oxford: Clarendon Press 1980) pp.1089-90

¹¹¹ David Eastwood *Government and Community in the English Provinces, 1700-1870* (Basingstoke and London: Macmillan Press 1997) p.167

¹¹² John Fenwick *Accounting for Sudden Death: A Sociological Study of the Coroner System* (unpublished University of Hull PhD thesis 1984) p.97

¹¹³ 1910 [Cd.5139] XXI.583 Second Report of the Departmental Committee appointed to inquire into the Law relating to Coroners and Coroners Inquests: Part II, Evidence Qs.8483-88

¹¹⁴ Pilling *op.cit.* p.240

¹¹⁵ Scraton and Chadwick *op.cit.* p.35

developments associated with local and national government rather than coroners' problems. The first was the 1887 Coroners (Consolidation) Act.¹¹⁶ The driving force was the need to bring the statute book into some sort of order as executive government developed and the legislative load increased.¹¹⁷ The second was the 1926 Coroners (Amendment) Act.¹¹⁸ This can be seen to have resulted from the 1888 Local Government Act¹¹⁹ which established the LCC as well as providing the basis for modern local county government. The LCC played an important role in the process of reform and provides an example of a local authority having a major effect on national policy and legislation.

The research has exposed a complexity of events which involved tensions, frustrations, ambitions, pressures, negotiations and compromises that together made up the reform process.¹²⁰ This was fragmented, haphazard, piece-meal and undirected. There was no strategist, no over-riding programme, no single process, no single source.¹²¹ Resistance and reluctance played a part in the process but the most important influences on the reform were the changes associated with developments in local and national government. Without these changes, and especially the endeavours of the LCC, even the limited reform of the coronatorial system in the 1926 Coroners (Amendment) Act might have been considerably delayed.

¹¹⁶ 50 & 51 Vict. c.71 An Act to consolidate the Law relating to Coroners [The Coroners Act] [16th September 1887]

¹¹⁷ *DNB* Supplement 1901-1911 Thring pp.521-2

¹¹⁸ 16 & 17 Geo.V c.59 An Act to amend the law relating to coroners [Coroners (Amendment) Act] [15th December 1926]

¹¹⁹ 51 & 52 Vict. c.41 Local Government Act [August 15, 1888]

¹²⁰ Garland Welfare *op.cit.* p.162

¹²¹ *Ibid.* pp.161-2

EPILOGUE:

It has been as difficult as ever to achieve reform since 1926, as confirmed in 1997 by Dr. John Burton, Past President and Past Honorary Secretary of the Coroners' Society:

The standard process for amending the law is slow, complex and uncertain. Lobbying, to claim that there is a need for change. Green papers, White Papers, the complexity of drafting a Bill and the stages in the Houses of Parliament. Those with vested interests may have amended or added upon the original to such an extent that the original promoters may wish that they had left matters as they were.

The need for change may be manifest and not controversial, but there is an election before the Bill becomes an Act and the legislation falls.

Much of the recent legislation has come about by mere chance. It was sometimes assisted in the right direction by seizing any opportunity that was presented.¹²²

Mutatis mutandis, these words might have been written in 1926 to summarise the processes of reform of coroners' law in the previous sixty six years.

The Lord Chancellor had anticipated that a consolidating measure would follow the 1926 Act.¹²³ It was needed because, by that time, there were more than forty Acts¹²⁴ that imposed 'grave and serious duties' on a coroner 'which call[ed] for judicial care and treatment if the rights of persons concerned [we]re to be properly safeguarded and preserved'.¹²⁵ Bringing these together in a consolidation Act would have gone a long way towards securing this but it did not materialise until 1988 following a Law Commission inquiry.¹²⁶ The ancient law in the

¹²² J.D.K. Burton Personal communication Mar 1997

¹²³ HC Deb. 5th Series 63: Mar 11 1926 col.556

¹²⁴ Thomas Ottaway *The Law and Practice of Coroners* (London: Butterworth 1927)

p.ix

¹²⁵ *Ibid.* p.xiv

¹²⁶ 1988 c.13 An Act to consolidate the Coroners Acts 1887 to 1980 and certain related enactments, with amendments to give effect to the recommendations of the

1887 Act and four other nineteenth century Acts are consolidated into the 1988 Coroners Act so that today's coronership still 'reflects a bygone age'.¹²⁷ Whatever the intention of the Home Office or the parliamentary reformers, in the end, the effectiveness and efficiency of the inquest system depends (and always has) upon the skills, abilities and professionalism of individual coroners. No statute, however well drafted, can achieve that.

Just as in 1860, the 1926 Act left problems and concerns.¹²⁸ In the early 1930s the Home Office reacted to the widespread criticism arising from several coroner's inquests by establishing a departmental committee under the chairmanship of Lord Wright. The report appeared in 1936,¹²⁹ but the Second World War delayed action until 1950 when a committee was established to examine the procedure and conduct of inquests, which initiated the production of Coroners Rules in 1953.¹³⁰ Similar well-publicised criticisms of inquests in the mid-1960s led to Brodrick's inquiry into death certification and coroners and the 1971 report.¹³¹ But the recommendations failed to bring change. The first significant statutory change for fifty years came in 1977, not from Brodrick's recommendations, but as a result of the considerable publicity and criticism raised by the inquest jury's verdict naming Lord Lucan as the murderer of his children's nanny.¹³² This led to the Criminal Justice Act¹³³ which finally terminated the coroner's role in the detection of

Law Commission [Coroners Act 1988] [10th May 1888] (This Act repealed seven whole Acts, (including five from the nineteenth century) and sections or schedules from fifteen other Acts or Standing Instructions. See also: 1987 [Cm.178] 21:07:87 Law Commission; Lord Chancellor: Consolidation of the Coroners Acts 1887-1980 and certain related enactments. Law Commission report (Law Commission 167)

¹²⁷ Rosamund Rhodes-Kemp 'Is it time for an inquest into the coroner's role' *The Times Law Supplement* Feb 13 2001 p.3a

¹²⁸ HC Deb. 5th Series **231**: Oct 29 1929 col.17, **238**: May 7 1930 cols.995-1000, 1002-4, 1011, 1018-9, 1023-4, 1039-40

¹²⁹ PP 1935-36 [Cmd.5070] VIII.1 Report of a Departmental Committee on the Law and Practice of Coroners [The Wright Report]

¹³⁰ Scraton and Chadwick op.cit. p.37

¹³¹ PP 1971-2 [Cmnd.4810] XXI.367 Report of the Committee on Death Certification and Coroners [The Brodrick Report] [Hereafter: Brodrick]

¹³² Scraton and Chadwick op.cit. p.38

¹³³ 25 & 26 Eliz. II, c.45 Criminal Law Act 1977 s.56 (1), (2) & (3). See also Coroners Rules 1984 (S.I. 1984 No.552) Rule 28.

crime¹³⁴—as recommended by Brodrick¹³⁵ and the Middlesex magistrates 126 years earlier.¹³⁶

The world in which we live is a very different from that which existed in the nineteenth and early twentieth centuries, but it is possible to see continuities from that period. The Home Office has not only continued to react to problems and adverse publicity as it had in the past, but coroners have also remained a low priority for successive governments. Indeed, it appears that they may have fallen to an even lower level in recent years; the Home Office Constitutional and Community Policy Directorate now has a unit with responsibilities for 'Animals, Byelaws & Coroners'.¹³⁷ There is no indication as to whether these are in order of importance or simply listed alphabetically.

There are further significant continuities. In chapter seven it was seen that Troutbeck's inquest on Horsley's dead patient in 1908 raised issues associated with the autonomy of the surgeon, experimental medicine, public accountability and the culture of secrecy associated with the medical profession. Almost a century later, the same problems have been identified in 'the inquiry into Bristol heart babies and the Alder Hey organs scandal'.¹³⁸ These, with the Shipman case and the ongoing concerns related to the Hillsborough¹³⁹ and *Marchioness* tragedies, have shaken public confidence in the coroners and the inquest system.¹⁴⁰ The Home Office has reacted as in the past to the escalation

¹³⁴ See: J.D.K.Burton, D.R. Chambers and P.S. Gill *Coroners' Inquiries: a guide to law and practice* (Brentford: Kluwer Law 1985) p.13, Dorries op.cit. p.7, Scraton and Chadwick p.38

¹³⁵ Brodrick op.cit. p.352

¹³⁶ Middlesex Justices of the Peace *Report of the Special Committee appointed at the Michaelmas Session, 1850, as to the Duties and Remuneration of Coroners, and Resolutions of the Court* (April Quarter Sessions 1851) pp.7, 16, 18. In 1929 an MP unsuccessfully attempted to remove the coroner's powers in criminal cases. See PRO: HO45/20140/519955/5 Coroners Act (1887) Amendment Bill: abandonment. 1928-34; HC Deb. 5th Series **224**: Jan 30 1929 cols.946-8

¹³⁷ Home Office letter head (Appendix IV p.367)

¹³⁸ Rhodes-Kemp op.cit. p.3a

¹³⁹ Phil Scraton *Hillsborough: The Truth* (Edinburgh: Mainstream Publishing Projects 1999)

¹⁴⁰ Rhodes-Kemp op.cit. p.3a

of concern. Following consultation with the Lord Chancellor and the Attorney General, 'a fundamental review of the coroner system' has been announced.¹⁴¹ The general election has prevented 'an announcement about the chairman, members or any other aspects of the review',¹⁴² nevertheless, in the terms of reference¹⁴³ revealed in March 2001 is included consideration of:

. . . the most effective arrangements for . . . ascertaining and certifying the medical cause of death for public health and public record purposes, having regard to proposals for a system of medical examiners.¹⁴⁴

Resonance with the objectives of the sanitarian movement and the 1851 Middlesex magistrates' recommendation to appoint medical examiners to perform post mortem examinations is clearly visible in this paragraph.

It appears that the current crisis may be of sufficient magnitude to persuade the government to respond to demands for radical reform. However, if the performance of successive governments since the mid-nineteenth century is taken as an indication of future action, then an early response can not be taken as a foregone conclusion.

¹⁴¹ An inquiry into death certification was already in progress. Home Office letter Jan 31 2001, Appendix IV p.367

¹⁴² Letter R.J. Clifford (Home Office) to Prichard Jun 8 2001

¹⁴³ Home Office letter Jan 31 2001, Appendix IV p.368

¹⁴⁴ HC Deb 'Coroner System Review' Mar 23 2001'. Appendix IV p.368

APPENDIX I

TABLE OF
PARLIAMENTARY BILLS:
(Selected)

1850 (581) I.435	A Bill for Abolishing the Fees paid to County and other Coroners, and providing for the Payment of such Coroners by Salaries
1851 (225) II.171	A Bill for Abolishing the Fees paid to County and other Coroners, and providing for the Payment of such Coroners by Salaries
1851 (22) II.239	A Bill to establish County Financial Boards for the assessing of County Rates, and for the Administration of County Expenditure in <i>England and Wales</i>
1860 (47) II.561	Bill to amend Law in relation to Remuneration to Coroners
1860 (53) II.565	Bill to amend Law in relation to Office of Coroner, and provide for Payment of Coroners by Salary
1860 (159) II.571	Bill to amend Law relating to Election, Duties and Payment of Coroners
1860 (271) II.577	Bill to amend Law relating to Election, Duties and Payment of Coroners. As amended in Committee;
1860 (313) II.583	Bill to amend Law relating to Election, Duties and Payment of Coroners. Amendments by Lords
1868-69 (75) II.75	Bill to amend Law relating to Office and Appointment of County Coroners
1868-69 (135) II.79	Bill to amend Law relating to Office and Appointment of County Coroners [as amended in Committee]

1870 (42) I.303	Bill to amend Law relating to Election and Office of Coroners
1871 (20) I.283	Bill to amend Law relating to Election, Office and Duties of Coroners
1872 (272) V.55	An Act to amend the Law relating to the Registration of Births and Deaths in England
1873 (180) IV.577	An Act to amend the Acts relating to the Registration of Births and Deaths in England and to consolidate the Law respecting the Registration of Births and Deaths at Sea
1874 (180) IV.429	An Act to amend the Acts relating to the Registration of Births and Deaths in England and to consolidate the Law respecting the Registration of Births and Deaths at Sea
1875 (174) I.465	Bill to alter and amend Law relating to Election of County Coroners
1876 (246) III.403	Bill to provide for Remuneration of Jurors in Criminal Cases and on Coroners' Inquests, and for better Remuneration of Jurors in Civil Actions
1878 (303) I.435	A Bill to consolidate and amend Law relating to Coroners
1878 (93) I.543	A Bill to amend the Law relating to the Administration of County Business, and to make further Provision for County Government
1878-79 (67) II.47	Bill to consolidate and amend Law relating to Coroners
1878-79 (243) II.87	Bill to consolidate and amend Law relating to Coroners [as amended by Select Committee]
1887 (165) I.221	Bill to define Jurisdiction, and to regulate Proceedings of Coroner of City of London with regard to Inquests on Fires within City
1887 (193) I.589	A Bill to Amend the Law relating to the Election of Coroners
1887 (378) I.551	Bill, intituled, an Act to consolidate Law relating to Coroners [Lords]
1887 (193) I.589	Bill to amend Law relating to Election of Coroners
1888 (36,a-g) House of Lords Sess.Papers	An Act to amend the Coroners Act, 1887
1888 (178) II.213	Bill to amend Law relating to Election of Coroners

- 1888 (338) IV.155 Bill to amend Laws Relating to Local Government in England and Wales and for other purposes connected therewith [as amended in Committee]
- 1888 (338) IV.155 Bill to amend Laws Relating to Local Government in England and Wales and for other purposes connected therewith [as amended in Committee]
- 1888 (373) IV.271 Bill to amend Laws Relating to Local Government in England and Wales and for other purposes connected therewith [Lord's amendments]
- 1888 (182) IV.37 A Bill to amend the Laws relating to Local Government in England and Wales and for other purposes connected therewith
- 1890-91 (264) IV.215 Bill to provide for the Holding of Fire Inquests
- 1892 (179) II.161 Bill to amend Coroners Act, 1887
- 1892 (245) II.165 Bill to amend Law in relation to Appointment of Coroners in Boroughs
- 1892 (357) II.169 Bill to amend Law in relation to Appointment of Coroners in Boroughs [as amended in Committee]
- 1892 (442) II.173 Bill to amend Law in relation to Appointment of Coroners in Boroughs [Lord's amendments]
- 1892 (164) III.161 Bill to provide for Holding of Fire Inquests
- 1893-94 (149) II.161 Bill to amend Coroners Act, 1887
- 1893-94 (197) III.149 Bill to provide for the Holding of Fire Inquests
- 1894 (67) III.55 Bill to amend Coroners Act, 1887
- 1896 (37) I.419 Bill to amend Law relating to Coroners' Inquests in Case of Fatal Accidents on Railways
- 1905 (172) I.355 Bill to amend Law relating to Coroners' Inquests in Case of Fatal Accidents on Railways
- 1906 (100) I.573 Bill to dispose with the compulsory Viewing of Bodies on the Holding of Coroners' Inquests
- 1906 (46) I.577 Bill to amend Law relating to Coroners' Inquests in Case of Fatal Accidents on Railways
- 1907 (58) I.533 Bill to dispose with the compulsory Viewing of Bodies on the Holding of Coroners' Inquests
- 1907 (30) I.537 Bill to amend Law relating to Coroners' Inquests in Case of Fatal Accidents on Railways
- 1908 (39) I.909 Bill to dispose with the compulsory Viewing of Bodies on the Holding of Coroners' Inquests

1908 (250) I.915	Bill to dispose with the compulsory Viewing of Bodies on the Holding of Coroners' Inquests [as amended in Committee]
1908 (34) I.921	Bill to amend Law relating to Coroners' Inquests in Case of Fatal Accidents on Railways
1908 (183) II.543	Bill to provide for the holding of Fire Inquests
1909 (23) I.577	Bill to dispose with the compulsory Viewing of Bodies on the Holding of Coroners' Inquests
1909 (127) II.575	Bill to provide for the holding of Fire Inquests
1910 (163) I.265	Bill to Amend the Law relating to Coroners' Law and the Certification and Registration of Deaths and Burial
1911 (226) I.599	Bill to amend Law relating to Coroners' Inquests in Case of Fatal Accidents on Railways
1912-13 (116) I.537	Bill to amend Law relating to Coroners' Inquests in Case of Fatal Accidents on Railways
1913 (107) I.839	Bill to amend Law relating to Coroners' Inquests in Case of Fatal Accidents on Railways
1914 (156) I.665	Bill to amend Law relating to Coroners' Inquests in Case of Fatal Accidents on Railways
1917-18 (34) I.299	Bill to reduce, in connection with the present War, the number of Jurors at Coroners' Inquests
1917-18 (1) I.587	Bill to provide for the suspension of Grand Juries in connection with the present War
1917-18 (16) I.591	Bill to provide for the suspension of Grand Juries in connection with the present War. Lords' amendments
1918 (46) I.833	Bill intitulated an Act to limit the right to a Jury in certain Civil Cases, to raise the Age for Jury Service, to amend the Law with respect to the preparation and publication of Jury Lists, and to enable Coroners' Inquests in certain Cases to be held without a Jury
1921 (24) I.227	Bill to amend the Law relating to the remuneration of Coroners
1921 (73) I.229	Bill to amend the Law relating to the remuneration of Coroners [as amended in Committee]
1921 (190) II.81	Bill intituled an Act to renew section two of the Juries (Emergency Provisions) Act, 1920

1922 (42) I.451	Bill intituled an Act to continue temporarily the Coroners' (Emergency Provisions) Act, 1917; and section 7 of the Juries Act, 1917
1923 (26) I.501	Bill to Amend the Law relating to Coroners' Law and the Certification and Registration of Deaths and Burial
1924 (216) I.985	Expiring Laws (Continuance) Bill
1924-25 (264) I.617	Bill to Amend the Law relating to Coroners
1924-5 (132) I.267	Births and Deaths Registration Bill
1926 (20) I.109	Births and Deaths Registration Bill
1926 (78) I.311	Bill to Amend the Law relating to Coroners
1926 (206) I.319	Bill to Amend the Law relating to Coroners [as amended in Committee]

APPENDIX II

TABLE OF
STATUTES OF THE REALM
(Selected)

25 Geo.II c.29	An Act for giving a proper Reward to Coroners, for the due Execution of their Office; and for the Amoval of Coroners upon a lawful conviction, for certain Misdemeanors [14 th November 1751]
4 Geo. IV c.52	An Act to alter and amend the Law relating to the Interment of the Remains of any Person found Felo de se [8 th July 1823]
4 & 5 Will.IV c.76	An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales [14 th August 1834]
5 & 6 Will. IV c.76	An Act to provide for Regulation of Municipal Corporations in England and Wales [9 th September 1835]
6 & 7 Will. IV. c.86	An Act for registering Births, Deaths and Marriages in England [17 th August 1836]
6 & 7 Will. IV c.89	An Act to provide for the Attendance and Remuneration of Medical Witnesses at Coroner's Inquests [17 th August 1836]
6 & 7 Will. IV. c.105	An Act for the better Administration of Justice in Certain Boroughs [20 th August 1836]
1 Vict. c.64	An Act for regulating the Coroners of the County of Durham [15 th July 1837]
1 Vict. c.68	An Act to provide for Payment of the Expences [<i>sic</i>] of holding Coroners Inquests [15 th July 1837]
1 Vict. c.68	An Act to provide for Payment of the Expenses of holding Coroners Inquests [15 th July 1837]

6 & 7 Vict. c.83	An Act to amend the Law respecting the Duties of Coroners [22 nd August 1843]
6 & 7 Vict. c.85	An Act for improving the Law of Evidence [22 nd August 1843]
6 Vict. c.12	An Act for the more convenient holding of Coroners Inquests [11 th April 1843]
7 & 8 Vict. c.92	An Act to amend the Law respecting the Office of County Coroner [9 th August 1844]
9 & 10 Vict. c.62	An Act to abolish Deodands [18 th August 1846]
11 & 12 Vict. c.63	An Act for promoting Public Health [31 st August 1848]
16 & 17 Vict. c.96	An Act to amend an Act passed in the Ninth year of Her Majesty, "for the Regulation of the Care and Treatment of Lunatics" [20 th August 1853]
20 & 21 Vict. c.81	An Act to amend the Burial Acts [25 th August 1857]
21 & 22 Vict. c.90	An Act to regulate the Qualifications of Practitioners in Medicine and Surgery [The Medical Act] [2 nd August 1858]
22 Vict. c.33	An Act to enable Coroners in England to admit to Bail Persons charged with Manslaughter [19 th April 1859]
23 & 24 Vict. c.116	An Act to amend the Law relating to the Election, Duties and Payment of County Coroners [28 th August 1860]
27 & 28 Vict. c.97	An Act to make further Provision for the Registration of Burials in England [Registration of Burials Act] [29 th July 1864]
28 & 29 Vict. c.126	An Act to consolidate and amend the Law relating to Prisons [6 th July 1865]
29 & 30 Vict. c.90	An Act to amend the Law relating to the Public Health [7 th August 1866]
29 & 30 Vict. c.100	An Act for the Amendment of the Laws relating to Prisons [10 th August 1866]
31 Vict. c.24	An Act to provide for carrying out of Capital Punishment within Prisons [29 th May 1868]
33 & 34 Vict. c.23	An Act to abolish Forfeiture for Treason and Felony, and to otherwise amend the Law relating thereto. [4 th July 1870]

34 & 35 Vict. c.43	An Act for the Amendment of the Law Relating to Ecclesiastical Dilapidations [Ecclesiastical Dilapidations Act] [13 th July 1871]
37 & 38 Vict. c.88	An Act to amend the Law relating to the Registration of Births and Deaths in England and consolidate the Law respecting the Registration of Births and Deaths at Sea [Births and Deaths Registration Act] [7 th August 1874]
37 & 38 Vict. c.96	Statute Law Revision Act [7 th August 1874]
38 & 39 Vict. c.55	An Act for consolidating and amending the Acts relating to Public Health [Public Health Act] [11 th August 1875]
40 & 41 Vict. c.21	An Act to amend the Law relating to Prison [Prison Act] [12 th July 1877]
42 & 43 Vict. c.19	An Act to facilitate the control and cure of Habitual Drunkards [Habitual Drunkards Act] [3 rd July 1879]
43 & 44 Vict. c.41	An Act to amend the Burial [Burial Laws Amendment Act] [7 th September 1880]
45 & 46 Vict. c.50	for consolidating, with Amendments, enactments relating to Municipal Corporations [Municipal Corporations Act] [18 th August 1882]
50 & 51 Vict. c.71	An Act to consolidate the Law relating to Coroners [The Coroners Act] [16 th September 1887]
51 & 52 Vict. c.38	City of London Fire Inquests Act 1888
51 & 52 Vict. c.41	Local Government Act [August 15, 1888]
53 & 54 Vict. c.5	An Act to consolidate certain of the Enactments respecting Lunatics [Lunacy Act] [29 th March 1890]
53 & 54 Vict. c.243	London Council (General Powers) Act [18 th August 1890]
55 & 56 Vict. c.56	An Act to amend the Law in relation to the Appointment of Coroners and Deputy Coroners in Counties and Boroughs [Coroners' Act] [28 th June 1892]
61 & 62 Vict. c.36	An Act to amend the Law of Evidence [Criminal Evidence Act] [12 th August 1898]
61 & 62 Vict. c.60	An Act to provide for the treatment of Habitual Inebriates [Inebriates Act] [12 th August 1898]

62 & 63 Vict. c.14	An Act to make better provision for local government in London [London Local Government Act] [13 th July 1899]
7 Edward c.23	An Act to establish a Court of Appeal and to amend the Law relating to Appeals in Criminal Cases [Criminal Appeal Act] [28 th August 1907]
5&6 Geo.V c.90	An Act to amend the Law relating to Indictments in Criminal Cases, and matters incidental or similar thereto [Indictments Act] [23 rd December 1915]
7 & 8 Geo.V c.4	An Act to provide for the Suspension of Grand Juries in connection with the present War [Grand Juries (Suspension) Act] [28 th March 1917]
7 & 8 Geo.V c.19	An Act to reduce, in connection with the present War, the Number of Jurors at Coroners' Inquests [Coroners (Emergency Provisions) Act] [24 th May 1917]
8 & 9 Geo.V c.23	An Act to limit the right to a jury in certain civil cases, to raise the age for jury service, to amend the Law with respect to the preparation and publication of jury lists, and to enable coroners' inquests in certain cases to be held without a jury [Juries Act] [30 th July 1918]
9 & 10 Geo.V c.71	An Act to amend the Law with respect to disqualifications on account of sex [Sex Disqualification (Removal) Act] [23 rd December 1919]
11 & 12 Geo.V c.30	An Act to amend the Law relating to the Remuneration of Coroners [28 th July 1921]
12 & 13 Geo.V c.2	An Act to continue temporarily the Coroners (Emergency Provisions) Act, 1917, and Section seven of the Juries Act, 1918 [2 nd March 1922]
12 & 13 Geo.V c.50	An Act to deal with certain Expiring Laws by making some of them permanent, repealing others, and continuing the remainder for a limited period [4 th August 1922]
13 & 14 Geo.V c.37	An Act to continue certain expiring laws [2 nd August 1923]
15 Geo V. c.1	An Act to continue certain expiring laws [18 th December 1924]
15 & 16 Geo.V c.76	An Act to deal with certain Expiring Laws by making some of them permanent, continuing

- some of them, and continuing the remainder for a limited period [10th December 1925]
- 16 & 17 Geo.V c.48 An Act to amend the law relating to certification of deaths and disposal of the dead [Births & Deaths Registration Act] [15th December 1926]
- 16 & 17 Geo.V c.59 An Act to amend the law relating to coroners [Coroners (Amendment) Act] [15th December 1926]
- 23 & 24 Geo.V c.36 An Act to abolish grand juries and amend the law as to the presentment of indictments; . . [Administration of Justice (Miscellaneous Provisions) Act] [28th July 1933]
- 2 & 3 Eliz.II c.31 An Act to amend the law as to fees and allowances payable by coroners to witnesses, to persons summoned to attend as witnesses and to medical practitioners making post mortem examinations by the coroner's direction or at the coroner's request. [Coroners Acts 1887-1980] [4th June 1954]
- 1972 c.70 An Act to make provision with respect to local government and the function of local authorities in England and Wales; etc. [Local Government Act 1972] [26th October 1972]
- 1977 c.45 An Act to amend the law of England and Wales . . including the law with respect to the administration of criminal justice; . . and the law about juries and coroners' inquests . . [Criminal Law Act 1977] [29th July 1977]
- 1980 c.38 An Act to abolish the obligation of coroners . . to view bodies on which they hold inquests; etc. [Coroners Act 1887-1980] [17th July 1980]
- 1988 c.13 An Act to consolidate the Coroners Acts 1887 to 1980 and certain related enactments, with amendments to give effect to the recommendations of the Law Commission [Coroners Act 1888] [10th May 1888]

APPENIDIX III

RECORDS OF THE CORONERS' SOCIETY
OF ENGLAND AND WALES

Like the Coroners' Society, the records have no permanent home. At present, they are still in the custody of Dr. J.D.K. Burton who retired recently. In order to examine them, I contacted him through the incumbent Hon. Secretary of the Society and H.M. Coroner for Surrey Coroner, Mr. Michael J.C. Burgess. The volume numbers listed below and used throughout the text are those that I have allocated.

Volume 1:	1846-1876	Manuscript
Volume 2:	1879-1901	Manuscript
Volume 3:	1910-1926	Manuscript
Volume 4:	1890-1898	Printed
Volume 5:	1899-1903	Printed
Volume 6:	1904-1908	Printed
Volume 7:	1909-1913	Printed
Volume 8:	1914-1918	Printed
Volume 9:	1919-1923	Printed
Volume 10:	1923-1928	Printed

Extract from *Hansard* 23rd March 2001 giving details of the Terms of Reference for the Review of the Coroner System communicated to HM Coroners and Chief Executives of relevant Councils.²

Coroner System Review

Mr. Khabra: To ask the Secretary of State for the Home Department if he has decided on the terms of reference for the fundamental review of the coroner system.

Mr. Boateng: In consultation with ministerial colleagues. it has been decided that the terms of reference should be as follows.

In respect of England, Wales and Northern Ireland:

1. To consider the most effective arrangements for identifying the deceased and for ascertaining and certifying the medical cause of death for public health and public record purposes, having regard to proposals for a system of medical examiners.
2. To consider the extent to which the public interest may require deaths to be subject to further independent investigation, having regard to existing criminal and other statutory and non-statutory investigative procedures.
3. To consider the qualifications and experience required, and the necessary supporting organisations and structures, for those appointed to undertake the duties for ascertaining, certifying and investigating deaths.
4. To consider arrangements for the provision of post mortem services for the investigation of deaths.
5. To consider the consequences of any changes arising from the above for the registration service and the role of coroners under the Treasure Act 1996, and to consider where departmental responsibilities for the arrangements should be located, having regard both to coherence for bereavement services and effective accountability.

We are now considering who should carry out the review and I hope to make a further announcement shortly.

² Ibid.

APPENDIX V

FRANCHISE CORONERS

The franchise coroners were the cause of many problems after 1888 when the new county councils attempted to reorganise the coroners' districts for greater economy and efficiency. In the thesis, I have dealt mainly with the franchise jurisdictions associated with the London County Council (see Map I), but a number of counties had problems with franchise coroners, some of which were far worse than the LCC. This applied to especially to Norfolk which had a mix of franchise coronerships, from small to very large, spread across the entire county (see Map II). This was described in the *Eastern Daily Press* as 'a Jig-Saw Puzzle.'¹

The majority of coroners were the county coroners who came into existence in 1194 and, until 1888 they were elected by the freeholders of the county. About a hundred years later, borough and franchise coroners came into existence. The borough coroners were appointed by the burgesses of the borough (later by the council of the county boroughs) under charters granted by the Crown. In this respect, the borough coroners could be considered as franchise coroners, but they are generally considered to have been in a special category.²

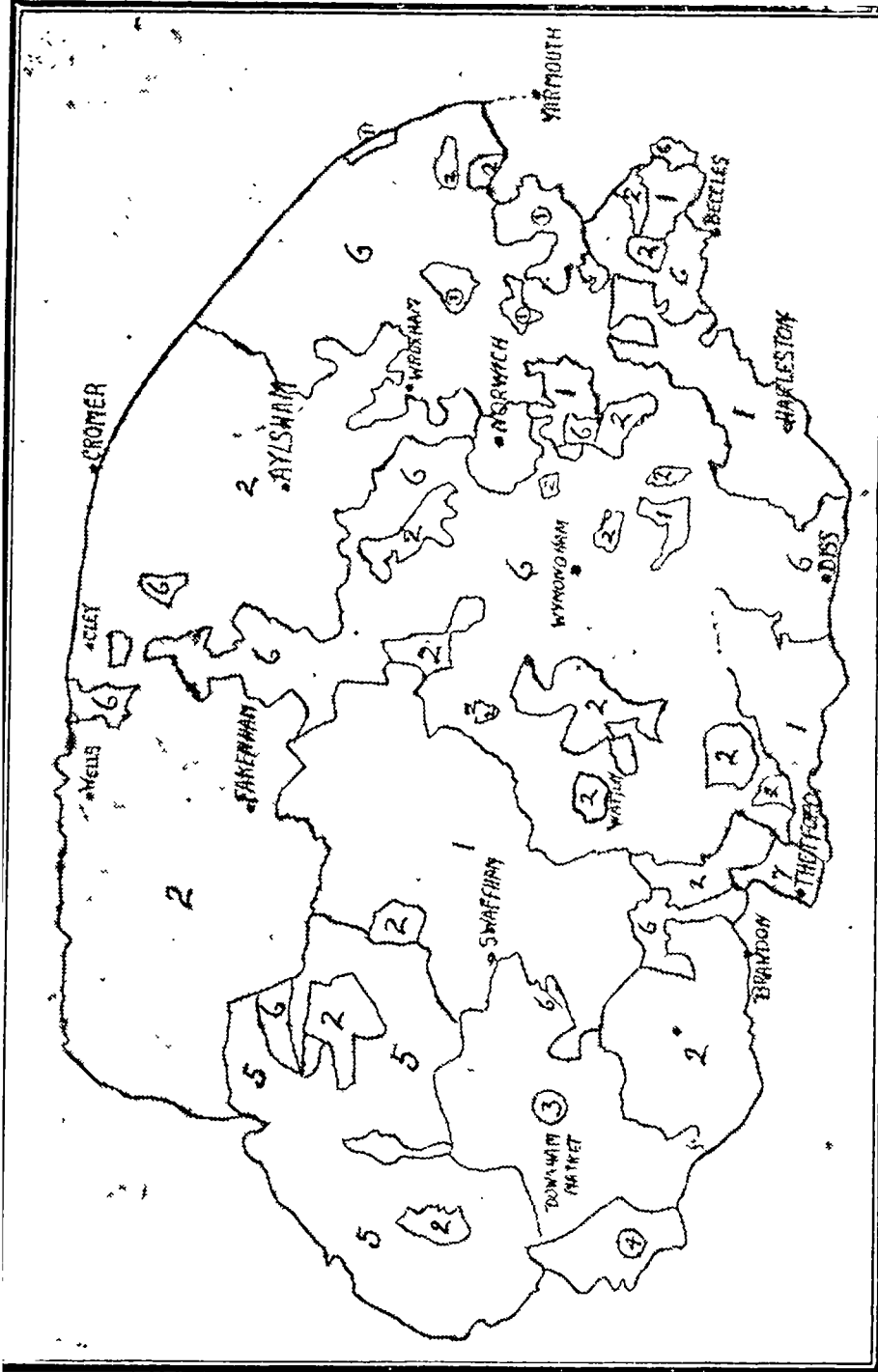
Franchise coroners came into existence around the same time as borough coroners, and were appointed *virtute cartae sive commissionis*, that is by charter, commission, or privilege by liberties and franchises, over which the lords, or heads of corporations, were empowered by

¹ *Eastern Daily Press* Jan 9 1922. See HO45/20002/428832 Appointments: proposals to abolish franchise Coronerships 1908-1932

² See R.F. Hunnisett *The Medieval Coroner* (Cambridge: Cambridge University Press 1961)

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At the County Council meeting on Saturday the 6th inst. the County Map of Norfolk was not inaptly described as a Jig-Saw Puzzle. The numbers on the map represent the scattered districts of the various Coroners as set forth below:—

Coroners' Districts	Map Number on	Coroner
Liberty of the Duke of Norfolk	1	Mr. G. K. Burne, Diss.
Liberty of the Duchy of Lancaster	2	Mr. W. J. Barton, Dereham.
The Hundred of Clackwell and the Liberty of Sir Thomas L. Hare	3	Mr. H. R. B. Wayman, Downham
The Half Hundred of Clackwell and the Liberty of Chas. Watson Townley	4	Mr. H. R. B. Wayman.
King's Lynn District	5	Mr. D. E. Jackson, Lynn.
Norwich District	6	Mr. George W. Barnard, Norwich
Borough of Thetford	7	Mr. G. O. Read, Thetford

MAP II: Coroners' Map of Norfolk

Reproduced from *Easter Daily Press* January 9th 1922. See: HO45/20002/428832
 Appointments: Proposals to abolish franchise Coronerships 1908-1932

charter to act themselves, or to create their own coroners. The monarch claimed 'this privilege by prescription, but the franchise is of so high a nature, that no subject can claim it otherwise than by grant from the Crown.'¹ The East Riding of Yorkshire County Council wanted to surrender the coronerships for the Manor of Howden and the Liberty of the town of Howden (part of the Ripon Bishopric Estates). However, when the application was made to achieve that, it was found to be impossible to except by Act of Parliament—and the Home Office had no papers to 'throw any light on the procedure to be adopted'.²

The smallest franchise district discovered is the Liberty of Glasshouse Yard in Holborn³—this is an area of around 70x10 metres—no record has been found of a coroner being appointed or an inquest being held. The Duchy of Lancaster possessed scattered franchises across the country 'wherever John of Gaunt planted a castle and established an area of jurisdiction'⁴ and numerous franchises were in the possession of lords of the manor.

There were some unusual franchises. Each year, the new Lord Mayor of London became the coroner for the City and he appointed a deputy to do the work. The dean and chapter of Westminster for the city and liberties of Westminster, the bishop of Ely for the isle of Ely, the Wardens in the Cornish stannaries were the coroners the various authorities of the University of Oxford all appointed coroners. The master of the crown office, or clerk of the crown, was coroner of the Queen's Bench and had jurisdiction over the Marshalsea and Fleet prisons, and held his office by letters patent under the great seal.

¹ John Jervis *On the Office and Duties of Coroners. With an appendix of forms and precedents* First edition (London: S. Sweet, R. Phene, A. Maxwell, and Stevens & Sons 1829) pp.3-6

² HO45/9843/B11593/2 1. Surrender of Franchise Coronerships to Crown 2. Surrender of Franchise appointing Howenden Coronership Minute Nov 10 1897

³ *BMJ* Mar 24 1894 p.650

⁴ *Lancet* Sept 10 1927 p.559

In addition, there were other exclusive jurisdictions and corporations for which coroners are appointed. The coroner of the Verge was the lord high steward of the household of the king's court which comprised a circuit of twelve miles round the residence of the king. There were also Admiralty coroners appointed by the Lord High Admiral which gave rise to some jealousies in the days when fees were paid for each inquest held. This was resolved by the arrangement that on the open shore, between the high and low water mark, the jurisdiction of the Admiralty coroner the county or district coroner alternated between them, the former acting when the tide was in, the other when the tide was out.⁵

Quite apart from any difficulties associated with economy, the liberties of the some franchises were not only small, but also widely spread across a county, as already noted, for example, in Norfolk. This, almost certainly, gave rise to problems of jurisdiction because it was unusual for the boundaries of the districts to be clearly defined. In addition there were problems of payment. Strictly speaking, franchise coroners were paid by their appointers and the 1751 Act⁶ had specifically excluded payment to them.⁷ Nevertheless, several were paid from the rates by Middlesex, Surrey and the City of London from around 1830 onwards and it appears that other counties may not have 'been aware of the strict reading of the law.'⁸

Most franchise coronerships were effectively abolished in the Coroners (Amendment) Act 1926⁹ except for a few exceptional cases.¹⁰ However,

⁵ James Craig *The Law of the Coroner, and on Medical Evidence in the Parliamentary Investigation of Cases in Scotland* (Edinburgh: Sutherland and Knox 1855 p 6

⁶ 25 Geo. II c.29 An Act for giving a proper Reward to Coroners for the due Execution of their Office; and for the Amoval of Coroners upon a lawfu conviction for certain Misdemeanors [14th November 1751]

⁷ 1910 [Cd.5139] XXI.583 Second Report of the Departmenta Committee appointed to inquire into the Law relating to Coroners and Coroners Inquests Part Evidence Qs 11462

⁸ Ibid. Q.11463

⁹ 16 & 17 Geo.V c 59 An Act to amend the law relating to coroners [Coroners (Amendment) Act] [15th December 1926] s 4

it was not possible to absorb the jurisdictions into the county system and reorganise the districts until a vacancy occurred. After 1926 franchise coroners could still be appointed for the liberties of the Duchy of Lancaster, though it has been the normal procedure to relinquish these powers as vacancies occurred. There were also two disqualified franchise coronerships that survived in north west England in the manors of Walton-le-Dale and Hale (see MAP III). They continued to exist because the lord of the manor was the coroner, therefore there was never a vacancy.¹¹ The lord of the manor was normally unqualified to act as a coroner and therefore appointed the county coroner in the adjacent district as the deputy coroner.¹²

Franchise appointments, which had a traditional and unbroken connection 'with the Norman King's and their Angevin successors',¹³ were abolished in the Local Government Act 1972¹⁴ save for three exceptional cases: the coroner of the Queen's Household,¹⁵ and the coroner for the Scilly Isles and the Queen's coroner.¹⁶

¹⁰ 16 & 17 Geo.V c.59 An Act to amend the law relating to coroners [Coroners (Amendment) Act] [15th December 1926] s.4 cited in Jervis op.cit. Eleventh edition (London: Sweet & Maxwell 1993) p.11

¹¹ Jervis op.cit. Ninth edition (London: Sweet & Maxwell 1957) p 5

¹² Personal communication G H H. Glasgow

¹³ Alexander Johnston *The Origins of the Office of Coroner* (unpublished University of Edinburgh thesis 1929) p.1. See HO45/13618/592180

¹⁴ 1972 c.70 An Act to make provision with respect to local government and the function of local authorities in England and Wales, etc. [Local Government Act 1972] [26th October 1972] s 220(1)

¹⁵ *Ibid* s.220(2) The Local Government Act 1972 did not apply to the Scilly Isles See Jervis op.cit. Eleventh edition (London Sweet & Maxwell 1993) p 11

¹⁶



MAP III: Franchise Coroner's Districts (circa. 1970):
 Manor of Walton-Le-Dale (within Preston Coroner's District,
 Lancashire) and Manor of Hale.
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¹ The existence of this thesis was originally reported to Mr G.H.H. Glasgow by a librarian at the Aldham Roberts Learning Resources Centre, John Moore's University, Liverpool. Enquiries there and to Mr J.M. Kaye (archivist at Queen's College, Oxford) and Mr R. Wilkes (Department of Special Collections and Western Manuscripts at the Bodleian Library, Oxford) failed to locate the thesis.