

Modernising the Common Law Offence of Misconduct in a Public or Judicial Office

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1. Introduction

As noted in a number of previous articles,¹ much of our criminal law is very antiquated. In part, this is due to many obsolete pieces of criminal legislation - often of great age. Also, there still exist a number of common law offences. These should be modernised and placed in statutory form.

In respect of one of these common law offences, this article looks at the offence of misconduct in a judicial - or a public - office. In analysing this offence, regard may be had to the following legal texts:

- E Coke, *Institutes of the Laws of England* (1628-41);²
- W Hawkins, *A Treatise of the Pleas of the Crown* (1716-1824);³
- M Hale, *The History of the Pleas of the Crown* (published 1736, written 1640's);⁴
- W Blackstone, *Commentaries on the Laws of England* (1765-9);⁵
- WO Russell, *A Treatise on Crimes and Misdemeanors* (1819-1964);⁶
- W Archbold, *Criminal Pleading, Evidence and Practice* (1822-2014);⁷
- Halsbury, *Laws of England*.⁸

It may be noted, in respect of this offence, that - apart from Archbold, Halsbury and Blackstone's *Criminal Procedure*⁹ - modern criminal texts contain no (or very little) analysis of this offence.¹⁰ Reference may also be

¹ A series of articles by the author has reviewed outdated criminal legislation. They are listed in GSMcBain, *Modernising English Criminal Law* (2010) Coventry LJ, vol 15, no 2.

² E Coke, *Institutes of the Laws of England* (W Clarke & Sons, London, last ed, 1824).

³ W Hawkins, *A Treatise on Pleas of the Crown* (E & R Nutt & R Gosling, Savoy (1st ed 1716-21, last ed 1824).

⁴ M Hale, *The History of the Pleas of the Crown* (printed for E & R Nutt & R Gosling, 1736).

⁵ W Blackstone, *Commentaries on the Laws of England* (Oxford, Clarendon Press, 1st ed, 1765-9, University of Chicago Press rep 1979).

⁶ WO Russell, *A Treatise on Crimes and Misdemeanors* (1st ed, 1819; last ed, 12th ed, 1964).

⁷ W Archbold, *Criminal Pleading, Evidence and Practice* (Sweet & Maxwell, 2014). See also JF Archbold, *A Summary of the law relative to Pleading and Evidence in Criminal Cases* (London, 1822, being the 1st ed).

⁸ Halsbury, *Laws of England* (5th ed, with updates).

⁹ Blackstone's *Criminal Practice* 2013 (eds A Hooper & D Ormerod) ('**Blackstone CP**'). See also Archbold, *Magistrates Courts Criminal Procedure* ('**Archbold Procedure**').

¹⁰ See, for example: (a) C McAlhone & R Huxley-Binns, *Criminal Law: The Fundamentals* (3rd ed, 2013); (b) MJ Allen, *Textbook on Criminal Law* (12th ed, 2013); (c) A Ashworth & J Horder, *Principles of Criminal Law* (7th ed, 2013); (d) R Card *et al*, *Criminal Law* (20th ed, 2012); (e) CMV Clarkson & HM Keating, *Criminal Law, Text and Materials* (7th ed, 2010); (f) C Elliott & F Quinn, *Criminal Law* (8th ed, 2010); (g) R Heaton, *Criminal Law* (2nd ed, 2006); (h) J Herring, *Criminal Law* (8th ed 2013); (i) M Jefferson, *Criminal Law* (9th ed, 2009); (j) Lacey, Wells & Quick, *Reconstructing Criminal Law. Text and Materials* (4th ed, 2010); (k) J Loveless, *Complete Criminal Law. Text. Cases and Materials* (3rd ed, 2012); (l) N Padfield, *Criminal Law* (7th ed, 2010); (m) A Reed & B Fitzpatrick, *Criminal Law* (4th ed, 2009); (n) AP Simester, Simester & Sullivan's *Criminal Law: Theory and Doctrine* (5th ed, 2013); (o) D Ormerod, Smith & Hogan's *Criminal Law* (13th ed, 2011); (p) DJ Baker, *Glanville Williams Textbook of Criminal Law* (3rd ed, 2012); (q) MJ Allen & S Cooper, *Elliott & Woods' Cases and Materials on Criminal Law* (11th ed, 2013); (r) M Molan, *Cases and Materials on Criminal Law* (4th ed, 2008); (s) J Martin & T Storey, *Unlocking Criminal Law* (3rd ed, 2010); (t) P Hungerford-Welch & A Taylor, *Sourcebook on Criminal Law* (1997); (u) M Molan *et al*, Bloy & Parry's *Principles of Criminal*

made to various Abridgments, major and minor, viz.

- N Statham, *Abridgment of the Law* (c. 1490);¹¹
- A Fitzherbert, *La Graunde Abridgment* (3rd ed, 1577);¹²
- R Brooke, *La Graunde Abridgment* (1586);¹³
- W Hughes, *Grand Abridgment of the Law* (1660-3);¹⁴
- W Sheppard, *Grand Abridgment of the Common and Statute Law of England* (1675);¹⁵
- H Rolle, *Abridgment des plusieurs Cases et Resolutions del Common Ley* (1668);¹⁶
- W Nelson, *Abridgment of the Common Law* (1725-6);¹⁷
- E Viner, *A General Abridgment of the Law and Equity* (1st ed, 1741-57);¹⁸
- M Bacon, *New Abridgment of the Law* (5th ed, 1798);¹⁹
- J Comyns, *Digest of the Laws of England* (last ed, 1822).²⁰

A useful modern text is Nicholls, *Corruption and Misuse of Public Office*.²¹ This article analyses the early history of this offence.

- It asserts that this offence should be placed in statutory form, with the concept of ‘*public office*’ including all employment where the individual in question is employed by the ‘*State*’ in whatever capacity (ie. central or local government), whether that person is remunerated or not and whatever the terms of their employment (eg. whether it is full time, part time, consultancy *etc*);
- It should be stated at the outset that a major problem of this offence is that its early history has not been considered.²² When it is - and the ambits (and purpose) of the offence in earlier times is perceived - it may be seen that a number of modern cases need not actually have been brought, since they were based on a limited perception of this offence that was not originally there.²³

2. Early History of the Offence

In early times, ‘*public office*’ was synonymous with ‘*Crown*’ office. There was no concept of the State as such. Rather, from 1066 - if not before - there was only the sovereign.²⁴ Further, the number of individuals directly employed by the Crown (the sovereign) was relatively small until after the Glorious Revolution of 1688 when the

Law (4th ed, 2000); (v) W Wilson, *Criminal Law* (4th ed, 2011). For older 20th century texts, see JW Cecil Turner, *Kenny’s Outlines of Criminal Law* (19th ed, 1966) and R Cross & PA Jones, *An Introduction to Criminal Law* (2nd ed, 1949).

¹¹ N Statham, *Abridgment of the Law* (Pynson, c. 1490). This has been reprinted by the Law Book Exchange. For a translation, see MC Klingelsmith, *Statham’s Abridgment of the Law* (Boston Book Company, 1915).

¹² A Fitzherbert, *La Graunde Abridgment* (Tottell, 3rd ed 1577). This has been reprinted by the Law Book Exchange.

¹³ R Brooke, *La Graunde Abridgment* (Tottell, 1586).

¹⁴ W Hughes, *Grand Abridgment of the Law* (Henry Twyford *et al*, 1660-3). This has been reprinted by the Law Book Exchange.

¹⁵ W Sheppard, *Grand Abridgment of the Common and Statute Law of England* (sold by George Sawbridge *et al*, 1675).

¹⁶ H Rolle, *Abridgment des plusieurs Cases et Resolutions del Common Ley* (A Crooke *et al*, 1668).

¹⁷ W Nelson, *Abridgment of the Common Law* (E & R Gosling, 1725-6). This has been reprinted.

¹⁸ E Viner, *A General Abridgment of the Law and Equity* (GCJ & J Robinson, 1st ed, 1741-57, 2nd ed 1791). This has been reprinted by the Law Book Exchange (there is also a CD with wordsearch).

¹⁹ M Bacon, *New Abridgment of the Law* (H Gwillim (ed), 5th ed, 1798).

²⁰ J Comyns, *Digest of the Laws of England* (A Hammond, last ed, 1822). In this article, the 3rd ed (ed Kyd), 1792 is cited. See also J Lilley, *Practical Register* (2nd edn, 1765).

²¹ C Nicholls *et al*, *Corruption and Misuse of Public Office* (OUP, 2nd ed, 2011), see ch 6 (Misconduct in a Public Office).

²² This is one criticism of the (otherwise admirable) work by Nicholls (see n 21). It looks at the position after *Bembridge* (1783), but fails to note that misconduct in a public office was being dealt with by statute, at least, from c. 1133 (Laws of Henry I, see 21(a)). It states, p 154 ‘The offence, in the form it is known today, is often said to date back to the case of *R v Bembridge* [1783]’. However, I am unaware of any legal writers or judges who have stated this; and not to look at earlier cases can give a misleading impression of the offence.

²³ See 14.

²⁴ The prevailing jurisprudential, and practical, analysis in early medieval times was that the sovereign was the Crown and the source of all power, whether judicial, military or administrative. Comyns, n 20, vol 5, p 130 ‘The king is the fountain of all power and authority, and by his prerogative has the nomination of all officers originally.’ Ibid, vol 7, p 51 ‘The king by his prerogative, has the nomination of all public officers within his kingdom.’ See also Bacon, n 19, vol 5, p 179 (offices). See also Sheppard, n 15 (Of Offices and Officers).

concept of the 'State', separate from the sovereign, really began to develop - both legally and practically.²⁵

(a) *Early Times – Public Officers*

In early times, 'public officers' mainly comprised members of the royal household, the Privy Council, judges and judicial appointments, exchequer (treasury) officials as well as - in the case of war time (whether a civil war or a war against a foreign enemy) - military appointments.²⁶ Some of these appointments were not well paid and they were financially onerous. As a result, it was a criminal offence (and still is, in some circumstances) for an individual to refuse to take up the appointment, once nominated or elected.

- For example, the City of London had (by way of franchise) - from early times - the the right to elect the offices of: a mayor,²⁷ (two) sheriffs²⁸ and aldermen. It was frequent for citizens to seek to excuse themselves from taking up such offices since they usually imposed considerable financial obligations. Thus, often, persons were fined - or, sometimes, imprisoned - for failing to take up the nomination or election;²⁹
- This also applied in the case of the more minor offices of constable and tithingman. These were menial offices (and somewhat hazardous as well, since the constable often had to defend himself against mobs and better armed assailants). Thus, persons nominated to the same often sought to avoid them - usually paying a fine by way of composition.³⁰

For those who did take up public offices - in the case of the great offices of State and judicial and military offices - individuals were rarely prosecuted in early times for misconduct in that office, being too powerful. As a result, the only way in which to punish such individuals - apart from securing their dismissal by the (often reluctant) sovereign³¹ - was *via* the process of the House of Commons impeaching such individuals for High Crimes and Misdemeanours.³² This means of punishment ended (in practice) by 1806.³³ Thereafter, the system of cabinet (and Parliamentary) responsibility developed, to ensure the removal of such persons. Further, the courts began to handle breaches of the law for bribery, the selling of offices *etc*, even in cases where the individual was a person of real importance.³⁴

²⁵ The Stuart period from James I (1603-25) to James II (1685-8) was the high water mark of the assertion of the sovereign in a personal capacity as the embodiment of the State. For the development of the legal concept of the sovereign acting in a natural capacity (*persona privata*) as opposed to in a political capacity (*persona publica*) see generally EH Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton, 1957). See also the *Duchy of Lancaster Case* (1561) 1 Plowd 212 (75 ER 325), at p 213 'his body politic is a body that cannot be seen or handled, consisting of policy and government, and constituted for the direction of the people, and the management of the public weal.' See generally GSMcBain, *Time to Abolish the Duchy of Lancaster*, Rev of European Studies (2013), vol 5, no 4, pp 1-22.

²⁶ It should be remembered that England had no standing army, in peacetime, until after 1688.

²⁷ See generally, GS McBain, *Liberties and Customs of the City of London - Are there any Left?* (2013) Int. Law Research, vol 2, no 1, 32-95, fns 41 & 42. The portreeve (portgrave) was the ruler (or chief officer) of an Anglo-Saxon town or borough and, after the Norman Conquest, the portreeve was often identified with the mayor or one holding an equivalent position. The first mayor of the City of London is said to have been Henry Fitz-ailwin appointed by the sovereign in 1189 (or 1192). A charter of 1215 provided for the citizens of London to be able to appoint their own mayor. *Ibid*, p 19. On the early history of the mayor of London, see HT Riley, *Liber Albus: The White Book of the City of London* (Richard Griffin & co, 1861), p 11 *et seq*.

²⁸ The sheriffs of the City of London and of Middlesex. A charter of c. 1132 provided for the citizens of London to be able to appoint their own sheriffs. See McBain, n 27, pp 1, 5-9.

²⁹ See eg. HT Riley, *Memorials of London and London Life...AD 1276-1419* (Longman, 1868), p 601 (alderman imprisoned in 1415 for refusing to take up office). See also pp 635-7 (Common Council enactment *re* avoiding serving as mayor or sheriff). See generally GSMcBain, *Abolishing some Obsolete Common Law Crimes* (2009) 20 KLJ at pp 113-4. For a case of a person indicted for refusing to take up the office of constable see *Anon* (1704) Fortescue 127 (92 ER 789) and for a person refusing to take up the office of an overseer, see *R v Jones* (1740) 2 Stra 1146 (93 ER 1091).

³⁰ See GS McBain, *False Imprisonment and Refusing to Assist a Police Officer – The Need for Statutory Offences*.

³¹ This can be vividly seen in the trials for high crimes and misdemeanours in the times of Richard II (1377-99) and James I (1603-25) where the sovereign's desire to retain important ministers and officials was controverted by prosecutions in Parliament, by way of appeal or impeachment.

³² See generally, GSMcBain, *Abolishing High Crimes and Misdemeanours etc.* (2011) 85 ALJ 810-79.

³³ The last (unsuccessful) case of prosecution for high crimes and misdemeanours was in 1806, with the trial of Lord Melville for mis-appropriating money in the period 1792-1800 when he was treasurer of the admiralty. See McBain, n 32, p 826. For examples of prosecution for misconduct in a public office being treated as a high crime and misdemeanor, see eg. McBain, pp 829-32 and *passim*.

³⁴ A telling example of this was the introduction of the Sale of Offices Act 1809 (it extended the ambits of the Sale of Offices Act 1551). This Act resulted from a scandal where the mistress of the commander-in-chief of the army (Prince Frederick, Duke of York, 1763-1827) was found to have taken money from those who wanted to buy offices or favours in the War Office. The Duke himself, although not found personally guilty, was forced to resign. See generally, GSMcBain, *Abolishing Obsolete Legislation on Bribery* (2011) Coventry LJ, vol 16, no 2.

(b) Early Legislation on Misconduct

There was also early legislation governing the conduct of Crown officers, viz.

- Sheriff & Other King's Officers - Extortion. The Statute of Westminster the First 1275, c 26 (rep) provided that: 'no sheriff, nor other the king's officer, shall take any reward to do his office, but shall be paid of that which they take of the king; and he that so doth shall yield twice as much and shall be punished at the king's pleasure';³⁵ Similar provisions related to extortion by clerks of justice and court officers,³⁶
- Sheriffs, Coroners & Bailiffs - Neglect or Corruption. The Statute of Westminster 1275, c 9 (rep), also provided that: 'if the sheriff, coroner, or any other bailiff, within such franchise or without, for reward, or for prayer, [or for great fear] or for any manner of affinity, conceal, consent, or procure to conceal, the felonies done in their liberties, or otherwise [will not attach nor] arrest such felons there, as they may, or otherwise [will not do] their office for favour borne to such misdoers, and be attainted thereof, they shall have one year's imprisonment etc.' (underlining supplied);
- Judges. An Act of 1346 (rep) provided that: 'We have ordained and caused our said justices to be sworn that they shall not from henceforth, as long as they shall be in the office of justice, take fee nor robe of any man, but of ourself, and that they shall take no gift nor reward by themselves, nor by other, privily or apertly, of any man that hath to do before them by any way, except meat and drink, and that of small value etc.'³⁷
- Brocage or Bribery.³⁸ An Act of 1388 (rep) relating to Corrupt Appointments to Offices provided that: 'It is accorded, that the Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the King's House, the King's Chamberlain, Clerk of the Rolls, the justices of the one bench and of the other, Barons of the Exchequer, and all other that shall be called to ordain, name, or make Justices of the Peace, Sheriffs, Escheators, Customers,³⁹ Comptrollers,⁴⁰ or any other officer or minister of the king, shall be firmly sworn, that they shall not ordain, name, or make Justice of the Peace, sheriff, escheator, customer, comptroller, nor other officer or minister of the king, for any gift or brocage, favour or affection; nor that none which pursueth by him or by other, privily or openly, to be in any manner office, shall be put in the same office, or in any other; but that they make all such officers and ministers of the best and most lawful men and sufficient to their estimation and knowledge.'⁴¹
- Sheriff. An Act of 1402 (rep) provided that a sheriff: 'shall not let his bailiwick to farm to any man, for the time that he occupieth such office.'⁴²
- Embezzlement. An Act of 1404 (rep) provided that - in the case of embezzlement by sheriffs, escheators, aulnegers, customers, comptrollers and other king's officers - if convicted, they forfeited treble of the same;⁴³
- Bribery. An Act of 1409 (rep) provided that all judges and officers of the king, convicted of bribery, forfeited treble the bribe, were punishable at the king's will and were discharged from the king's service forever.⁴⁴ The translation provided by Comyns is 'No chancellor, treasurer, keeper of the privy seal,

³⁵ 3 Edw 1 c 26 (1275, rep). See also Russell, n 6, vol 1, p 370.

³⁶ Ibid, c 27 & c 30.

³⁷ 20 Edw 3 c 1 (1346). See also Comyns, n 20, vol 5, p 149.

³⁸ Bribery, until, at least, the time of Comyns was limited to judicial offices. See eg. Comyns, n 20, (3rd ed, 1792) vol 5, p 149 'Extortion may be by a judicial or ministerial officer, but bribery only by a judicial officer, ecclesiastical or temporal.' 'Brocage' was the French term usually employed when the bribery in question did not relate to a judicial office. See also Oxford English Dictionary ('OED') which notes that 'brocage' was a variant of 'brokage'. As to the latter, the OED states: 'The following meanings are given in dictionaries, or indicated in some of the quotations: in many of the latter the exact sense cannot be fixed, so that they are not here separated. In most cases the word has an ill-favour. Cf. 'jobbery'....lc The corrupt farming or jobbing of offices; the price or bribe paid unlawfully for any office or place of trust.'

³⁹ OED, n 38 (definition of customer) 'An official who collects customs or dues, a custom-house officer.'

⁴⁰ 'Comptroller' was a form of spelling of 'controller' defined, see OED, n 38, as, '2a A household officer whose duty was primarily to check expenditure, and so to manage in general; a steward. Now chiefly used in the household of the sovereign, and in those of members of the royal family, and spelt comptroller. (b) An officer having similar duties in various public offices.'

⁴¹ 12 Ric 2 ca 2 (rep 1871). For an exposition of this Act see *Earl of Macclesfield's Case* (1725) 16 ST 767.

⁴² 4 Hen IV c 5 (1402, rep).

⁴³ 6 Hen IV c 3 (1404, rep).

⁴⁴ Coke, n 2, vol 3, p 146 noted the wording of this Act (which was never imprinted) as 'Que nul chancelor, treasurer, garden del privie seal counselor le roy, sernts. a counsell del roy, ne nul auter officer, judge ne minister le roy, pernans fees ou gages de roy pur lour ditz offices ou

*king's counsellor, king's serjeant, or any other officer, judge, or minister of the king, taking fees or wages of the king, for their offices, shall take any gift or brocage of any, upon pain to answer to the king the treble, and satisfy the party, and to be punished at the king's pleasure, and discharged from his office for ever, and any one may prosecute for the king and himself, and shall have a third part of the sum recovered;*⁴⁵

- Sale of Offices. The Sale of Offices Act 1551 (rep) was enacted to punish the buying, and selling, of certain Crown offices. It was later supplemented by the Sale of Offices Act 1809.⁴⁶

(c) Early Times – Major Judicial Offices

In early times, there were few judges⁴⁷ and - since their appointment was linked to the pleasure of the Crown - where misconduct occurred it, likely, was ignored by the sovereign unless it was contrary to his own interests. Where there was misconduct - and the judge did not otherwise quietly resign (or had his tenure was terminated by the sovereign) - then, usually, the manner by which the same was removed was *via* an accusation of '*high crimes and misdemeanours*'.⁴⁸ Various examples may be given:

- William Thorp(e) - Chief Justice, King's Bench (1350). Tried before special commissioners appointed by Edward III (1327-77), he admitted taking bribes. A judgment of guilty by the commissioners was upheld by the House of Lords. Although Thorp was sentenced to death on 10 March 1351, he was subsequently granted a full pardon by the sovereign.⁴⁹
- Francis Bacon - Lord Chancellor (1621). Impeached for bribery, in a letter of 30 April 1621, he made a general confession of corruption. There was no trial and Bacon was sentenced to imprisonment, a fine of £40,000 and exclusion from Parliament, court and office. The fine was later remitted, his period of imprisonment was only 3 days and he was later pardoned.⁵⁰
- Thomas Parker - Lord Chancellor (1725). Impeached for high crimes and misdemeanours for bribery (including the sale of masterships in Chancery), Parker was found guilty by the House of Lords in May 1725. Fined £30,000, he was removed from office as well as from the Privy Council.⁵¹

It may be noted that, subsequently, the Act of Settlement 1700 provided that judges could be removed on an address to both Houses of Parliament.⁵² Today, the Constitutional Reform Act 2005, s 33 provides:

A judge of the Supreme Court holds the office during good behaviour, but may be removed from it on the address of both Houses of Parliament.⁵³

The Act also gives the Lord Chancellor and the Lord Chief Justice responsibility for the administration of a new system for considering, and determining, complaints about the personal conduct of judicial holders in England and

*services, preigne en nul manner en temps a vener aucun manner de done ou brocage de ullay pur lour ditz offices et services a faire, sur peine de responder au roy de la treble que issint preignont, et de satisfaire la partie, et punys al volant le roy, et soit discharges de son office, service, et counsell pur tous jours, et que chescun que voiera persuer en la dit matter, eyt la suite cibien pur le roy, come pur luy mesme, et eit la tierce part del somme, de que la partie est duement convict'. See also RP 11 Hen 4 (1409) nu 28, see *The Parliament Rolls of Medieval England* (Scholarly Digital Editions, which is also on CD). Blackstone, n 5, vol 4, p 139 'By a statute 11 Hen IV [rep], all judges and officers of the king, convicted of bribery, shall forfeit treble the bribe, be punished at the king's will, and be discharged from the king's service for ever.'*

⁴⁵ Comyns, n 20, (3rd ed, 1792), vol 5, p 149.

⁴⁶ See generally McBain, n 34. For the position of this Act by 1819, see Russell, n 6, vol 1, ch 16.

⁴⁷ See generally J Sainty, *The Judges of England 1272-1990* (Selden Society ('SS', 1993).

⁴⁸ See McBain, n 32, pp 827-9.

⁴⁹ Blackstone, n 5, vol 4, p 139 mistakenly stated that Thorp was hanged. For the case of Michael de la Pole, Chancellor, accused of bribery in 1384 but found not guilty, see McBain, n 32, p 827. See also Coke, n 2, vol 3, pp 144- 7.

⁵⁰ See McBain, n 32, p 827-8. See also Coke, n 2, vol 3, pp 147-8.

⁵¹ His is the last case of a judge being found guilty of high crimes and misdemeanours, see McBain, n 32, p 829.

⁵² Act of Settlement 1700 'judges commissions be made *quamdiu se bene gesserint* [ie. during good behaviour]...but upon an address of both houses of Parliament, it may be lawful to remove them.' The only case in relation to this is that of an Irish judge, Sir Jonah Barrington. In 1830, he misappropriated £700 paid into the Admiralty Court of Ireland and fled to France. He was removed by an address. See McBain, n 32, p 865.

⁵³ See also s 35 (resignation and retirement) and s 36 (medical retirement). See also *Anderson v Gorrie* [1895] 1 QB 668 (no civil action lies against a colonial judge of a Supreme court for acts done by him in his judicial capacity, even though he acted oppressively and maliciously to the prejudice of the plaintiff of justice), *per* Esher MR, at p 470 'No one can doubt that if any judge exercises his jurisdiction from malicious motives he has been guilty of a gross dereliction of duty.' See also *Ex p Ramshay* (1852) 1 QB 173 (118 ER 65) and *Sirros v Morre and Others* [1975] 1 QB 118 at 132. See also *Garnett v Ferrand* (1827) 6 B & C 611 (108 ER 576), *per* Lord Tenterden at p 626 'Corruption is quite another matter; so also are neglect of duty and misconduct in it. For these, I trust, there is and always will be some due course of punishment by public prosecution.'

Wales.⁵⁴

(d) *Early Times – Minor Offices*

As well as major public and judicial officers, the Crown also employed a host of more minor officials, including sheriffs, JP's, constables, gaolers, customs officials *etc.*⁵⁵ As noted in (b), early legislation covered brocage and bribery, embezzlement and - by 1551 - the buying and selling of Crown offices (save where excepted). As to other misconduct, this was punishable at common law. Thus, for example, sheriffs and goalers could be punished by a fine and imprisonment for letting prisoners escape.⁵⁶ And a sheriff could be prosecuted for failing to obey a writ.⁵⁷ Pollock and Maitland noted that:

The justices in eyre of the thirteenth century carry with them a list of interrogatories, known as the Articles of the Eyre (*Capitula Itineris*), which are to be addressed to the local juries... A third and a large group of [these] articles relates to the official misdoings of royal officers, sheriffs, coroners and bailiffs. Sometimes the justices will at once declare that the offender is in mercy or must be kept in custody. More often they seem to have been content with having got a charge which will be used against him in an administrative, rather than in a strictly judicial, way. When, for example, he renders his accounts at Westminster he will find that all that he has extorted from the people he owes to the king.⁵⁸

The Articles of Eyre in the Statutes of the Realm (passed pre-1377), among other things, required the *justices of eyre* to enquire of many forms of misconduct by sheriffs, their bailiffs and coroners.⁵⁹ For example, they had to enquire:

- 'Of sheriffs and other bailiffs of our lord the king who have caused hundredors to meet to make inquisition for homicide, or other pleas of the Crown, and where they have taken money for defaults';
- 'Of bailiffs who have taken gifts [*dona*] for removing recognitors from juries and assizes';
- 'Of bailiffs of our lord the king who are double handed, and take from both parties';
- 'Of the coroners who have taken money, or other reward for doing their office';
- 'Of sheriffs who have taken money from persons excommunicated from having respect [application] to them that they should not be taken.'⁶⁰

In conclusion, in early times, public and judicial misconduct in the highest offices tended to be punished in Parliament by way of high crimes and misdemeanours. However, this ended by 1806. Legislation also punished brocage (bribery not involving a judicial office), bribery (bribery involving a judicial office), embezzlement and the buying, and selling, of a Crown office (unless excepted). Finally, at common law, Crown officers could be punished for misconduct in their office.

3. Pulton (1609) & Coke (1618)

The fact that public misconduct - including judicial misconduct - was not categorised as a separate legal crime with any degree of precision may be seen from 17th century texts on criminal law which refer to public officers in the

⁵⁴ See McBain, n 32, pp 865-6. If a judge refused to step down he (or she) could be removed by means of an address to Parliament, which does not require evidence of 'high crimes and misdemeanours'.

⁵⁵ See, for example, those listed in the text to n 41. See also Coke, n 2, vol 2, p 209 (as to the words 'king's officer' in the Statute of Westminster 1275, c 26 - for which see ns 36 & 70) 'Under these words... are understood escheators, coroners, bailiffs, goalers, the king's clerk of the market, aulnager, and other inferior ministers and officers of the king, whose offices do any way concern the administration or execution of justice, or the common good of the subject, or for the king's service; that none of the king's officers or ministers do take any reward for any matter touching their offices, but of the king. And some do hold that the king's heralds are within this Act, for that they are the king's ministers, and were long before this statute'. (spelling modernized).

⁵⁶ See generally, GS McBain, *Modernising the Law of Escape, Prison Breach and Rescue* (see especially n 77) and *Calendar of Select Pleas and Memoranda of the City of London 1381-1412* (Cambridge UP, 1932), pp 92-8, 113-6, 179, 223-4, 233 (actions against sheriffs and jailers re escape of prisoners). See also AH Thomas (ed), *Calendar of the Select Pleas and Memoranda of the City of London 1323-1364* (Cambridge UP, 1926), p 198-9, 266 (sheriffs sued for the escape of debtor-prisoners) and AH Thomas, *Calendar of Select Pleas and Memoranda of the City of London 1381-1412* (Cambridge UP, 1932), pp 92-8, 113-6, 223-4, 233.

⁵⁷ AH Thomas (ed), *Calendar of Early Mayor's Courts Rolls 1298-1307* (Cambridge UP, 1924), p 181 (1305) 'Symon de Paris, late Sheriff of London, was attached to answer Andrew de Hengham, who complained that Symon had neglected to obey a writ concerning trespasses done against the plaintiff. The defendant said that he obeyed the writ, but that the plaintiff had lost his case because he did not prosecute his plaint; he demanded a jury of people living round Guildhall and of persons frequenting the court. A jury was summoned for Saturday.'

⁵⁸ F Pollock & FW Maitland, *The History of English Law before the time of Edward I* (Cambridge UP, rep 1984), vol 2, p 521.

⁵⁹ Statutes of the Realm (1235-1713) (also on CD from Tanner Ritchie), vol 1, p 233.

⁶⁰ For articles of the London Eyre of 1244 and for the Eyre of 1321, see HT Riley, *Munimenta Gildhallaw Londoniensis* (London, Longman, 1860), vol 2, pt 1, pp 79, 347. See also FM Nichols (ed), *Britton* (c. 1290)(John Byrne & Co., 1901), ch 22 (Of Officers).

context of bribery, extortion and exaction. Thus,

- Pulton, *De Pace Regis et Regni* (1609), considered the law on extortion⁶¹ and on exaction⁶² - as well as the punishment for the same. He did not consider misconduct as such;⁶³
- Coke - in the first part of his *Institutes of the Laws of England* (1618) - referred to the sale of offices at common law and the Sale of Offices Act 1551;⁶⁴
- Coke - in the third part of his work (published in 1628) - considered the law of bribery⁶⁵ (which was interpreted in his time to apply to those who held judicial office)⁶⁶ extortion⁶⁷ and exaction.⁶⁸ In particular, Coke considered bribery by important people in the context of high crimes and misdemeanours.⁶⁹

As to the meaning of extortion, Coke stated:

Extortion in his proper sense, is a great misprision, by wresting or unlawfully taking by any officer, by colour of his office, any money or valuable thing of or from any man, either that is not due, or more than is due, or before it be due; [*quod non est debitum, vel quod est ultra debitum, vel ante tempus quod est debitum.*] ⁷⁰ ...But largely extortion is taken for any oppression by extort power, or by colour or pretence of right...*Extortio* is derived from the verb *extorqueo* [literally, to twist out or to wrench out]; and it is called *crimen expilationis*, [the crime of pillaging or plundering] or *concuSSIONIS* [an extortion of money

⁶¹ F Pulton, *De Pace Regis et Regni* (London, Company of Stationers, 1609, rep. Law Book Exchange), p 82 'Extortion is a wrong done by an officer...or by any other by colour of an office, in taking of an excessive reward or fee, and more than the law doth allow him, for execution of his said office: which offence in some degrees is worse than the privy picking of a man's purse in secret.' For an example see AH Thomas, *Calendar of Plea and Memoranda Rolls 1364-1381* (1929), p 180 (1374, certain 'scawagers [ie. those who collected scavage and who were also charged with the duty of keeping the streets clean, see OED, n 38, 'scavager'] for the Ward of Billingsgate, indicted in the same ward on a charge of extorting heavy fines, under colour of their office, from men of the ward...'). See also pp 186-7 (1375, man had pretended to be a purveyor of coal and oats to the Prince [ie. Edward, the Black Prince, son of Edward III (1327-77)] and had arrested and detained goods until the owners bought him off by fines. Had practiced this extortion before). For charges of extortion brought against under-searchers of the Port of London, the porter of Poultry Compter (prison), officials of the Tower of London and a farmer of customs (customs collector) see AH Thomas, *Calendar of Plea and Memoranda Rolls 1413-1437* (Cambridge UP, 1943), pp 32, 137, 141, 156, 155.

⁶² *Ibid*, 'Exaction is a wrong done by an officer, or by one pretending to have authority, in demanding and taking reward or fee for that matter, cause, or thing, which the law doth allow no fee at all.'

⁶³ *Ibid*, 'And as our common and statute laws have declared, which offences or acts they do condemn and adjudge as extortions and exactions, so they have prescribed in most cases several penalties to be inflicted upon the several transgressors therein, leaving the residue to be punished at the king's pleasure, or by the discretion of such of his judges, justices, or others by his commission authorized, before whom the offenders shall be thereof convicted.'

⁶⁴ Coke, n 2, vol 1, 233-4a. See also *Colshil's Case* (1596) 3 Co Rep 83 (76 ER 821).

⁶⁵ *Ibid*, vol 3, p 144 'Bribery is a great misprision, when any man in judicial place takes any fee or pension, robe, or livery, gift, reward or brocade of any person, that hath to do before him any way, for doing his office, or by colour of his office, but that of the king only, unless it be of meat and drink, and that of small value, upon divers, and grievous punishments.' (spelling modernized). Also 'This word [bribery] commeth of the French word *briber*, which signifieth to devour, or eat greedily, applied to the devouring of a corrupt judge...' (spelling modernized). Blackstone, n 5, vol 4, p 139 'Bribery...is when a judge, or other person concerned in the administration of justice, takes any undue reward to influence his behaviour in his office.'

⁶⁶ *Ibid*, p 147 'For the difference between bribery and extortion is, that bribery is only committed by him, that hath a judicial place, and extortion may be committed both by him hath a judicial place, or by him that hath a ministerial office. And this offence of bribery may be committed by any that hath any judicial place either ecclesiastical or temporal.' (spelling modernized).

⁶⁷ *Ibid*, p 148. Coke referred to cases where: (a) tax collectors (collectors of the fifteenths) were committed to prison since they 'took of every town eighteen pence for an acquittance'; (b) a coroner was committed to prison 'because he would not take the view of the dead body, before he had received for himself six shillings eight pence, and for his clerk two shillings, and was fined at forty shillings'. Coke also asserted that it was extortion if: (i) any of the king's council or his ministers exacted a bond of the king's subjects to come to the king with force of arms when they should be sent for; (ii) a bishop, or other ecclesiastical judge, or minister, exacted a bond or oath of any person in any cause ecclesiastical, not warrantable by law.

⁶⁸ *Ibid*, pp 148-50. Coke said nothing on exaction, effectively conflating it with extortion.

⁶⁹ *Ibid*. See also McBain, n 32.

⁷⁰ Coke, n 2, vol 1, s 701. It continued 'for this is to be known, that it is provided by the statute of W 1 [ie. the Statute of Westminster 1 c 26 and c 10], that no sheriff, nor any other minister of the king, shall take any reward for doing of his office, but only that which the king allows him, on pain that he shall surrender double to the party, and be punished at the king's pleasure. And this was the ancient common law, and was punishable by fine and imprisonment; but the statute added the aforesaid penalty. But some later statutes having permitted them to take in some cases; by colour thereof the king's officers and ministers, as sheriffs, coroners, escheators, feodaries, golaers and the like, do offend in most cases; and seeing this Act yet stands in force, they cannot take any thing but where and so far as later statutes have allowed unto them.' For c 26, see n 36. Further c 10 provided, *inter alia*, that 'no coroner demand nor take any thing of any man to do his office, upon pain of great forfeiture to the king'. See generally Coke, n 2, vol 2, pp 173 & 209.

by means of threats]...⁷¹

Coke also referred to the Act of 1388 relating to Corrupt Appointments to Offices (see **2(b)**), stating:

Therefore by the law of England it is further provided, that no officer or minister of the king shall be ordained or made for any gift or brocage, favour or affection, nor that any which pursueth by him or any other, privily or openly, to be in any manner of office, shall be put in the same office or any other, but that all such officers shall be made of the best and most lawful men and sufficient: a law worthy to be written in letters of gold, but more worthy to be put in due execution. For certainly never shall justice be duly administered but when the officers and ministers of justice be of such quality, and come to their places in such manner as by this law is required. (*spelling modernised*)⁷²

In conclusion, both Pulton and Coke tended to view misconduct in a public office in terms of specific offences such as brocage, bribery, the buying and selling of offices, extortion and exaction.

4. Cases: 1599 - 1704

As to cases relating to misconduct in a public office usually cited in the period 1599-1704, the following may be noted:

- *Crowther* (1599).⁷³ A constable was indicted for failing to make hue and cry when informed of a burglary committed at night by persons unknown. The court held the indictment to the good and stated: '*it is the constable's duty, upon notice being given unto him, presently to pursue.*'⁷⁴
- *Broughton* (1671).⁷⁵ Lady Broughton, keeper of the gatehouse prison in Westminster, was found guilty of the extortion of fees and the hard usage of prisoners in a most barbaric manner. Fined 100 marks, she was removed from the office, and custody of the prison was given (temporarily) to the sheriff of Middlesex;
- *Buck & Hale* (1703).⁷⁶ The defendants were found guilty on an indictment for misdemeanour. Being collectors and assessors of the public taxes in a parish, they assessed and rated some at too high a rate. Also, they omitted to tax some in their books and yet levied the taxes on them and put the money in their own pocket. It was held, *per curiam* '*It is an offence of dangerous consequence, and very pernicious to the Government, of very ill example, and too much practiced of late; for what greater discouragement can there be to the people to pay their taxes freely, than to have injustice and inequality of rates for the private advantage of some? And therefore this offence deserves an exemplary punishment*'. The defendants were adjudged to the pillory;⁷⁷
- *Wyat* (1703).⁷⁸ One N was convicted of dear stealing before a JP.⁷⁹ The defendant, a constable, received a warrant of distress from the JP which directed him to levy the penalty (fine) against N. The constable failed to return the warrant to the JP or anyone else. He was fined £200. Powell J stated that '*This is an*

⁷¹ Ibid. Coke also stated 'Of this crime it is said, that it is no other than robbery; and another says, that it is more odious than robbery; for robbery is apparent, and has the face of crime; but extortion puts on the visage of virtue, for expedition of justice, and the like; and it is ever accompanied with the greivous sin of perjury.' Coke cited the *Mirror of Justices* (c. 1290), c 5, s 1, see Selden Society, vol 7, p 15 *et seq.*

⁷² Coke, n 2, vol 1, 234.

⁷³ Cro Eliz 654 (78 ER 893). This case was referred to by Neill J in *Dytham* (1979) (see **11**), at p 589, where he stated that it was a: 'case which involved a breach of one of these statutes of hue and cry and that the duty imposed on the constable was a duty under statute.' See also Russell, n 6, vol 1, p 316.

⁷⁴ Nicholls, n 21, p 154 cites *Mackelley's Case* (1611) 9 Co Rep 65b (77 ER 828) for the proposition that a constable who failed to act in accordance with his duty as an officer of the Crown was criminally liable. However, the case does not appear to expressly hold this. See also *Sayre's Case* (1617) Cro Jac 426 (79 ER 364). An indictment will lie against an under-sheriff for undervaluing goods taken under a *feri facias*. The court held that 'it was oppression, and inquirable at the Assizes by indictment or punishable in the Star Chamber [abolished in 1641]; and the court commanded that the under-sheriff, being an attorney, should be brought before them.'

⁷⁵ See 2 Raym (83 ER 216). Also, 2 Lev 72 (83 ER 455). Broughton was keeper of the prison by virtue of a lease from the Dean and Chapter of Westminster. For the indictment see J Tremaine, *Placita Coronae* (J Rice, E & R Nutt & R Gosling, 1723), p 111. See also *R v Sir Purbeck Temple* (1664) 1 Keb 727 (83 ER 1209). A JP, he was convicted of extortion and compounding for giving new licences to unlawful alehouses and taking away good ones. Also, for discharging recognizances for appearances at sessions. He was fined 1000 marks, imprisoned during the king's pleasure, required to be of good behavior for a year and required, at the subsequent assize, to acknowledge his offence publicly.

⁷⁶ 6 Mod 306 (87 ER 1046).

⁷⁷ At p 307.

⁷⁸ The name is also spelt *Wiat* and *Wyatt*. The case is reported in 11 Mod Rep 53 (88 ER 880), 1 Salk 380 (91 ER 380) and Fortescue 127 (92 ER 789).

⁷⁹ The Act was 3 & 4 W & M c 10 (1691, rep).

*offence at common law, neglecting to execute the office of a constable, and an indictment lies at common law...*⁸⁰ In *Dytham* (1979)(see 11), Neill J referred to: ‘*the clear authority of the decision in Wyat...that a neglect by a police constable to carry out duties imposed on him at common law is an offence at common law. I am satisfied ...that there did exist, in the eighteenth century at any rate, an offence of failure to comply with or to carry out the duties of a constable and that was an indictable offence.*’⁸¹

- *Anon* (1704).⁸² It was stated *per curiam* ‘*If a man be made an officer by Act of Parliament, and misbehave himself in his office, he is indictable for it at common law, and any publick officer is indictable for misdemeanor in his office.*’

In conclusion, these cases confirm that constables, goalers and tax collectors who failed to perform their office could be held liable for misconduct in a public office.

5. Hawkins – Pleas of the Crown: 1716-21 & 1824

Hawkins - in the first edition of his *Treatise of the Pleas of the Crown* (1716-21) - considered that offences by officers were reducible to the following heads: (a) neglect or breach of duty; (b) bribery;⁸³ and (c) extortion.⁸⁴ As to the first, he stated:

I take it to be agreed, that in the grant of every office whatsoever, there is this condition implied by common reason, that the grantee ought to execute it diligently and faithfully; for since every office is instituted, not for the sake of the officer, but for the good of some other, nothing can be more just, than that he, who either neglects or refuses to answer the end for which his office was ordained, should give way to others, who are both willing and able to take care of it.

And therefore it is certain, that an officer is liable to forfeiture of his office, not only for doing a thing directly contrary to the design of it, but also for neglecting to attend his duty at all usual, proper, and convenient times and places, whereby any damage shall accrue to those by, or for, whom he was made an officer...

However, it cannot but be very reasonable, that he who so far neglects a public office, as plainly to appear to take no manner of care of it, should rather be immediately displaced, than the public be in danger of suffering that damage which cannot but be expected some time or other from his negligence...

But it would be endless to enumerate all the particular instances wherein an officer may be discharged or fined; and it also seems needless to endeavour it, because they are generally so obvious to common sense as to need no explication; for what can be more plain than that a gaoler deserves to be discharged and fined for voluntarily suffering his prisoners to escape,⁸⁵ or for barbarously misusing them?⁸⁶ What can be more evident than that a sheriff is justly punishable for persuading a jury to underprice goods in the execution of *feri facias etc*? And therefore I shall leave the particular cases of this nature to every man’s own judgment, which, from the consideration of the general rules above-mentioned, and the various circumstances of every case, will easily discern how far each offence of this kind deserves to be punished.⁸⁷ (*wording divided for ease of reference*).

⁸⁰ Fortescue 127 (92 ER 789) per Powell J. 1 Salk 380 (91 ER 331) reports it as being said ‘where an officer neglects a duty incumbent on him either by common law or statute, he is for his fault indictable.’

⁸¹ 69 Cr App R 387 at p 390. See also (on appeal), p 394.

⁸² 6 Mod 96, case 136 (87 ER 853).

⁸³ Hawkins stated ‘And first, bribery in a strict sense is taken for a great misprision of one in a judicial place, taking any valuable thing whatsoever, except meat and drink of small value, of any one who has to do before him any way, for doing his office, or by colour of his office, but of the king only’ He cited Coke [see n 65]. Also, ‘But bribery in a large sense is sometimes taken for the receiving or offering of any undue reward, by or to any person whatsoever whose ordinary profession or business relates to the administration of public justice, in order to incline him to do a thing against the known rules of honesty and integrity, for the law abhors any of the least tendency to corruption in those who are any way concerned in its administration, and will not endure their taking a reward for the doing a thing which deserves the severest of punishments.’ Also, ‘Also Bribery sometimes signifies the taking or giving of a reward for offices of a public nature...’ Hawkins then cited the Act of 1388 (see 2(b)) and the Sale of Offices Act 1551 (see 2(b)) which he discussed.

⁸⁴ Hawkins stated ‘Extortion in a large sense signifies any oppression under colour of right, but that in a strict sense it signifies the taking of money by an officer, by colour of his office, either where none at all is due, or not so much which is due, or where it is not yet due.’ Hawkins then discussed the Statute of Westminster I (1275) c 26 (see ns 36 & 70).

⁸⁵ He referred to *The Earl of Shewsbury’s Case* (1610) 9 Co 46a. (77 ER 799) at p 50a ‘Abusing or misusing, as if the marshal, or other goaler, suffer voluntary escapes, it is a forfeiture of their offices.’

⁸⁶ He referred to *Broughton*, see 4.

⁸⁷ Hawkins, n 3, pp 167-8.

It may be noted that this wording scarcely had changed by the final edition of Hawkins' work in 1824 - save that the latter also stated (quoting Blackstone, see 6) that:

Under this head may be ranked another offence of deep malignity, namely, the oppression and tyrannical partiality of judges, justices, and other magistrates in the administration of, and under colour of their offices. However, when this offence is prosecuted, either by impeachment in parliament, or by information in the court of King's Bench, (according to the rank of the offenders,) it is punished with forfeiture of their office, either consequential or immediate, fines, imprisonment, or other discretionary censure, regulated by the nature and aggravations of the offence committed.⁸⁸

In conclusion, Hawkins considered that offences by officers were reducible to three heads, those of: (a) neglect (or breach) of duty, (b) bribery; and (c) extortion.

6. Blackstone (1769)

Blackstone, stated, in the fourth volume of his *Commentaries on the Laws of England* in 1769, as to misprisions:⁸⁹

The first and principal is the mal-administration of such high officers, as are in public trust and employment. This is usually punished by the method of parliamentary impeachment: wherein such penalties, short of death, are inflicted, as to the wisdom of the house of peers shall seem proper; consisting usually of banishment, imprisonment, fines, or perpetual disability.⁹⁰

Blackstone went on to consider various contempts of the sovereign, but not misconduct in a public or judicial office.⁹¹ However, when discussing offences against public justice, Blackstone stated:⁹²

There is yet another offence against public justice, which is a crime of deep malignity; and so much deeper, as there are many opportunities of putting it in practice, and the power and wealth of the offenders may often deter the injured from a legal prosecution. This is the oppression and tyrannical partiality of judges, justices, and other magistrates, in the administration and under the colour of their office. However, when prosecuted, either by impeachment in parliament, or by information in the court of king's bench, (according to the rank of the offenders) it is sure to be severely punished with the forfeiture of their offices, fines, imprisonment, or other discretionary censures, regulated by the nature and aggravations of the offence committed...⁹³

Lastly, extortion is an abuse of public justice, which consists in any officer's unlawfully taking, by colour of his office, from any man, any money or thing of value, that is not due to him, or more than is due, or before it is due. The punishment is fine and imprisonment, and sometimes a forfeiture of the office.⁹⁴ (*wording divided for ease of reference*).

*In conclusion, Blackstone said little about misconduct in a public office.*⁹⁵

⁸⁸ At p 413. Hawkins referred to impeachment. However, this process was becoming much more rare by 1824.

⁸⁹ Blackstone, n 5, vol 4, p 121 'Misprisions, which are merely positive, are generally denominated contempts or high misdemeanors...'

⁹⁰ Ibid, p 121. As to the increasing rarity of impeachment, see n 88.

⁹¹ Ibid, p 122 *et seq.*

⁹² Blackstone also mentioned the negligence of public officers, at p 140 'Another offence of the same species is the negligence of public officers, entrusted with the administration of public justice, as sheriffs, coroners, constables, and the like: which makes the offender liable to be fined and in very notorious cases will amount to a forfeiture of his office, if it be a beneficial one.' He cited Hawkins.

⁹³ Ibid, pp 140-1. For Hawkins' repetition of this wording see n 88.

⁹⁴ Ibid, p 141. Blackstone cited Hawkins. See also Blackstone, n 5, vol 4, p 280 (punishment of contempts by way of attachment) 'The contempts, that are thus punished, are either direct, which openly insult or resist the powers of the courts, or the persons of the judges who preside there; or else are consequential, which (without such gross insolence or direct opposition) plainly tend to create an universal disregard of their authority. The principal instances, of either sort, that have been usually punished by attachment, are chiefly of the following kinds. 1. Those committed by inferior judges and magistrates: by acting unjustly, oppressively, or irregularly, in administering those portions of justice which are entrusted to their distribution; or by disobeying the king's writs issuing out of the superior courts, by proceeding in a cause after it is put a stop to or removed by writ of prohibition, certiorari, error, *supercedeas*, and the like. For, as the superior courts (and especially the courts of the king's bench) have a general superintendence over all inferior jurisdictions, any corrupt or iniquitous practices of subordinate judges are contempts of that super-intending authority, whose duty it is to keep them within the bounds of justice. 2. Those committed by sheriffs, bailiffs, goalers, and other officers of the court: by abusing the process of the law, or deceiving the parties, by any acts of oppression, extortion, collusive behaviour, or culpable neglect of duty...'

⁹⁵ It may be noted that Russell, n 6 (1st ed, 1819) also had little to say about the offence although he did consider the sale of offices (ch 16) and bribery (ch 17), p 239 noting that 'bribery sometimes signifies the taking or giving of a reward for offices of a public nature.' It may also be noted that the first edition of Archbold in 1822, see n 7, contained indictments against a: (a) constable for not conveying an offender to prison, p 324; (b) JP, for committing in a case where he had no jurisdiction, p 325; (c) high constable for disobeying an order of sessions, p 327.

7. Cases: 1733-1850

As to cases relating to misconduct in a public office usually cited in the period 1733-1850, the following may be noted:

- *Mather* (1733).⁹⁶ JP's ordered an obviously illegal whipping. 'The court said, that they thought they had an undoubted jurisdiction to punish all inferior judges, when they are guilty of any oppression in the execution of their authority;'⁹⁷
- *Davis* (1754).⁹⁸ An indictment will lie against an overseer for not receiving a pauper, removed there by an order of two JP's;
- *Young v Pitts* (1758).⁹⁹ An information against two JP's for unreasonably refusing to grant a licence to keep a tavern. The case noted: *Lord Mansfield and Mr Just. Denison were of opinion, that notwithstanding this was a matter left in great measure to the discretion of the justices, yet if it appeared to the court, from sufficient circumstances laid before them, that their conduct was influenced by partial, oppressive, corrupt, or arbitrary views, instead of exercising a fair and candid discretion, the court might call upon them to show the reason whereby they guided their discretion;*¹⁰⁰
- *Palmer & Baine* (1761).¹⁰¹ In a case where JP's were said to have been complained of without reason, the court stated 'even where a justice of peace acts illegally...yet if he has acted honestly and candidly, without oppression, malice, revenge, or any bad view or ill intention whatsoever, the court will never punish him in this extraordinary course of an information; but leave the party complaining, to the ordinary legal remedy or method of prosecution, by action or by indictment.';
- *Williams & Davis* (1762).¹⁰² An information was granted by the court against defendant JP's for refusing to grant licences to publicans who voted against their recommendation of candidates as MP's for the borough. The casenote states: *And Lord Mansfield [CJ] declared, that the court granted this information against the justices, not for the mere refusing to grant the licences (which they had a discretion to grant or refuse, as they should see to be right and proper) but for the corrupt motive of such refusal; for their oppressive and unjust refusing to grant them because the person applying for them would not give their votes for members of Parliament as the justices would have had them;*'
- *Kennett* (1781).¹⁰³ Kennett was Lord Mayor of London in 1780 when the Gordon riots in London took place. The case held that, if on a riot taking place, a JP neither read the proclamation from the Riot Act 1714, nor restrained nor apprehended the rioters nor gave any order to fire on them, nor made any use of a military force under his command, this was, *prima facie*, evidence of a criminal neglect of duty in him;
- *Bembridge* (1783).¹⁰⁴ The defendant, an accountant in the office of the Receiver and Paymaster General of the Forces, deceitfully (ie. corruptly) concealed from his superior his knowledge that certain sums

⁹⁶ 2 Barn 249 (94 ER 480).

⁹⁷ At p 249. Also, at p 250 'They observed, that this construction that was made upon the words of the Act [of 12 Ann 2 (1712), it applied only to vagrants but they applied it to a woman who clearly was not] was so notoriously groundless, that what the justices did they took to be manifestly an act of oppression; accordingly [they] made the rule absolute.'

⁹⁸ Say 163 (96 ER 839). See also *R v Cox* (1759) 2 Burr 785 (97 ER 562) *Re* an information against a JP to show cause why he had refused to receive an information against a baker for contravening 29 Car 2 c 7 (for the Better Observation of the Lord's Day), *per* Denison J at p 787 'This court will never grant an information against a justice of peace for a mere error in judgment.'

⁹⁹ 1 Burr 556 (97 ER 447).

¹⁰⁰ At p 556. *R v Hann and Price* (1765) 1 Burr 1716, 1786 (in 1765, two JP's were committed to prison for a month and fined £50 each, for refusing an alehouse licence to an innkeeper, because he had voted for a candidate for Parliament whom they were opposing).

¹⁰¹ 2 Burr 1162 (97 ER 767).

¹⁰² 3 Burr 1317 (97 ER 851). Mansfield dealt with a number of cases of misconduct in public office, see J Oldham, *The Mansfield Manuscripts* (Univ of North Carolina Press), p 927 'Also included in this chapter [ch 16] are a number of suits raising questions of the performance by public officials of their duties. The latter ordinarily presented the public official as a defendant, with allegations of improper arrests and confinement. These covered a wide range of officials, including justices of the peace, constables, parish officers, headboroughs, watch house keepers, poundkeepers, Commissioners of Excise, customs officers, and local court officers. In addition, suits were brought against sheriffs and prison keepers for allowing prisoners to escape. Mansfield also dealt with the trial of Kennett. Ibid, p 928. See also n 103.

¹⁰³ 5 C & P 282, note to *Pinney* (172 ER 976).

¹⁰⁴ 3 Doug 327 (99 ER 679) (a public officer is indictable for misbehaviour in his office). See also (1783) 22 ST 1. See also Nicholls, n 21, p 154. JF Stephen, *A Digest of the Criminal Law* (Macmillan & Co, 3rd ed, 1883), p 85 summarised this case as follows 'A, an accountant in the office of the Paymaster-General, fraudulently omits to make certain entries in his accounts, whereby he enables the cashier to retain large sums of money in his own possession, and to appropriate the interest on such sums to himself after the time when they ought to have been paid to the Crown. A commits a misdemeanor.' Stephen also cited *R v Valentine Jones* (1809) 31 ST 251 which he summarized as 'A, a

which should have been inserted into a final account were omitted. Mansfield CJ stated: ‘*The duty of the defendant is obvious; he was a trustee for the public and the paymaster, for making every charge and every allowance he knew of; ...If the defendant knew of the omission...and if he concealed it, his motive must have been corrupt. That he did know was fully proved, and he was guilty therefore, not of an omission or neglect, but of a gross deceit. The object could only have been to defraud the public of the whole, or part of the interest ...Here there are two principles applicable: first, that a man accepting an office of trust concerning the public, especially if attended with profit; is answerable criminally to the king for misbehaviour in his office; this is true, by whomever and whatever way the officer is appointed...Secondly, where there is a breach of trust, fraud, or imposition, in a matter concerning the public, though as between individuals it would only be actionable, yet as between the king and the subject it is indictable. That such should be the rule is essential to the existence of the country. An indictment has been sustained for concealing public money, 27 Ass pl 17, though this, as against a private person, would only have been actionable.*¹⁰⁵ *The rule is well laid down by Mr Serj. Hawkins*¹⁰⁶ *that all kinds of crimes of a public nature, all misdemeanours whatsoever of a public evil example against the common law may be indicted; but no injuries of a private nature, unless they some way concern the king. So it is laid down in an Anonymous case,*¹⁰⁷ *that any public officer is indictable for misbehaviour in his office. No doubt the offices concerning the revenue are of great importance to the public*’;¹⁰⁸

- *Holland & Foster* (1787).¹⁰⁹ An information will be granted against a JP as well for granting, as for refusing, an ale license improperly;¹¹⁰
- *Brooke* (1788).¹¹¹ A JP capriciously discharged a vagrant committed by another JP. Gross J stated ‘*It must be shown in these cases that the magistrates...have acted illegally and corruptly.*’¹¹² Ashurst J stated ‘*But the principal ground is, that they have taken upon themselves to supercede a warrant of a justice of peace having competent jurisdiction, before the matter had been inquired into at all, and without having any evidence before them. This was taking upon them to prejudge that the justice granting the warrant must have done wrong, and that the party on appeal would be acquitted: this was certainly a palpable and gross abuse of their office*’;¹¹³

commissary-general of stores in the West Indies, makes contracts with B to supply stores, on the condition that B should divide the profits with A. A commits a misdemeanor.’ See also, for this case, (1806) East 31 (103 ER 256).

¹⁰⁵ 27 Ass pl 17. This is a reference to 27 Edw (1353) *Liber Assissarum* (Book of Assizes), pl 17 fo 135a, Seipp no 1353.142ass (Presentment for withholding money levied for the array of archers). Seipp translates the Anglo-Norman as: ‘It was presented that G of L and another had levied 100 marks from the county for the array of certain archers, which money (*den’s*) never came to the profit of the king.’ See also Brooke, n 13, Fees del Court, 11. Translations of many of the 22,000 cases in the Yearbooks have been published online by professor David Seipp in the form of an Index, www.bu.edu/law/faculty/scholarship/yearbooks). The Book of Assizes (*Liber Assissarum*)(Criminal cases in time of Edward III, 1327-77) has been reprinted by the Law Book Exchange, see www.lawbookexchange.com/. The *Liber* was first published in 1516 (J Rastell). The case was cited by Coke CJ in *R v Haukes* (1675) 1 RR (81 ER 283) where he stated that a person who collected murage (ie. a toll for repairing city walls) but who did not account for it properly could be indicted the same as the collectors in 27 Ass pl 17; they were indicted for conversion of money collected to provide archers (‘*si il ne ceo imploie accordantment il poet ester indicte, come est en 27 Ass car la fuit deniers collectes a furnish archers collector indicte por conversion de eo al son use demesne.*’).

¹⁰⁶ Mansfield CJ cited Hawkins, bk 2, c 25, s 4 (see eg 3rd ed, 1739 ‘What matters are indictable: There can be no doubt, but that all capital crimes whtsoever, and also all kinds of inferior crimes of a public nature, as misprisions, and all other contempts, all disturbances of the peace, all oppressions, and all other misdemeanours whatsoever of a publicly evil example against the common law, may be indicted; but no injuries of a private nature, unless they some way concern the king.’ See also 5.

¹⁰⁷ See n 82. In the course of the argument in *Bembridge* reference was made to *R v Peter Leheup* (1755). The defendant and three others had been appointed receivers and managers of a lottery called the Museum Lottery, under stat 26 Geo 2 c 22 [1753, rep] for the purpose of raising a sum of money for the establishment of the British Museum. The Act directed that the subscriptions of the Lottery should be received publicly, from such time to such time, after notice in the Gazette, and that no person should subscribe for more than 20 tickets. The information was for receiving subscriptions privately before the time appointed, and by fictitious names giving a greater number of tickets to one person, and other evasions of the Act. There were 10 counts all concluding in open violation of the Act, and contrary to the form and effect thereof. They all charged the offence to be contrary to the said office of receiver. The defendant was found guilty on several counts.

¹⁰⁸ At pp 331-2. Willes and Buller JJ concurred. See also *Hudson* (1956) 40 Cr App R 55 (where *Bembridge* was cited to support the offence of cheating the revenue). P Finn, *Official Misconduct* (1978) 2 Crim LJ 307, pp 308-10 also cites *Bembridge* for the offences of cheating as well as misconduct in a public office.

¹⁰⁹ 1 TR 692 (99 ER 1324).

¹¹⁰ The court referred to *R v Filewood and Another* (1786), a similar case.

¹¹¹ 2 TR 190 (100 ER 103).

¹¹² At p 196.

¹¹³ At p 195. He also stated, p 195 ‘if they [the JP’s] acted even from passion or from oppression that is equally corrupt as if they acted from pecuniary considerations.’

- *Sainsbury* (1791).¹¹⁴ Where two sets of JP's had a concurrent jurisdiction and one appointed a meeting to grant ale licences, that jurisdiction attached so as to exclude the appointment of the others of a subsequent meeting, but they might all meet together on the first day. However, if, after such an appointment, the other set of JP's met on a subsequent day and granted other licences, then their proceeding was illegal and the subject of an indictment;
- *Hollond* (1794).¹¹⁵ In an indictment against a public officer (East India officers performing military duties) for breach of duty, it is not necessary to state his terms of appointment. A breach of duty can be for acts of commission as well as of omission. It is sufficient to charge in the indictment a person with a wilful breach of duty without adding that it was corrupt;
- *Booth* (1795).¹¹⁶ The refusal by an overseer to provide adequate food, drink and lodging to a person for whom he was responsible, such that she died, was held to be misconduct in a public office;
- *Harrison* (1800).¹¹⁷ A coroner was convicted of extortion for taking money for not holding an inquest on a dead body, which he had no authority for doing;
- *Borron* (1820).¹¹⁸ Where a criminal information was applied for against a JP, the question for the court was not whether the act done was found, on investigation, to be strictly right or not, but whether it proceeded from an unjust, oppressive, or corrupt motive (among which fear and favour were generally included), or from mistake or error only;
- *Henly v The Mayor and Burgesses of Lyme* (1828).¹¹⁹ A civil action was brought against the mayor and burgesses of Lyme Regis for failing - in breach of their public duty - to repair the sea walls (the cob).¹²⁰ Best CJ stated: *if a public officer abuses his office, either by an act of omission or commission, and the consequence of that, is an injury to an individual, an action may be maintained against such public officer. The instances of this are so numerous, that it would be a waste of time to refer to them. Then, what constitutes a public officer? In my opinion, everyone who is appointed to discharge a public duty, and receives a compensation in whatever shape, whether from the Crown or otherwise, is constituted a public officer.*¹²¹ Citing as examples of a public officers: bishops, clergymen, lords of the manor and Bank of England officials, Best CJ also stated: *'if a man takes a reward - whatever may be the nature of that reward, whether it be in money from the Crown, whether it be in land from the Crown, whether it be in lands or money from any individual - for the discharge of a public duty, that instant he becomes a public officer; and if by an act of negligence or any act of abuse in his office, any individual sustains an injury, that individual is entitled to redress in a civil action.'*¹²²
- *Pinney* (1832).¹²³ The case held that JP's, at the time of a riot, were required to keep the peace and restrain rioters and pursue and take them. To enable them to do this, they might call on all of the king's

¹¹⁴ 4 TR 451 (100 ER 1113).

¹¹⁵ 5 TR 607 (101 ER 340). In particular, this case concerned 24 Geo 3 sess 2 c 25 (1784), s 49 which provided that 'Every willful breach of the trust and duty of any office or employment under the said United Company by any of the officers or servants of the said United Company in the East Indies shall be deemed to and taken to be a misdemeanour at law, and shall be proceeded against and punished as such by virtue of this Act.' See also Turner, n 10, p 361 who cited this case for the proposition 'Where a duty is thrown on a body consisting of several persons, each is individually liable for a breach of duty, as well for acts of commission as for omission.'

¹¹⁶ Russ & Ry CC 47n (168 ER 676-7). See also *R v Martin* (1809) 2 Camp 268 (170 ER 1151). An overseer was liable to indictment for fraudulently omitting to give credit for a sum in his accounts with the parish. Ellenborough CJ, at p 269 'having the money as overseer for the benefit of the parish, he was bound to bring it to account, and that he is guilty of an indictable offence by this attempt to put it into his own pocket.' See also *R v Jackson & Another* (1787) (whether JP's had power to commit a pauper for refusing to answer questions relating to his settlement), per Ashurst J at p 653 'When magistrates act uprightly and honestly, even though they mistake the law, no information ought to be granted against them.'

¹¹⁷ Cited by EH East, *A Treatise of Pleas of the Crown* (A Strahan, London), vol 1, p 382. Turner, n 10, vol 1, p 371 mistakenly cites this case as *R v Harriford*.

¹¹⁸ 3 B & Ald 432 (106 ER 721). See also *R v Hoseason* (1811) 14 East 605 (104 ER 734) Ellenborough CJ, at p 607, 'strongly expressed his disapprobation of the conduct of the defendant for sitting in judgment as a magistrate upon the imputed misconduct of his own labourer, of which he himself was to be considered the complainant.'

¹¹⁹ 5 Bing 91 (130 ER 995).

¹²⁰ The casenote summarised it as follows: 'An individual who has suffered loss in consequence of the decay of sea walls, which a corporation is directed to repair under the terms of a grant from the Crown conveying a borough, and pier and quay with tolls, to the corporation may sue the corporation for damages.'

¹²¹ At p 107. See also this case in the House of Lords (reported as *Lyme Regis Corporation v Henley* (1834) 5 ER 1097).

¹²² At p 108.

¹²³ 5 C & P 254 and 3 B & Ad 946 (172 ER 962).

subjects to assist them and these subjects were bound to do so, on reasonable warning. Mere good feeling and upright intention in a JP was no defence, if he was guilty of a neglect of his duty;

- *Ex p Fentiman* (1834).¹²⁴ The court will not grant a rule *nisi* for a criminal information against JP's on the following grounds only: (a) they held a party to bail for perjury, without any legal information or evidence; (b) without legal evidence, or without opportunity for a person to defend himself, they bound a person over to the sessions, which had no jurisdiction to answer such a charge; (c) not binding over any prosecutor; (d) their conduct was, in some other respects, irregular; (e) that the party applying believed them to have acted in collusion with persons whom he had intended prosecuting, to deter him from such prosecution. More distinct evidence is requisite, that the JP's acted from corrupt motives;
- *Antrobus* (1835).¹²⁵ An information was filed against the sheriff of the county of Chester for not executing a criminal for a felony committed in that county;
- *Neale* (1839).¹²⁶ Any assembly of persons attended with circumstances calculated to excite alarm is an unlawful assembly. And it is not only lawful for JP's to disperse an unlawful assembly, even where no riot has occurred - but if they do not do so - and are guilty of criminal negligence in not putting down any unlawful assembly, they are liable to be prosecuted for a breach of their duty;
- *Badger* (1843).¹²⁷ In the case of rule calling on JP's to shew cause why an information should not be brought against them, the court provided that, in the case of a bailable misdemeanour, bail - if otherwise sufficient - ought not to be refused on account of the personal character or opinions of the party proposed. Denman CJ stated '*If then, such refusal [of bail] took place from improper motives, it might be treated as a criminal offence and made subject to an indictment [or] information.*'¹²⁸
- *Ex p Higgins* (1849).¹²⁹ JP's convicted a person of unlawfully taking fish in a private fishery. On appeal, the court refused to issue a prohibition against their proceeding to enforce it on the ground that the defendant claimed a right a fishing before the JP's, and they refused to require the informant to produce his title deeds. Denman CJ stated '*If they wilfully refuse to receive legal evidence, that is misconduct for which they may be brought here by criminal information, or, if they act maliciously, they are liable to an action on the case. The present question is, whether they had jurisdiction to try the title of the informant; and it is quite clear that the statute gives them that power: the motion for a prohibition presumes that they had it.*';
- *James* (1850).¹³⁰ A Church of England priest who refused to solemnize a marriage between persons who might lawfully be married and who tendered themselves for that purpose, committed a misdemeanour.

In conclusion, the cases show that JP's, an army accountant, military officers with the East India company, overseers, coroners, sheriffs, the mayor and burgesses of a town and a Church of England clergyman could be criminally punished for misconduct in a public office.

8. Gabbett (1843), Harris (1881) & Stephen (1883)

In the 19th century, the legal writers Gabbett, Harris and Stephen all made observations on the offence of misconduct in a public office. These are now considered.

(a) Gabbett (1843)

Joseph Gabbett - in his *Treatise on Criminal Law* in 1843 - had a chapter '*Of Officers – Offences By*'.¹³¹ He stated

Public officers are not only liable to be indicted for receiving any undue reward for acting contrary to the known rules of honesty and integrity, (of which offence we have already treated...) ¹³² but also for wilful

¹²⁴ 2 A & E 127 (111 ER 49).

¹²⁵ 2 A & E 788 (111 ER 304).

¹²⁶ 9 C & P 431 (173 ER 899). See also Turner, n 10, vol 1, p 364 (he characterized this case as a refusal of bail in wilful defiance of the law).

¹²⁷ 4 QB 468 (114 ER 975).

¹²⁸ At p 472. See also Russell, n 6, p 364.

¹²⁹ 10 Jur 838. See also *R v Barton* (1850) 4 Cox CC 353. A rule *nisi* called on the defendant JP to show cause why a criminal information should not be filed against him for misconduct in his office. Campbell CJ at p 354 '*A magistrate is properly answerable to a criminal charge for misconduct in his office, though in such misconduct he may not be actuated by any motive of pecuniary interest, and though he may not mean maliciously to injure any individual.*'

¹³⁰ 2 Den 1 (169 ER 393). See also Turner, n 10, vol 1, pp 13, 365 (who noted the indictment seemed to be open to several objections).

¹³¹ J Gabbett, *Treatise on the Criminal Law* (Dublin, 1843), ch 18, pp 779-90.

¹³² In ch 9 of his work he dealt with bribery.

neglect of duty, and for any fraud, extortion, or oppression in such their offices. In the grant of every office there is the condition implied, that the grantee ought to execute it diligently, as well as faithfully; and, therefore, where an officer neglects a duty incumbent on him, either by common law or statute, he is indictable for such default.¹³³

Gabbett then gave several instances:¹³⁴

- A constable was indictable for not pursuing a felon when required to do so. Also, for not executing a JP's warrant or not making a return thereto;¹³⁵
- A coroner might be indicted for not taking an inquisition on a dead body;¹³⁶
- Overseers of the poor were indictable for neglect of their duty in not providing for the poor;¹³⁷
- JP's were punishable for the wilful abuse of discretion given to them,¹³⁸
- Collectors and assessors of taxes were pilloried for corrupt partiality.¹³⁹

Gabbett also stated:¹⁴⁰

Another species of malversation by public officers is that of fraud or imposition upon the public. Some cases which might be referred to under this head, have already been mentioned in a preceding chapter. But extortion, which is an offence compounded of fraud and oppression, is, properly, to be considered in this place. This term extortion, in a large sense, signifies any oppression under colour of right; but, in a strict sense, it signifies the unlawful taking by any officer, by colour of his office, of money or other valuable thing that is not due to him, or more than is due.¹⁴¹

(b) Harris (1881)

Harris, in this *Principles of the Criminal Law* (1881 edition),¹⁴² stated:

Every malfeasance, or culpable non-feasance of an officer of justice, with relation to his office, is a misdemeanor punishable by fine or imprisonment, or both. Forfeiture of his office, if a profitable one, will also generally ensue. Under the term '*officers of justice*' are included not only the higher officers, as judges, sheriffs, but also those of a lower rank, as constables, overseers, *etc.*

As to malfeasance (i) In cases of oppression and partiality the officers are clearly punishable: and not only when they act from corrupt motives, but even when this element is wanting, if the act is clearly illegal,¹⁴³ for example, for a magistrate to commit in a case in which he has no jurisdiction. The proceedings will generally be by impeachment, or information in the Queen's Bench, according to the rank of the offender;

¹³³ At p 779.

¹³⁴ Gabbett n 131, p 780 also noted: 'The oppression and corrupt partiality of public officers, as judges, justices of the peace, and other magistrates, are not only punishable by the ordinary remedy of indictment, but also by the extraordinary course of an information in the king's bench, or impeachment in parliament; according to the circumstances of the offence, and the rank of the offender.' It may be noted that proceeding by way of information is no longer possible and that proceeding by way of impeachment was obsolete as a form of process by 1843, when Gabbett wrote.

¹³⁵ Gabbett referred to *Crowther* and to *Wyat*, see 4.

¹³⁶ In particular, Gabbett stated 'according to Lord Hale, if a coroner do not arrive in convenient time to view the body, and take his inquisition, he may be fined and imprisoned. See Hale, n 4, vol 2, p 58 'If the coroner have notice and come not in convenient time to view the body and take his inquisition upon the death of him, that thus dies suddenly, and therefore upon a presentment by the grand inquest of a death by misadventure, if the like presentment be not found in the coroner's roll, he shall be fined and imprisoned.' See also *Harrison*, see 7.

¹³⁷ Gabbett referred to *Davis*, see 7. Also, to *Booth*, see 7, stating at p 781 'Overseers of the poor have also been the objects of indictments, in several cases, for oppression, and other abuses of their authority.'

¹³⁸ Gabbett, n 131, p 781. He referred to *Young & Pitts*, *Williams & Davies* and *Holland & Foster*, see 7.

¹³⁹ *Ibid.* He referred to *Buck & Hale*, see 4.

¹⁴⁰ *Ibid.*, p 781. Gabbett also dealt with the buying and selling of offices (pp 785-90) and the refusal to execute an office (pp 784-5).

¹⁴¹ *Ibid.* Gabbett then noted that it was extortion: (a) in a goaler to obtain money from his prisoner by colour of his office (he referred to *Broughton*, see 4); (b) in the chancellor and registrar of a diocese to obtain the executors of a will to prove it in the bishop's court (and to take fees for the same) when they knew it had been proved before, in the prerogative court. See *R v Loggen and Fromme* (1718) 1 Stra 73 (93 ER 393)(judge not indictable for mere error of judgment). See also Turner, n 10, vol 1, p 361; (c) to demand and take money before it was due (ie. where a coroner refused to take the view of a dead body until his fees were paid, see also *Harrison*, see 7); (d) if an under-sheriff obtained his fee by refusing to execute process until paid. Or, if he took a bond for his fee before execution was sued out. See *Hescott's Case* (1694) 1 Salk 330 (91 ER 29) (under-sheriff refused to execute a *capias* till he had his fees) and *Empson v Bathurst* (1619) Hutt 52 (123 ER 1095); (e) exaction of outrageous toll.

¹⁴² SF Harris, *Principles of the Criminal Law* (2nd ed, 1881).

¹⁴³ He referred to *Sainsbury*, see 7.

but an indictment will also lie.

Extortion, in the more strict sense of the word, consists in an officer's unlawfully taking, by colour of his office, any money or thing of value that is not due to him, or more than is due, or before it is due.¹⁴⁴ But it is not criminal to take a reward, voluntarily given, and which has been usual in the case, for the more diligent or more expeditious performance of his duty. As to non-feasance. - An officer is equally liable for neglect of his duty as for active misconduct. Thus an overseer is indictable for not providing for the poor.¹⁴⁵

(c) Stephen (1883)

Sir James Fitzjames Stephen, in his *Digest of the Criminal Law* in 1883,¹⁴⁶ under the heading of '*Abuses and Obstructions of Public Authority*', defined a '*public officer*' as follows:

The expression '*public officer*', in this chapter, means a person invested with authority to execute any public duty, and legally bound to do so, but does not include any member of either House of Parliament as such, or any ecclesiastical, naval, or military officer acting in the discharge of duties for the due discharge of which he can be made accountable only by an ecclesiastical, naval, or military court.¹⁴⁷

Stephen then went on to define *extortion or oppression by public officers* (art 119):

Every public officer commits a misdemeanour who, in the exercise, or under the colour of exercising the duties of his office, does any illegal act, or abuses any discretionary power with which he is invested by law from an improper motive, the existence of which motive may be inferred either from the nature of the act, or from the circumstances of the case. But an illegal exercise of authority caused by a mistake as to the law, made in good faith, is not a misdemeanour within this article.

If the illegal act consists in taking under colour of office from any person any money or valuable thing which is not due from him at the time when it is taken, the offence is called '*extortion*'.

If it consists in inflicting upon any person any bodily harm, imprisonment, or other injury, not being extortion, the offence is called '*oppression*.'¹⁴⁸ (*wording divided for ease of reference*)

In article 121, Stephen defined *frauds and breaches of trust by officers*:¹⁴⁹

Every public officer commits a misdemeanour who, in the discharge of the duties of his office commits any fraud or breach of trust, whether such fraud or breach of trust would have been criminal or not if committed against a private person.¹⁵⁰

In article 122, Stephen defined *neglect of official duty*:¹⁵¹

Every public officer commits a misdemeanour who wilfully neglects to perform any duty which he is bound either by common law or by statute to perform, provided that the discharge of such duty is not attended with greater danger than a man of ordinary firmness and activity may be expected to encounter.

As examples, Stephen cited the cases of *Kennett* (1781)¹⁵² and *Pinney* (1832)¹⁵³ (no longer of direct relevance)¹⁵⁴

¹⁴⁴ He referred to Blackstone, n 5, vol 4, p 141. See 6.

¹⁴⁵ Harris, n 142, pp 97-8.

¹⁴⁶ Stephen, n 104.

¹⁴⁷ Ibid, p 82 (article 118).

¹⁴⁸ Ibid, p 83. Stephen cited *Wyat* and *Bembridge*, see 4 and *Borron*, see 7. He also gave various illustrations.

¹⁴⁹ In article 120, Stephen defined illegally imprisoning subjects beyond the sea. This is not relevant here.

¹⁵⁰ Stephen, n 104, pp 84-5. He cited *Wyat* and *Bembridge*, see 4, noting the latter would now be an offence in the case of a private person under 38 & 39 Vict 24, s 2 (1875, rep). See also art 352 (fraudulent false accounting).

¹⁵¹ Ibid, p 86 (article 123) also considered '*Refusal to Serve an Office*' not dealt with here. See also McBain, n 29 where it is asserted this offence is obsolete.

¹⁵² See 7. Stephen stated 'A, the lord mayor of London, refrains from making the proclamation in the Riot Act, and from ordering soldiers to disperse a mob, because he is afraid to do so, in circumstances in which a man of ordinary courage would not have been afraid. A commits a misdemeanour.'

¹⁵³ See 7. Stephen stated 'A, the mayor of B, neglects to perform various acts which it was in his power to do, and which a man of ordinary prudence, firmness, and activity, might have been expected to do, in order to suppress riots in B. A is guilty of a misdemeanour.' Stephen also noted 'Mr Pinney was, in fact, acquitted; but the case involves the principles of the illustration.'

¹⁵⁴ Since the Riot Act 1714 has been repealed and the police now deal with directly with riots, without the need to involved JP's. Stephen also cited *Antrobus*, see 7. Stephen stated 'A, a sheriff, refuses to execute a criminal condemned to death. A commits a misdemeanor.'

where it was asserted JP's mis-conducted themselves when they failed to quell riots. Also, *James*¹⁵⁵ as well as illustrations from *Hale*¹⁵⁶ and *Hawkins*.¹⁵⁷

In conclusion, by the time Gabbett, Harris and Stephen wrote, misconduct in a public office was considered in terms of: (a) extortion and oppression (see Stephen, art 119); (b) fraud and breach of trust (art 121) and (c) neglect of duty (art 122).

9. Cases: 1850-1914

As to cases relating to misconduct in a public office usually cited in the period 1850-1914, the following may be noted:

- *Marshall* (1855).¹⁵⁸ In this case a rule was obtained for a criminal information against a county court judge for alleged misconduct in office. Campbell CJ stated: 'no doubt a judge who maliciously obstructs the course of justice is guilty of a misdemeanour.'¹⁵⁹
- *Hall* (1891).¹⁶⁰ An overseer of the poor was indicted on the basis he corruptly omitted from the register persons qualified to vote or included persons who were dead or not otherwise entitled to vote. Although the indictment was held bad,¹⁶¹ it was implicit in the decision that - but for the statutory provisions - the indictment would have been good;
- *Whitaker* (1914).¹⁶² A commanding officer accepted from a catering firm sums of money to induce him to accept their representative as the tenant of a regimental canteen. The charge was, essentially, one of bribery.¹⁶³ Lawrence J stated: 'a public officer is one who discharges any duty in which the public is interested, and more particularly if he receives payments from public money.'¹⁶⁴

In conclusion, the cases show that county court judges, overseers of the poor and military officers could be held liable for misconduct in a public office.

10. Kenny (1966) & Russell (1964)

Harris - in his *Principles and Practice of the Criminal Law* (1950) - provided as to 'Misconduct of Public Officers':

Any extortion by a public officer is a common law misdemeanour punishable by fine and imprisonment.¹⁶⁵ ...Extortion consists in the taking of money by any officer by colour of his office,

¹⁵⁵ See 130. Stephen stated 'A, a clergyman of the Church of England, refuses to solemnize marriage between persons who might lawfully be married and who tender themselves for that purpose. He commits a misdemeanour.'

¹⁵⁶ Hale, n 3, vol 2, p 58. Stephen stated 'A, a coroner, refuses to take an inquest on a body, after notice that it is lying dead in his jurisdiction. A commits a misdemeanour.' Stephen also referred to J Chitty, *A Practical Treatise on the Criminal Law*, (1819), vol 2, p 255. This text contains useful specimen indictments against: (a) JP's, for oppression; (b) Coroners, for negligence; (c) Inferior officers (ie. constables, headboroughs and bailiffs), for negligence and misconduct.

¹⁵⁷ Stephen stated 'A, a constable, willfully refuses to arrest a person who commits a felony in his presence. A commits a misdemeanour.' He cited Hawkins.

¹⁵⁸ 4 E & B 475 (119 ER 174).

¹⁵⁹ At p 480.

¹⁶⁰ 1 QB 747.

¹⁶¹ This was due to the fact that - as a result of the provisions of the Reform Act 1822 and subsequent statutes regulating elections - the only remedies available were those laid down in the statutes.

¹⁶² 10 Cr App R 245.

¹⁶³ Per Lawrence J at p 253, 'Bribing a colonel to corruptly shew favour to a firm supplying canteen provisions is clearly a misdemeanour of grave importance. The colonel is a trustee with a duty to perform, and to receive money and thus to put himself in a position where his interest and his duty conflict, is a misdemeanour at common law, and a serious one.' Also, p 252 'Whenever an officer has a public duty to perform, to bribe the officer to induce him to show favour or abstain from showing disfavour in violation of his duty constitutes a misdemeanour. The common law abhors fraud and corruption as nature abhors a vacuum.'

¹⁶⁴ At p 252. The wording of the judgment reported in [1914] 3 KB 1283 is slightly different (see p 1296), 'A public officer is an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public. If taxes go to supply his payment and the public have an interest in the duties he discharges, he is a public officer.' This wording was cited in *Cosford*, see 13.

¹⁶⁵ At p 123. He also noted that 'There are also statutory provisions as to extortion by a 'king's officer' by clerks of court and goalers, by sheriffs, and by coroners.'

either where none at all is due, or not so much is due, or where it is not yet due.¹⁶⁶ But it must be accompanied by some *mens rea*, so that an overcharge by an innocent mistake without any criminal negligence or intention will not constitute a criminal offence.

Any other form of oppression or misconduct by a public officer by colour of his office is a similar misdemeanour.¹⁶⁷ Thus, a judicial officer is indictable for any illegal act committed by him from fraudulent, corrupt or vindictive motives, or for manifest illegality and oppression, or gross abuse of power, or partiality and wilful abuse of discretion; but he is not criminally liable for oppression where he acts under a mistake; uninfluenced by any corrupt or improper motive, and believing that he is acting in a fair and legitimate exercise of his office.¹⁶⁸ So also a ministerial officer is indictable for any act of oppression or any illegal act committed in the execution of his duty, from corrupt or other improper motives, but not where he acts from ignorance or mistake.

Any unjustifiable neglect or refusal by a public officer to perform his duties is also a similar misdemeanour as eg. the neglect of a magistrate to take such steps as are in his power and could be expected from a man of ordinary prudence, firmness and activity, in order to suppress a riot...¹⁶⁹

The last edition of *Kenny's Outlines of Criminal Law* (edited by Turner in 1966), stated that neglect of duty or misconduct of duty by a public officer was an indictable misdemeanour at common law, referring to Russell, chapter 24.¹⁷⁰ And, in the last edition of Russell (edited by Turner in 1964), a chapter on misconduct on public office stated:¹⁷¹

Where a public officer is guilty of misdemeanour in office by neglecting a duty imposed upon him either at common law or by statute, he commits a misdemeanour and is liable to indictment unless another remedy is substituted by statute.¹⁷² The liability exists whether he is a common law or a statutory officer;¹⁷³ and a person holding an office of important trust and consequence to the public, under letters patent or derivatively from such authority, is liable to indictment for not faithfully discharging the office.¹⁷⁴

Russell then analysed misconduct under the headings of: (a) oppression; (b) neglect of duty (negligence); (c) fraud; and (d) extortion. He separately considered (e) bribery; and (f) sale of offices. Of these, (e) and (f) are now covered by legislation – the Bribery Act 2010 (see **16(c)**) and so are not further considered. Further, extortion in a public office was abolished by the Theft Act 1968, s 32 (see **16(d)**). As to (b), in respect of negligence *per se*, the offence, today requires ‘wilful’ behaviour and thus mere negligence would not come within the terms of its ambit (although wilful neglect will).¹⁷⁵ As to (a), Russell cited some useful (older) cases on misconduct by JP’s not generally previously referred to.¹⁷⁶

It may be noted that, after *Whitaker* (1914), the offence of mis-conduct effectively fell into disuse, since no new cases were cited by the legal writers and it is not clear whether any (at least, any major) cases were brought in the period 1914-67.¹⁷⁷

In conclusion, by 1966, cases on misconduct in a public office cited by legal writers concerned (a) oppression; (b) neglect of duty; (c) fraud; and (d) extortion. There was little additional caselaw cited.

11. Cases: 1967-96

As to cases relating to misconduct in a public office usually cited in the period 1967-96, the following may be noted:

¹⁶⁶ He cited *Shoppée v Nathan* [1892] 1 QB 250 (the Sheriffs Act 1887, s 29, which imposed a penalty on any sheriff’s officer ‘who takes or demands any money or reward under any pretext whatever other than the fees or sums allowed by that Act or any other Act,’ did not apply where the overcharge was unintentional).

¹⁶⁷ He cited *Williams and Davis*, see 7.

¹⁶⁸ He cited *Borron and Badger*, see 7.

¹⁶⁹ He cited *Pinney*, see 7.

¹⁷⁰ See Turner, n 10, p 419.

¹⁷¹ Russell, n 6, vol 1, p 361. Much of the material (including legislation) cited by Russell has been superceded.

¹⁷² *Ibid.* Russell, n 6, cited *Hall*, see 9.

¹⁷³ *Ibid.* Russell cited *Wyat and Anon*, see 4.

¹⁷⁴ *Ibid.* Russell cited *Bembridge*, see 7 and *Wyat*, see 4.

¹⁷⁵ See, for example, *Dytham* (see 11).

¹⁷⁶ Russell, n 6, vol 1, pp 363-5. See also Nicholls, n 21, p 155.

¹⁷⁷ Nicholls, n 21, p 155 ‘[it] almost fell into disuse during the mid-twentieth century.’

- *Llewellyn-Jones* (1967).¹⁷⁸ In an appeal against conviction by a county court registrar who made an order with the intention of gaining improper personal advantage, the court rejected a submission that the count laid in the indictment did not reveal any offence known to the law. Parker CJ stated that it: '*can in general terms be described as misbehaviour in a public office.*'¹⁷⁹ The court upheld the conviction stating that: '*Assuming...there must be some element of dishonesty involved, a dishonest motive, a fraudulent motive, it seems to this court that that is inherent in the words of the count.*';¹⁸⁰
- *Dytham* (1979).¹⁸¹ The court upheld the conviction of a constable who witnessed the commission of serious offences of violence,¹⁸² but wilfully failed to take any steps to preserve the Queen's peace or to protect the person of the victim or arrest his assailant. Reference was made to Stephen's Digest, article 22 (see **8(c)**).¹⁸³ Widgery CJ stated '*The neglect must be wilful and not merely inadvertent; and it must be culpable in the sense that it is without reasonable excuse or justification.*'¹⁸⁴ He also stated: '*This involves an element of culpability which is not restricted to corruption or dishonesty but which must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment. Whether such a situation is revealed by the evidence is a matter that a jury has to decide.*'¹⁸⁵
- *Bowden* (1996).¹⁸⁶ This case confirmed that misconduct in public office could be committed by local authority employees. Thus, it applied to every person appointed to discharge a public duty - whether or not that person was remunerated by the Crown. In this case, a person was employed as the maintenance manager of the City Works department with a local authority. He was charged with misconduct in a public office and fined £350 for dishonestly causing joinery, plumbing and electrical work to be carried out by council employees in a property let to a lady friend, when the same was not required under the repairing policy of Stoke County Council.¹⁸⁷ Hirst LJ stated: '*In the words of Best CJ in the Lyme Case repeated almost verbatim in Whitaker, he was appointed to discharge public duties and received compensation from the City of Stoke-on-Trent. This seems to us to fall fully within the public duty at common law referred to in Stephen's Digest.*'¹⁸⁸

It may also be noted that the Public Bodies Corrupt Practices Act 1889, s 7 (which was not applicable in the case of *Bowden*)¹⁸⁹ defined 'public body' to mean:

any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law or otherwise to administer money raised by rates in pursuance of any public general Act and includes any body which exists in a country or territory outside the United Kingdom and is equivalent to any body described above.

Section 7 also defined 'public office' to mean:

any office or employment of a person as a member, officer or servant of such public body.

¹⁷⁸ 51 Cr App R 204.

¹⁷⁹ At p 209.

¹⁸⁰ At p 211.

¹⁸¹ 69 Cr App R 387.

¹⁸² The constable witnessed a man being ejected by a bouncer from a club early one morning. A fight ensued in which the man was kicked to death. The constable in no way intervened but went off.

¹⁸³ (9th edition, 1950), p 114.

¹⁸⁴ At p 394.

¹⁸⁵ Ibid.

¹⁸⁶ [1996] 1 Cr App R 104. JC Smith in *R v Bowden* [1996] Crim LR 57 (casenote) observed 'It is presumed that proof of a corrupt motive is required and was present in the instant case. An officer might depart accidentally or negligently from the repairing policy of the council employing him; but that could hardly amount to this serious common law offence, punishable with imprisonment at the discretion of the court.' It is asserted that either dishonesty or recklessness is required.

¹⁸⁷ Reference was made in this case to the cases of: *Bembridge*, *Henly v Mayor of Lyme, Hall*, *Whitaker*, *Llewellyn-Jones* and *Dytham*.

¹⁸⁸ At p 109. Cf. Indictment against a surveyor of highways for converting to his own use gravel dug at the expense of the parish. Also, for employing for his own gain and emolument the labourers and teams of the parishioners whom he ought to have employed repairing the highways. Chitty, n 156, vol 3, p 666 cited by Turner, n 10, vol 2, p 1159 (this case was treated as a form of cheat). The indictment stated that Robinson, a parish surveyor, 'not regarding his duty in that behalf, but minding and intending to promote his own private gain and emolument, at the expense of the inhabitants of the parish...unlawfully, wilfully and corruptly, by colour of his said office' did procure the gravel and labour on his premises.' There was also a count (the 7th count) for embezzling the same. See also Finn, n 108, p 309.

¹⁸⁹ This Act was repealed by the Bribery Act 2010, Sch 2.

The Law Commission - in a Consultation paper in 1997 - indicated that the offence of misconduct in a public office was not 'easily defined.'¹⁹⁰ More distantly, the Nolan Committee in 1977 recommended that the common law offence should be a statutory one.¹⁹¹

In conclusion, the cases show that a county court registrar, a constable and a local government employee could be held liable for misconduct in a public office.

12. A-G's Reference: No 3 of 2003

In the *Attorney-General's Reference (No 3 of 2003)*¹⁹² the reference concerned a challenge by the Attorney-General ('A-G') to the decision of Roderick Evans J that misconduct in a public office could not be founded on the basis of recklessness by five public officers as to the risk to the welfare of a man in custody. It was not suggested that a police officer was not a public officer and the case turned entirely on the characterisation of misconduct and the necessary *mens rea* for the offence. The A-G referred to the Court of Appeal the following questions:

- What are the ingredients of the common law offence of misconduct in a public office?
- In particular, is it necessary, in proceedings for an offence of misconduct in a public office, for the prosecution to prove 'bad faith' and, if so, what does 'bad faith' mean in this context?¹⁹³

The headnote to the case¹⁹⁴ stated:

The elements of the offence of misconduct in a public office were that a police officer was acting as such, that he wilfully neglected to perform his duty and/or wilfully misconducted himself in a way which amounted to an abuse of the public's trust in the office holder, without reasonable excuse or justification; that whether the misconduct was of a sufficiently serious nature would depend on the responsibilities of the office and the office holder, the importance of the public objects which they served, the nature and extent of the departure from those responsibilities and the seriousness of the consequences which might follow from the misconduct;

that to establish the *mens rea* of the offence it had to be proved that the office holder was aware of the duty to act or was sufficiently reckless as to the existence of the duty; that the test of recklessness applied both to the question whether in particular circumstances a duty arose at all and to the conduct of the defendant if it did arise; and that the subjective test applied both to reckless indifference to the legality of the act or omission and in relation to the consequences of the act or omission.¹⁹⁵ (*wording divided for ease of reference*)

This analysis is very useful since it may be noted that, until the 20th century (see **11**), there was scarcely any analysis in the older caselaw as to the *mens rea*. This case, therefore, is the starting point in respect of the same, superceding such (little) analysis as there was, prior to it.

In conclusion, the mens rea for the offence of misconduct in a public office may be found in A-G's Reference no 3 of 2003.

13. Cases: 1997-2013

As to cases relating to misconduct in a public office usually cited in the period 1997-2013, the following may be noted:

- *W(M)* (2010).¹⁹⁶ D was a senior police officer. It was alleged, in that capacity, he wilfully misconducted himself by using an Amex card provided by his employer with the effect of incurring expenditure of c.

¹⁹⁰ Law Commission Consultation Paper (No 145) on *Legislating the Criminal Code. Corruption* (1997) ('LC-1997'). See especially, para 2.8. See also Report of the Salmon Commission (1976) Cmnd 6524 referred to at para 2.10 of LC-1997, 'The Salmon Report refers to 'misconduct in a public office' as 'breach of official trust', and offence which, it says, 'embraces a wide variety of misconduct including acts done with a dishonest, oppressive or corrupt motive.' It should be noted that LC-1997 and the Salmon Report are now dated.

¹⁹¹ Committee on Standards in Public Life who issued a consultation paper on the offence of Misuse of Public Office (July 8th, 1977), <http://webarchive.nationalarchives.gov.uk/20140131031506/>

<http://www.archive.official-documents.co.uk/document/parlment/nolan3/misuse-1.htm>. See also an article by Finn, n 108 (now rather dated in some aspects).

¹⁹² [2005] QB 73.

¹⁹³ At p 77.

¹⁹⁴ Cited by Leveson LJ in *R v L (D)*, see **13**, at p 163.

¹⁹⁵ [2005] QB 73. See also pp 91-2.

¹⁹⁶ [2010] 1 Cr App R 28.

£12,500 for personal use funded by public monies. Judge CJ stated: *'In our judgment it is clearly established that when the crime of misconduct in a public office is committed in circumstances which involve the acquisition of property by theft or fraud, and in particular when the holder of a public office is alleged to have made improper claims for public funds in circumstances which are said to be criminal, an essential ingredient of the offence is proof that the defendant was dishonest.'*¹⁹⁷

- *L(D)* (2011).¹⁹⁸ A retired police officer (D) worked as a civil employee for a police force, which did not involve him in the handling of informants or the receiving of intelligence. D passed police information to M in the hope of receiving valuable information in return. M was a member of the criminal fraternity and had provided D with intelligence during a 30 year period in when D had been a police officer. However, M had ceased to be an authorised police informant. D was charged with conspiracy to commit wilful misconduct in a public office. The trial judge directed the jury that there were 3 ingredients to the offence: (a) that D was acting as a public officer; (b) that he wilfully, or deliberately, misconducted himself in his duties; (c) that he did so to such a degree that it amounted to an abuse of the public's trust in him. On appeal it was held, *per* Leveson LJ, that *'it would have been appropriate for the judge to explain [to the jury] that the phrase 'without justification or reasonable excuse' meant no more than acting culpably or in a blameworthy fashion.'*¹⁹⁹
- *Belton* (2011).²⁰⁰ The defendant, acting as a member of the Independent Monitoring Board, developed personal and inappropriate relations with serving prisoners at one of HM prisons. The court held that: (a) there was no exhaustive definition of the common law offence; (b) although there was good reason to confine the offence strictly and within proper grounds with regard to the standard of misconduct required, that had nothing to do with whether the office holder was remunerated or not. Remuneration was merely indicative but not determinable. Gross LJ noted that *'there are...a variety of others who plainly hold judicial or public office and are not remunerated. These must, as we see it, include magistrates, special constables, perhaps local councillors and high sheriffs. All, as it seems to us, hold public office.'*²⁰¹
- *Cosford, Falloon & Flynn* (2013).²⁰² The defendants were civil servants and employees of HM Prison. The first and third were employed as prison nurses, the second as a health care officer (ie. a prison officer who was also a trained nurse). The first had a sexual relationship with a prisoner and the second and third knew about it but failed to report it. It was argued the defendants were not public officers. This was rejected on appeal. As well as being responsible for the welfare of the prisoners, nurses in a prison setting were also responsible to the public for the proper, safe and secure running of the prison in which they worked. The defendants' duties more than amply fulfilled the requirements of a public office. In particular, Leveson LJ noted a list of those held to have been in a public office for the purposes of the offence.²⁰³

In conclusion, constables (including a retired constable working as a civil employee for the police) - as well as members of the Independent Monitoring Board and civil servants and employees (employed as nurses and healthcare workers) for HM prisons - constitute public officers.

14. The Past Forgotten?

Because there was a long absence of cases on this offence after *Whitaker* (1914) until *Llewelyn-Jones* (1967), it is suggested the basic nature of this offence was forgotten and that many of the subsequent cases need not (should not) have been brought since they simply confirmed points that were never in contention previously. These include the

¹⁹⁷ At p 426. Cf. *R v Hodgkinson* (June 26, 1900) Archbold Cr Pl (35th ed), p 1306 referred to in Turner, n 10, vol 1, p 369 (indictment will lie for failing to account for money received *virtute officii*).

¹⁹⁸ [2011] 2 Cr App R 14.

¹⁹⁹ At p 166. The court also noted that - given that the jury concluded that the standard of the defendant's behaviour fell below that which was to be expected so as to amount to an abuse of public trust in him - it was impossible to see how the jury would have equally not have concluded that the conduct was culpable. Accordingly, while the judge should have directed the jury to consider culpability, his failure specifically to direct that belief in the prospect of obtaining more worthwhile intelligence could constitute a reasonable excuse, in the context of his direction that defendant's behaviour had to fall so far below that which was to be expected as to amount to an abuse of public trust in him, did not render the conviction unsafe.

²⁰⁰ [2011] 1 Cr App R 20.

²⁰¹ At p 268. Cf. *Booth v Arnold* [1895] 1 QB 571 (action of slander will lie without special damage for words importing dishonesty or malversation in a public office of trust, although office is not one of profit).

²⁰² [2013] 2 Cr App R 8.

²⁰³ At p 87. These are listed in **Appendix B**.

following:

- *Public Office.* What did this mean? In early times, *all* public offices emanated from the Crown in some way. They could be direct or indirect (by way of franchise). For example, *sheriffs*, who existed in Anglo-Saxon times and continued after the Norman Conquest of 1066, had important tax gathering and judicial powers (assisted by their bailiffs and sarjeants).²⁰⁴ *Tithingmen* were the precursors to constables and their police function emanated from the Crown.²⁰⁵ So too *goalers* and - although many jails were held by way of franchise (being lucrative) - this did not stop them being held to be public officers.²⁰⁶ All these were public officers. So too, were the great offices of State - such as members of the Royal household (the lord chamberlain and staff), high military offices (such as the Lord High Constable and the Earl Marshall of the army),²⁰⁷ ecclesiastical offices (the Archbishop of Canterbury *etc*), treasury officers (barons of the exchequer *etc*). In conclusion, all Crown offices - whether held directly or by way of franchise - comprised '*public offices*' in early times. As local government developed, this did not change the situation. Thus, overseers of the poor and police constables were still Crown appointments - but at a local level.²⁰⁸ Given this, a modern '*local government*' employee would have been treated no different to an overseer of the poor in earlier times. As a result, it is no surprise that the court in *Bowden* (1996, see **11**) so held. However, one questions whether such a case need have been brought in the first place;
- *Remuneration.* While many Crown appointments were remunerated others were not. For example, some of the great offices of State were hereditary (eg. the Earl Marshal (and hereditary marshal) of England is the Duke of Norfolk)²⁰⁹ and are unpaid. In other cases, the franchisee paid the (usually impecunious) sovereign for the office (ie. the franchisee bought an interest in it for life or a shorter period) and there were no further payments.²¹⁰ The franchisee then re-couped his (or her) investment from the office (for example, charging prisoners for their board and lodging). Other Crown offices, while not hereditary or franchises, were not paid as such. For example, JP's who account for a high proportion of the cases for this offence (see **Appendix B**). So too, Lords Lieutenant; their office was honorary and often for life.²¹¹ So too, overseers. Therefore, it astonishing that the case of *Belton* (2011, see **13**) needed to be brought to confirm this point --not least since, if the case *had* upheld that remuneration was required, it would have excluded all the prior caselaw as to JP's and overseers !;²¹²
- *Part Time & Full Time.* Tithingmen - and their successors, constables - were invariably poorly paid and ill-educated persons, such as farmers in local communities, who (often) worked part-time in their police function.²¹³ Jailers and coroners were also, often, part-time appointments. Thus, the precise nature of the office in question did not matter; and the appointment and terms did not have to be proved as such to the court.²¹⁴ The same prevailed where the post was elected or not.²¹⁵ As a result, the fact that a prison officer

²⁰⁴ See GSMcBain, *Abolishing Obsolete Offices* (2012) Coventry LJ, vol 17, pp 31-60.

²⁰⁵ See McBain, n 30. Tithingmen and constables were usually appointed at the court leet - a minor criminal court franchised to lords of the manor. Constables (high and petty) may have first existed c. 1285. *Ibid*.

²⁰⁶ See McBain, n 56.

²⁰⁷ See McBain, n 204. For a useful list of Crown offices in 1675, see Sheppard, n 15, (Offices and Officers).

²⁰⁸ Overseers of the poor were created by 43 Eliz (1601) c 2, s 1 'churchwardens of every parish, and four, three, or two substantial householders... shall be called overseers of the poor of the same parish.' As the OED, n 38 (*overseers of the poor*) notes, the office was annual and gratuitous but where the duty required it, paid or assistant overseers were appointed.

²⁰⁹ See n 204.

²¹⁰ For example, Lady Broughton was a gaoler on a lease from the Crown franchisee, the Dean and Chapter of Westminster, see **4**. On the early history of prisons, see McBain, n 56.

²¹¹ See McBain, n 204, for their history. Lords lieutenant were appointed by Henry VIII (1509-47) in the 1540's in a number of counties and they took over the military functions of the sheriff. Today, like high sheriffs, they are honorary in nature.

²¹² Nicholls, n 21, p 160 'the fact of any remuneration, is not in itself a key element.' See also *Ibid*, pp 161-2.

²¹³ See McBain, n 30.

²¹⁴ See *Holland* (1794), see **7**. See also Nicholls, n 21, p 156 who cites Mansfield CJ in *Bembridge* 'a man accepting an office of trust concerning the public is answerable criminally to the king for misbehavior in his office... this is true by whomever and in whatever way the officer is appointed.' (*underlining supplied*). By reference to an '*office of trust*' (at p 332), Mansfield CJ was referring to a public (ie. Crown) office, howsoever held.

²¹⁵ In early times coroners may have been elected as so were constables. Later, coroners were a Crown appointment and constables could be appointed by JP's if not elected (they were usually elected at the court leet). The mayor of London was, originally, a Crown appointment, later elected. Election or appointment was not a relevant point in the early caselaw. See also Nicholls, n 21, p 159 'liability [for misconduct] will exist no matter how the person comes to hold such a position (ie. whether elected or appointed and whether by the Crown or otherwise).' Also, p 159 'it matters not who made the appointment, nor the manner in which it was made.'

is acting in the capacity of a nurse (see *Cosford* (2013), see **13**) or a retired police officer is still working for the police but as a civil employee (see *L(D)*(2011), see **13**) is entirely consistent with the past authorities - such that one is (slightly) puzzled as to whether this issue should ever have been in contention. Both worked for institutions regulated by the Crown (HM Prison and the police force). Therefore, it is axiomatic that they are public officers,²¹⁶

- *Commission or Omission.* In early times, there is no evidence that any legal distinction was drawn between situations where a public officer committed an act of misconduct (misfeasance) or failed to act, such that misconduct arose (nonfeasance). Thus, a jailer or a constable could be punished equally for imprisoning a person falsely (false imprisonment) as for failing to prevent a prisoner escaping. As a result, this issue is really a non-point - one which should not have troubled the court in *Dytham* (1979, see **11**). After all, Hawkins - as long ago as 1716 - stated that: 'it is certain, that an officer is liable to forfeiture of his office, not only for doing a thing directly contrary to the design of it, but also for neglecting to attend his duty at all usual, proper, and convenient times and places' (see **5**) and no subsequent legal writer controverted him. Also, *Holland* (1794) and *Henly* (1828) (see **7**) clearly upheld this, as did legislation as early as 1275 (see **2(b)**).²¹⁷ Finally, basic common sense suggests that this should be so;
- *Important Public Position.* In early times, most Crown appointments were of a lowly nature. Others were very important. There was a distinction in that - in the case of misconduct - the latter were often proceeded against by way of Parliamentary process, since, otherwise, it was likely the defaultee would evade justice. However, there is no doubt that the courts did not distinguish the importance of the public office in question. Thus, it is asserted that the modern proposition - that the 'importance of the public objects' the office serves, is material to the offence - is wholly at variance with the pre-1914 caselaw. For example, a humble constable could be prosecuted for failing to raise hue and cry - and whether this object (hue and cry, to catch criminals) was important, or not, was not relevant.²¹⁸ The only issue was whether he had performed his *duty* - and it was axiomatic that his public duty had an important public object.

In conclusion, in early times, all Crown appointees (whether direct or indirect, such as by way of franchise) were public officers and - as local government expanded in Elizabethan times with overseers of the poor *etc.* - this did not change. Further, whether the appointment was: (a) remunerated ; or (b) part time or full time; or (c) important or lowly, did not prevent a public officer being held otherwise. Nor for being punished for misconduct. The same was also liable for omission (neglect) as well as for commission. It is a pity these simple points were forgotten after 1967. The result has been a series of unnecessary cases to re-discover the past.

15. **Archbold (2014)** ²¹⁹

Archbold has little to say on this offence, besides citing various cases. Thus, it states:

In *Att-Gen's Reference (No 3 of 2003)* ²²⁰ ... it was held that the offence of misfeasance in a public office is committed by a public officer acting as such who wilfully neglects to perform his duty and/or wilfully misconducts himself to such a degree as to amount to an abuse of the public's trust in the office holder without reasonable cause or justification; 'wilful' here refers to that which is deliberate, as opposed to accidental, and accompanied by an awareness of the duty to act or subjective recklessness as to the existence of the duty, and the recklessness test would apply to the question whether in particular circumstances a duty rose at all, as well as to the conduct if it did, and it applied both to the legality of the act or omission and to its consequences; as to consequences, these are not an ingredient of the offence as such but the consequences as to which the defendant was reckless will need to be considered for the purpose of deciding whether the conduct in question falls so far below the standard of conduct to be

²¹⁶ There are no prisons now operating pursuant to a Crown franchise. Nor are there local police forces as such (the last local police force was in Hove and it ended in 1898). As a result, all police and prison services are part of the State (although the State may pay others to operate part of the same).

²¹⁷ In *Henly* (1828)(see **1828**), Best CJ expressly referred to 'act of omission or commission'. See also Nicholls, n 21, p 162. Further, there is nothing surprising in this since misconduct in a public office is a form of misprison and the latter can be committed by omission as well as by commission, as Coke, n 2, vol 3, p 139 noted, 'Misprison is twofold: one is *crimen omissionis*, of omission, as in concealment, or not discovery of treason or felony: another is *crimen commissionis*, of commission, as in committing some heinous offence under the degree of felony.'

²¹⁸ Nicholls, n 21, p 159, 'Nor is there reason to believe that there was any sort of implicit understanding in the earlier authorities that the criminal offence should be reserved for holders of high office.' One would agree.

²¹⁹ Archbold, n 7, para 25-406 also considers allied offences such as the refusal to execute a public office. In a previous article it has been asserted that this offence is obsolete, see McBain, n 29. Archbold, n 7, para 25-404 also considers the trial and punishment of British officials for oppressions, crimes and lesser offences committed outside the UK. This is considered in **20**.

²²⁰ [2004] 2 Cr App R 23. See **12**.

expected as to amount to the offence; the conduct cannot be viewed in a vacuum; the consequences likely to follow from it, viewed subjectively as in *R v G*²²¹ ... will often influence the decision as to whether the conduct amounted to an abuse of the public's trust in the officer.

As to the requirement that the neglect of duty or the misconduct must amount to an abuse of the public's trust in the office holder, the court said that the threshold is a high one, and a mistake, even a serious one, will not suffice; whether it is sufficiently serious is to be determined having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.²²²

Archbold also states:

In *R v W (M)*²²³ ... it was said that the nature of the conduct falling within the ambit of the offence being wide, logically it would follow that the necessary mental element would not be identical for each and every one of its different manifestations; and the decisions in *R v Llewellyn-Jones*²²⁴ and *R v Dytham*²²⁵ (in the first of which it was held that there had been an implicit allegation of dishonesty and in the second of which the court had rejected a submission that the jury should have been directed that dishonesty was a necessary ingredient of the offence), were entirely consistent with many earlier authorities which underlined that a criminal state of mind is required. Relying on *R v Borron*²²⁶ ... in which it had been said that the issue would be whether the act had been done 'from a dishonest, oppressive, or corrupt motive... or from mistake or error', it was held that where a charge of misconduct in public office is founded upon an allegation that the holder of such an office made improper claims to public funds in circumstances which are said to be criminal, an essential ingredient of the offence is proof that the defendant was dishonest; and the issue of dishonesty is pre-eminently one for the jury. As to whether the court may have read too much into what was said in *Dytham* as to the offence not being restricted to dishonesty, see CLW [Criminal Law Week] 10/11/5.

See also *R v Bowden*²²⁷ ... (offence may be committed by employees of local authorities) and *R v Belton*²²⁸ (remuneration is not an indispensable element requirement for the holding of a public office). In *R v Cosford, Falloon and Flynn*²²⁹ the court concluded that whilst it was said in *A-G's Reference (No 3 of 2003)* ... that the offence should be strictly confined, nothing in the authorities justified the conclusion that this related to a position held by the potential defendant; rather, it should be addressed to the nature of the duty undertaken by him and, in particular, whether that duty is a public duty in the sense that it represents the fulfilment of one of the responsibilities of government such that the public at large have a significant interest in its proper discharge. Accordingly, it was held that nurses in a prison setting, whether trained as prison officers or not, and whether or not the prison is run directly by the State or indirectly through a private company, paid by the State to perform its functions, had duties which fulfilled the requirement of a public office for this purpose.

In *HKSAR v Wong Lin Kay*²³⁰ the Hong Kong Court of Final Appeal held that the correct approach is not to attempt somehow to decide in the abstract or in isolation whether a person is or is not a public officer; the court said that what, if any, powers, discretions or duties have been entrusted to the defendant in his official position for the public benefit, must be examined and it must be asked how, if at all, the misconduct alleged involves an abuse of those powers.²³¹

Archbold²³² also cited various cases involving police officers mis-using their position, viz. *Keyte (1998)*,²³³ *Nazir*

²²¹ [2004] 1 AC 1034 (concerned the Criminal Damage Act 1971, s 1(1), meaning of the word 'reckless').

²²² Archbold cited *R v L (D)* [2011] 2 Cr App R 14 ('without reasonable justification or excuse' means no more than acting culpably or in a blameworthy fashion). See also *Kwok Sher v HKSAR* (2002) HKCFAR 381 (Hong Kong Final Court of Appeal), referred to in *A-G's Reference (No 3 of 2003)*, per Pull LJ at p 87.

²²³ [2010] 1 Cr App R 28. See 13.

²²⁴ [1968] 1 QB 429. See 11.

²²⁵ [1979] 2 QB 722. See 11.

²²⁶ (1820) 3 B & Ald 432. See 7.

²²⁷ [1996] 1 Cr App R 104. See 11.

²²⁸ [2011] 1 Cr App R 20. See 13.

²²⁹ [2013] 2 Cr App R 8. See 13.

²³⁰ [2012] 2 HKLRD 898.

²³¹ Archbold, n 7, para 25-403.

²³² For sentencing practice see also Nicholls, n 21, pp 168-71.

(2003),²³⁴ *Gellion* (2006),²³⁵ *O'Leary* (2007),²³⁶ *Ranson & Kerr* (2007),²³⁷ *A-G's Reference (No 1 of 2007)* (*R v Hardy*) (2007)²³⁸ and *A-G's Reference (No 68 of 2009)* (*R v Turner (Mark Simon)*) (2010).²³⁹

16. Conclusion – Nature of the Offence

In *L(D)* (2001), Leveson LJ stated that: '*consideration of the offence [of misconduct in public office] by the Law Commission would be of value*'.²⁴⁰ This article asserts that the common law offence of misconduct in a public office should now be placed in statutory form. And that it should also be clarified. The following points may be noted:

(a) *Definition - Public Office*

The offence of misconduct in a public office has had a long history even though, in early times, the common law offence tended to be overshadowed by specific legislation which dealt with brocage, bribery, sale of offices *etc.* As previously noted (see **2(a)**), the '*Crown*' may refer to the sovereign in a personal capacity (*persona privata*) as well as those who attend her. It may also refer to the Crown in the wider sense of the apparatus of the State, *viz.* central and local government (ie. as *persona publica*). There is no good reason why all officials in both senses should not be included in a statutory concept of a '*public officer*' – including all those instances where the courts have upheld this (see **Appendix B**). As a result, it is asserted that a statutory definition of '*public office*' should include all persons employed by:

- (a) the Queen - including the Royal Household and the duchy of Lancaster;²⁴¹
- (b) duchy of Cornwall;²⁴²
- (c) Crown Estate;²⁴³
- (d) Central and local Government in general (including the Civil Service);
- (e) Bank of England.

Also, all:

- (f) judicial offices (including JP's, constables, prison service personnel *etc.*);
- (g) military offices in the Armed Forces;
- (h) ecclesiastical offices in the Church of England (it being a State religion);²⁴⁴
- (i) members of the House of Commons and the House of Lords.

The *rationale* for this is that the general public is entitled to expect all State employees to have '*clean hands*' and to perform their employment in the due form - not least since the general public have to resort to them, having no choice otherwise.²⁴⁵

²³³ [1998] 2 Cr App R (S) 165.

²³⁴ [2003] 2 Cr App R (S) 114.

²³⁵ [2006] 2 Cr App R (S) 69.

²³⁶ [2007] 2 Cr App R (S) 51.

²³⁷ [2007] 2 Cr App R (S) 55.

²³⁸ [2007] 2 Cr App R (S) 86.

²³⁹ [2010] 1 Cr App R (S) 108.

²⁴⁰ At p 166.

²⁴¹ The duchy of Lancaster is held by the reigning sovereign as an inalienable estate and it is likely that, while it once was held in a private capacity by the sovereign (*persona privata*) (since the estate does not merge with the Crown), it will now be treated as held *persona publica*, see generally *Alcock v Cooke* (1829) 5 Bing 320 (140 ER 1092) and *McBain*, n 25.

²⁴² The duchy of Cornwall (as well as the title Duke of Cornwall) is inherited by the eldest son of the reigning sovereign and he inherits it at the time of his birth or his parent's succession to the throne. If there is no eldest son (or second or subsequent son on the demise of the eldest) then the duchy is held in right of the Crown. Thus, in practice, it is no different to the duchy of Lancaster or the Crown Estate, being an inalienable appanage of the Crown, with an automatic life interest being granted from time to time. See generally, *GSMcBain, Time to Abolish the Duchy of Cornwall?* (2013) *Rev. of European Studies*, vol 5, no 5, pp 40-58. Given this, duchy officials are Crown officers when there is no Duke and they should be so treated when there is one.

²⁴³ *Halsbury*, n 8, vol 12(1)(4th ed), para 278 'The Crown Estate comprises the lands and other rights...which the monarch enjoys in her political capacity in right of the Crown and which are now under the management of the Crown Estate Commissioners.'

²⁴⁴ This is anomalous. However, it may be noted that the Simony Acts 1588 and 1688 (sale of offices) only apply to the Church of England and not to other churches. Since they are covered by the Bribery Act 2010, it is asserted these Acts can now be repealed, see **19**.

²⁴⁵ See the argument in *R v Dr Burrell* (1698) *Cart* 478 (90 ER 875) (an information against not taking certain statutory oaths), at pp 478-9 'it was argued that...the word *officium* principally implies a duty, and in the next place the charge of such a duty; and 'tis the rule, that where one

(b) Definition - Public Office: Exclusions

Stephen (writing in 1883) proposed that any statutory offence not cover MP's. Nor any ecclesiastical, naval or military officer acting in the discharge of his duties for the due discharge of which he could be made accountable only by an ecclesiastical, naval or military court (see **8(c)**). However, this was only Stephen's *opinion* and no caselaw established this. Further, the following may be noted:

- Church of England. *James* (1850) established that this offence can apply to a Church of England priest and Best CJ in *Henly* (1828) referred to bishops and clergymen;²⁴⁶
- Military. *Bembridge* (1783), *Hollond* (1794) and *Whitaker* (1914) established that it can apply to military officers;
- MP's. In *Currie and Ors* (1992), Buckley J rejected the contention that bribing an MP was not a bribe in English law since MP's were not holders of public offices.²⁴⁷ And, although it is dubious whether MP's in times past would have been held to have been Crown appointees in any way, treating them as '*public officers*' today, reflects their modern role.²⁴⁸

Today, it is asserted there is no good reason why Stephen's exceptions should prevail. For example, if MP's practice oppression, they should be liable for misconduct in their office.

(c) Brocage, Bribery, Sale of Offices

In the past, much of the offence of misconduct was closely associated with (and, at common law, part of) the offences of brocage, bribery and the sale of offices. However, brocage, bribery and the sale of offices are now covered by the Bribery Act 2010.²⁴⁹

- Thus, it is asserted that any statutory formulation of the offence of misconduct in a public office should exclude it where the Bribery Act 2010 otherwise applies;
- In other words, the general law should apply in such circumstances - and not a specific law relating to public officers. Further, in the case of the general law, no additional pre-requisite of being a public officer needs to be proved - which is why resort should be made to it.

(d) Extortion, False Accounting, Embezzlement

In the past, much of the offence of misconduct was closely associated with (and, at common law, part of) the offences of extortion, exaction, false accounting and embezzlement.

- However, the common law offences of extortion by colour of office (or franchise) and false accounting by public officers were abolished by the Theft Act 1968, which also abolished the statutory offences of extortion by coroners and sheriffs.²⁵⁰ Further, embezzlement and blackmail, as well as other forms of fraud and deceit, are dealt with by the Theft Acts 1968-1978;
- Thus, any statutory formulation of the offence of misconduct in a public office should exclude it where the Theft Acts 1968-78 otherwise apply (including for example, theft, obtaining money by deception, dishonestly retaining a wrongful credit *etc*). It is asserted that the reason why this should be done is the same as with the Bribery Act 2010 (see *(c)*);
- The same should apply to fraud, forgery *etc*. See eg. Forgery Act 1861, Fraud Act 2006 *etc*.

If not, the effect will be to undermine the generality of this legislation by prosecutors pleading, for example, theft

man hath to do with another's affairs and against his will, and without his leave, that is an office, and he who is in it is an officer...offices are distinguished into civil and military according to the nature of their several trusts, and every man is a public officer who hath any duty concerning the publick, and he is not less a publick officer where his authority is confined to narrow limits, because 'tis the duty of his office, and the nature of that duty, which makes him a publick officer, and not the extent of his authority.'

²⁴⁶ See 7.

²⁴⁷ (1992) unreported, Central Criminal Court. See also Nicholls, n 21, pp 160-1. See also *R v Boston* (1923) 33 CLR 386 (High Court of Australia held that the post of an MP was a public office). See also LC-1997, n 190, para 7.42-4.

²⁴⁸ As noted previously, all Crown appointees were public officers and *vice versa*. Were MP's? Doubtless, prior to Edward III (1327-77) the sovereign would have asserted that, since he summoned Parliament, it was a Crown body in some way. Obviously, subsequent history has been one of MP's dis-associating themselves from being beholden to the Crown in any way. Thus, the issue is not solvable by reference to history. The real issue in modern times is a wider one as to whether MP's are performing an office entrusted to them by the public (and in which they interact with the public) and, thus, whether they should be liable (criminally) for misconduct. The emerging caselaw indicates that the courts uphold this proposition.

²⁴⁹ The Sale of Offices Acts 1551 and 1809 have now been repealed, as has all the other legislation referred to in **2(b)**.

²⁵⁰ See Theft Act 1968, ss 32 & 33 (section 17 of the Theft Act 1968 now covers false accounting).

and misconduct *concurrently* or *alternatively*, in the hope that – if it cannot be caught under the primary offence - it might, on a ‘sidewind’, be caught as misconduct in a public office. However, this did not happen in times past (bribery under legislation, for example, was not pleaded, concurrently or alternatively, as misconduct under the common law).

- An example of the unfortunate consequence of this is a case such as *W(M)* (see 13). Here a police officer mis-used an Amex card provided by the police to spend c. £12,500 of public money for his own use;
- However, it is asserted that the officer should have been prosecuted for theft or fraud under legislation. And if this was not covered by the Theft Acts, then that legislation should be amended - since such an offence should cover any mis-use of a card, whether *corporate* or *government* money is involved. Prosecuting such a person for misconduct simply confuses the ambit of the Theft Acts and, in the case of misconduct in a public office, converts it into a sort-of ‘catch-all’ offence undermining the former.²⁵¹

*In conclusion, the offence of misconduct in a public office should be a specialised offence which only applies when the general criminal law does not. It should not be a residual, ‘catch-all’ offence.*²⁵²

(e) What the Offence would Cover in Practice

As to what the statutory offence would cover in practice (assuming that the position in (c) and (d) above prevails) - from the past caselaw - one would suggest that a statutory offence would cover, *in practice*:

- Oppression (eg. JP’s corruptly, arbitrarily, maliciously or partially exercising their discretion); and
- Neglect of duty (eg. a police constable neglecting to stop a crime being committed *etc*).²⁵³

(f) Pre-requisites for the Offence

In light of the caselaw - especially the more recent cases mentioned in 11 and 13 - it is asserted that the pre-requisites for this offence should be simple and clear (at present, they are about as clear as mud). Thus, it is asserted that it should be required to be proved of the defendant (D) that:

- Public Officer. That D was a public officer;²⁵⁴
- Acting as Such. D was acting as a public officer or was purporting to do so;²⁵⁵
- Intentional. That D ‘*intentionally*’ misconducted himself in his duties. ‘*Intention*’ excludes: (a) inadvertence;²⁵⁶ (b) negligence;²⁵⁷ (c) acting from error;²⁵⁸ (d) acting from ignorance.²⁵⁹ Previous

²⁵¹ Exactly the same unfortunate position occurred in the case of the antiquated common law offence of keeping a disorderly house being utilized when the Sexual Offences Act 1956, s 33 should have been resorted to. See *Court v Gu* [2012] 1 Cr App R 36.

²⁵² The fact that misconduct in a public office is perceived as a sort of ‘catch all’ may be seen from Nicholls, n 21, p 154 ‘Why the modern recourse to misconduct in a public office? The answer is at least fivefold: (1) a single charge may be used to reflect an entire course of conduct; (2) it may be used to reflect serious misconduct which is truly ‘criminal’ but which cannot be satisfactorily reflected by any other offence; (3) it may be used to reflect behaviour which would amount to perverting the course of justice in circumstances where the ‘course of justice’ is fictitious (ie. created by those carrying out an integrity test); (4) as confidential information becomes increasingly valuable to criminals or commercial offences interests, it may be used to reflect the unlawful passing of such information when other offences (for example, under the UK’s Data Protection Act 1998 or Official Secrets Act 1989) are limited or give the court only limited sentencing options; (5) the maximum sentence is life imprisonment. (*italics supplied*). See also the CPS Charging Practice referred to in Nicholls, n 21, p 167 (‘Before deciding to proceed with a charge of misconduct in public office you should consider whether the acts complained of can properly be dealt with by any available statutory offence. If the seriousness of the offence can properly be reflected in any other charge, which would provide the court with adequate sentencing powers, and permit a proper presentation of the case as a whole, unless: the facts are so serious that the court’s sentencing powers would be inadequate; or it would ensure the better presentation of the case as a whole; for example, a co-defendant has been charged with an indictable offence and the statutory offence is summary only.’ See also *R v Sookoo* (2002) TLR 10/4/02 cited in Nicholls, n 21, p 168 (court cautioned against a count of perverting the course of justice when the court could properly be treated as an aggravating feature of the statutory offence).

²⁵³ eg. *Dytham*, see 11.

²⁵⁴ See the trial judge’s formulation in *L(D)*, see 13.

²⁵⁵ Nicholls, n 21, p 166.

²⁵⁶ Widgery CJ in *Dytham*, see 11 (wilful and not merely inadvertent).

²⁵⁷ See JC Smith’s comment, n 186. In *Henly* (1828), see 7, Best CJ referred to ‘negligence’ but thus should (it is asserted) more appropriately have referred to ‘neglect’. See re difference, Turner, n 10, vol 1, p 44 *et seq*. See also *R v Halford* (1734) 7 Mod 193 (87 ER 1184) (re any grant by a court of an information against a mayor for neglecting to hold a sessions), Hardwicke CJ at pp 193-4 said ‘he could never consent to grant such informations, unless it appeared that such neglect was willfully committed, in delay of justice and oppression of the subject.’

²⁵⁸ See *Fentimen*, see 7. Also Turner, n 10, vol 1, p 364 (mistake or error) and Finn, n 108, p 316.

²⁵⁹ *Ibid*. See also Harris (ignorance or mistake), see 8(b).

judicial formulations have used the words ‘*wilful*’ or ‘*deliberate*’ or them both.²⁶⁰ However, ‘*intention*’ involves an exercise of the will (thus, it includes wilfully) and it results from some degree of deliberation. Thus, these other words are not required,²⁶¹

- Reckless. That D ‘*intentionally or recklessly*’ misconducted himself. This was a pre-requisite as to the *mens rea* in *A-G’s Reference (No 3 of 2003)* (see 12) and it seems reasonable to include it (although it was never referred to in pre-1967 caselaw);²⁶²
- Without Legal Justification. The misconduct was ‘*without legal justification*’.²⁶³ Possible legal justification arose in *Kennett* (1781) and *Pinney* (1832) where the failure by a JP (the mayor of London) to read the Riot Act 1714 and to otherwise act to prevent a major riot may have justifiable if the JP was accepted as being in reasonable fear for his own life.²⁶⁴ However, there is no *legal justification* where the misconduct results from behaviour that is: (a) corrupt; (b) oppressive;²⁶⁵ (c) unjust; (d) dishonest; (e) illegal.²⁶⁶

In conclusion, it is asserted these should be the key elements of the offence - a public officer, acting as such, who intentionally (or recklessly) misconducts himself without legal justification. However, in more recent decisions, additional elements have been proposed which, it is asserted, are unnecessary and not found in the older caselaw as pre-requisites. These are the following:

- Dishonesty? Should dishonesty be required? ²⁶⁷ One would assert this is implicit in the words ‘*without legal justification*’ as Leveson LJ pointed out in *L(D)* (without legal justification or reasonable cause means no more than acting culpably or in a blameworthy fashion, see 13). Thus, the words ‘*dishonest*’ ‘*culpable*’²⁶⁸ and ‘*blameworthy*’²⁶⁹ - if separated from the same - simply cause confusion. These are epithets which explain the words ‘*without legal justification*’ and are not (and should not be employed) as an additional pre-requisite. In *Dytham*, Widgey CJ used the words ‘*without reasonable excuse or justification*’. However, ‘*excuse*’ is a synonym for ‘*justification*’ and ‘*reasonable*’ confuses the issue since the justification must not be *legal*. That is, it must be corrupt, arbitrary, unjust, oppressive, partial, illegal *etc* in some way. As a result, *per se*, it will not be reasonable. It may be noted that, in early cases (ie. pre-1914), dishonesty was not treated as an essential component as such;
- Abuse of the Public’s Trust? In *A-G’s Reference (No 3 of 2003)* a pre-requisite was said to be whether the misconduct was said to be of such a degree ‘*that it amounted to an abuse of the public’s trust in the officeholder*.’²⁷⁰ However, this is very vague and it was not required in prior cases as a pre-requisite as such. For example, when a constable failed to raise hue and cry - or an overseer failed to provide food and drink to a person - it was not considered whether the public’s trust in that office was affected (doubtless, it was, in a technical sense). Instead, this circumlocution really refers to the seriousness (or substantial nature) of the misconduct. That is, if it is trivial, a prosecution should not ensue. However, the need for

²⁶⁰ Widgey CJ in *Dytham*, see 11 (wilful and not merely inadvertent). See also Stephen, n 104, art 122 (wilfully). See generally, Nicholls, n 21, p 165-6.

²⁶¹ OED, n 38 (*wilful*) ‘2. Having the will to do something: purposing, intending; wishful, desirous.’ (*deliberate*) ‘1. Well weighed out and considered; carefully thought out, formed, carried out *etc* with careful consideration and full intention; done of set purpose; studied; not hasty or rash.’ (underlining supplied)

²⁶² See generally Nicholls, n 21, pp 164-5.

²⁶³ Widgey CJ in *Dytham* in 11. See also Stephen, n 104, p 104 (art 122) which Widgey CJ cited.

²⁶⁴ See *Kennett* (1781) and *Pinney* (1832).

²⁶⁵ Oppression would include intentional malice, partiality or being actuated by improper motives. See also Finn, n 108, p 325.

²⁶⁶ In *Young v Pitts* (1758) and in *Williams & Davis* (1762), Mansfield CJ used words such as ‘partial, oppressive, corrupt, arbitrary, unjust’ *vis-a-vis* the exercise of a JP’s discretion and all these words are examples of an absence of ‘*legal justification*’. In *Borron* (1820), words such as ‘unjust, oppressive, corrupt (among which fear and favour were included)’ were used. In *Badger* (1843) the acts of the JP’s arose from improper motives. In *Marshall* (1855) the conduct of the county court judge was alleged to be malicious. In *Hall* (1889) it was alleged the overseer was corrupt. See also Turner, n 10, vol 1, p 364 and Finn, n 108, p 318.

²⁶⁷ See *Llewellyn Jones* (‘dishonest motive’), see 11. Cf. Theft Act 1968, s 2 (dishonestly appropriates). See also Finn, n 108, p 309 ‘cheat is essentially an offence of dishonesty. Official misconduct, as will be seen, is not. It embraces the dishonest act. But equally it embraces, for example, the corrupt, the oppressive or the partial act. In confusing the two the error can be made of insisting that a dishonest motive is an essential element in the official offence.’

²⁶⁸ See Widgey CJ in *Dytham*, see 11.

²⁶⁹ It is asserted that ‘culpable’ and ‘blameworthy’ mean the same thing. OED, n 38 (*culpable*) ‘1. Guilty, criminal; deserving punishment or condemnation. 2. Deserving blame or censure, blameworthy.’ Ibid (*blameworthy*), ‘... deserving of blame culpable.’ (underlining supplied).

²⁷⁰ See also Nicholls, n 21, p 166-7.

conduct to be *serious* applies to a vast range of criminal offences and it is better to let prosecutors determine this - and let the court impose a minimal fine if they bring trivial cases²⁷¹ - than to grapple with the (in truth, unanswerable) issue of whether it can really be objectively shown in a specific case that the public's trust was abused or that the misconduct was serious, as a *pre-requisite*. It may be noted that, prior to 2003, this was not treated as a prerequisite. Thus, '*without legal justification*' seems quite sufficient.²⁷²

In conclusion, the concepts of '*dishonesty*' and '*serious*', should not be pre-requisites for the offence.

17. Mason's Formulation

In *Shum Kwok Sher v HKSAR* (2002)²⁷³ Sir Anthony Mason NPJ - referring to English and Australian authority - said that the elements of the offence were that the person was a:

1. Public official;
2. Who in the course of (or in relation to) his public office;
3. Wilfully and intentionally
4. Culpably misconducts himself. A public official culpably misconducts himself if he wilfully, and intentionally, neglects or fails to perform a duty to which he is subject by virtue of his office or employment without reasonable excuse or justification.²⁷⁴

Further, Mason added that the misconduct must be serious, which was to be determined:

having regard to the responsibility of the office and the office holder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.

This definition would seem to be a very good starting point for a statutory offence since all the caselaw in **Appendix B** endorses 1-3 (with the exception of it being asserted that '*wilfully*' in 3 is covered by '*intentionally*').²⁷⁵

As to 4, it is asserted that '*without legal justification*' also covers all the caselaw and that '*culpably*' in 4 is covered by '*without reasonable justification*'. As to the '*responsibility of the office and the office holder, the importance of the public objects which they serve and the nature and departure from those responsibilities*', besides being at risk of comprising mere verbiage, it is asserted this is not required as a pre-requisite. Indeed, it is the very opposite of the common law position as it originally prevailed.

- For example, bailiffs, constables, overseers and goalers were regarded as very lowly public servants in early times and yet the courts (correctly, it is asserted) applied the offence of misconduct in a public office to them;
- Thus, it is not the *responsibility of the office* nor the *public objects they serve* that is material. What is, is whether the misconduct is sufficiently serious to merit a fine or imprisonment. This should be decided on a case-by-case basis at trial and not as a pre-requisite.

18. Conclusion – Caselaw

Before proposing a precise statutory formulation it is instructive to analyse the c. 42 cases from 1599-2012 (413 years)(see **Appendix B**) which are commonly cited in respect of this offence, since they reveal its essential purpose and why some recent cases are out of *sync* with this. As to these cases:

- Oppression. A large number of cases in **Appendix B** are of oppression, taking the form of JP's exercising their judicial discretion in a malicious, partial, unreasonable or capricious way. It may be noted the last

²⁷¹ There is no evidence from the caselaw (see **Appendix B**) that trivial cases have ever been brought.

²⁷² In *Bowden* (1996) the local government employee got council workers to work on a lady friend's flat. Thus, he was acting dishonestly since he knew that the council repairing policy did not include this. In *W(M)* the police officer used an Amex card given to him by the police for his own benefit when it intended (as he knew) only to be used for specified legitimate purposes. Both these are examples of behaviour that was without legal justification – being dishonest, culpable, blameworthy.

²⁷³ (2002) HKCFAR 381 (Final Court of Appeal in HK). This case was referred to by Leveson LJ in *L(D)*, see **11** at p 165.

²⁷⁴ See also Bokhary PJ 'Accordingly the offence of misconduct in public office is committed when (i) a public official (ii) in the course of or in relation to his public office, (iii) wilfully and intentionally (iv) culpably misconducts himself and the misconduct is serious.'

²⁷⁵ Leveson LJ in *L(D)*, p 165 (see **13**) noted that 'Although Pill LJ [in *A-G's Reference no of 2003*], see **12**] expresses difficulty in understanding the need for the conduct to be both wilful and intentional, he expressed approval of the view that the misconduct must be serious.'

instance was in 1850 (*Barton*) which likely reflects the greater professionalism of JP's (assisted by a clerk) in modern times, as well an improved system of appeal and oversight *etc.* However, the principle that this offence should cover oppression (by those in a judicial office especially) is a good one and should remain;

- Neglect. A number of cases are of neglect. Thus, a constable failed to raise hue and cry (*Crowther*) or return a warrant of distress (*Wyat*)²⁷⁶ or stop serious violence against a person (*Dytham*), a sheriff failed to execute a criminal when he should (*Antrobus*), an overseer failed to receive a pauper when he should (*Davis*) or failed to feed her (*Booth*), a clergyman failed to marry people when he should (*James*, although this case is dubious);
- Commission. A local authority employee dishonestly authorised council workmen to work on a private matter as a favour (*Bowden*), a retired police officer in a civil role, without legal justification (wrongfully), passed confidential information to an informant in the hope of getting valuable information in return ((*L(D)*)) and an overseer of the poor corruptly omitted from the register persons entitled to vote or included those not otherwise entitled (*Hall*).²⁷⁷

This was the 'heart' of the old offence and it is asserted that it should remain so. There are also cases on :

- (a) bribery (*Whitaker*);
- (b) extortion (*Broughton, Harrison*);
- (c) theft/false accounting (*Buck & Hale, Bembridge*);
- (d) intention to gain improper financial advantage (*Llewellyn-Jones, W(M)*);
- (e) prison personnel having sex with prisoners (*Belton, Cosford*);
- (f) mis-use of confidential information (*L(D)*);
- (g) corruption (*Hall, Bowden*).

Bribery, extortion, theft and false accounting (ie. (a) and (c)) are now separate offences. Thus, these cases will not arise again. However, it is contended that (d)-(f) are not appropriate to this offence.

- A police officer mis-using a credit card or country court registrar improperly making an order, both for improper financial advantage should be no different to a corporate employee. Both should be prosecuted under some aspect of the Theft Acts, not under a general offence of misconduct in a public office (not least, since dishonesty should be proved as a pre-requisite of both). Otherwise, the latter offence will be used to 'fill in' *lacunae* in the Theft Acts. Old common law offences should not be so utilised;
- Similarly, sex with prisoners should, more appropriately, be dealt with as an offence under the Sexual Offences Act 2003 (the latter being amended) since, at heart, it is, like so many other sexual offences, an abuse of trust (both victim and perpetrator being in an inappropriate relationship in the circumstances). Further, given the opprobrium *vis-à-vis* sexual offences, this might likely have a greater prospect of suppressing such an activity (especially if people then have to register on a sexual offenders list);
- Public Officers intentionally, or recklessly, mis-using confidential information should be a separate criminal offence.

It is asserted that the same applies to public officers (police, prison officers) who commit *false imprisonment* or who intentionally assist in *escapes or rescues* (or negligently permit the same)(see 22). They should be prosecuted under these 'tailor made' offences and not under a 'general' offence of misconduct. Thus, just as the punishment should fit the crime, the offence should fit the act (or failure to act) in question.

In conclusion, a statutory offence should be drawn so as to reflect the basic nature of this common law offence. Also, it should be formulated so as to prevent it being utilised as a 'catch-all', to fill in where other legislation has left a small gap or is uncertain.

19. Developing a Statutory Offence

One would propose the following as a statutory definition:

1. It is an offence for a public officer:²⁷⁸

²⁷⁶ It is not clear whether theft was involved (ie. whether *Wyat* kept any of the money).

²⁷⁷ It should be noted the indictment was held bad and so the matter did not proceed to trial.

²⁷⁸ For a definition of 'public officer' see 16(b). See also LC-1997, n 190, para 2.17 (definition of public body in the Prevention of Corruption Act 1889) and pt 6.

- (a) acting (or purporting to act) in the course of his employment;
 - (b) to intentionally (or recklessly) misconduct himself;
 - (c) without legal justification.
2. The misconduct in s 1 may be by way of commission or omission.
 3. 'Without legal justification' in s 1 includes where a person acts: (a) corruptly; (b) oppressively; (c) dishonestly; (d) illegally.
 4. The public office may, or may not, be remunerated.
 5. The public office may be full-time, part-time, by way of consultancy or otherwise.
 6. Where an offence is prosecuted under the legislation referred to in [App []], ²⁷⁹ no prosecution shall be brought concurrently or alternately for this offence.

As to the *punishment*, this offence is a serious one since it diminishes the general public's trust and can have important financial consequences. However, to impose the current maximum of life imprisonment is excessive. Thus, one would suggest that up to 5 years imprisonment and/or a maximum fine should be imposed (the maximum penalty only being imposed in the case of very serious breaches). A statutory offence of misconduct in a public office will enable the tort of misfeasance in public office to be reviewed. ²⁸⁰

- Finally, since the Bribery Act 2010 now deals with the sale of offices, three old pieces of legislation covering the same should be repealed, to prevent their being treated as aspects of misconduct in a public office or separate to the law of bribery. ²⁸¹

20. Crown Officers Abroad

A previous article ²⁸² has considered the antiquated Criminal Jurisdiction Act 1802 which, it is asserted, should be repealed since it was effectively replaced by the Criminal Justice Act 1948, s 31(1). The latter Act provides that:

Any British subject employed under His Majesty's Government in the United Kingdom in the service of the Crown who commits, in a foreign country, when acting or purporting to act in the course of his employment, any offence which, if committed in England, would be punishable on indictment, shall be guilty of an offence...and subject to the same punishment, as if the offence had been committed in England.

It is asserted that this section should be amended, so that it covers any person and not just British subjects. Further, it should be dovetailed with the offence of misconduct by a public officer. Thus, it should (it is asserted) state:

A public officer acting (or purporting to act) in the course of his employment who commits an offence which, if committed in England, ²⁸³ would be punishable on indictment, is guilty of an offence and subject to the same punishment as if the offence had been committed in England. ²⁸⁴

In practice, this would likely only cover Foreign Office officials and a few other civil servants, since most persons working in central or local government perform their employment solely in the UK. However, there would seem no good reason why a public officer abroad should not be liable, when acting as such in the course of his employment, when he would be if in the UK.

²⁷⁹ This is to prevent the offence of public misconduct being a 'catch all' offence. One would suggest that this offence should not apply when the following financial crimes legislation apply: (a) Bribery Act 2010; (b) Forgery Act 1861 and Forgery and Counterfeiting Act 1981; (c) Fraud Act 2006; (d) Criminal Justice Act 1993 (ss 52-64 (insider dealing), (e) Debtors Act 1869, s 13 (fraudulently obtaining credit); (f) Documentary Evidence Act 1868 s 4 (forgery), Documentary Evidence Act 1882, s 3 (forgery); (g) Criminal Justice Act 1925, s 36 (forgery of passport, s 37 pension documents), (h) Evidence Act 1851, s 15 (certifying a false document), (i) Criminal Justice Act 1991, s 20A (false statements as to financial circumstances). Also, when the following property crimes legislation applies: (a) Computer Misuse Act 1990; (b) Criminal Damage Act 1971; (c) Criminal Law Act 1977, ss 6-12A (entering/remaining on property); (c) Police and Justice Act 2006 (computer misuse), (d) Theft Acts 1968 and 1978; (e) Mobile Telephones (Re-Programming) Act 2002, ss 1-2. The effect of this should be to limit (in practice) the offence of misconduct in a public office to: (a) oppression; and (b) neglect. See LC-1997, n 190, p 21, fn 70 'The common law offence of misconduct in a public office (or, in Scotland, of a public official acting in breach or willful neglect of duty) provides a residual offence should the statutory offences be inapplicable.'

²⁸⁰ Nicholls, n 21, p 171 *et seq.*

²⁸¹ See Sheriffs Act 1887, s 29 (sale of offices) and the Simony Acts 1588 & 1688 (sale of Church of England offices). I have suggested to the Law Commission (State Repeals) Dept that these should be repealed since such matters are now covered by the Bribery Act 2010.

²⁸² See GS McBain, *Time to Consolidate Public Order Offences – A New Act.*

²⁸³ One would suggest the reference should probably be to the UK.

²⁸⁴ It would be useful if this section and material on misconduct in public officers were juxtaposed in legislation.

In conclusion, misconduct when acting in a public office abroad should be covered by the Criminal Justice Act 1948, s 31(1), as amended. This, to enable prosecution where the public officer is abroad.

21. High Crimes & Misdemeanours

If misconduct in a public office is dealt with, it is important that the composite crime of ‘*High Crimes and Misdemeanours*’ should also be dealt with since this was the means by which misconduct in high public office (including judicial office) was punished.²⁸⁵ Further, both forms of misconduct are forms of contempt (misprisions, *mespris*) as Blackstone noted.²⁸⁶ Although there are many cases, it is asserted that a review of the law in this area is, actually, very simple for the following reasons:

- ‘*High Crimes and Misdemeanours*’ no longer exists in practice since all the crimes compassed by it over the centuries have been superceded by modern statutory crimes or are obsolete. Thus, today, specific offences (and not the composite offence) would be pleaded;
- The criminal process for bringing High Crimes and Misdemeanours is by way of impeachment in which the House of Commons acts as accuser and the House of Lords acts as a court. In the past, the latter was able to act as a court since judges were present as members of the Lords. Today, this no longer occurs since the Supreme Court has superceded the House of Lords (in judicial terms). Further, article 6 of the European Convention on Human Rights (incorporated into English domestic law by the Human Rights Act 1998) guarantees the right to a fair trial by ‘*an independent and impartial tribunal established by law*’. This the House of Lords cannot, in any fashion, be said to be. It is a political body not a tribunal (also, it has not exercised such a role since 1806 so it would be rather out of practice). As a result, it is asserted that impeachment is no longer a ‘*legal*’ criminal process. That is, it would not be legal to seek to resort to such a criminal process today.

Two interesting points arise in this context:

(a) Which Came First – Common Law or Parliamentary?

Did the Parliamentary punishment for misconduct in the case of great men come before the common law offence or *vice versa*? It seems clear the latter.

- Thus, high crimes and misdemeanours were brought by way of *impeachment* in the period 1376-1806 and - prior to that - by way of *appeal* in the period 1388-97 before the latter was made illegal in 1399;²⁸⁷
- Prior to appeal, there were criminal processes of *accusation* by the Crown, the Commons or an individual. Of these, one of the earliest was that of Edward I (1272-1307), in 1305, accusing Nicholas Seagrave of treason in Parliament.²⁸⁸

However, there are examples of early common law proceedings, prior to 1305. For example, the prosecution of sheriffs and their bailiffs (or sarjeants). Thus, the Pleas and Assizes at Norwich in 1209 records a case of punishment for bribery by a sheriff’s serjeant:

Roger of Bintree, serjeant of Eynsford hundred, because he was convicted of refusing to summon the essoiner of a certain poor man except for half a mark which John de Frid offered him [is in mercy].²⁸⁹

Further, legislation on misconduct pre-dates the Parliamentary process. Thus, as previously noted (see **2(b)**), the Statute of Westminster the First 1275 punished extortion, neglect of office and corruption in sheriff’s and their bailiffs²⁹⁰ as well as coroners and other king’s officers. Further, in even earlier times, legislation was punishing sheriffs committing extortion by unjustly distraining goods of persons for alleged debts. Thus, The Laws of Henry I (1100-35), c. 1133, provided that:

If a sheriff unjustly distrains anyone he shall, on being convicted of the offence, lose his suit and pay

²⁸⁵ See McBain, n 32. It also covered treason. However, the latter is now a statutory offence only (Treason Acts 1351, 1702). Thus, it asserted that none of Parliamentary constructive treasons considered under the offence of High Crimes and Misdemeanours now exist or are required.

²⁸⁶ See Hawkins, 5 and Blackstone, 6. See generally, McBain, n 32.

²⁸⁷ McBain, n 32, pp 815-7. See also 1 Hen IV c 14 (1399, rep).

²⁸⁸ *Ibid*, p 815.

²⁸⁹ See *Pleas before the King or His Justices 1198-121*, vol 4, Selden Society Reports, vol 84, p 241.

²⁹⁰ For problems with sheriffs and their duties in the time of Edward I (1272-1307) see *Select Cases in the Court of King’s Bench under Edward I*, SS, vol 57, pp xciii-xcvii. See also the attachment of a sheriff for his misapplication of monies, SS, vol 58, pp 193-4 (which conduct was (correctly, it is asserted) categorized as a ‘contempt’).

double compensation, and he shall also pay a penalty to the king in accordance with the nature of the offence.²⁹¹

It seems clear that judicial corruption was also not uncommon in the time of Henry I.²⁹² Thus, the Laws provide:

If anyone through anger or animosity or fear or partiality or greed or for any reason delivers an unjust judgment or produces any injustice, he shall forfeit 120 shillings and his rank of thegn and be deprived of every judicial dignity, unless he redeems himself *vis-à-vis* the king, according as the latter, in his discretion, decides.²⁹³

Finally, even *before* 1133 and these pieces of legislation, one would suggest that the common law on misconduct in such a public office prevailed.

In conclusion, therefore, the Parliamentary punishment for misconduct in a public office was subsequent to that laid down in legislation as well as to the common law.

(b) Misconduct in Public Office and High Treason?

Finally, the link between *misconduct in a public office* and *high treason* may be noted. In early medieval times, the feudal link between sovereign and subject was clear. It was one of reciprocal duties. A subject owed obedience to his sovereign in return for the sovereign's protection.²⁹⁴

- Any attempt to challenge this proposition comprised a form of 'contempt'. The most heinous form of this contempt was high treason – the formal defiance of the sovereign (*diffidatio*). In the case of civil war, this took the form of rebels displaying their banners against those of the sovereign. Its effect was suspension of the law against such rebels. Martial law (no law) then applied on the battlefield and a rebel could be justly slaughtered.²⁹⁵
- Lesser contempts than high treason comprised those against the sovereign in a reduced form. Misconduct in a Crown (public) office was one of these, as was refusing to take up a Crown office (see **2(a)**) which was essentially part of it, being neglect.

That said, this division between high treason and lesser contempts was fluid. Thus, in the early medieval period prior to the the Treason Act 1351, when the misconduct in a public office was committed by a very important person, the penalty could be 'elevated' to that of high treason, in the case of High Crimes and Misdemeanours. Examples are as follows:

- **Judicial Misconduct.** Thorp CJ was guilty of bribery in 1350, (see **2(a)**). He was sentenced to dismissal, death and confiscation of property, a punishment usually imposed for high treason;
- **Military Misconduct.** William Weston was a military commander arraigned before Parliament in 1377, accused of surrendering a castle to the French without Crown consent. He was sentenced to be drawn and hanged.²⁹⁶

This fluid approach changed when the Treason Act 1351 expressed exactly what comprised high treason.²⁹⁷ Thus, the link between misconduct in a Crown office and treason may be seen in various cases of High Crimes and Misdemeanours.

In conclusion, the punishment of misconduct in a public office by way of Parliamentary process should be abolished in order that all persons - whether important or not - are prosecuted under the new statutory offence.

22. False Imprisonment - Escape, Prison Breach & Rescue

²⁹¹ LJ Downer, *Leges Henrici Primi* (Oxford, 1972), p 167.

²⁹² Ibid, pp 129-30 'In all judicial proceedings the disposition of the judges must be irreproachable, not open to suspicion. For poor people are more grievously afflicted by corrupt judges than by savage enemies.' See also, p 137 'Failure of justice and violent denial to litigants of their right are matters which cause the transfer of cases to the royal jurisdiction or to the judicial authority of higher lords.'

²⁹³ Ibid, p 139. Also, p 139 'If anyone delivers an unjust judgment and subverts the case, he shall make amends by payment of *wergeld*.'

²⁹⁴ *Calvin's Case* (1608) 7 Co Rep 1a at 5a, '*Protectio trahit subjectionem, et subjection protectionem*' ('protection draws allegiance and allegiance draws protection').

²⁹⁵ McBain, n 32, p 4, n 41 (*diffidatio*). This principle applied right up until 1745 where the display of banners against the sovereign was a sign of open war making the followers of 'Bonny Prince Charlie', traitors. For the history of martial law, see GSMcBain, *Abolishing Obsolete Crown Prerogatives relating to Martial Law, Conscriptio & Billeting*. (2012) Int. Law Research, vol 1, no 1, 13-62.

²⁹⁶ See McBain, n 32, p 858.

²⁹⁷ This also explains why - if misconduct in a public office punished by Parliamentary process is abolished – then abolition should also apply in respect of any Parliamentary process *re* treason.

A review of the common law on misconduct in a public office, inevitably leads to a review of the above common law offences - since frequent examples of *false imprisonment* were of police constables (and prison officers) illegally detaining people - just as frequent examples of *escape* and *rescue* involved police constables (and prison officers) either intentionally allowing prisoners to escape or negligently permitting the same.

Previous articles have analysed these offences.²⁹⁸ A review of these antiquated common law offences is not complex and placing them in a statutory form will, then, enable matters on constables and prison officers misconducting themselves in these specific circumstances to be dovetailed with misconduct in a public office.

23. Other Contempts

A review of misconduct in a public office as well as of '*High Crimes and Misdemeanours*' leads to a review of other contempts (misprisions) since they also involved misconduct. This, also, would not be complex. Contempts that still exist at common law comprise:

- (a) contempt of court;
- (b) contempt of Parliament,²⁹⁹
- (c) contempt of the sovereign,³⁰⁰
- (d) other contempts.

As to (a), this is being reviewed presently by the Law Commission and it is hoped that it will become a statutory offence. As to (c) it has been asserted, in a previous article, that this (composite) offence should be abolished.³⁰¹ As to (b), it is asserted that this should be left for present purposes. As to (d), do any still exist? One way of determining this with a fairly high degree of accuracy is to trawl through all the reports of the State trials (both the old and new series, 1163-1843), see **Appendix D**. One would suggest that there are none.³⁰²

In conclusion, all 'contempts' should be abolished - save for contempt of court and contempt of Parliament. This will ensure that any other, common law, criminal offences of misconduct in a public office are abolished. This will help clarify the law and remove dead material.

24. Summary

This article proposes the following, that:

- Misconduct in a public office is made a statutory offence;
- The Criminal Justice Act 1948, s 31 (Crown officers abroad) is amended;
- The Sheriffs Act 1887, s 29 and the Simony Acts 1588 and 1688 are repealed,³⁰³
- The crime of *Refusing to serve in a Public Office* is abolished, it being a form of mis-conduct in a public office (ie. neglect or refusal to take it up);³⁰⁴
- *High Crimes and Misdemeanours* - which comprises, for the most part, misconduct in a public or judicial office - is abolished (also, the criminal process of impeachment);
- *False Imprisonment* - much of which comprises false imprisonment by police and prison officers - becomes a statutory offence, to dovetail with misconduct in a public office;
- *Escape, Prison Breach & Rescue* - much of which comprises police and prison officers intentionally assisting (or negligently enabling) prisoners to escape (or be rescued) becomes a statutory offence, to dovetail with misconduct in a public office;
- All '*Contempts*' are abolished save for: (a) contempt of court; and (b) contempt of Parliament - in order to remove all other common law mis-conducts.

²⁹⁸ See ns 30 & 56.

²⁹⁹ See also **Appendix D**, cases of *Leech* (1682)(frivolous plea), *In re Long Wellesley* (1831)(committing MP for contempt) and *Willis v Gipps* (1846)(power of House of Commons to commit for contempt).

³⁰⁰ See McBain, n 29. Also, **Appendix D**, case of *Knevet* (1541)(striking in Royal palace).

³⁰¹ *Ibid.*

³⁰² There are various contempts against the Star Chamber, see **Appendix D**, cases of *William Davison* (1587)(re execution of Mary, Queen of Scots), *James Whitelocks* (1613) and John Hollis (traducing public justice). However, the Star Chamber was abolished in 1641. It should be noted that 'contempt of statute' is a mis-nomer, not being a contempt as such but a rule of construction. See McBain, n 29, p 104.

³⁰³ I believe that the Law Commission (Statute Repeals) Department are already considering this.

³⁰⁴ See McBain, n 29, p 115. The last case appears to have been in 1832. For refusal to serve in a public office being a category of misconduct in a public office see LC-1997, n 190, para 2.8.

If undertaken in the above order, none of this would be complex.

25. Urgent Need to Legislate for Common Law Offences

There are still a relatively large number of common law offences on the books. Not only are many obscure and uncertain in many cases. However, they are positively conducive to legal cases having to be brought in order to determine their scope and their purport, which simply adds to the bill to the taxpayer and clogs up the court system. As to these (see **Appendix C**):

- **Obsolete Crimes.** It would seem clear that many of these crimes are obsolete, viz. (a) refusal of a common innkeeper to provide board and lodging; (b) contempt of the sovereign; (c) refusing to serve in a public office; (d) contempts (save for contempt of court and contempt of the sovereign); (e) buying and selling a pretended title; (f) keeping a disorderly house; (g) high crimes and misdemeanours; (h) conspiracy to commit a public nuisance; (i) conspiracy to outrage public decency; (j) conspiracy to corrupt public morals;
- **Connected Crimes.** (a) Misconduct in a public office; (b) false imprisonment; (c) escape, prison breach and rescue, being closely connected, should be placed in the same statutory context. Corruption, conspiracy to defraud and cheating the public revenue should be added to the Theft Acts 1968-78;³⁰⁵
- **Placing in Specific Legislation.** Refusing to aid a police constable should be placed in legislation dealing with the police and the unlawful treatment of dead bodies in legislation dealing with legislation dealing with burial.³⁰⁶

As to the removal of obsolete crimes, given that the Law Commission is fully occupied with more modern offences, it would seem basic common (and business) sense for experts (such as retired judges or QC's or academics) to be appointed to deal with this material. Otherwise, it will linger on in the law books and caselaw causing inconvenience to everyone. If common law offences are abolished - or placed into legislation - it would then be possible for all general criminal legislation to be placed in just four statutes relating to:

- Crimes against the person;
- Sexual Crimes;
- Property and Financial Crimes;
- Public Order Crimes.³⁰⁷

Needless to say, this would radically improve the present very fragmented nature of English criminal law with there being, at least, some 220 pieces of legislation concerning the same (including legislation on criminal procedure).

³⁰⁵ It is contended that material relating to theft and property offences could easily be placed in one piece of legislation, see GSMcBain, *Our Criminal Law should only be 200 Years Out of Date – and It Should be Consolidated (2014) Review of European Studies*, vol 6, no 2, pp 120-55.

³⁰⁶ See GSMcBain, *Modernising the Law on the Unlawful Treatment of Dead Bodies (2014) Journal of Politics and Law*, vol 7, no 3, pp 89-99.

³⁰⁷ See n 305.

Appendix A

1599	<i>Crowther</i>	Constable	Indicted for failing to make hue and cry when informed of a burglary committed at night by persons unknown. Court held the indictment to be good. [Neglect] [1]
1671	<i>Broughton</i>	Goaler	Extorted fees. [Extortion] [2]
1703	<i>Buck & Hale</i>	Tax Collectors	Assessed and rated some at too high a rate. Also, omitted to tax some in their books and yet levied the taxes on them and put the money in their own pocket. [Theft/False Accounting] [3]
1703	<i>Wyat</i>	Constable	Received a warrant of distress from a JP directing him to levy a penalty. He failed to return the warrant to the JP or anyone else. [Neglect] [4]
1704	<i>Anon</i>		It was stated <i>per curiam</i> 'If a man be made an officer by Act of Parliament, and misbehave himself in his office, he is indictable for it at common law, and any publick officer is indictable for misdemeanor in his office.'
1733	<i>Mather</i>	JP	JP's ordered an obviously illegal whipping. The court said they thought they had an undoubted jurisdiction to punish all inferior judges, when they were guilty of any oppression in the execution of their authority. [Oppression][5]
1734	<i>Halford</i>	JP	<i>Re</i> any grant by a court of an information against a mayor for neglecting to hold a sessions, Hardwicke CJ, 'he could never consent to grant such informations, unless it appeared that such neglect was willfully committed, in delay of justice and oppression of the subject.' [Neglect][6]
1754	<i>Davis</i>	Overseer	An indictment will lie against an overseer for not receiving a pauper, removed there by an order of two JP's. [Neglect][7]
1758	<i>Young v Pitts</i>	JP	Information against two JP's for unreasonably refusing to grant a licence to keep a tavern. [Oppression][8]
1759	<i>Cox</i>	JP	Information against a JP to show cause why he refused to receive an information against a baker for contravening 29 Car 2 c 7 (for the Better Observation of the Lord's Day), Denison J, 'This court will never grant an information against a justice of peace for a mere error in judgment.' [Oppression][9]
1761	<i>Palmer</i>	JP	In a case where JP's were said to have been complained of without reason, the court stated 'even where a justice of peace acts illegally...yet if he has acted honestly and candidly, without oppression, malice, revenge, or any bad view or ill intention whatsoever, the court will never punish him in this extraordinary course of an information; but leave the party complaining, to the ordinary legal remedy or method of prosecution, by action or by indictment. [Oppression] [10]
1762	<i>Williams & Davis</i>	JP	Information granted by a court against JP's for refusing to grant licences to publicans who voted against their recommendation of candidates as MP's for the borough. [Oppression] [11]
1781	<i>Kennett</i>	JP	If, on a riot taking place, a JP neither read the proclamation from the Riot Act 1714, nor restrained (nor apprehended) the rioters nor gave any order to fire on them, nor made any use of a military force under his command, this was, <i>prima facie</i> , evidence of a criminal neglect of duty in him. [Neglect] [12]
1783	<i>Bembridge</i>	Accountant	Accountant in office of the Receiver and Paymaster General of the Forces. Deceitfully concealed from his superior his knowledge that certain sums which should have been inserted into a final account were omitted. [False Accounting/Theft (re interest)] [13]
1787	<i>Holland & Foster</i>	JP	An information will be granted against a JP as well for granting, as for refusing, an ale license improperly. [Oppression] [14]

1787	<i>Jackson et al</i>	JP	Whether JP's had power to commit a pauper for refusing to answer questions relating to his settlement. Ashurst J ' <i>When magistrates act uprightly and honestly, even though they mistake the law, no information ought to be granted against them.</i> ' [Oppression][15]
1788	<i>Brooke</i>	JP	JP capriciously discharged a vagrant committed by another JP. [Oppression] [16]
1791	<i>Sainsbury</i>	JP	Where two sets of JP's had a concurrent jurisdiction and one appointed a meeting to grant ale licences, that jurisdiction attached so as to exclude the appointment of the others of a subsequent meeting, but they might all meet together on the first day. However, if after such an appointment, the other set of JP's met on a subsequent day and granted other licences, then their proceeding was illegal and the subject of an indictment. [Oppression] [17]
1794	<i>Hollond</i>	Military	In an indictment against a public officer for breach of duty, it was not necessary to state his appointment. A breach of duty can be for acts of commission as well as omission. It is sufficient to charge in the indictment a person with a wilful breach of duty without adding that it was corrupt. [Neglect][18]
1795	<i>Booth</i>	Overseer	Refused to provide adequate food, drink and lodging to a person for whom responsible, such that she died. [Neglect][19]
1800	<i>Harrison</i>	Coroner	Convicted of extortion for taking money for not holding an inquest on a dead body, which he had no authority for doing. [Extortion][20]
1809	<i>Martin</i>	Overseer	Liable to indictment for fraudulently omitting to give credit for a sum in his accounts with the parish. [False accounting][21]
1811	<i>Hoseason</i>	JP	Ellenborough CJ, ' <i>strongly expressed his disapprobation of the conduct of the defendant for sitting in judgment as a magistrate upon the imputed misconduct of his own labourer, of which he himself was to be considered the complainant.</i> ' [Oppression][22]
1820	<i>Borron</i>	JP	Where a criminal information was applied for against a JP, the question for the court was not whether the act done was found, on investigation, to be strictly right or not, but whether it proceeded from an unjust, oppressive, or corrupt motive (among which fear and favour were generally included) or from mistake or error only. [Oppression][23]
1828	<i>Henly</i>	Mayor	Civil action against the mayor and burgesses of Lyme Regis for failing, in breach of their public duty, to repair the sea walls (the cob). [Neglect][24]
1832	<i>Pinney</i>	JP	JP's, at the time of a riot, were required to keep the peace and restrain rioters and pursue and take them. To enable them to do this, they might call on all of the king's subjects to assist them, and all these subjects were bound to do so, on reasonable warning. Mere good feeling and upright intention in a JP was no defence, if he was guilty of a neglect of his duty. [Neglect][25]
1834	<i>Ex p Fentiman</i>	JP	Court will not grant a rule nisi for a criminal information against JP's on the following grounds only: (a) they held a party to bail for perjury, without any legal information or evidence; (b) without legal evidence, or without opportunity for a person to defend himself, they bound a person over to the sessions, which had no jurisdiction to answer such a charge; (c) not binding over any prosecutor; (d) their conduct was, in some other respects, irregular; (e) the party applying believed them to have acted in collusion with persons whom he had intended prosecuting, to deter him from such prosecution. More distinct evidence is requisite, that the JP's acted from corrupt motives. [Oppression] [26]
1835	<i>Antrobus</i>	Sheriff	Information was filed against sheriff of Chester for not executing a criminal for a felony committed there. [Neglect][27]
1839	<i>Neale</i>	JP	Any assembly of persons attended with circumstances calculated to excite alarm is an unlawful assembly. And it is not only lawful for JP's to

			disperse an unlawful assembly, even where no riot has occurred, but if they do not do so, and are guilty of criminal negligence in not putting down any unlawful assembly, they are liable to be prosecuted for a breach of their duty. [Neglect][28]
1843	<i>Badger</i>	JP	In case of rule calling on JP's to shew cause why an information should not be brought against them, the court provided that, in the case of a bailable misdemeanour, bail - if otherwise sufficient - ought not to be refused on account of the personal character or opinions of the party proposed.[Oppression][29]
1849	<i>Ex p Higgins</i>	JP	JP's convicted a person of unlawfully taking fish in a private fishery. Denman CJ ' <i>If they wilfully refuse to receive legal evidence, that is misconduct for which they may be brought here by criminal information, or, if they act maliciously, they are liable to an action on the case.</i> ' [Neglect][30]
1850	<i>James</i>	Clergy	Church of England clergyman who refused to solemnize a marriage between persons who might lawfully be married and who tendered themselves for that purpose, committed a misdemeanour. [Neglect][31]
1850	<i>Barton</i>	JP	Rule <i>nisi</i> called on the defendant JP to show cause why a criminal information should not be filed against him for misconduct in his office. Campbell CJ, ' <i>A magistrate is properly answerable to a criminal charge for misconduct in his office, though in such misconduct he may not be actuated by any motive of pecuniary interest, and though he may not mean maliciously to injure any individual.</i> ' [Oppression][32]
1855	<i>Marshall</i>	CC Judge	A rule was obtained for a criminal information against a county court judge for alleged malicious misconduct in office. [Oppression][33]
1891	<i>Hall</i>	Overseer	An overseer of the poor indicted on the basis he corruptly omitted from the register persons qualified to vote or included persons who were dead or not otherwise entitled to vote. Although the indictment was held bad, it was implicit in the decision that - but for the statutory provisions - the indictment would have been good.[Corruption][34]
1914	<i>Whitaker</i>	Military	A commanding officer accepted from a catering firm sums of money to induce him to accept their representative as the tenant of a regimental canteen. The charge was, essentially, one of bribery.[Bribery][35]
1967	<i>Llewellyn-Jones</i>	CC Registrar	Appeal against conviction by a county court registrar who made an order with the intention of gaining improper personal advantage. The court rejected a submission that the count laid in the indictment did not reveal any offence known to the law. [Improper financial advantage][36]
1979	<i>Dytham</i>	Constable	Court upheld conviction of a constable who witnessed the commission of serious offences of violence, but wilfully failed to take any steps to preserve the Queen's peace or to protect the person of the victim or arrest his assailant.[Neglect][37]
1996	<i>Bowden</i>	Local AE	Local authority employee dishonestly authorised council workmen to work on a private matter as a favour.[Corruption/Cheat][38]
2003	<i>A-G</i>	Reference	
2010	<i>W(M)</i>	Constable	Used employer's Amex card incurring expenditure for personal use, funded by public monies.[Improper financial advantage][39]
2011	<i>L(D)</i>	Constable	Retired police officer in a civil role wrongfully passed confidential information to an informant in the hope of getting valuable information in return.[Misuse of confidential information][40]
2011	<i>Belton</i>	Prison Board	Independent Monitoring Board member developed personal and inappropriate relations with prisoners at one of HM prisons.[Sex with prisoner][41]

2012 *Cosford et al* Prison Personnel Offence committed by civil servants and employees of HM Prison. The 1st and 3rd D's were employed as prison nurses, the 2nd as a health care officer (ie. a prison officer who was also a trained nurse). The 1st D had a sexual relationship with a prisoner and the others knew about it but failed to report it. [Sex with prisoner][42]

Appendix B

(a) Police

An early case cited is *Crowther* (1599). Other cases are *Wyat* (1703), *Dytham* (1979), *L(D)* (2011) and *W(M)*(2010). See also:

Police Officers	<i>A-G's Reference (No 3 of 2003)</i> , see 12 .
Police Officer (suspended)	<i>R v Knox</i> [2011] 2 Cr App R 21.
Former Police Officer (part time work)	<i>R v L(D)</i> [2011] 2 Cr App R 14, see 13 .
Community Service officer	<i>R v Iqbal (Amar)</i> [2008] EWCA Crim 2066.
Police Civil Call Handler	<i>R v Gallagher</i> [2010] EWCA Crim 3201.

(b) Prison Personnel

An early case *re* a goaler is *Broughton* (1671). See also:

Prison Officers	<i>R v Ratcliffe</i> [2010] 1 Cr App R (S) 51, <i>R v McDade</i> [2010] 2 Cr App R (S) 82, <i>R v Jibona</i> [2010] EWCA Crim 1390, <i>R v Wright</i> [2012] 1 Cr App R (S) 21
Prison Visitors	<i>Belton</i> , see 13 .
Prison Nurses	<i>Cosford, Falloon & Flynn</i> .

(c) Judicial Personnel

Early cases of JPs are *Young v Pitts* (1758), *Williams & Davis* (1762), *Kennett* (1781), *Holland & Foster* (1787), *Sainsbury* (1791), *Borron* (1820), *Pinney* (1832), *Ex p Fentiman* (1834), *Neale* (1839), *Badger* (1843).

County Court Registrar	<i>Marshall</i> , see 9 . <i>Llewellyn-Jones</i> , see 11 .
Sheriff	<i>Antrobus</i> , see 7 .
Coroner	<i>Harrison</i> , see 7 .

(d) Military

Army Officers	<i>Whitaker</i> , see 9 .
Military Accountant	<i>Bembridge</i> , see 7 .

(e) Local Government

Overseers	<i>Davis</i> , see 7 . <i>Booth</i> , see 7 . <i>Hall</i> , see 9 .
Local councillor	<i>Speechley</i> [2005] 2 Cr App R (S) 15.
Local authority employee	<i>Bowden</i> , see 11 .
Mayor and Burgesses, Lyme Regis	<i>Henly</i> , see 7 .

(f) DVLA & Tax

DVLA Employees	<i>A-G's Reference (No 140 of 2004)</i> [2004] EWCA Crim 3525.
Tax Collector	<i>Buck & Hale</i> , see 4 .

(g) Church of England

Clergy	<i>James</i> , see 7 .
Clergy & Bishops	Suggested by Best CJ in <i>Henly</i> , see 7 .

(h) Bank of England Officials

Bank of England officials	Suggested by Best CJ in <i>Henly</i> , see 7 .
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(i) Others

Lords of the Manor

Suggested by Best CJ in *Henly*, see 7.**Appendix C**

The following would appear (with reference to Hawkins, Russell and Archbold) to be common law crimes still extant:

- **Offences v the Person:** murder, manslaughter, assault, battery, false imprisonment, kidnapping;
- **Corruption Offences:** corruption, cheating the public revenue, misconduct in a public or judicial office, conspiracy to defraud;
- **Nuisance Offences:** public nuisances (including conspiracy to commit a public nuisance), selling unwholesome provisions in a market;
- **Public Morals Offences:** outraging public decency, conspiracy to corrupt public morals, conspiracy to outrage public decency, keeping a disorderly house. More tangentially, unlawful treatment of dead bodies;
- **Perverting the Course of Justice:** perverting the course of public justice, personating a juror, contempt of court, escape, prison breach, rescue, refusing to aid a police constable;
- **Others:** (a) common innkeeper refusing to provide board and lodging to the public; (b) contempt of the sovereign; (c) refusing to serve in (ie. execute) a public office; (d) effecting a public mischief; (f) buying and selling a pretended title.

Appendix D: State Trials - Cases: 1163 - 1858

The best series of State trials (and the most reliable and comprehensive) are those of:

- TB Howell & W Cobbett, *Howell's State Trials 1163- 1820* (33 vols);
- MacDonnell, *State Trials New Series 1820-58* (8 vols).

The cases in their indices (but not the minor reports in the appendices in the case of MacDonnell) are listed below. The only other State trial reports worthy of mention are: T Salmon, *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanours* (6 vols 1730-5, with abridgment in 1737). However, they invariably contain the same reports as those in Howell & Cobbett, but cut down. Where Salmon contains new cases, I have indicated them (in italics). Also, there are:

- GL Browne: *Narratives of State Trials* (1801-30, 2nd ed, 2 vols, 1882);
- WC Townsend: *Modern State Trials* (1850, 2 vols, 1850).¹

Cases which Browne and Townsend analyse are mentioned in []. Cases relating to:

- **High Treason** ('HT') are marked in bold. They are discussed in GSMcBain, *Abolishing the Crime of Treason* (2007) 81 ALJ 94-134, *High Treason: Killing the Sovereign or Her Judges* (2009) 20 KLJ 457-88 and *High Treason: Violating the Sovereign's Wife* (2009) Legal Studies vol 29(2) 264-80;
- **Treason Felony** ('TF') are discussed in GSMcBain, *Abolishing the Crime of Treason Felony* (2007) 81 ALJ 812-38;
- **Sedition & Criminal Libel** are discussed in GSMcBain, *Abolishing the Crime of Sedition - Part 1* (2008) 82 ALJ 543-79; *Abolishing the Crime of Sedition - Part 2* (2009) 83 ALJ 449-85 and *Abolishing Criminal Libel* (2010) 84 ALJ 439-504;

¹ There were other texts on State trials, many of which are held by Lincoln's Inn. However, they are of inferior quality, issued for a popular market.

- **High Crimes & Misdemeanours** ('HC&M') are discussed in GSMcBain, *Abolishing High Crimes and Misdemeanours etc.* (2011) 85 ALJ 810-79.

1163 - 1350

1163	Thomas Beckett (Archbishop of Canterbury)	HT ²
1239	Hugh de Burgh, Earl of Kent	Articles of Accusation, HC&M
1307	Piers Gaveston	HC&M ³
1320	Hugh & Hugh Le Despenser	HC&M ⁴
1323	Adam de Orleton, Bishop of Hereford	HC&M ⁵
1322	Thomas, Earl of Lancaster	HT
1327	Edward II	Proceedings (Deposition, Edward II)
1330	Roger Mortimer, Earl of March	HC&M ⁶
1331	Thomas de Berkeley	Murder (Edward II)
1341	John Stratford, Archbishop of Canterbury	HC&M

1350 - 1450

1383	John Wickliffe	Heresy
1388	Alexander Nevil <i>et al</i>	HC&M [S]
1397	Thomas Fitzalan, Archbishop of Canterbury	HC&M
1397	Thomas, Duke of Gloucester <i>et al</i>	HC&M
1399	Richard II	Articles of Accusation (Renunciation, Richard II)
1399	John Hall	Murder (Duke of Gloucester, see above, 1397)
1400	William Sautre (Sawtre)	Heresy
1407	William Thorpe	Heresy [S]
1409	John Badby	Heresy
1413	John Oldcastle, Lord Cobham	Heresy [S] ⁷
1424	John Mortimer (sir)	HT, escape from prison
1426	Henry Beaufort, Bishop of Winchester	Articles of Accusation, HC&M

1450 - 1550

1451	William de la Pole, Duke of Suffolk	HC&M
1478	Duke of Clarence, brother of Edward IV	HT (attainted)
1494-5	William Stanley (sir)	HT (attainted)
1509	Thomas Empson (sir), Edmund Dudley (sir)	HT (attainted)
1522	Edward, Duke of Buckingham	HT (attainted)
1528	Catherine of Aragon	Divorce
1529	Thomas Wolsey, Archbishop of York	Praemunire <i>etc</i>
1535	Thomas More, Lord Chancellor	HT [S]
1535	John Fisher, Bishop of Rochester	HT
1535	William, Lord Dacres	HT
1536	Anne Boleyn, Queen <i>et al</i>	HT
1541	Thomas Cromwell, Earl of Essex	HT
1541	Leonard Grey, Lord	HT ⁸
1541	Edmond Knevet (sir)	Striking in a Royal Palace
1542	Catherine Howard, Queen	HT - Incontinency (attainted)
1546	Henry, Earl of Surrey	HT - Using Royal arms (attainted)
	Various Persons	Treason (denying supremacy)
1549	Thomas Seymour (sir)	HT

1550 - 80

1550	Edward, Duke of Somerset	HT & Misdemeanours [S]
1551	Edward, Duke of Somerset	HT & Felony [S]
1550-1	Lady Mary, later Queen	Non conformity in religion
1551	Stephen Gardiner, Bishop of Winchester	Opposing religious reform (heresy)
1550	Edward Bonner, Bishop of London	Opposing religious reform (heresy)
1553	James Hales, Justice, Common Pleas	Assizes in Kent ⁹ (heresy)
1553	Lady Jane Grey <i>et al</i>	HT (Sought the Crown)
1553	Henry Grey, Duke of Suffolk	Arraignment (father of Lady Jane Grey)
1554	John Dudley, Duke of Northumberland	HT (father-in-law of Lady Jane Grey) ¹⁰

² Essentially, this comprised Beckett's refusal to respect the jurisdiction of the king's court and breach of his oath of allegiance.

³ This was effective HC&M, since it was dealt with by Parliament, see article by GSMcBain on the same.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ See also RR Sharpe, *Calendar of Letter-Books of the City of London, Letter-Book I 1400-1422* (1909), pp xix-i.

⁸ Related to treasons alleged to have been committed in Ireland.

⁹ The accusation was, essentially, that of indicting certain priests for saying mass.

¹⁰ Other conspirators were: William Parr, John Dudley (Earl of Warwick), Sir John Gates, Sir Henry Gates, Sir Andrew Dudley, Sir Thomas Palmer.

1554	Thomas Cranmer, Archbishop of Canterbury	HT & Heresy
1554	Thomas Wyatt (sir)	HT [S] (led rebellion against Queen Mary)
1554	Nicholas Throckmorton (sir)	HT [S]
1567	<u>James, Earl of Bothwell (Sc)</u>	Murder [S]
1567	<u>William Powrie et al (Sc)</u>	Murder
1581	<u>Earl of Mortoun (Sc)</u>	Murder
1571	Thomas Howard, Duke of Norfolk	HT [S] ¹¹
1571	Robert Hickford, servant to Duke of Norfolk	HT [S]

1580 - 1600¹²

1581	Edmond Campion et al	HT ¹³
1571	John Story	HT
1584	William Parry (dr)	HT [S] (Parry Plot) ¹⁴
1585	Earl of Northumberland	Inquisition (death) ¹⁵
1586	Anthony Babington et al	HT [S] ¹⁶
1586	Edward Abington (Havington)	HT [S] ¹⁷
1586	Mary, Queen of Scots	Conspiracy v Queen Elizabeth I [S]
1587	William Davison	Misprision & Contempt [S] (Star Chamber)
1589	Philip Howard, Earl of Arundel	HT [S]
1588	Richard Knightly (sir)	Seditious Libel (Star Chamber)[S] ¹⁸
1590	John Udall, Puritan Minister	Felony [S]
1592	John Perrot, Lord Deputy of Ireland	HT [S]
1600	Robert, Earl of Essex	HT [S] (Earl of Essex Plot) ¹⁹
1600	Thomas Lee or Lea (capt)	HT [S] (Earl of Essex Plot)
1600	Christopher Blunt (Blount) et al (sir)	HT [S] (Earl of Essex Plot)
1600	<u>John, Earl of Gowrie et al (Sc)</u>	HT [S]

1603-15

1603	Walter Raleigh (sir)	HT [S]
1603	Griffin Markham (sir) et al	HT [S]
1604	Proceedings, Hampton Court	Reform of the Church
1604	Francis Godwin (sir) & John Fortescue (sir)	Return for Buckingham [S]
1605	Case of Mixed Money in Ireland	
1605	Articuli Cleri	Against the Judges
1606	Fawkes, Guy (Gunpowder Plot)	HT [S] ²⁰ (attainted)
1606	Henry Garnet, Jesuit	HT [S] (Gunpowder Plot)
1607	Robert Drewrie (priest)	Arraignment
1606-10	Case of Impositions (Bates' case)	Import Duty on currants
1607	Robert Lalor (priest)	Praemunire (Ireland)
1608	Case of the Postnati	Status of Scotsmen
1608	<u>George Sprot (Sc)</u>	HT [S]
1609	<u>Robert Logan (Sc)</u>	HT [S]
1609	<u>Lord Balmerinoth(Sc)</u>	HT [S]
1610	Case of Proclamations	
1612	Bartholomew Legat & Edward Wightman	Heresy
1612	Earl of Shrewsbury's Case	Case of Dignities
1612	Lord Sanquire	Murder [S]
1613	James Whitelocke	Contempt (Star Chamber) ²¹
1612	Countess of Shrewsbury	Contempt (Privy Council) ²²
1613	William Talbot	Argued Pope's power to dispose kings
1613	Lady Francis Howard,	Divorce [S]
1613	Earl of Northampton's case	<i>Scandalum Magnatum</i>
1614	Richard Neile, Bishop of Lincoln	Words spoken in House of Lords, HC&M

¹¹ He planned to marry Mary, Queen of Scots and place her on the throne, replacing Elizabeth I. See also Selden Society, vol 110, pp 243-5.

¹² The various plots in the time of Elizabeth are told in W Camden, *The History of the Most Renowned and Victorious Princess Elizabeth* (pub 1625). See edition with introduction of WT MacCaffrey, University of Chicago Press, 1970).

¹³ Others tried were: Edmund Campion, Sherwin, Bosgrave, Cottam, Johnson, Bristow, Kirbie & Orton.

¹⁴ Parry was executed for conspiring to murder her (shooting her in her coach).

¹⁵ Henry Percy, 8th Earl committed suicide after being arrested for complicity in the Throgmorton Plot of 1582, to assassinate Elizabeth I.

¹⁶ The conspirators comprised: Anthony Babington, John Ballard, Chidiock Titchborne, Sir Thomas Salisbury, Robert Barnewell, John Savage & Henry Donn.

¹⁷ A further group in the Babington plot comprised: Edward Havington (Habington), Charles Tilney, Edward Jones, John Charnock, John Travers, Jerome Bellamy & Robert Gage.

¹⁸ Also Wickstone (husband and wife).

¹⁹ Essex's plot was to take Elizabeth I into custody. Other conspirators executed were: Sir Charles Davers, Sir John Davis, Sir Gilly Merrick and Henry Cuffe. Also, Thomas Lee (after Essex was arrested).

²⁰ Also executed were Thomas Bates, Sir Everard Digby, Henry Garnet, John Grant, Robert Keys, Ambrose Rookwood, Robert Winter, Thomas Winter.

²¹ Contempt of the King's Prerogative.

²² She refused to answer fully before the Privy Council or to subscribe to examination.

1615 - 25

1615	Edmund Peacham	HT
1615	John Owen (Collins)	HT
1615	<u>John Ogilvie (Sc)</u>	HT [S]
1615	Oliver St John	Published against Benevolences (Star Chamber)
1615	Richard Weston	Murder (Sir Thomas Overbury)[S]
1615	Anne Turner	Murder (same) [S]
1615	Jervis Elwes	Murder (same) [S]
1615	James Franklin	Murder (same) [S]
1615	Thomas Monson (sir)	Murder (same)
1616	Lady Frances, Countess of Somerset	Murder (same)
1616	Robert Carr, Earl of Somerset	Murder (same)[S]
1615	John Hollis <i>et al</i>	Traducing Public Justice (Star Chamber)[S]
1615	Case of the Duels	Challenge
1616	Case of Mary Smith	Witchcraft
1618	Mr Wraynham	Slander (Star Chamber)[S]
1619	Williams of Essex	HT
1620	Francis Bacon	HC&M [S]
1620	Giles Mompesson	HC&M
1621	Francis Mitchell	HC&M
1621	Henry Yelverton, A-G	HC&M
1621	John Bennett, Judge	HC&M
1621	Edward Floyde (Floyd)	HC&M
1621	George Abbot, Archbishop of Canterbury	Accidental Killing
1624	Lionel Cranfiled, Lord Treasurer	HC& M
1624	Samuel Harsnet, Bishop of Norwich	HC&M
1625	Richard Montague, Clerk	HC&M

1625 - 35

1626	Duke of Buckingham <i>et al</i>	HC& M
1627	George Abbot, Archbishop of Canterbury	Refusing to licence sermon
1627	Thomas Darnel <i>et al</i> (sir)	Habeas Corpus [S]
1629	Walter Long, Sheriff of Wiltshire	Absenting himself [S]
1629	William Stroud	Habeas Corpus [S]
1629	John Elliot <i>et al</i>	Seditious Speeches [S]
1621	Roger Manwaring, chaplain to Charles I	HC&M
1628	Hugh Pine	HT
1628	John Felton	Murder
1629	Richard Chambers	Seditious Speeches (Star Chamber)
1630	Alexander Leighton	Libel (Star Chamber)
1630	Earl of Bedford <i>et al</i>	Seditious Libel (Star Chamber)
1631	Mervin, Lord Audley	Rape & Sodomy [S]
1631	Lawence Fitzpatrick, Giles Broadway	Rape & Sodomy [S]
1631	<u>James, Lord Uchiltrie (Sc)</u>	Seditious Slander [S]
1631	Donald Lord Rea	Appeal of HT (Court of Chivalry)
1632	Henry Sherfield	Breaking Church Window [S]
1632	William Prynne (e) <i>et al</i>	Seditious Libel [S]
1633	Sir David Fowles <i>et al</i>	Traducing Officers of State (Star Chamber)
1634	<u>John Lord Balmerino (Sc)</u>	Libel [S]

1635 - 42²³

1637	John Bastwick <i>et al</i>	Libel (Star Chamber) [S]
1637	Dr John Williams, Bishop of Lincoln	Publishing False News
1637	Ship Money Case, John Hampden	[S]
1637	John Lilburn & John Wharton	Seditious Books (Star Chamber) [S]
1638	Thomas Harrison	Slander, Hatton J [S]
1637	<i>Robert Berkeley (sir)</i>	HC&M [S]
1640	Thomas, Earl of Strafford	Attainted [S]
1640	John Lord Finch, Lord Keeper	HC&M [S]
1640	John Cosin (dr)	HC&M
1640	Matthew Wren, Bishop of Ely	HC&M
1640	Francis Windebank (sir)	HC&M
1640	George Ratcliff(e) (sir)	HC&M
1641	Sir Richard Bolton <i>et al</i>	HC&M
1641	John Goodman, priest	HT
1641	Twelve Bishops	HC&M
1641	Lord Kimbolton <i>et al</i>	HC&M
1641-2	James, Duke of Richmond	Malignant Counsellor to Charles I ²⁴

²³ Cases during the Civil War until the restoration in 1660 are generally not taken into account as precedents (especially trials for treason before specially established courts). Therefore, HT for the period 1642-60 are not placed in bold.

²⁴ These were proceedings in Parliament.

1642	Edward Herbert, A-G	HC&M
1642	George, Lord Digby	HC&M
1642	George Benyon	HC&M
1642	Edward Dering (sir)	HC&M
1642	Gurney, Richard (sir), Lord Mayor	HC&
1642	Thomas Gardiner, Recorder of London	HC&M
1642	Henry Hastings <i>et al</i>	HC&M
1642	James, Lord Strange	HT
1642	Nine Lords at York	HC&M

1643 - 50

1643	Nathaniel Fiennes (col)	Surrendering City [S]
1640-3	William Laud, Archbishop of Canterbury	Attainted [S]
1643	Tompins, Waller <i>et al</i>	Plot v Parliament
1645	Conor, Lord Macguire	HT (Irish Massacre) [S]
1645	Hollis and Whitelocke	Breach of Trust
1645	<u>Robert Spottswood (sir) (Sc)</u>	HT [S]
1645	Confessions of Wiches	
1647	11 Members of the House of Commons	Delinquents
1647	David Jenkins, Welsh judge	Seditious Books
1647	John Morris <i>et al</i>	Forging Pretended Act of Parliament [S]
1647	John Gayre (sir)	HT
1647	James, Earl of Suffolk <i>et al</i> (Seven Lords)	HC&M
<i>1647</i>	<i>Isabel Smith</i>	<i>Forgery [S – Abridgment]</i>
1649	Charles II (trial)	HT [S]
1649	James, Duke of Hamilton	HT
1649	Earl of Holland <i>et al</i>	HT
1649	John Morris (col)	HT [S]
1649	John Lilburne (lieut col)	HT [S]
1650	Eusebius Andrewe (col)	HT [S]

1650 - 60

1651	Christopher Love	HT [S]
1651	John Gibbons	HT [S]
1651	James Stanley, Earl of Derby	Court Martial, HT
1653	Richard Faulconer	Perjury [S]
1653	John Streater	Habeas Corpus [S]
1653	John Lilburne	Unlawful Return from Banishment [S]
1654	Don Pantaleon	Murder (brother of Don was an Amabassador)
1654	John Gerhard <i>et al</i>	HT, conspiring to murder Cromwell [S]
1654	John Pordage	Insufficient Minister [S]
1656	Walter Bushnell (priest)	Insufficient Minister
1641	John Pocklington (dr) (priest)	Innovations in Church of England
1655	John Penruddock (col)	HT [S]
1656	Henry Vane	Publication of book
1656	James Nayler (Quaker)	Blasphemy [S]
1657	Miles Sindercombe	HT [S]
1658	Henry Slingsby (sir)	HT [S]
1658	John Hewet (dr)	HT [S]
1658	John Mordaunt	HT [S]
1660	29 Regicides	HT [S]
1660	William Drake	Seditious Libel
1660	<i>Marquis of Hertford</i>	<i>Restored to Title [S – Abridgment]</i>

1660 - 70

1661	<u>Archibald, Marquis of Argyle (Sc)</u>	HT [S]
1661	Proceedings re Reform of the Liturgy	
1661	John James (Fifth Monarchy Man)	HT [S]
1662	Henry Vane (sir)	HT [S]
1662	John Crook <i>et al</i> (Quakers)	Refusal to take oath of Allegiance <i>etc</i> [S]
1662	Thomas Tonge <i>et al</i>	HT [S]
1663	Mary Moders (Stedman)	Bigamy [S]
1663	Message <i>re</i> Settlement of King's Revenue	
1663-7	Edward, Earl of Clarendon	HC& M [S]
1663	John Twyn <i>et al</i>	HT (Others, misdemeanours) [S]
<i>1663</i>	<i>Thomas Brewster, Nathan Brooks, Simon Dover</i>	<i>Libel</i>
1664	James Turner <i>et al</i>	Felony & Burglary [S]
1664	Margaret Fell & George Fox	Refusing to take oath of Obedience
1665	Trial of Witches	Witchcraft
1665	Benjamin Keach	Libel [S]
1666	Jurisdiction of the House of Lords	East India Company
1666	Lord Morley	Murder [S]

1666	Lord Viscount Mordaunt	HC&M
1666	Examinations <i>re</i> Firing of London	
1668	Peter Pett	HC&M
1668	William Penn (sir)	HC&M [S]
1668	Peter Messinger <i>et al</i>	HT [Riot][S]
1669	Earl of Orrery	HC&M
1669	Robert Hawkins (priest)	Felony [S]

1670 - 8

1670	William Penn & William Mead	Tumultuous Assembly [S]
1670	Edward Bushell	Jury Misconduct
1670	Duke of Lauderdale	HC Proceedings
1674	Duke of Buckingham	HC Proceedings
1674	Earl of Arlington	HC Proceedings
1674	Samuel Barnardiston (sir)	Election of Members to Parliament [S]
1675	Dr Shirley v John Fagg (sir)	Privilege of Parliament [S]
1676	Francis Jenks	Proceedings v Election speech [S]
1677	<u>James Mitchel (Sc)</u>	Attempted Murder [S]
1681	<u>Charles Maitland (Sc)</u>	Perjury (in Mitchel trial)
1677	Anthony, Earl of Shaftesbury	Habeas Corpus [S]
1678	Philip, Earl of Pembroke	Murder [S]
1678	Case of the Constitution of Jamaica	

1678 – 80²⁵

1678	William Stayley (Staley)	HT [S] ²⁶
1678	Edward Coleman	HT [S] ²⁷ (<i>Popish Plot</i>)
1678	William Ireland <i>et al</i>	HT [S] (<i>Popish Plot</i>)
1678	<i>Lord Conwallis</i>	<i>Murder (Sir Edmondbury Godfrey) [S]</i> ²⁸
1679	<i>Robert Green</i>	<i>Murder (same)[S]</i>
1679	<i>Samuel Atkins</i>	<i>Accessory to Murder (same)[S]</i>
1679	David Lewis (priest)	HT [S] (<i>Popish Plot</i>) ²⁹
1679	<i>Nathaniel Reading</i>	<i>Trespass & Misdemeanour [S](Popish Plot)</i> ³⁰
1679	Thomas White (Whitebread) <i>et al</i> (priests)	HT [S] (<i>Popish Plot</i>) ³¹
1679	Richard Langhorn	HT [S] (<i>Popish Plot</i>)
1679	Wakeman, George (sir) <i>et al</i>	HT [S] (<i>Popish Plot</i>)
1679	Charles Kerne (priest)	HT [S]
1679	Brommich, Andrew (priest)	HT [S]
1679	William Atkins (priest)	HT [S]
1679	Francis Johnson (monk)	HT
1679	<i>Thomas Knox & John Lane</i>	<i>Misdemeanour [S]</i> ³² (<i>Popish Plot</i>)

1680

1680	Lionel Anderson <i>et al</i> (priests)	HT [S]
1680	<i>John Tasborough & Anne Price</i>	<i>Subornation of Perjury[S] (Popish Plot)</i>
1680	Benjamin Harris	Libel [S]
1680	Francis Smith	Libel [S]
1680	Jane Curtis	Libel [S]
1680	Thomas Gascoigne	HT [S] (<i>connected to Popish Plot</i>)
1680	Elizabeth Cellier	HT [S] (<i>Meal Tub Plot</i>)
1680	Roger Palmer, Earl of Castlemaine	HT [S] (<i>connected to Popish Plot</i>)
1680	Henry Carr (Care)	Libel [S]
1680	<i>John Giles</i>	<i>Attempted Murder[S] (connected to Popish Plot)</i> ³³
1680	Thomas Thwing & Mary Pressicks	HT [S] (<i>Popish Plot</i>)
1680	<i>Elizabeth Cellier</i>	<i>Libel [S] (connected to Popish Plot)</i>

²⁵ All the Popish Plot trials are generally discredited. Therefore, I have placed them in italics.

²⁶ Condemned for treason under 13 Car 2 c 1 (malicious and advised speaking, *viz* 'I would kill him [Charles II] myself.'). His head was the last to be spiked on London Bridge.

²⁷ This comprised an alleged Catholic plot to murder Charles I, based on false testimony from Titus Oates and others. 16 people were directly executed as a result of it (Edward Coleman, William Ireland, John Grove, Robert Green, Lawrence Hill, Henry Berry, Thomas Pickering, Richard Langton, John Garvan, William Harcourt, Anthony Turner, Thomas Whitebread (White), John Fenwick, Thomas Thwing, William Howard (Visc Stafford), Oliver Plunkett (Archbishop of Armagh). 8 priests were also executed as a result of the anti-Catholic outcry as a result of it (William Plessington, Philip Evans, John Lloyd, Nicholas Postgate, Charles Mahony, John Wall, John Kemble, Charles Baker (David Lewis). An excellent work on the plot is J Pollock, *The Popish Plot* (Cambridge UP, 1944).

²⁸ His name is better known as Sir Edmund Berry Godfrey. His murder was the flame that set the Popish Plot on fire (he may well have been murdered by Oates or on the orders of James II (then, Duke of York).

²⁹ David Lewis and Philip Evans were executed for treason under an Act of Elizabeth, for being priests in catholic orders. However, they comprised the 'fall out' from the Popish plot. See Pollock, n 27, p 274.

³⁰ See Pollock, n 27, pp 335-8.

³¹ Thomas Whitebread (White), William Harcourt, John Fenwick, John Garvan and Anthony Turner.

³² *viz*. false accusations against Titus Oates. See Pollock, n 27, pp 338-9.

³³ See Pollock, n 27, p 274.

1678-85	Five Popish Lords	HC&M (Popish Plot) ³⁴
1680	<i>William Howard, Viscount Stafford</i>	<i>Attainder [S] (Popish Plot)</i>
1680	Richard Thomson	HC & M [S]
1680	James Skene	Treasonable Opinions
1680	<u>John Niven [Sc]</u>	Leasemaking
1680	Edward Seymour	HC&M
1680	<i>Scroggs CJ</i>	<i>HC & M [S] (Popish Plot)</i> ³⁵
<u>1681 - 8</u>		
1681	Edward Fitzharris	Attainder [S]
1681	<i>Oliver Plunket (dr)</i>	HT [S] (Popish Plot)
1681	<i>Miles Stapleton</i>	<i>HT [S] (Popish Plot)</i>
1681	George Busby (priest)	HT [S]
1681	Stephen Colledge	HT [S]
1681	Slingsby Bethel	Assault & Battery [S]
1681	Anthony, Earl of Shaftesbury	HT [S]
1681	<u>Earl of Argyle (Sc)</u>	HT [S]
1681	<i>Charles Maitland (Sc)</i>	<i>Perjury [S – Abridgment]</i>
1682	Arthur, Earl of Anglesey	Libel
1682	Temperance Lloyd <i>et al</i>	Witchcraft
1682	Proceedings v City of London	Quo Warranto [S]
1682	<i>Nathaniel Thompson et al</i>	<i>Libel [S] (Popish Plot)</i>
1682	Charles John, Count Coningsmark <i>et al</i>	Murder [S]
1682	Ford, Lord Grey of Werk	Debauchery [S]
1683	Thomas Pilkington <i>et al</i>	Riot, Assault & Battery [S]
1683	Patience Ward (sir)	Perjury [S]
1682	Benjamin Leech	Contempt (Frivolous Plea to Old Bailey court)
1683	Algernon Sidney (col)	HT [S] (Rye House Plot)
1683	<u>Lowrie (Weir) of Blackwood (Sc)</u>	HT (Rye House Plot)
1684	John Hampden	High Misdemeanour [S] ³⁶
1684	Laurence Braddon & Hugh Speke	Suborning Witnesses [S]
1684	Samuel Barnardiston (sir)	High Misdemeanour [S] (Rye House Plot)
1684	James Holloway	Outlawry for HT [S] (Rye House Plot)
1684	William Sacheverell	Riot [S]
1684	Thomas Armstrong (sir)	Outlawry for HT [S]³⁷
1684	James, Duke of York v Titus Oates	<i>Scandalum Magnatum (Writ of Inquiry)[S]</i>
1684	Thomas Rosewell	HT [S]
1684	Joseph Hayes	HT [S]
1684	William Pritchard	Action on the Case (false arrest)[S]
1683	Case of Monopolies	East Indies patent [S]
1684	Lady Ivy, Thomas Neal	Land in Shadwell, Middlesex [S]
1684	<u>Robert Baillie (Sc)</u>	HT [S]
1681	<u>John Spreull & Robert Ferguson (Sc)</u>	HT
1680	<u>David Hackstoun (Sc)</u>	HT & Sacrilegious Murder
1680	<u>Donald Cargill (Sc) et al</u>	HT
1684	<u>Hugh Campbell (sir)(Sc)</u>	HT
1684	<u>James, Earl of Loudoun (Sc)</u>	HT
1684	<u>John Porterfield (Sc)</u>	HT
1685	<u>Walter, Earl of Tarras (Sc)</u>	HT
1685	Titus Oates	Perjury [S]
1685	Charles, Earl of Macclesfield	<i>Scandalum Magnatum</i>
1680	Heritors of the Shire of Fife (Sc)	Proceedings
1680	<u>The Gordons of Earlestoun (Sc)</u>	HT
1680	<u>John, Lord Bargenv (Sc)</u>	HT
1681	<i>Alexander Blair (Sc)</i>	Process of Error <i>re</i> HT
1682-3	<i>Charles, Earl of Lauderdale (Sc)</i>	Malversations, Royal Mint
1681	<u>Several Persons of Lanarkshire (Sc)</u>	HT
1685	John Fernley et al	HT [S]
1685	William Disney	HT [S]
1685	Charles Bateman	HT [S]
1685	John Hampden	HT [S]
1685	Richard Baxter	Seditious Libel
1685	Robert Frances	Murder
1686	Henry, Lord Delamere	HC&M [S]
1678-85	Thomas, Earl of Danby	HC&M [S]
1685	<u>Richard Rumbold (Sc)</u>	HT
1685	<u>Thomas Archer, Alexander Sheils & Others (Sc)</u>	HT

³⁴ The lords comprised: William Herbert, William Howard, Henry Arundell, William Petrie, John Belasye.

³⁵ See Pollock, n 27, pp 352-4.

³⁶ *viz.* conspiring to raise an insurrection.

³⁷ In this plot were involved, *inter alia*, Thomas Armstrong, John Ayloff, Henry Cornish, Elizabeth Gaunt, James Holloway, Baillie of Jervis Wood, Richard Nelthorpe, Richard Rumbold, Algernon Sydney. See also William Ring, William Hone, John Rouse, William Blague (Blagg).

1682	Several Persons of Galloway (Sc)	HT
1684	John Semple, John Watt & Gabriel Thompson (Sc)	HT
1685	Denholme of Westshiels (Sc)	HT
1686	David Mowbray (Sc)	HT
1686	Alexander Keith (Sc)	Sedition, Mutiny & Tumult
1685	James, Duke of Buccleugh et al	HT
1687	Gilbert Burnet, later Bishop of Salisbury	HT
1686	Henry Compton (dr), Lord Bishop of London	Ecclesiastical [S] (before Lords Commissioners)
1686	Edward Hales (sir) & Arthur Godwin	Neglecting to take Oaths [S]
1687	John Peachell	Cambridge Degree [S]
1686	Samuel Johnson	Seditious Libels [S]
1687	William, Earl of Devonshire	Assault

1689 - 90

1688	Philip Standsfield (Sc)	Murder [S]
1687-8	St Mary Magdalen College, Oxford	Election issue [S]
1688	Rowland Walters <i>et al</i>	Murder [S]
1688	Birth of the Pretender (child of James II)	Proceedings
1688	Trial of the Seven Bishops	Libel [S] ³⁸
1687	John Love (Sc)	HT
1688	Thomas White	Libel [S – Abridgment]
1689	James Renwick (Sc)	HT
1689	John Hardy (Sc)	HT
1689	Roger Palmer, Earl of Castlemaine	HC&M [S]
1689	John Price & 100 other Protestants in Ireland	HT [S]
1689	Maurice Cavanagh <i>et al</i>	Felony (stealing cows) [S]
1691	Richard Grahme <i>et al</i>	HT [S]
1689	Case of Jay & Topham	Proceedings in Parliament [S]
1692	Henry Harrison	Murder [S]
1692	John Cole	Murder [S]
1692	Duke and Duchess of Norfolk	Divorce [S]
1692	Duke of Norfolk	Trespass on the Case
1692	Charles, Lord Mohun	Murder[S]
1692	Thomas Sprat (dr), Bishop of Rochester	Plot <i>re</i> James II [S]
1692-3	Charles Knowles (Knollys)	Murder [S]
1689-90	Adam Blair (sir)	HC & M
1689-90	James, Earl of Salisbury & Henry, Earl of Peterborough	HC & M
1690	Matthew Crone	HT
1690	John Alston	HT [S – Abridgment]

1693 - 1701

1693	William Anderton	HT [S]
1693	John Golding <i>et al</i>	Piracy
1693	Thomas, Lord Coningsby & Charles Porter (sir)	HC&M
1693	William Oldys [dr] <i>et al</i>	Refusal to prosecute pirates[S – Abridgment]
1695	Crosby	HT
1695	Thomas Kendall & Richard Roe	Habeas Corpus [S]
1696	Robert Charnock et al (Assassination Plot)	HT [S] ³⁹ (Assassination Plot)
1696	John Friend (sir)	HT [S] (same)
1696	William Parkyns	HT [S] (same)
1696	Ambrose Rookwood	HT [S] (same)
1696	Charles Cranburne	HT [S] (same)
1696	Robert Lowick	HT [S] (same)
1686	Peter Cook	HT [S]
1696	Alexander Knightley	HT [S]
1696	Mr Collier, Cook, Snatt (clergymen)	Absolving Friend & Parkyns (traitors) ⁴⁰
1696	Joseph Dawson <i>et al</i>	Felony & Piracy {S}
1696	Thomas Vaugan (capt)	HT [S]
1696	John Fenwick (sir)	Attainder [S]
1696	John Bernardi <i>et al</i> (Assassination Plot)	Proceedings against
1686-7	Duncan Campbell (sir)(Sc)	HT
1690	Viscount of Dundee (Sc)	HT
1692	Alexander Halyburton & William Fraser	HT
1694	James Middletoun (capt)(Sc)	HT
1695	Massacre of Glencoe (Sc)	Proceedings
1696	Thomas Aikenhead (Sc)	Blasphemy
1699	Edward, Earl of Warwick and Holland	Murder [S]

³⁸ viz, Dr William Sancroft, Dr William Lloyd, Dr Francis Turner, Dr John Lake, Dr Thomas Kenn, Dr Thomas White, Sir Jonathan Trelawney.

³⁹ Executed were: Robert Charnock, Edward King, Thomas Keyes, Sir William Parkyns, Sir John Friend, Robert Lowick, Charles Cranburne & Ambrose Rookwood.

⁴⁰ This was a contempt of the sovereign.

1699	Charles, Lord Mohun	Murder [S]
1699	Charles Duncombe	Forgery
1699	Spencer Cowper <i>et al</i>	Murder (of Baron Hatsell) [S]
1699	Mary Butler <i>et al</i>	Forging Bond [S]
1695	Thomas Osbourne, Duke of Leeds	HC& M
1697	<u>Patrick Kinnynmount (Sc)</u>	Blasphemy
1700	Duke of Norfolk	Divorce [S]
1684-95	William Williams (sir)	HC& M
1694	<u>John, Earl of Melfort <i>et al</i> (Sc)</u>	HT
1697	<u>Kenneth, Earl of Seaforth (Sc)</u>	HT
1697	<u>Alexander Pitcairne (Sc)</u>	HT
1690	Case of the Bankers	
1697	<u>Christopher Phillipson (Sc)</u>	Toasting Pretender
1701	William Kidd <i>et al</i>	Murder & Piracy [S]
1701	William, Earl of Portland <i>et al</i>	HC&M [S]
1698	<u>Thomas Fraser <i>et al</i> (Sc)</u>	HT
1701	Patrick Hurly (Hurley)	Perjury, Cheating [S]
1701	<i>John Lord Haversham (sir)</i>	<i>HC charge (disparaging words)[S - Abridgment]</i>
1695	Thomas Watson (dr), Bishop of St David's	Simony

1702 - 10

1702	Nicholas Bayard (col)(trial in New York)	HT [S]
1702	William Fuller	Cheat & Imposter [S]
1702	Richard Kirkby (col) <i>et al</i>	Court Martial, Breach of Articles of War [S]
1702	William Lloyd, Bishop of Worcester and son	HC Proceedings [S]
1702	Haagen Swendsen	Abduction [S]
1702	Sarah Baynton <i>et al</i>	Abduction [S]
1702	Richard Hathaway	Cheat & Imposter [S]
1702	Richard Hathaway <i>et al</i>	Riot & Assault [S]
1702	<i>William Drake & William Binkes</i>	<i>HL Resolutions [S - Abridgment]</i>
1702	<i>John Toland</i>	<i>Pamphlet [S- Abridgment]</i>
1705	Ashby & White	Proceedings HC [S]
1704	Charles Bathurst	Proceedings HC [S]
1704	Nathaniel Denew <i>et al</i>	Assault & Conspiracy [S]
1704	James Boucher	Proceedings in Parliament
1704	James Boucher	HT [S]
1704	David Lindsay	HT [S]
1704	<u>David Baillie (Sc)</u>	Defamation [S]
1704	John Quelch <i>et al</i>	Piracy [S]
1704	John Tutchin	Libel [S]
1705	<u>Thomas Green (capt)(Sc)</u>	Piracy [S]
1706	Robert Fielding	Bigamy [S]
1708	William Gregg	HT
1708	<u>James Stirling (Sc)</u>	HT[S]

1710 - 20

1710	Henry Sacheverell	HC&M [S]
1710	Daniel Dammaree <i>et al</i>	HT [Riot] [S]
1711	William Whiston	Against Established Religion
1711	<i>William Haunt</i>	<i>Murder [S - Abridgment]</i>
1712	<u>James Dundas [Sc]</u>	Leasemaking & Sediton
1713	Richard Noble <i>et al</i>	Murder (aiding and abetting)
1716	James, Earl of Derwentwater <i>et al</i>	HT [S] (1715 Jacobite rebellion)
1716	George, Earl of Wintoun	HT [S] (1715 Jacobite rebellion)
1717	Francis Francia	HT [S]
1715	Henry, Lord Viscount Bolingbroke	HC&M
1715	James, Duke of Ormond(e)	HC& M
1715	Thomas, Earl of Strafford	HC&M [S]
1717	Robert Harley, Earl of Oxford	HC&M
1718	King's Prerogative re Marriage & Eduction of Children	
1718	Stede Bonnet (major) <i>et al</i>	Piracy [S]
1719	Jeffrey Gilbert, Lord Chief Baron	Issuing Process contrary to HL Orders [S]
1719	John Matthews	HT (Libel)
1719	William Newbolt & Edward Buttler	HT
1719	William Hendley	<i>Re Sermon</i>

1720 - 40

1722	Hugh Reason & Robert Tranter	Murder [S]
1722	John Woodburne & Arundel Coke	Nose slitting [S]

1722	Christopher Layer	HT [S] (Atterbury Plot) ⁴¹
1723	John Plunkett <i>et al</i>	Bill of Pains & Penalties [S] (Atterbury Plot)
1724	Edward Arnold	Shooting & Wounding [S]
1725	Thomas Parker, Earl of Macclesfield	HC & M [S]
1715	<u>John Graham (Sc)</u>	Drinking Pretender's health
1728	<u>James Carnegie (Sc)</u>	Murder
1726	John Oneby (major)	Murder
1727	Edmund Curl	Libel
1729	William Hales & Thomas Kinnersley (various trials)	Forgery/Fraud
1729	John Huggins <i>et al</i> (jailers) ⁴²	Murder <i>etc</i>
1729	Robert Eyre (sir)	Proceedings <i>re</i> prison visit
1731	Richard Franklyn	Libel
1735	John Peter Zengler (NY)	Libel
1715	John Oliphant (Sc)	Toasting Pretender
1715	<u>George Robertson (Sc)</u>	Failing to pray for King
1715	<u>Alexander Stewart (Sc)</u>	Maintaining title of Pretender
1715	James Geddes & John Crawford	Drinking health of Pretender
1734	R v Gibbon	Quo Warranto
1734	R v Elles	Quo Warranto
1735	<u>Thomas Macadams[Sc]</u>	<i>Murder</i>
1736	Henry Moore v Mayor of Hastings <i>etc</i>	
1736	John Porteous (capt)	Murder [S]
1737	<u>William Maclauchlan (Sc)</u>	Murder, Mobbing <i>etc</i>

1740 – 6

1741	Samuel Goodere <i>et al</i>	Murder on board ship
1742	James Annesley & Joseph Redding	Murder
1743	Campbell Craig	Trial in Ejectment
1744	Mary Heath	Perjury, Trial in Ejectment
1744	Richard, Earl of Anglesea <i>et al</i>	Assault
1743	William Chetwynd	Murder

1746-50

1746	Francis Townley	HT (Jacobite rebellion, 1745)
1746	George Fletcher	HT (same)
1746	Thomas Chadwick & William Batragh	HT (same)
1746	Thomas Theodorus Deacon	HT (same)
1746	John Berwick	HT (same)
1746	David Morgan	HT (same)
1746	Alexander MacGrowther	HT (same)
1746	Alexander & Charles Kinloch	HT (same, Scots born)
1746	James Bradshaw	HT (same)
1746	John Wedderburn (sir)	HT (same)
1746	Charles Ratcliffe	HT (same)
1746	William, Earl of Kilmarnock <i>et al</i>	HC&M (same)
1746	Simon Lord Lovat	HC&M (same)
1747	Aeneas Macdonald	HT (same)
1747	<u>Archibald Stewart (Sc), ex Lord Provost of Edinburgh</u>	Neglect of Duty
1749	William Jackson <i>et al</i>	Murder

1750 - 75

1752	Mary Blandy	Murder
1752	John Swan & Elizabeth Jefferys	Murder
1753	William Owen	Libel
1753	John Barbot	Murder
1743	Alexander Broadfoot (Impressing Seamen)	Murder
1716	<u>Daniel Taylor (Sc)</u>	Not praying for King
1752	<u>James Stewart (Sc)</u>	Murder
1753	Mary Squires & Susannah Wells	Assault & Felony
1753	John Gibbons <i>et al</i>	Perjury
1754	Elizabeth Canning	Perjury
1753	Timothy Murphy	Felony & Forgery
1753	Archibald Cameron (dr)	Attainder
1755	Stephen M'Daniel <i>et al</i>	Felony & Robbery
1758	William Barnard	Black Act
1759	John Stevenson	Murder
1760	Lawrence, Earl Ferrers	Murder
1763	John Wilkes	Habeas Corpus

⁴¹ This was a plot to assassinate George I and place the Old Pretender (James III) on the throne.

⁴² See also Thomas Bambridge, Richard Corbett and William Acton.

1765	Dryden Leach <i>et al</i>	False Imprisonment
1765	John Entick	Action of Trepass (seizure of papers)
1763-70	John Wilkes	Libels
1771	Brass Crosby, Lord Mayor of London	Commitment by HC
1763	John Wilkes	Action of Trespass (general warrant)
1765	William, Lord Byron	Murder
1765	Katherine Nairn & Patrick Ogilvie	Incest & Murder
1758	Florence Hensey	HT
1771-2	James Sommersett (negro)	Habeas Corpus
1773-4	Anthony Fabregas v Governor of Minorca	False Imprisonment
1774	Alexander Campbell, Case of Island of Grenada	Export Payments
1776	Elizabeth, Duchess Dowager of Kingston	Bigamy
1777	John Horne	Libel
1770	John Almon (Letters of Junius, bookseller)	Libel
1770	John Miller (Letters of Junius, printer)	Libel
1770	Henry Sampson Woodfall (Letters of Junius)	Libel
1775	Maharajah Nundocomar	Forgery (Calcutta, Bengal)
<u>1775 - 90</u>		
1775	Joseph Fowke <i>et al</i>	Conspiracy v Warren Hastings <i>etc</i>
1776	Richard Smith & Thomas Brand	Election Bribery
1776	Stephen Sayre	False Imprisonment
1777	James Hill	Setting Fire to Dockyard House
1778-9	Thomas Baillie (capt) Royal Hospital for Seamen at Greenwich	Libel
1781	George Gordon	HT [Gordon Riots]
1781	Francis Henry de la Motte	HT
1782	David Tyrrie	HT
1783-4	William Jones v Rev William Davies Shipley	Seditious Libel
1779-80	George Stratton	Misdemeanour ⁴³
1783	Charles Bembridge	Misconduct in a Public Office
1784	Philip Lord Viscount Strangford	Corruption, Lord of Parliament, Ireland
1787	George Gordon	Libel
1789	John Stockdale	Libel
1790	John Frith	HT
<u>1790 - 3</u>		
1792	Patrick William Duffin & Thomas Lloyd	Seditious Libel
1792	Thomas Paine	Libel
1793	John Frost	Seditious words
1793-4	William Friend	Libel (Court of Cambridge university)
1793	Daniel Isaac Eaton	Libels
1793	William Winterbotham	Seditious Words
1793	Thomas Briellat	Seditious Words
1793	John Lambert <i>et al</i>	Seditious Libel
1793	William Hudson	Seditious Words
1793-4	Archibald Hamilton Rowan	Seditious Libel
1793	Daniel Holt	Seditious Libel
1793	Alexander Whyte	Seditious Libel
1793	<u>James Tytler (Sc)</u>	Sedition
1793	<u>John Morton <i>et al</i> (Sc)</u>	Sedition
1793	<u>John Elder & William Stewart (Sc)</u>	Sedition
1793	<u>James Smith & John Mennons (Sc)</u>	Sedition
1793	<u>William Johnston (Sc)</u>	Contempt of Court
1793	<u>James Thomson Callendar <i>et al</i> (Sc)</u>	Seditious Libel
1793	<u>Thomas Muir (Sc)</u>	Sedition
1793	<u>Thomas Fyshe Palmer (Sc)</u>	Seditious Practices
<u>1794 - 6</u>		
1794	<u>Alexander Scott (Sc)</u>	Sedition
1794	<u>William Skirving (Sc)</u>	Sedition
1794	<u>Maurice Margarot (Sc)</u>	Seditious Practices
1794	<u>Charles Sinclair (Sc)</u>	Sedition
1794	<u>Joseph Gerrald (Sc)</u>	Sedition
1794	Daniel Isaac Eaton	Seditious Libel
1794	Thomas Walker <i>et al</i>	Conspiracy to overthrow Government
1794	<u>David Downie (Sc)</u>	HT
1794	<u>Thomas Hardy (Sc)</u>	HT
1794	Robert Watt	HT
1794-6	John Horne Tooke	HT

⁴³ Depositing General Lord Pigot, CC Fort St George, Madras, East Indies.

1794	James Bird <i>et al</i>	Conspiracy to Incite Insurrection
1794-5	William Jackson	HT
1795	Archibald Gordon Kinloch (sir)	Murder
1795	Henry Redhead	Conspiracy
1796	William Stone	HT
1796	Robert Thomas Crossfield	HT
1795	James Weldon	HT
1795	Michael Maguire	HT
1795	John Leary	HT
1796	Thomas Kennedy	HT
1796	Patrick Hart	HT
1796	Andrew Glennan <i>et al</i>	Conspiracy
1796	John, Bishop of Bangor <i>et al</i>	Riot
1796	John Reeves	Seditious Libel

1797 - 9

1797	John Binns	Seditious Words
1797	Thomas Williams (published Paine's Age of Reason)	Libel
1797	David Maclane (Quebec, Lower Canada)	HT
1797	<u>Alison Duncan <i>et al</i> (Sc)</u>	Mobbing & Rioting
1797	James Dunn	Conspiracy to Murder
1797	Patrick Carty	Conspiracy to Murder
1797	Peter Finerty	Seditious Libel
1798	Patrick Finney	HT
1798	<u>George Mealmaker (Sc)</u>	Sedition/Unlawful Oaths
1798	<u>Angus Cameron & James Menzies (Sc)</u>	Sedition, Mobbing & Rioting
1798	<u>David Black & James Paterson (Sc)</u>	Sedition, Unlawful Oaths
1798	James O'Coigly <i>et al</i>	HT
1798	Henry & John Sheares	HT
1798	John MacCann	HT
1798	William Michael Byrne	HT
1798	Oliver Bond	HT
1798	Theobald Wolfe Tone	HT
1799	John Vint, George Ross & John Parry	Libel
1799	John Cuthell	Seditious Libel
1799	Gilbert Wakefield	Seditious Libel
1799	Thomas Judkin Fitzgerald, <i>ex</i> High Sheriff, Tipperary, Ireland	Assault & Battery
1799	Sackville, Earl of Thanet <i>et al</i>	Riot/Other Misdemeanours
1799	Benjamin Flower	Libel (Parliamentary privilege, breach)
1799	William Byrne	Rebellion & Murder
1799	John Tuite	Murder
1799	John Devereux	Rebellion

1800 - 3

1800	James Napper Tandy & Harvey Morris	HT
1800	James Hadfield	HT
1801	<i>Berkeley Peerage</i>	[<i>Browne</i>]
1802	Charles Henry Sirr	Assault & False Imprisonment
1802	Joseph Wall, <i>ex</i> Governor of Goree, Africa	Murder [Browne]
1802	William Codling <i>et al</i>	Destroying Ship on High Seas
1803	Edward Marcus Despard	HT [Browne] (Despard Plot)⁴⁴
1803	Jean Peltier	Libel [Browne]
1802	Thomas Kinch & Thomas Watson	Murder
1802	William Shields	Murder
1803	Edward Kearney	HT
1803	Thomas Maxwell Roche	HT
1803	Owen Kirwan	HT
1803	James Byrne	HT
1803	John Begg	HT
1803	Walter Clare	HT
1803	Felix Rourke	HT
1803	John Killen & John MacCann	HT
1803	Joseph Doran	HT
1803	Thomas Donnelly <i>et al</i>	HT
1803	Robert Emmet	HT [Browne] (Irish case)
1803	Henry Howley	HT (Irish case)
1803	John Macintosh	HT (Irish case)
1803	Thomas Keenan	HT (Irish case)
1803	Dennis Lambert Redmond	HT (Irish case)

⁴⁴ This was a plot to assassinate George III and a *coup d'etat*. Despard was executed along with John Wood, John Francis, Thomas Broughton, James Wrattan, Arthur Graham & John Macnamara.

1803	Michael & John Hedges	Conspiracy & Fraud
<u>1804 - 10</u>		
1804	William Cobbett	Libels [Browne]
1805	Robert Johnson (Judge, Common Pleas, Ireland)	Libel
1805	John Thomas Troy & Henry Delahay Symonds	Libel
1806	Henry, Lord Melville	HC&M [Browne]
1806	Trials of the Threshers	Also, [Browne]
1806	<i>Trial of Queen Caroline</i>	[Browne]
1804	Thomas Picton, <i>ex</i> Governor, Trinidad	Torture [Browne]
1806	Edward Alured Draper	Libels [Browne]
1808	John Harriott Hart & Henry White	Libels
1809	Joseph Hanson	Misdemeanour (Raising Wages)
1808	Alexander Davison	Fraud [Browne]
1809	Valentine Jones, <i>ex</i> Commissary General, West Indies	Misconduct in a Public Office [Browne]
1809	<i>Duke of York & Mary Ann Clarke</i>	<i>Sale of Offices [Browne]</i>
1810	John Lambert & James Perry	Libel [Browne]
<u>1811 - 20</u>		
1811	John Hunt & John Leigh Hunt	Seditious Libel [Browne]
1811	Trials of the Caravats & Shanavests, Tipperary, Ireland	Also [Browne]
1811	John Drakard	Seditious Libel [Browne]
1811	Edward Sheridan & Thomas Kirwan	Misdemeanours ⁴⁵
1811	<i>Luddite Trials</i>	[Browne]
1812	Daniel Isaac Eaton	Blasphemous Libel
1812	<i>Bellingham</i>	<i>Murder (Spencer Percival) [Browne]</i>
1813	Proceedings under Oyer and Terminer & Goal Delivery	
1813	Hugh Fitzpatrick	Libel
1814	<i>Lord Cochrane</i>	<i>Fraud [Browne][Townsend]</i>
1817	James Watson	HT [Browne] (Spencean Rising)
1817	John Hatchard	Libel
1817	Jeremiah Brandreth	HT [Browne] (Pentrich Rising) ⁴⁶
1817	William Turner	HT (same)
1817	Isaac Ludlam	HT (same)
1817	George Weightman	HT (same)
1817	<u>Alexander McLaren & Thomas Baird (Sc)</u>	Sedition
1817	<u>William Edgar (Sc)</u>	Unlawful Oaths
1817	<u>Andrew M'Kinley (Sc)</u>	Unlawful Oaths
1817	<u>Neil Douglas (Sc)</u>	Sedition
1819	<i>Manchester 1819</i>	[Browne]
1820	Arthur Thistlewood	HT [Browne] (<i>Cato Street Conspiracy</i>) ⁴⁷
1820	James Ings	HT (same)
1820	John Thomas Brunt	HT (same)
1820	William Davidson & Richard Tidd	HT (same)
<u>1820 - 5</u>		
1820	Francis Burdett (sir)	Seditious Libel
1820	Henry Hunt <i>et al</i>	Conspiracy & Unlawful Assembly
1820	John Knowles	Unlawfully making and selling arms
1820	James Morris	Unlawfully making and selling arms
1820	George Dewhurst	Unlawful assembly & Causing people to go armed
1820	<u>Andrew Hardie (Sc)</u>	HT
1821	George Edmonds <i>et al</i>	Seditious Conspiracy
1821	Queen Caroline	Claim to be crowned
1821	Mary Ann Carlile	Blasphemous Libel
1821	Walter Ruding v Jemima Claudia Smith	Nullification of marriage
1822	Hugh Hornby <i>et al</i>	Action for Trespass
1822	Gidley v Lord Palmerston	Arrears of retired allowance
1822	John Ambrose Williams	Libel [Townsend]
1822	Samuel Waddington	Blasphemous Libel
1822	<i>James Stuart [Sc]</i>	<i>Killing in Duel [Townsend]</i>
1823	Daniel Harvey & John Chapman	Libel
1824	John Hunt	Seditious Libel
1824	Demise of Thomas v Acklam	Effect of British-US treaty (<i>re</i> nationality)
1824	Demetrius de Wutz v Hendricks	Action of trover (legality of loan)
1824	A-G v Thornton	Unpaid Wine Duties
1824	Forbes v Cochrane & Cockburn	Action of trover (fugitive slaves)

⁴⁵ Related to the Irish Convention Act, 33 Geo 3 c 39.

⁴⁶ This was an armed march to overthrow the Government.

⁴⁷ This was a plot to kill various Government ministers at a house in Grosvenor Square, London.

1825 - 31

1825	Colonel Bradley v Colonel Arthur	False imprisonment v assault
1826	Earl & Countess of Strathmore v William Laing	Privilege attached to Hollyrood Palace
1826	Manners & Miller, Buchan <i>et al</i> v King's printers	Royal prerogative <i>re</i> printing of bibles
1826	Doe on the demise of Auchmuty v Mulcaster	Effect of British-US treaty (<i>re</i> nationality)
1827	Rowe, Executor of Joshua Rowe v Brenton	Interest of Crown in Duchy of Cornwall
1827	The Slave, Grace	Status of slave in England
1827	<i>Abduction of Miss Turner</i>	<i>Conspiracy & Abduction [Townsend]</i>
1828	King of Spain v John Hullett & Charles Widder	Right of foreign sovereign to sue
1829	Basham v Lumley	Action v Colonial Governor for Trespass
1829	Alcock v Cooke <i>et al</i>	Rights of sovereign as duke of Lancaster
1829	Harding v Pollock	Right of Crown <i>re</i> clerk of peace
1830	Heerachund Bedreechund <i>et al</i> v Elphinstone <i>et al</i>	Jurisdiction of municipal courts <i>re</i> war acts
1831	Richard Carlile	Seditious Libel
1831	Daniel O'Connell	Conspiring to breach certain Acts
1831	Devon Peerage Claim	Claim to Eraldom of Devon
1831	Alexander v Duke of Wellington	Booty and rights of Crown & captors
1831	William Corbett	Seditious Libel
1831	Bloomfield Peerage Claim	Right of Crown to create Irish peers
1831	<i>In re</i> Long Wellesley	Committing MP for contempt

1832 - 40

1832	Bristol Riots (charge of Tindal CJ to grand jury)	Riot
1832	Charles Pinney (mayor of Bristol)	Neglect of duty as mayor [Townsend]
1838	George Furse	Feloniously stabbing
1833	Action of John Dicas v Lord Brougham	Solicitor not obeying bankruptcy court order
1835	Jephson v Riera	Appeal from Gibraltar Court to JCPC
1835	Cameron v Kyte	Appeal from Bengal Court to JCPC
1836	Dobree v Napier	Action of Trespass v Admiral Napier
1836	Mayor of Lyons v East India Co	Court of Bengal to the JCPC
1837	Stockdale v Hansard	Libel
1838	<i>Hunter and Four others [Sc]</i>	<i>Conspiracy & Murder [Townsend]</i>
1839	Habeas Corpus in the case of the Canadian prisoners	Habeas Corpus
1839	Henry Vincent <i>et al</i>	Conspiracy & Unlawful Assembly
1839	Howell <i>et al</i>	Riotously demolishing a house
1839	John Collins	Seditious Libel
1839	Joseph Rayner Stephens	Seditious words, riot & unlawful assembly
1840	Case of the Sheriff of Middlesex	Habeas Corpus
1839	Presbytery of Auchterbader v Kinnoull	Appeal from Court of Session
1839	John Frost	HT [Townsend]⁴⁸
1839	Calder v Halket	Appeal from Bengal Court to JCPC
1840	Edward Oxford	HT [Townsend]⁴⁹
1840	Paddock v Forrester <i>et al</i>	Judgment of Court of Common Pleas
1840	Henry Hetherington	Blasphemous Libel

1841 - 7

1841	James Thomas, Earl of Cardigan	Felony [Townsend]
1841	Edward Moxon	Blasphemous Libel [Townsend]
1841	Hill v Bigge	Appeal from Trinidad Court to JCPC
1842	Douglas v the Officers of State	Appeal from Court of Session
1842	Viscount Canterbury v R	General demurrer to Petition of Right
1842	Ferguson v Kinnoull	Appeal from Court of Session
1843	Daniel M'Naughton	Murder (insanity) [Townsend]
1843	Feargus O'Connor <i>et al</i> (chartists)	Seditious Conspiracy
1843	Thomas Cooper <i>et al</i>	Seditious Conspiracy
1843	Lopez v Burslem	Appeal Sierra Leone Court to JCPC
1843	Daniel O'Connell	Seditious Conspiracy [Townsend]
1842	Jewison v Dyson	Appointment of franchise Coroners
1843	Azzopardi	Murder of foreigner by British subject
1844	Duke of Brunswick v King of Hanover	Suit v foreign sovereign also British subject
1844	Sussex Peerage claim	Claim to dukedom of Sussex
1844	Gray v Queen	Pre-emptory challenges, felony
1844	Bailiff and Jurats of Royal Court of Guernsey	Right of Governor to deport aliens
1845	<i>In re</i> Carus Wilson	Habeas Corpus
1845	R v Serva <i>et al</i>	Murder of British officer on high seas
1845	Baron de Bode v Queen	Petition of right to recover compensation
1846	Charles Gavan Duffy	Seditious Libel
1846	Willis v Gipps	Removing colonial judge from office
1845	Howard v Gosset	Power to HC to commit for contempt

⁴⁸ This was an armed rising of Chartists in Wales.⁴⁹ Assault on Queen Victoria, held to be HT.

1847	Munden v Duke of Brunswick	Immunity as foreign sovereign
<u>1848</u>		
1848	R v Archbishop of Canterbury	Election of a bishop
1848	Buron v Denman	Acts of State outside jurisdiction
1848	John Mitchell	Seditious Libel
1848	William Smith O'Brien & Thomas Meagher	Seditious words
1848	John Mitchell	TF
1848	Dyke v Walford	Duchy of Lancaster – estates of dead
1848	John Joseph Fussell	Sedition, Unlawful Assembly & Riot
1848	Joseph Williams & William John Vernon	Unlawful Assembly & Riot
1848	Ernest Charles Jones	Sedition and Unlawful Assembly
1848	O'Doherty	TF
1848	John Martin	TF
1849	Smith O'Brien	HT [Townsend] (Irish case) ⁵⁰
1848	William Dowling	TF
1848	William Cuffey <i>et al</i>	TF
1848	James Cumming (Sc)	TF & Seditious Conspiracy
1848	John Grant <i>et al</i> (Sc)	Conspiracy & Sedition
1848	Francis O'Donnell <i>et al</i>	Seditious Conspiracy
1848	Thomas Rankin	Seditious Conspiracy/Unlawful Assembly
<u>1849 - 52</u>		
1849	Charles Gavan Duffy	TF
1849	<i>In re</i> John Crawford	Habeas Corpus
1849	<i>In re</i> Bedard (petition from Canada to JCPC)	Grant of precedence by the Crown
1849	Prince Granatelli <i>et al</i>	Foreign Enlistment Act 1819
1849	R v Manning	Trial by Jury <i>de medietate</i>
1850	Houlden v Smith (action of trespass)	County Court judge exceeding jurisdiction
1851	King of the two Sicilies v Wilcox <i>et al</i>	Claim to a ship (SS Bombay)
1850	Gorham v Bishop of Exeter	Appeal from Archbishops' Court
1850	Robert Pate	Assaulting Queen Victoria
1851	Wadsworth v Queen of Spain, De Haber v Queen of Portugal	Attaching property of foreign sovereign
1852	Miller v Salomons	MP sitting without taking oath
<u>1853 - 9</u>		
1853	Brownlow Egerton (an infant) v Earl Brownlow <i>et al</i>	Provisos in a will
1853	In the matter of the States of Jersey	Power of Crown to legislate for Jersey
1854	Taylor v Best <i>et al</i>	Diplomatic privilege
1855	The Franciska	Condemnation of Prize for breaching blockade
1855	The Ionian ships (The Leucade)	Condemnation of Prize
1856	The Wensleydale Peerage	Patent purporting to create baron for life
1856	The Fermoy Peerage Claim	Voting at election of Irish peer
1857	Cremidi v Powell (the Gerasimo)	Appeal from High Court of Admiralty to JCPC
1855	Exposito v Bowden	Breach of charterparty
1857	Mansell v R	Right to order jurors to stand by
1858	Fenton v Hampton (appeal from Van Dieman's land to JCPC)	Privileges of colonial legislative chamber
1858	R v Simon Bernard	Accessory to murder
1857	<i>Ex p</i> John Anderson Robertson (JCPC)	New South Wales – colonial office
1859	<i>Alexander Alexander</i>	<i>Forgery [Townsend]</i>

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⁵⁰ So called rising in widow McCormack's cabbage patch.