

**Searching for pigeons in the belfry: the inquest, the abolition of the deodand and the rise of the family**

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## **Searching for pigeons in the belfry: the inquest, the abolition of the deodand and the rise of the family**

Abstract: This article explores the abolition in 1846 of the deodand – the object or animal declared responsible for death by an inquest jury – and its relationship with the family of the deceased. Drawing on the work of Jacques Donzelot, it argues that the deodand brought contingency into the heart of law, and that its replacement with a legal right to compensation for dependents was a move to rationalise the investigation of death. This rationalisation had consequences; limiting the place of the unruly community, centring and regulated the family, and disconnecting the inquest from the material of death.

Key words: Deodand; Jacques Donzelot; death; fatal accidents; legal history; new materialism; inquest; Coroner; Coronial; family; dependency; financial relief; liberalism; modernity;

“And nothing may we use in vain;  
Even beasts must be with justice slain,  
Else men are made their deodands.  
Though they should wash their guilty hands  
In this warm life-blood which doth part  
From thine, and wound me to the heart,  
Yet could they not be clean; their stain  
Is dyed in such a purple grain.  
There is not such another in  
The world, to offer for their sin”

Andrew Marvell, 'The Nymph Complaining for the Death of her Fawn' c.1650

## **Introduction**

For centuries in England and Wales, at the end of an inquest into a death, the jury could declare an animal or inanimate object to be responsible for the death. Such an object was named deodand, a gift to God (1), and was forfeit to the Sovereign. Abolished by statute in 1846, the demise of the deodand coincided with Parliament's approval of Lord Campbell's Act of the same year, which permitted relatives of the deceased to claim damages arising out of the death. Prior to this, any possible claim for negligence ended with the death of the injured party.

Recent academic engagement has focussed on the deodand as an example of the role non-human actants can play in law, troubling the distinction between human and object/animal (2) – an endeavour which can be traced back through Marvell's Nymph, and the transformation of 'ungentle men' into deodands through unjust slaying of an animal. This article builds on these insights, and focuses on the moment of abolition of the deodand to draw out the subversive possibilities of the deodand. I explore the ways in which the deodand brought contingency and materiality into the law, and argue that in exchanging the deodand for a claim, the law promised to contain risk, which the deodand had previously demonstrated was everywhere and in everything. However, this promise to replace risk with certainty with the imposition of a familial compensation claim – constructed as rational and progressive – brought a new kind of arbitrariness into the law.

I argue that this replacement of the deodand with a familial claim to compensation makes an account of the place of the family a crucial part of any discussion of the deodand. This

work is part of a broader project in which I trace the family in the contemporary inquest, and, drawing on Donzelot's thesis (3) that the family is critical in the emergence of liberal governmentalities, I argue that this is a transformational moment in that account. Prior to this, the family had no special place in the law, and the legislative swap of the deodand for the claim was a key step in carving out a distinct place for them in the inquest jurisdiction.

The article is in four parts. In the first part I briefly discuss the deodand itself and describe the relationship between the deodand and the family in the historic inquest. Thereafter, adopting Donzelot's methodology of exploring history through tracing the lines of transformation which reshape the social surface, I analyse three lines of transformation, starting with the technical legal change from deodand to cause of action by the family. My second line of transformation analyses the shift from community to family; exploring public order and the inquest as a popular court. Finally, I examine mutations in the ritual of the inquest, the promise to control risk, and the decline of materiality.

### **The Deodand – flexible, contingent and anti-modern**

In London, in late August in the mid-thirteenth century, a jury gathered on a Monday morning to consider the death of William Bonefaunt. They concluded that “on the preceding Sunday, at the hour of curfew, the above William, had stood drunk, naked and alone, on the top of a stair in the aforesaid rent for the purpose of relieving nature when by accident he fell head foremost to the ground and forthwith died. The stair appraised at 6d for which William De Brykelworth, one of the Sheriffs, will answer.”(4)

The stair from which William fell was a deodand, and the value of it was forfeit. “Any moveable thing not fixed to the freehold, or instrument inanimate or beast animate” (5)

could be a deodand, and William Bonefaunt's step illustrates the deodand in all of its elusive ambiguity.

Its defining feature is a lack of definition. The decision to name an object deodand was at the discretion of the jury (although the attitude of the coroner was inevitably relevant (6)) and it was for the jury to assign a value to it (7). Crucially, the deodand was an inherently contingent object; a chattel which through the jury's shaping of the narratives of death became linked to that death. The variability of the deodand's appearance in the law and the historical record mean that few irrefutable assertions can be made about it, and like the office of the coroner itself (7), its origins predate legislative attention. The earliest official mention of the deodand is found in the reign of Edward I, in *De Officio Coronatoris* in 1275-76, which includes no definition and which clearly draws on pre-existing common law (9). The deodand did not appear again in statute until 1833 (10), but was considered judicially and, probably most influentially, in the work of a handful of key jurists, including Fleta, Britton, Coke, Hale and Blackstone.

Unfortunately, in their attempts to set out the law – a task which, speaking about his wider project, Coke describes as “a worke arduous, and full of such difficultie, as none can either feele or beleeve, but he onely which maketh tryall of it” (11) – they only succeeded in creating more mystery and confusion over the meaning and purpose of the deodand (12). In fact, as Pervukhin (13) convincingly shows, the creation of deodand law was driven by juries, and many of the rules around deodand were created as jurists and courts sought to make sense of the wide variation in jury decisions on deodand. Few inquest jury decisions were appealed for the courts to develop common law principles, and while jurists sought to

impose clear principles on deodand law, there is little evidence to suggest that juries considered themselves bound by these principles.

This is not to suggest that coroners and juries entirely ignored these rules. For example, courts emphasised the role of movement, and juries often suggested movement (14) was important, as with Elyas Ide, seaman, who fell from a mast and “immediately” died. The jury “attribute his death solely to his drunkenness and the rope, and further find that neither the ship nor anything belonging to it was moving or being moved except the rope, which they appraise at 10s.” (15) However, as court decisions acknowledged, movement was only one factor (16), and other jury considerations in finding and valuing a deodand seem to have included mischief, negligence, retribution, and proximity (17). Juries manipulated items said to have caused death – and the values of those objects – and “tailored their findings to each individual case.” (18)

It is otherwise difficult to understand the deodand of a ladder in the case of William le Cupere of Bedford (19). The jury concluded that on 18 August 1272 he had “climbed up Cauldwell church ... to do his work. He saw 2 pigeons in the belfry, climbed up inside it to look for them, and by misadventure fell through the middle of an opening (*clera*), breaking his right leg and the whole of his body.” He died the following day, and the ladder he had climbed up to get into the belfry was appraised at 6d and declared deodand. Suggestively, the report also states that the prior of Cauldwell was fined for taking it without warrant, and although no explicit link is made between the prior’s behaviour in taking the ladder and the declaration of deodand, it is clear that in some way the jury linked William’s death to the prior, perhaps as an informal health and safety punishment. From our perspective, the ladder might be seen as peripheral; having used it to enter the belfry, the inquisition

suggests it played no part in his subsequent fall. Declaring the ladder to be deodand, therefore supposedly – by one definition (20) – the immediate cause of his death, serves to highlight the deodand’s flexibility.

The abolition of the jury’s power to manipulate the deodand in 1846 is part of a wider context in which the institution of the inquest engaged with conceptions of modernity during the 19<sup>th</sup> century. There was a productive tension between the professionalised inquest, which was a site for medical and public health intervention, and the inquest as a public forum for protection of individual liberty (21). The deodand failed to fit these narratives, and its abolition was one step within a broader pattern of cultural, political and legislative reformulations. These latter included endeavours to rationalise and standardise the office of coroner, to deal with corruption, and to abolish elections for coroners; as well as a shift from common law to statute when the office of coroner was reconstituted in legislation in 1887; and the later removal of the need for the jury to view the body in 1926. (22)

This modernisation of the coroner’s inquest meant that by the early twentieth century the inquest had been significantly reworked: pulled out of the public house, “where the majesty of death evaporated with the fumes from the gin of the jury,” (23) and (re)invested with its “modern [focus of] an investigation into the cause and circumstances of death.” (24)

### ***The Deodand as Financial Relief***

One aspect of the flexibility of the deodand is that, although theoretically forfeit to the Sovereign, it was sometimes used as a mechanism to provide financial support to those bereaved by the death. In 1837, Robert Cocking, a stuntman in Vauxhall Gardens, died

when his parachute failed to open. Following the inquest, the parachute was declared deodand and was given to the Treasury. A fund to support his widow applied for the parachute, and this was granted (25). Similarly, in 1825 in London, deodands of £50 on a coach and horses and £10 on a cask of ginger were granted to the widows of deceased men (26). The coach and horses had run over and killed a hairdresser, while the cask of ginger was being carried by a labourer when he fell down a hole and died.

Primary sources do not generally tell us what happened to the object, and sources differ over whether as a matter of law the owner of the deodand could choose to forfeit the object which would then be sold, or pay the valuation by the jury, or if it was not open to them to choose. Where the object was forfeit itself, it is unclear what role the jury's valuation played, but it is clear that in some instances, as with Robert Cocking's parachute, the object itself was given up. In many sources, there is slippage between deodand as an object and deodand as a sum of money amounting to a valuation of an object, as with the debates in Parliament at the point of abolition, where the Attorney-General referred to the new system as "making the deodand recoverable by an action at civil law." (27)

The Sheriff, or other local official, is often stated to be responsible for the deodand, and may have been able to collect the value from the local community (28), and there are examples of a deodand being awarded but not subsequently collected from the owner (29). As with the definition of the deodand, the sources suggest a great deal of variability in practice, and also in valuation, with at least one suggestion that where the Lord of the Manor publicly declared the deodand would be given to the deceased's family, this encouraged higher awards. (30)



However, it is not easy to establish how often the deodand was used to provide some financial support for the bereaved, as the ultimate destination of the deodand is not generally included in the coroner's rolls which are the main source of evidence. One support for it as a practice might be found in the rule which states that no deodand will be declared in non-moving cases where the victim was under 14. Pervukin argues that this rule appears to have been inadvertently invented by Staunford based on coroner's rolls and jury decisions but without firm judicial authority (31). She contends that it is likely that the rule arose because most children would be killed at home, and it was unlikely that juries would want to punish grieving parents. Another possibly complementary explanation is that if the deodand was regularly granted to the bereaved, there would be little need for a deodand for the death of a child at home, because the parents would both own the deodand already and be the beneficiaries of a declaration of deodand by the jury. While this is speculation, there is substantial support in the secondary materials for the deodand playing a role in providing financial relief for the bereaved (32).

The historical origins of this practice are contested. Links to the deodand have been drawn (and disputed) with Biblical law, Roman and Greek law as well as the Anglo-Saxon concept of the 'bane' whereby family members of those slain would receive payment from the slayer to avert vengeance (33). MacCormack argues that a definite conclusion cannot be reached (34), while Sutton considers that "It is quite possible that the deodand was at first a form of compensation which gradually developed into pure forfeiture." (35)

The traditional narrative in relation to deodands is that they peaked in use in the 13<sup>th</sup>-14<sup>th</sup> Centuries and gradually disappeared during the 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> centuries, before reappearing with the railway age, when some significant deodand awards were made (36).

Some near-contemporary sources support this analysis (37). However, Sutton has identified “extensive and valuable deodands” in Holderness in Yorkshire in the 18<sup>th</sup> Century, as well as examples in Marlborough and Westminster (38), and Pervukin suggests that the deodand might have continued to be levied, but had slipped out of official attention (39). The presence of the deodand in Marvell’s *Nymph* could also be counted as supportive evidence for awareness of, and therefore some possible use of, the deodand in the 17<sup>th</sup> Century.

### **From Financial Relief to Cause of Action**

Crucially, by the time the deodand came to be abolished, its abolition was mirrored by the introduction of a right for the dependent family to claim compensation, reinforcing the link between the bereaved family and the deodand. This technical legal line of transformation, from a discretionary decision by the inquest jury, to a claim outside the inquest, is explored in three short sections; I outline the deodand’s role in financial relief for the bereaved, then I discuss the debates in Parliament, and finally I assess the replacement - the family’s right to bring a claim.

### ***Discretionary relief***

A crucial plank in the argument against the deodand as a compensatory tool was that it was based in the “defective machinery of a coroner’s court”, in the arbitrary exercise of discretion by the inquest jury (40). From the perspective of the dependent bereaved and the need to replace lost income from the death of a family member, the wide scope granted to the jury in relation to both the award of a deodand and the valuation of the item doubtless carried risk. There was little guarantee that if any relief was awarded it would cover the loss, and there was a risk that the jury would award no deodand at all. Smith

argues that juries may have declined to award significant deodands because of the stigma attached to such awards, and inquest juries might have objected to mistreating otherwise responsible citizens by taking away their property or fining them (41). In 1845 H.B., albeit in an article seeking to juxtapose the unreasonable use of deodands in the 1840s with previous decisions, describes it as being “clear from the ancient authorities, that jurors always determined the amount of deodand to be imposed with great moderation, and with due regard to the rights of property and the moral innocence of the party incurring the penalty.” (42)

There was also the risk that large deodands could be struck down by the court, leaving families with nothing (43). In 1842, a decision of Lord Denman nullifying an £800 deodand was “an example of the venom which coroner’s courts could excite among high court judges” (44) and there were a sequence of cases in the early 1840s in which the Queen’s Bench deployed a variety of technical arguments to invalidate large deodands (45) (although not all appeals by owners of deodands were successful (46)).

It was not only the jury that exercised a discretion in relation to the deodand. Once declared, the deodand was forfeit to the Crown or to whomsoever the Crown had granted the right - a local landowner or a local institution. Thus, for a bereaved family to receive financial relief, a second hurdle sometimes needed to be crossed; as with friends and relatives of the nine individuals who died in the Sonning railway crash on Christmas Eve 1841. Despite the reluctance of the Coroner, the jury levied a £1000 deodand, attaching “great blame” to the company for placing passenger coaches (filled with 3<sup>rd</sup> class passengers) close to the engine, so that the heavy goods which formed most of the train crushed their coaches when the train hit a landslide. Subsequently, *The Times* reported that

friends of the nine deceased would get £100 each. It seems that Mr Palmer, the local lord of the manor, received petitions from these friends based on the article in the *Times*, as he then wrote to the paper to state it was questionable whether a deodand would belong to him, and in any case it was too early to say how the money would be distributed. Sutton notes from the accounts of Great Western that there was indeed no apparent subsequent payment to Mr Palmer, but the company did pay out money for hospital bills for those injured (47).

A possible response to both the risk of having a deodand struck down and the family not receiving compensation, was for a jury to threaten a deodand, and thereby to negotiate a solution with the deodand owner. In one example of this, in 1833, the jury apparently extracted financial support for the widow of John Skinner from the ship-owner Mr Mellish by threatening a deodand (48).

Thus the deodand could be deployed as a tool to give money to the family, either through a direct grant or through indirect means by jury negotiation, but the bereaved could not oblige the coroner, jury or state to provide them with financial relief. Smith, reviewing these developments, suggests that the deodand was moving towards a system of compensation “although at a painfully slow rate and in an incredibly haphazard fashion.” (49)

### ***Passage of the Bills***

In direct contradiction to this, in the Lords debate on abolition, Lord Campbell asserted that under the deodand, relatives could receive no compensation, whatever the degree of negligence (50). Lord Campbell’s critique focussed on the incoherence of a law which

compensated where injury was short of death, but where death ensued, as well as the deodand's consequent failure to deter poor practice leading to deaths (51).

In the other House, Thomas Wakley, prominent radical MP and "one of the most fearless, capable and sympathetic Coroners who ever served the public" (52) set out an alternative account of why the deodand "ought not to remain in its present state." (53) He cited an example of a fatal accident which was caused by a railway employee previously found to be guilty of very gross offences but nevertheless retained by the company. The jury had imposed a deodand of £2,000. As coroner, Wakley was concerned that "if it was tried in a court of law, the inquisition was not very likely to stand." He therefore consulted the Attorney-General (54) and leading Counsel (55) and was advised that the result would withstand the scrutiny of the Queen's Bench. Having satisfied himself,

"He said to himself 'Well, it is now clear that for their gross misconduct the company will have to pay 2,000/.' He was however sadly disappointed by the result. The case was taken by the defendants into the Court of Queen's Bench, where the inquisition was at once declared to be utterly worthless – it was cast aside and treated as almost worse than waste paper. He believed that no inquisition had ever been drawn with so much care and attention as that to which he was referring; and he thought it was quite clear, from the result, that the law ought not to continue in its present state." (56)

For Wakley, the problem with the deodand was the inconsistency of its application, which gave a reactive and conservative Queens Bench the opportunity to defeat just punishments with legal technicality (57). Wakley, medically qualified and the founder of *The Lancet*, was eager to use the position of coroner to promote public health, and had found "no benefit

whatsoever to arise from the present law of deodands” (58) because it failed as an effective tool he could use to force change (59). Instead of reinforcing a rational investigation dedicated to preventing future deaths, the deodand permitted the jury a wide rein at the end of the hearing; granting them the ability to declare a deodand against a gentleman’s horse, when his servant may have been to blame for the death; failing to punish a livery stable keeper who lent a drunken apprentice an unmanageable horse which then killed someone; or unjustly punishing a railway company which had properly examined a train before it left the station.

And this last concern of Wakley’s tapped into a deeper concern: that the arbitrary and unpredictable deodand inhibited the increasingly valorised risk-takers in charge of industry.

(60) In contrast, the deodand, representing a tool available to the local community for the collectivised management of risk, clashed with dominant conceptions of risk as either a matter of individual responsibility, dealt with by contract law and thrift, or else something to be spread through rational, predictable and institutional mechanisms. (61)

Support for the principle behind the conjoined Bills was overwhelming; they were approved by large majorities in both Houses of Parliament and were supported “by the Lord Chancellor, the Lord Chief Justice, by all the law Lords, and by the Judges of England.” (62)

The only unease expressed about abolition was raised by Mr S. Wortley MP, who argued that despite its problems, the deodand provided “a cheap and ready compensation [for] the poor” (63), avoiding expensive and risky legal proceedings. Additionally, he argued that the Bill would not enable claims against a company, but only against a servant “who was in most cases a man of straw, and could pay nothing.” (64) His concerns, immediately dismissed by the Attorney General, would prove prescient.

### ***Claim for the dependents***

On August 18, 1846, Queen Victoria assented to the abolition of deodands (65). Eight days later, Lord Campbell's Act came into effect (66), the rule in *Baker v. Bolton* (67) was bypassed and claims for bereaved relatives were instituted.

The mechanism purportedly gave agency to bereaved families, but was in fact extremely limited from their perspective, with workers – legally deemed to have voluntarily taken on risk by signing an employment contract – particularly poorly served (68). Judges compensated bereaved families “rarely and begrudgingly” (69) and while there was an increase in claims, particularly for railway passengers (70), legal, social and cultural barriers prevented many claims from getting as far as a courtroom (71). S.2 of the Act required action by the estate of the deceased, which was impractical for those too poor to proceed to probate; and the courts restrictively interpreted the Act to require pecuniary loss, thus replacing the uncertainty of the deodand (72) with the vagaries of establishing negligence and financial loss. According to the Mines Inspector in 1853, “However gross may have been the neglect which caused the husband's death, all interests are arrayed against the survivors.” (73).

Thus compensation, based on an increasingly structured assessment of loss, itself shaped by documentary evidence generated in a civil action to a specific standard of proof, replaced discretionary and flexible financial relief. At the same time, juries in civil claims were warned not to take the opportunity to punish railway companies with large awards against them (74) and were instead to focus on the law. Dependents better able to establish family connections or pecuniary loss – those with formally sanctioned relations recognised by the law (75) and with licit, certain and evidenced financial affairs – were in a far stronger

position than those with less formally recognised intimate relationships or financial affairs (76). The question of financial relief shifted from the inquest arena to the civil courts; from a local space, a hearing held in a public house attended by neighbours, into an “extended, expensive process” in a formal court room (77). The dependent family became a key actor; plaintiff and later claimant, moving from the periphery of the law into law’s direct gaze, and the jury, potentially capricious in the inquest, was shackled in the civil jurisdiction by legal technicalities, expertise and evidence.

In this process, despite being re-engineered as the vehicle of justice, the family revealed flaws when opened to the scrutiny of the law. In particular, legislators expressed concerns about leaving the family to manage finances. A widow, left to herself, as Viscount Sandon observed in the House of Commons, might marry another man and “the money might all be expended the day after the verdict in a drunken frolic.”(78) Such families had to be controlled; meaning widows, cast either as domestic angels to be protected or fallen women to be anxiously managed (79), had to be restrained and the money secured to the children. (80)

In the post-deodand world, the risks for business were made more predictable (81), as new technology drove the development of tort law (82). However, financial relief for the family may not have appeared any less arbitrary, and was certainly less immediate. The family were given rights, but with little ability to enforce such rights for all but the richest families, and the informal, negotiated and uncertain gave way to the impenetrable, constrained and putatively certain.

### **From an unruly community to governing through the family**



As well as a tool for financial relief for the family, the flexibility of the deodand enabled financial relief for others – if there was no family, or the family was not formally constituted. Alternatively, monies could be put to community benefit – fixing bridges or providing financial relief to those with leprosy (83) – or as a negotiation tool to effect health and safety improvements (84). Abolition of the deodand was a way of managing the unruly juries who sought to use the deodand in this way, whether with the support of a local coroner, or without, as Thomas Wakley discussed with such chagrin in the House of Commons. At the same time, the creation of a right to sue for the bereaved dependents was part of a process of formalising the family, and framing them as properly and primarily responsible for leading reaction to death. The abolition of the deodand and the implementation of the Fatal Accidents Act were thus central to strategies to manage the unpredictability of the community following death. The next section looks at each in turn.

### *Subduing an unruly community*

Prior to abolition, the deodand was available as a tool of resistance for the community, most famously in relation to the industrialisation of Britain and the railways. As discussed above, abolition was closely linked to the protection of risk-takers driving the burgeoning rail network. As Wellington dryly notes, “the date of this statute (1846) may suggest the great inconvenience which the law, if it had remained in operation, would have caused ... to railway and other enterprises in which loss of life is a frequent occurrence.” (85)

The railways expanded dramatically in the first half of the nineteenth century (86), “a mindless juggernaut, grinding private rights into the ground in the blind quest for profit.” (87) As deaths at the hands of the juggernaut became a frequent occurrence, some inquest juries reacted to defend the private rights of those killed by the railways. The Mechanic’s

Magazine of 1842 cast the railways as “The Modern Mechanical Moloc” and severely censured “the railroads for the numerous accidents that had occurred, attributing them to a general lack of precaution and scarcity of safety measures.” As a result “Deodand after deodand has been imposed by honest and indignant juries – deodands in amount surpassing any previously known in our criminal history.” (88) Case reports bear this activity out, and in a number of cases in the late 1830s and early 1840s, juries found trains and carriages to be deodands, and valued them at significant amounts.(89) The Monthly Law Magazine in 1841 stated that “in 1840 we have seen [deodands] rapidly ascend to £500, £800, and at length, £2,000.” (90) Railway companies took such inquests very seriously, “almost always sending legal counsel and at least one director” (91) and successfully challenged many deodands which were awarded (92). Railway deaths provided the backdrop to the debates in Parliament (93), and Cawthon highlights the ‘behind the scenes’ intervention of the ‘railway interest’ – “A combination of outraged lawyers, employers and judges [who] got in the ear of Parliament in the matter.” (94)

Before this lobby succeeded in abolishing the deodand, Smith suggests that the law left juries little choice but to declare trains and carriages as high value deodand, as an ancient rule that the deodand moved to the death bound them to recognise them as such and it was “hard to pretend they were low value.”(95) This version of events implicitly undermines the place of active resistance in the deliberations of these juries, who could have decided on a low value (96), or chosen, as in other deodand cases, to separate part of a moving object from the whole (97). Instead some coroners and juries explicitly deployed the deodand as a tool to exact concessions, and while this was not common in the early Victorian inquest, it

was a vital and potentially progressive development, curtailed by the abolition of the deodand. (98)

Without the ambiguity available in the deodand, the inquest jury lost this tool, and also lost the possibility of expressing a formal retributive reaction to deaths deemed to be by misadventure. Furthermore, shifting out of the potentially populist coroner's court meant that arguments over compensation lacked the vital energy which an inquest in close physical proximity to the death could generate. By contrast, after abolition, financial loss was principally a dispassionate question for objective determination by the law, and the potentially insurrectionary voice of the public was radically diminished. The inquest, the "only court in which working class people could participate as jurors" (99) was shorn of a tool for the community to exact accountability.

### *Governing through the family*

Inquests have long been a site for the maintenance of public order. As part of this, emphasis was laid on the community's role in safety and security. In the 1840s, J. Toulmin Smith argued that inquests were a forum for

"free unofficial men ... to declare for the satisfaction and security of all, whether it appears to their plain common sense that the case is free from suspicion. ... The object is one of such paramount importance to the safety and security to all men in the community, that there has, from the earliest times existed an officer ... whose special function it is to preside at these inquiries." (100)

The coroner as presiding officer did not constitute the historic jurisdiction of the inquest, but rather arranged for it to exist. The coroner "did not 'hear and determine,' but *kept*

records of all that went on in the county and that in any way concerned the administration of criminal justice". (101)

However, in the period from 1840 to 1926, the development of medical expertise and medically qualified coroners, the shift from election to appointment of the coroner, the reduction in cases which had to be heard by juries, and the removal of the body from the inquest forum, reshaped the place of the community, from agents of that declaration to listeners to the declaration. Public order was increasingly maintained through public information, not necessarily through public involvement in any conclusions. As Burney argues

"At its theoretical core lay the proposition that the public circulation of information concerning potentially disturbing deaths was a tool of social stability. In giving a formal context for the airing of the gossip, rumour, and suspicion generated by such deaths, the inquest diffused a tension that, if left to fester, might pose a threat to the reign of sense and reason." (102)

In the maintenance of public order, the emphasis was on the gathering of men, "the doer, the creator, the discoverer, the defender" rather than women, "whose intellect is not for invention or creation, but for sweet ordering, arrangement and decision," excluding, apparently, legal decision-making (103).

However women, including the spectre of the drunken widow, also presented a risk to public order. Whilst her husband was alive, the Victorian wife was "By her office, and place ... protected from all danger and temptation," (104) but such protection was lost following her husband's death. Thus the hearing had to engage in protection and restraint of such

women, and it was in this context that the dependent family was reconstituted as key participants in the inquest; firstly as claimants in a potential civil case, and later with the development of formal rights to engage with the inquiry. Family, rather than community, became the essential component in an effective declaration of the cause of death to allay suspicion; as junior co-author and principal reactants to the declaration.

Donzelot describes this transformation of family into the reorganising principle of society as “as a positive form of solution to the problems posed by a liberal definition of the state rather than as a negative element of resistance to social change.” (105) He analyses the way that in this period family became the foundation of the liberal state’s response to pauperism and indigence, with philanthropy focussing efforts on the family, encouraging family saving and thrift, and making the family “agents for conveying the norms of the state into the private sphere.” (106) As he argues, the strength of family as a mechanism for policing lies in the relationship between the imposition of these state norms and the complexity of familial configurations; social control is maintained through an interplay between external forces and differences of potential within the concept “family”.

Thus, according to Donzelot, because the family is malleable and ill-defined, continually recreated by the interplay of external and internal pressures, it becomes the key tool by which social cohesion is maintained. The shift from deodand to compensation claim is an illustration of this; a move from networks of solidarity to claims procedures. The abolition of the deodand marked a severing of a key link between the community and the family in relation to death. At the same time, the establishment of a limited civil claim marks out the separation of family and a claim to justice distinct from any rights the community might have.

Furthermore, the family was developed as a mechanism to import key norms, focussing on the protection of life within and by the family and interdependence of family members in exclusion of their place and links in the community. The difference of potentials within family, and the flexible engagement with that variability was seen in the tool of compensation; as noted above, with larger awards for lawfully recognised families which managed their finance in formally established ways and could thereby establish dependence on each other, whilst less formally constituted families lost out. Law reinforced the angel in the home, and penalised the fallen woman. Through all these means, narratives around compensation and explaining the unexplained saw the formal family recast as the basic unit of engagement with the state's relation to death, for which investigations take place, from which claims to justice can initiate and must depend, and upon which social control is founded.

### **Ritual, Symbolism and Materiality**

The abolition of the deodand and creation of the right to claim highlights a final line of transformation; that of the place of ritual, symbolism and materiality. I examine this final line in three parts: ritual and the deodand; the abolition of the deodand; and the role of materiality.

### ***Taming Death and the Deodand***

Aries describes the medieval taming of death occurring through humankind's strategy of controlling death by detaching it from the blind violence of nature through ritualization. He argues that a crucial part of this ritualization is the imprisonment of death in public

ceremony and spectacle (108). Key to this was a belief in the advance warning of death; in comparison a sudden death was ugly, destroying the natural order of the world. (109)

Bermann argues that, in such cases, ceremonies were needed to re-establish law. The deodand can be seen as playing a part in this strategy of humankind against nature, a part of the ritual of death and a bulwark which re-tamed death, tying it down with a physical object and opening it out to public exploration and authentication. Bermann suggests that the declaration of deodand, like trials of objects and animals on the Continent, must be seen as part of cultural storytelling, permitting "the community to heal itself after the breach of a social norm by creating a narrative whereby a symbolic transgressor of the established order was deemed to be "guilty" of a "crime" and cast beyond the boundaries of the society." (110) Thus a declaration that an object is guilty must be taken seriously and its symbolic content must be assessed, rather than being dismissed as superstition or error, because the legal narrative plays a function in constructing reality. A narrative founded in such proceedings identifies transgressors and removes them from the community, through banishment, forfeiture, excommunication, or execution. This symbolic gesture, founded in an essential human need for a managed response to an unexplained event, is a common thread in contemporary academic discussion of the deodand (111).

However, there is a crucial difference between the deodand and trials of animals and guilty objects (112). Unlike in those trials, the potential deodand, be it animal or object, was not charged and symbolically put in the dock, and the inquest hearing was not primarily charged with deciding its guilt or innocence. A declaration of deodand did not result in the slaughter of an ox that gored, and resulted in a payment by the owner rather than actual forfeiture in some cases (113). Instead of being the defendant in a criminal process, the object or animal

was part of the factual nexus that the jury shaped into a narrative explaining death. It was a flexible process, in which a range of potential conclusions could be reached, and objects which were nearby when the death occurred could be symbolically brought into the forum, declared deodand and valued at the end of the process. Equally, the jury could reach a conclusion on death without finding a deodand.

While the symbolic importance of the deodand – casting out an object to preserve the integrity of the social order – might have similarities to other legal processes involving non-human actants as in the continental animal trials, the distinction between the two is important in analysing the abolition of the deodand and the institution of the family claim.

### ***Ritual and Abolition***

Some Victorian and contemporary commentators argue that, with its very basis in superstition (114), the deodand could not survive modernity (115). The deodand as an evil object could not be reconciled with reason, “which is the soul of law.” (116) However, this account of the irrational deodand underplays the contingent nature of the deodand and its abolition. MacCormack argues that it is not clear that juries were engaged in declaring an object to be evil (118), and immediately prior to its abolition, the primary narratives around the deodand were of prevention of death and compensation of the bereaved. Adaptation of the deodand was not impossible. It could, as Smith has argued was happening, have been remodelled into compensation for the family (119). Additionally, adopting the justifications of Hale and others, modification of the deodand could have increasingly focussed on the deodand in a narrative of prevention of death (120). Such a shift could have maintained but subdued the symbolism of the banishment of the object; allowing the ambiguity of the deodand to continue to reflect different concerns.



Having criticised the irrational deodand, one Victorian commentator proposed exactly such an adaptation in the Monthly Law Magazine of 1841:

“When we consider how often the death of a husband and a father plunges the wife and children in a state of extreme destitution, how frequently a whole family is thus by one blow deprived of the very means of existence, we must surely lament that it is not left to the discretion of the inquest to deduct a certain portion of the deodand for the relief of the sufferers. Thus the same means which have been adopted to instil a horror of inflicting death, might also tend to the support and nourishment of life.”(121)

This proposal was not acted upon. Crucially, this was not because the deodand as an object which caused death was no longer sustainable. The deodand was never solely such an object, but was instead a flexible community tool which could meet various ends. It was this very freedom and flexibility which could not be tolerated; as a jury could not be relied upon to be objective and rational.

Once the deodand was abolished, the powerful demands of symbolic justice required that the inquest did not lose the aspect of excommunication, and the reworked public health inquest, gradually shorn of its criminal jurisdiction, found this in the responsibility to banish systems, structures or processes which had caused death, in order to prevent future death (122). Importantly, for reasons of complexity and expertise, these were not questions which could be left to the jury and had to be dealt with by the coroner. Symbolic justice could therefore be married with reason, at the cost of the exclusion of the irrational jury. The deodand, not necessarily associated with evil before its demise, is now regularly cast as the evil object, because it was abolished in the name of rationality. However, rather than the

deodand itself, it was the jury's freedom to name objects deodand which offended reason, and the deodand was made the blameless victim of the triumph over reason over evil. In this triumph, symbolised in the coroner's reports to avoid future deaths, one crucial aspect of the previous legal regime was lost: the deodand as physical object.

### ***The loss of materiality***

At one level, the deodand was an object made by the jury. It was given substance, independent form and value by their declaration, as wheels were separated from carts, and individual steps from staircases. At another level, it pre-existed the declaration as an object which the deceased was near in the moments before their death; a cask they were carrying, a vat of ale they fell into, a boat they fell out of, a ladder they climbed up. It might have been classed as a thing which moved due to a deliberate act – a horse which bolted – or an object which could not reasonably have any intention attached to it – a pebble on which they tripped.

All of these things act (123). They intervene, make a difference, and make things happen. They are actors both because they pre-exist and because they are named as actors by the jury, and these cannot be separated. A deodand cannot be intangible, untouchable, but it also cannot be called into being as a deodand unless the jury names it so. Once called into being, it acts backwards, as a cause, occasion or instrument of death, and forwards, as explanation, punishment, deterrent and relief.

Abolishing the object as an actant can be seen as part of a wider trend in which causation shifted from Aristotelean to Newtonian understandings of the subservient nature of things.

Bennett argues that this conception, the "image of dead or thoroughly instrumentalized

matter, feeds human hubris and our earth destroying fantasies of conquest and consumption.”(124) She calls for recognition of the vibrant nature of materials; not by positing a force that can enter and animate a physical body, but rather by exploring the affective nature of non-human bodies. A modern focus on a division of object and actor binds material into “passive, mechanistic, or divinely infused substance” (125) while removing this division allows a refocusing on the catalyzing capacity of non-human actants and their affective potential. Lemke, drawing on Barad as well as Braun & Whatmore, argues that this approach is too all-encompassing and fails sufficiently to recognise the importance of a relational perspective, and the conditions in the specific moment in which non-human actants have vitality (126).

These insights are demonstrated in the deodand; both in the way the deodand is founded in the specific relative conditions of the moment of its creation, and the affective potential of each deodand. The abolition of the deodand meant that recognition of this affective capacity was lost to inquest law. The deodand had acted to give power to the forum, the community, as explored above, and this was denied after 1846. Crucially, it also had an affective place for the family. In granting the deodand to the bereaved, the very material of death was being tied into the outcome of the inquest. The family, in receiving the parachute that did not open, was put in immediate proximity to the deceased and the end of their existence. Where a family received the value of the contents of the barrel which had crushed one of their number, that money was directly linked to that cask; it was representative of that cask and maintained the immediacy of the link to death. The material was thereby affective in a way which transcended a formulation of it as an instrument of another human. It also could not be said to be wholly an instrument of the jury, as while

they had a broad discretion to attribute value, they were bound by what was available to be a deodand – a house twenty miles away from the death could not be deodand – and if they could compensate without the deodand, such compensation would not intervene in the narrative of death in the same way. The deodand's affective value was therefore axiomatically fused with the conditions of the historically specific moment it was created; stretching from the physical site and moment of death, to the politics of the inquest hearing which shaped the narrative of that death.

Its combined physicality and contingency also permitted it to embody risk. Until its abolition, the deodand marked a world in which peril and possibility lay everywhere and in everything. In binding those risks into physical form, it made them directly available to the community, and provided both demarcation for the generation of a narrative and a vessel to contain the ubiquitous risk. It embodied the local community's response to the danger of death, charging them with a responsibility to engage with the physical world's capacity for unruliness, and materialising the joining of law and that world. Aries describes the medieval resignation to suffering and death, and acceptance of the constant presence of evil, not as submission to nature or biological necessity, but "as recognition of an evil inseparable from man." (127) Similarly, the deodand had acted as recognition of – not submission to – the inseparable place of the uncontrollable physical world in law. It characterised an embracement of the generative nature of law's relationship with the material world, and brought the contingency of the physical world into the heart of law.

Abolition meant the separation of the inseparable, and the abrupt termination of the possibility of the deodand acting beyond human agency whilst being inextricably merged with human agency. This was lost to law; reinforcing a change of perspective towards the

natural world as lifeless instrument or unthinking beast; static, pending the call of humanity's will to act and control. The shifting possibilities once held out by Marvell's Nymph were excluded, and the place of matter was refashioned as thoroughly inert, beneath law's gaze and without affective potential.

Separated from contingent matter, law proceeded to make a bold promise: that it could characterise, contain and restrain risk. Appearing to give agency to the bereaved family – the apparent chief beneficiaries and subjects of the Act – law promised to provide certainty, predictability and control. Through Lord Campbell's Act, law identified legitimate risks, and promised to reduce them; not only from the risk of poverty for a bereaved family, but also the risk of arbitrary removal of property and the reduction of risky behaviour, as a claim against careless companies would "read such companies a proper lesson." (128) Law's promise was prospective, providing certainty in the face of such risks, through the imposition of apparently objectively justifiable factors; negligence, loss, evidenced family link. (129)

Thus while the deodand had dealt with risk through incorporating and materialising it piecemeal, passing possession of it to the community, the law sought to settle risk in advance, sharing it out according to political rationalities. This meant, as far as possible, individuals owning their own risk, determined by contracts of employment or insurance, or else risks being spread by formal institutional means. The effect was that law's promise to the bereaved family was a fallacy, as the individualisation and spreading of risk either thrust risk upon them, or passed determination of fault and need to more centralised and more inaccessible authorities. The reframing of the relationship of risk and law reassembled death and the family as legal subjects constituted by knowable relevant factors, stripping

away identity (130), asserting law's comprehensive reach and denying the authority of anything outside law's purview.

Such a perspective disabled law's ability to embrace potentially undisciplinable material and to respond to the elemental disorder of sudden death. The control on offer was thus illusory for law's subjects, as despite law's promises and efforts to evade, the material and uncontrollable refused to be rationalised away. Where the material of the deodand had sustained networks of solidarity, maintaining affective links between law, the community, the family and the deceased, the loss of the deodand broke those links, separating family off and subjecting them to the disciplinary process of claiming. (133)

## **Conclusion**

The deodand appears at the end of the historical inquest, at the conclusion of a particular inquest and the point where the record ends. The deodand appears at the last, only to disappear, and it is this very liminality which means that an analysis of the deodand is not limited to a discussion of the inquest but can produce an account which drives directly at legal personhood and the foundations of the modern state. Its value to the scholar is in its ambiguity, grounded in the dualism of its thing-ness and its essential lack of clarity. The fact that it can never be pulled away from the contingent moment of its creation highlights the role it played in bringing physicality and contingency to law, and in giving authority to the community. The circumstances of its abolition and the development of a civil claim are similarly illuminating; as law promises to structure and make certain, and family is reshaped as a vital tool of governance; constrained and directed.

Law's role is not limited to restraint and subjection in this account. The deodand holds out an alternative formulation, absorbed in an object made powerful by legal tradition, ancient precedent, and within a particular imaginary of the common law. The deodand could be unjust, but it could also be productive of a form of convivial, local accountability (132), founded in the contingent moment and engaging in a productive relationship between law and the material world. Its replacement promised to correct its flaws, but in the futile search for clarity and legitimacy, law deliberately took a step away from the richness of contingency and materiality. It was a step too far. Law fell, breaking a vital part of its body, leaving us to wonder when, where and how we seek redress for that loss.

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## **References**

- (1) From the Latin *deo dandus* or *deo dandum*

- (2) See, amongst others, C. Dayan, *The Law is a White Dog* (Princeton, Princeton University Press, 2011); J. Bennett, *Vibrant Matter: A Political Ecology of Things* (Durham & London, Duke University Press, 2010), T. Lemke, 'New Materialisms: Foucault and the 'Government of Things'' *Theory, Culture & Society*, 0 (2014) 1
- (3) J. Donzelot, *The Policing of Families* (New York, Pantheon Books, 1979)
- (4) R. R. Sharpe, ed., *Calendar of coroners rolls of the city of London, A.D. 1300-1378* (City of London (England) Corporation, Clay, 1913) p.194-5, Roll F27. See also a deodand of 12d for a step in the case of William Hamond, in Sharpe, *Calendar*, p.233, Roll G. Other coroners rolls have instances of deodands, see for example R. Hunnisett, *Bedfordshire Coroners' Rolls* (Bedfordshire Historical Record Society, Vol. XLI, 1961)
- (5) Fitzherbert, quoted in H. B. (full name not given), 'Art. II - Law of Deodands' *Law Mag. Quart. Rev. Juris.* 3 (1845) n.s. 188
- (6) A. Pervukhin, 'Deodands: a study in the creation of common law rules' *Am. J. Legal Hist.* 47 (2005) 237, p.248
- (7) Although this valuation could be, and was, challenged, see for example R. F. Hunnisett, *The Medieval Coroner* (Cambridge, CUP, 1961), p.33
- (8) An office which is often stated to be dated from the Articles of Eyre in 1194, but which has been convincingly shown to pre-date the Articles; see R. H. Wellington, *The King's Coroner* (London, William Clowes & Sons Ltd, 1905), p.3
- (9) *De Officio Coronatoris* states "Concerning horses, boats, carts (mills) etc., whereby any are slain, that properly are called deodands, they shall be valued



and delivered into the Towns, as before is said.” Hunnisett contends that this was not a statute proper, but was rather an excerpt from Bracton, a thirteenth century jurist, which came to be regarded as a statute; Hunnisett, *Medieval Coroner*, p.5

- (10) 1833 3&4 Wm IV c.99 (Fines Act)
- (11) Sir E.Coke, *The Third Part of the Institutes of England Concerning High Treason and other Pleas of the Crown and Criminal Causes*, (E. & R. Brooke, Bell-Yard near Temple Bar, 1797).
- (12) Including making errors of law, as noted in Hunnisett, *Medieval Coroner*, p.5. Also see H.B. ‘Art.II’, p.191.
- (13) Pervukhin ‘Deodands’, p.239
- (14) The test is generally stated to be *omnia quae movent ad mortem, deodanda sunt* (a deodand is that which moves to the death)
- (15) See Sharpe, *Calender*, p.177, Roll F5, November 20, 1336
- (16) See, for example, Elena Gubbe who on November 1, 1324 fell into the Thames while attempting to collect water; the stair of the wharf was a deodand and appraised at 4d, while the earthenware jugs she had filled with water from the river were not. See Sharpe, *Calender*, p.100, Roll D6
- (17) See, amongst others, T.Sutton, ‘The nature of the early law of deodand’ *Cambrian L. Rev.* 30(9) (1999), p.14; Pervukin, ‘Deodands’, p. 239. Burke similarly states that there is evidence that in some cases, negligence or carelessness might encourage a jury to find a deodand or increase the value of it, see E.W.Burke, ‘Deodand, a Legal Antiquity that may still exist’ *Chi-Kent Rev* 8 (1929-30) 15

- (18) Pervukhin 'Deodands', p.245, also see range of jury decisions, and valuations, in A.Gray, 'A Review of Transport and the Law of Deodand' *Journal of the Railway and Canal Historical Society* 212 (2011) 26
- (19) Hunnisett, *Bedfordshire Coroner's Rolls*, p.38
- (20) Wellington, taken from Hale, see Wellington, *The King's Coroner*, p.16
- (21) I.Burney, *Bodies of Evidence* (Baltimore & London, John Hopkins University Press, 2000)
- (22) See Births and Deaths Registration Act 1836, An Act to provide for the attendance and remuneration of medical witnesses at Coroners Inquests 1836, County Coroners Act 1860, Coroners Act 1887, Local Government Act 1888, Coroners (Amendment) Act 1926
- (23) R.R.Sprigge 1889, Quoted in Burney, *Bodies of Evidence*, p.80. Also see E.T.Hurren, 'Remaking the Medico-Legal Scene: a social history of the late-Victorian Coroner in Oxford' *Journal of the History of Medicine and Allied Sciences* 65(2) (2010) 207, p.239
- (24) C.Dorries, *Coroners' Courts: a Guide to Law and Practice* (Oxford, OUP, 2004) p.6. The pace of such changes should not be overstated, and as an example, Burney describes the move out of the public house as "slow and partial", noting that "pub inquests, especially in rural districts, survived well into the twentieth century." See Burney, *Bodies of Evidence*, p.81
- (25) H.Smith, 'From Deodand to Dependency' *Am. J. Legal History* 11 (1967) 389. However, Smith goes on to note that the Robert Cocking's wife did not collect the parachute, which was eventually sold at auction, probably to the owners of Vauxhall Gardens.

- (26) Sharpe, *Calender*, p.XXVI
- (27) Hansard August 11, 1846, col. 626
- (28) Wellington, *The King's Coroner*, p.17
- (29) See e.g. T.Sutton, 'The deodand and responsibility for death' *The Journal of Legal History* 18(3) (1997) 44, p.41
- (30) Gray, 'Review of Transport', p.27
- (31) Pervukhin, 'Deodand', p.253
- (32) Smith, 'From Deodand', p.398. Also see e.g. J.McKeogh, 'Origins of the Coronial Jurisdiction' *U.N.S.W.L.J.* , 6 (1983) 191, p. 198; G.Thurston, *Coronership* (London, Barry Rose Publishers, 1976), p.1; Sutton, 'Early law', p.16; Burke, 'Deodand', p.16; Gray, 'Review of Transport' p.27
- (33) Anonymous, 'The Law of Deodands' *Monthly L. Mag.* 10 (1841) 15-17; Wellington, *The Kings Coroner*, p.14-15; J.Finkelstein, 'The Goring Ox' *Temp. L. Q.* 46(2) (1972-73) 169, p.185; also see S.Jurasinski, 'Noxal Surrender, the Deodand and the Laws of King Alfred' *Studies in Philology* 111(2) (2014) 195
- (34) G.MacCormack, 'On Thing-Liability (Sachhaftung) in Early Law' *Irish Jurist* 19 (1984) 322, p.339
- (35) Sutton, 'early law', p. 12
- (36) Wellington, *The Kings Coroner*, p.17; Sutton, 'responsibility for death', p.46
- (37) Anonymous 'The Law of Deodands', p.15
- (38) Sutton, 'responsibility for death', p.48-50
- (39) Pervukhin, 'Deodand', p.248

- (40) According to the Attorney General, Sir John Jervis, first author of the still-authoritative textbook *Jervis on Coroners*, see Hansard, August 11 1846, col. 626.
- (41) Smith, 'From Deodand', p.395
- (42) H.B. 'Art.II', p.190
- (43) R.Kidner, 'A History of the Fatal Accidents Acts' *N.Ir. Legal Q.* 50 (1999) 318, p.321, and see discussion in E.Cawthon, *Job Accidents and the Law in England's Early Railway Age* (Edwin Mellen Press, Lewiston, 1997), p.141-4
- (44) E.Cawthon, 'New Life for the Deodand: Coroners' Inquests and Occupational Deaths in England, 1830-46' *Am. J. Legal Hist.* 33, (1989) 137, p.144
- (45) E.g. *R. v. Great Western Railway Company* 3 A & E, N.S. 333; *R. v. William West*, (1841) 1 QB 826
- (46) *The Queen v. The Grand Junction Union Railway Company* 113 Eng Rep 362 (1839)
- (47) Sutton, 'responsibility for death', p.46. Also see R.Matheson *Death, Dynamite and Disaster: a Grisly British Railway History* (Stroud, The History Press, 2014), at Ch.2 and in Gray, 'Review of Transport' p. 31, which suggests the deodand was in fact £1,100
- (48) Cawthon, 'New life', p.146-7
- (49) Smith, 'From Deodand', p.389.
- (50) Hansard, April 24, 1846, Col.967. Lord Campbell's speech echoes a similar statement by H.B. from 1845, and it may be that this was his source for the statement, see H.B. 'Art.II', p.193.

- (51) See, for example Hansard, April 24, 1846, Col.967-9, and Hansard, August 21, 1846, Col.926
- (52) D.Cowburn, 'The Metropolitan Policeman as Coroner's Officer' *Police J.* 2 (1929) 397
- (53) Hansard, July 22, 1846, Col.1372-3
- (54) It is not clear whether he is referring here to the then Attorney-General, Sir John Jervis, expert on Coronial law, who had been in post for 5 days, or an earlier Attorney-General.
- (55) Mr Serjeant Stephen, first author of *New Commentaries on the Laws of England*
- (56) Hansard, July 22, 1846, Col.1373
- (57) In a later debate, noting differences between the Attorney-General and Mr S. Wortley, he noted that, despite having received an entirely similar education, they had widely differing views on the deodand. Indeed "if either of these Gentlemen were elevated to the Bench, the law of coroner would entirely depend on the opinion of which of them happened to be the judge." Hansard, August 11, Col.626
- (58) According to Lord Campbell, Hansard April 24, 1846, col.968
- (59) For an example of Wakley's campaigning ambitions, see his role in banning corporal punishment in the British Army. See H.G.Day, *A Brief Sketch of the "Hounslow Inquest" and of the late trial "Wakley versus Cook and Healey"* (London, 1849)

- (60) See discussion in J.Simon, 'Edgework and insurance in risk societies: some notes on Victorian lawyers and mountaineers' in S.Lyng, ed. , *Edgework; the Sociology of Risk Taking*, (London & New York, Routledge, 2005)
- (61) P.O'Malley, 'Risk societies and the government of crime', in M.Brown & J.Pratt, *Dangerous Offenders: Punishment and Social Order* (London & New York, Routledge, 2000), pp.17-33; P.O'Malley, 'Imagining insurance: risk, thrift and life insurance in Britain', in T.Baker & J.Simon, ed.s, *Embracing Risk: the changing culture of insurance and responsibility*, (Chicago & London, University of Chicago Press, 2002), pp. 97-115
- (62) Hansard, May 7, 1846, Col.173
- (63) Hansard, August 11, 1846, Col.625
- (64) Hansard, August 11, 1846, Col.625
- (65) 1846 9&10 Vict. c.62
- (66) 1846 9&10 Vict. c.93
- (67) Baker v. Bolton (1808) 1 Camp. 493, 170 ER 1033
- (68) M.Stein, 'Victorian tort liability for workplace injuries', *University of Illinois Law Review*, 3 (2008), pp. 943-56; Kidner, 'Fatal Accidents Act', p.331
- (69) Cawthon 'New life', p.147, although railway companies complained that in their cases, juries awarding compensation were overly generous, See Kidner, 'Fatal Accidents Act', p.333
- (70) R.W.Kostal, *Law and English Railway Capitalism, 1825-1875*, (Oxford, Clarendon Press, 1994); K.Oliphant, 'Tort law, risk, and technological innovation in England', *McGill Law Journal*, 59 (2014), p.827

- (71) P.Bartrip & S.Burman, *The Wounded Soldiers of Industry*, (Oxford, Clarendon Press, 1983); Kidner, 'Fatal Accidents Act', p.321; P.Bartrip, *Workmen's Compensation in Twentieth Century Britain* (Aldershot/Brookfield, Gower Publishing, 1987), p.7; Stein, 'Victorian tort liability', pp.956-7
- (72) Sutton, 'responsibility for death', p. 50; Pervukin, 'Deodand', p.245;
- (73) H.Mackworth, quoted in Bartrip, *Workmen's Compensation*, p.7. Also see Smith, 'From Deodand',p.401-3
- (74) Kidner, 'Fatal Accidents Act', p.328
- (75) Categories of potential claimants were set out in ss. 2 & 5 of the Act, and relationships falling outside these formal categories could not form the basis of a claim.
- (76) Stein, 'Victorian tort liability', p.957
- (77) Cawthon, *Job Accidents*, p.144
- (78) Hansard, July 22, Col.1369
- (79) See, amongst others, I.Ward, *Sex, Crime and Literature in Victorian England* (Oxford & Portland, Oregon, Hart 2014)
- (80) See Lord Campbell, Hansard, August 21, Col.926; also see s.2 9&10 Vict. c.93; and discussion in Kidner, 'History of the Fatal Accidents Act', p.325
- (81) Although some companies railed at the awards given by juries; Kidner, 'History of the Fatal Accidents Act', p.333
- (82) Oliphant, 'Tort law', p.837-8
- (83) See, eg Sutton, 'responsibility for death', p.16; Burke, 'Deodand', p.18
- (84) Cawthon, 'New life', p.147; Smith, 'From Deodand', p.397

- (85) Wellington, *The Kings Coroner*, p.18, although contrast with Kidner 'History of the Fatal Accidents Act', p.323
- (86) See for example, the statement by Mr Williams MP in 1846 that in the previous 2 sessions of Parliament, Bills for railways requiring private funding of £210,000,000 (over £100bn at 2014 prices) had been passed, which had "caused great apprehension in the money market, that the monetary affairs of the country would be deranged, and its commerce considerably retarded, by the application of so much capital to railway undertakings." See Hansard, 11 August 1846, at 623
- (87) J.Kellett, quoted in C.Wolmar, *The Subterranean Railway* (London, Atlantic Books, 2005), p.19
- (88) Burke, 'Deodand', p.28
- (89) See Cawthon, 'New life', for a detailed discussion of this development, and also see a deodand of £1,400 awarded against the Stockton & Darlington railway, discussed in R.Fellows, *History of the Canterbury and Whitstable Railway*, (Canterbury, Jennings, 1930)
- (90) Anonymous (Monthly Law Magazine), 1841 at 15-16 – which may well have been the deodand which Thomas Wakely discussed in the House of Commons in 1846.
- (91) Cawthon, 'New life', p.145
- (92) See, for example R. v. William West, 1 A & E 826, Leeds and Selby Railway, R. v. Midland Railway Company, 8 QB 587 (1844), R. v. Great Western Railway Company 3 A & E, N.S. 333.



- (93) See for example the “mildly humorous exchange” between Lords Campbell and Lyndhurst, cited by Smith, ‘From Deodand’, p.399, in Hansard May 7, 1846 Col.174-5, and the pointed remark by Lord Campbell in which he stated that he trusted that the “great many” House of Commons members who were also railway proprietors “would forget that they were directors, and consider only that they were citizens and subjects” (see Hansard, April 24 1846, Col.969)
- (94) Cawthon, ‘New life’, p.147, compare to Kidner, ‘Fatal Accidents Act’
- (95) Smith, ‘From Deodand’, p.395
- (96) As other juries did, e.g. in relation to the first recorded railway deodand, awarded in April 1833, for Jane Hazell, a girl killed by a train of three wagons of sand. A deodand of £2 was levied on one wagon and the sand in it, see Fellows, *Canterbury and Whitstable*, p.73
- (97) E.g. Hunnisett, *Medieval Coroner*, p.33
- (98) Cawthon, ‘New life’, p.147; Gray ‘Review of Transport’ pp.29-31
- (99) J.Sim & T.Ward, ‘The magistrate of the poor? Coroners and deaths in custody in nineteenth-century England’ in M.Clark & C.Crawford, ed., *Legal medicine in history* (Cambridge, CUP, 1994), p.263
- (100) J.Toulmin Smith, *On the Constitution and Functions of the Coroner and Coroner’s Inquest and their relation to Municipal Self-Government, A Letter to Edward Herford Esq, Coroner of Manchester* (Trelawney Saunders, Charing Cross, 1852)
- (101) Wellington, *The Kings Coroner*, p.1

- (102) I.Burney, 'Viewing Bodies: Medicine, Public Order, and English Inquest Practice' *Configurations*, 1 (1994) 33, p.34
- (103) Ruskin, quoted in Ward, *Sex, Crime and Literature*, p.8
- (104) *Op. cit.*, p.8
- (105) Donzelot, *Policing the Family*, p.53
- (106) *Op. cit.*, p.58
- (107) Ward, *Sex, Crime and Literature*, p.25
- (108) P.Aries, *The hour of our death* (New York, Vintage Books, 1981), p.604-605
- (109) *Op. cit.*, p.10
- (110) P.Bermann, 'An anthropological approach to modern forfeiture law: the symbolic function of legal actions against objects' *Yale J.L. & Human.* 11 (1999) 1, p.5
- (111) See, for example, Sutton, 'responsibility for death', p. 11, and Bermann, 'anthropological approach', p.25-31
- (112) See MacCormack 'Thing-Liability', p.323, counselling caution in drawing links between the deodand and non-human trials
- (113) See, Finkelstein, 'The goring ox' compared to P.Jamieson, 'Animal Liability in Early Law' *Cambrian Law Review* 19 (1988) 45
- (114) See, e.g., Burke, 'Deodand', p.16
- (115) Finkelstein, 'The goring ox', p.207; Bermann 'Anthropological approach', p.53
- (116) H.B. 'Art.II', p.191
- (117) Aries, *The hour of our death*, p.614
- (118) MacCormack, 'Thing-Liability', p.339
- (119) Smith, 'From Deodand', p.389

- (120) M.Hale, *History of the Pleas of the Crown* (London, E.Rider, Little-Britain, republished 1800)
- (121) Anonymous (Monthly Law Magazine), 1841 at 24
- (122) Now contained in Schedule 5 of the Coroners and Justice Act 2009 and Rule 28 of the Coroners (Investigations) Regulations 2013 SI 1629/2013
- (123) B.Latour, *Reassembling the Social* (Oxford, OUP, 2005)
- (124) Bennett, *Vibrant Matter*, Kindle Loc 40-43
- (125) *Op. cit.*, Kindle Loc 90
- (126) Lemke, 'New Materialisms', p.13-14
- (127) Aries, *The hour of our death*, p.605
- (128) Lord Campbell, Hansard, August 21 1846, col.926
- (129) P.O'Malley, 'Governmentality and Risk' in J.Zinn, ed., *Social Theories of risk and uncertainty*, (London, Wiley-Blackwell, 2009), pp.60-61
- (130) O'Malley, 'Governmentality and Risk', p.66
- (131) akin to the move from collective to disciplinary processes analysed by O'Malley in relation to insurance, see O'Malley, 'imagining insurance', pp.99-100
- (132) a concept proposed by Morgan in B.Morgan 'Technocratic v. convivial accountability' in M.W.Dowdle, ed., *Public Accountability: Designs, Dilemmas and Experiences*, (Cambridge, CUP, 2006), and see (in relation to the historic and contemporary "social welfare inquest") Kirton-Darling (forthcoming)