

The 1942 police trials

The case of 17 Guernsey policemen punished for raiding food stores remains one of the major unanswered controversies of the German occupation. All the officers are long gone, but with Channel 4's Walking Through History series due to shed light on moral dilemmas during those five years, historian



Dr Paul Sanders, who will take part in the programme, argues that their convictions must be reassessed and that the men's public rehabilitation is long overdue



Jack Harper was one of the 17 Guernsey policemen whose conviction should be reassessed, says Dr Paul Sanders. (Picture courtesy of the Tuck family.)



ONE hundred years ago it would have been hard to imagine that soldiers executed as deserters from the field of honour would ever be able to find rehabilitation in the eyes of history. But it is precisely this achievement that campaigners can take pride in on this centenary of the First World War. Far from cowardice, many of the 'deserters' suffered from shell shock, a condition that went undiagnosed. One group of people from Guernsey still awaiting rehabilitation are those who resisted during the Occupation. Although there are signs of a thaw, the new glasnost may stop short of the most controversial group of islanders, 17 Guernsey policemen convicted in spring 1942, by both military and civil court, for the pilfering of German and islander-owned food depots: Kingston Bailey, Peter Bretel, William Burton, Frederick Duquemin, Charles Friend, Thomas Gaudion, Jack Harper, Alfred Howlett, Alfred Le Gallez, Eugene Le Lievre, Harold Piesing, William Quin, Frederick Short, Percival Smith, Archibald Tardif, Frank Tuck and Frank Whare.

Ever since studying Bill Bell's *I Beg to Report* in 1997, I have wanted to investigate the story of these men. The historiography of the period has come a long way since, but, to me, this has remained the last major riddle of the Occupation. Bell already went a long way toward disentangling the Gordian knot, and I completed this job – using previously unavailable material – in a co-authored volume that appeared last June. This article reprises my main points; they

prove that the 1942 civil court convictions were wrongful.

The raids on the German depots were dealt with in the military court, after which the Germans handed over the case to the Royal Court, where 10 of the men were prosecuted for the raids on the civilian stores. This civilian trial led to an additional nine convictions. Sixteen of the convicted men were deported to France in June 1942 and nine were later sent to Germany. All but Smith survived, albeit with more or less damage to their physical and mental health. After the war the eight surviving defendants in the civilian trial petitioned the Privy Council to quash their civilian convictions, an initiative that led to only one of the charges being withdrawn in 1955. Bell attributed the failure to the lack of appellate jurisdiction in Guernsey, which produced a legal gap. As a last resort jurisdiction, the Privy Council was limited to the detection of procedural irregularities, but could not examine issues of evidence.

While problems of purview cannot be underestimated, one should not dismiss a political reading, namely that there would have been some reluctance to reopen the thorny issue of administration of justice in occupied Guernsey. That the Guernsey authorities had raised concern 'about the position that may arise with regards to the appellants should their appeal be successful' emerges from Home Office correspondence, in 1952. Be it as it may. Towards the end of their lives three of the men considered applying for a Royal Pardon, while Tuck also toyed with the idea of seizing the European Court of Human Rights. In the end, the only

vindication the men ever received was compensation from West Germany, in the 1960s; and this gesture only concerned men deported to Germany.

The 'duck test'

The occupation vulgate has treated this case as a criminal affair, whereas the men argued a case of sabotage after the war. What does the evidence say? The first thing to consider is 'history of play'. Contrary to legend, the police force of 1940-42 were in no mood to open doors to Germans and salute them. Following a period of disorientation, they were the first group of islanders to have pursued resistance, from early 1941. At first these were mere pranks, such as flashing torches at German positions at night-time or removing German vehicles and re-parking them elsewhere. Other policemen reverted to more drastic means, such as the roughing up of heavily inebriated Germans. The campaign gathered momentum when BBC agitator Douglas Ritchie ('Colonel Britton') encouraged populations under occupation to engage in 'disruptive activities'. Britton's missives fell onto fertile ground in Guernsey. As Harper would explain, 'we [...] felt that he was talking to us and inciting us to action [...] [H]e was talking to us in English, and we were the only part of the realm occupied. Why would he speak in English to the French, the Poles, the Dutch, or the Belgians?' The policemen then turned to painting V signs, before shifting their attention to food depots. Again, this

activity could be justified by a Britton missive of November 1941: 'One thing that the Germans like very much is food. And they like drink. And they prefer your food and drink to their own. You should make sure that the food and drink are suitable to people who are uninvited guests.'

The second thing to consider are quantities and beneficiaries. Bill Burton, the father figure of the force, declared that 75-80 percent of the loot was taken from German stores. Burton's statement is borne out by figures used in the three trials. In addition, the policemen targeted local stores which were commandeered by the Germans or which plied the black market. Burton was affirmative that there was no difference between these and stores earmarked as German: 'Colonel Britton [...] made no differentiation between civil or military stores'. While the policemen kept some of the loot for themselves and their families, the larger part was distributed to friends and people who would not give away the game, or put in storage as a reserve. Some beneficiaries provided affidavits in 1951, but many witnesses were either too afraid to come forward or, as the many elderly who had received food, had passed away.

What raises an eyebrow are the thefts of alcohol, the reality of which is impossible to deny. While spirits and wine had been banned from consumption, the stock was left on civilian premises, for the Germans to draw on. The policemen could assume that any alcohol in civilian depots would, ultimately, go to the Germans. Withholding drink from the Germans was also in line with Britton's directives. Still, the taint of booze peddling puts a

- time for redress



Long queues for food, such as this one in Market Street, were a common sight during the Occupation and the police raids occurred at a time when those who could not afford to buy on the black market were left in a state of semi-starvation. (supplied by Ron Gould from the collection of Bert Gould 6449259)

considerable strain on the sabotage thesis. Having said this, it pays to put things into perspective. German propaganda over-emphasised the alcohol thefts, as this made the action of the policemen appear more reprehensible. The reality, however, was different: no charges concerning alcohol thefts could be formulated against four of the 10 indicted. And of the remaining six men, only two committed a significant theft of alcohol (86 bottles of port, later found at a local pub). The remaining three were involved in two raids involving much smaller quantities; and one defendant was charged with having received a total of nine bottles of alcohol from these two minor raids. If one considers that only three charges (out of a total of 70) involved alcohol, then the conclusion must be that these thefts were a small by-product of an effort that focused on German foodstuffs. And this does not factor in the shortcomings of the trial evidence in terms of its reliability. These were serious enough for a fourth charge, concerning another alleged alcohol theft, to be disallowed in the 1955 Privy Council ruling. Finally, there is the distinct possibility that thefts committed earlier by Germans were pinned onto the policemen.

Political context

It is also worth stressing that the case has always been treated as though it happened in a time warp, with insufficient consideration given to the context of occupation. This has led to

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an interpretation that is less favourable toward the policemen than need be. Decontextualisation trivialises the policemen's dilemma. It skips the issue whether they were justified in taking Britton at face value. Although some still hold the opinion that even the raiding of German stores was unjustified, the legitimacy of such action is a grey zone; it can be argued both ways. As other officials in similar contexts, the policemen were subject to a conflict of interest between their loyalty to Britain and the necessary duty to obey the Occupation regime. To be sure, the policemen were not instructed on how they were to navigate this 'Scylla and Charybdis' of legitimacy. Reconciling the loyalty to King and Country with the equally legitimate call of the island authorities who wanted the Occupation

to stay frictionless was a conundrum. A later Home Office note conceded as much, stating that '(i)t must have been impossible immediately after the Germans came to decide by what standards one should live'. Torn between two antagonistic positions, the police force became confused. According to Bailey, as a branch of executive government, they became useless: 'I turned a blind eye on almost everything, completely ignoring our Police duties and averting my attention [...] to the Germans'. Short described the situation as 'difficult, because we had to convince the Germans that we were working for them, at the same time as we were [...] doing our best not to help them'. The situation was made worse by the resentment some policemen felt against island officials for having prevented them from enlisting in the British army in 1939. These men could not bring themselves to accept policing a new order that was responsible for serious civilian suffering. It has to be remembered that the period of the police raids coincided with the period of the highest monthly civilian mortality rates of the Occupation. According to Bailey, those who could not afford to buy on the black market were in a state of semi-starvation. The medical officer of the island stated that at this time a large part of the population were on diets having calorific values below the subsistence level; especially many elderly were unable to withstand the strain. The police force's political unreliability was no secret to Eugen zu Öttingen-Wallerstein, head of the Guernsey branch of the German military administration in

the islands. He was interested in bringing the force under his direct command. A German show trial would fit this purpose perfectly. And all the better if it could be followed up by a civilian trial. To achieve this, the Germans exerted pressure on the Guernsey judiciary, most poignantly through a letter which Dr Biel, the German judge advocate, addressed to the deputy solicitor general, Advocate Martel, on 8 May 1942. It read that if the accused denied the confessions used in the German trial, the Germans would take over the civilian charges and prosecute them in their own court. The letter was in response to a correspondence in which Martel had indicated that the civilian prosecution may not be able to rely on these 'confessions': 'You say that these statements constitute confessions but I would remind you that if they are denied it will not be possible to use them'. Seeing that Germans were barred from taking the witness stand in civilian trials, the alternative for the island judiciary would have been to discard the 'confessions' and renew the evidence gathering process. This, however, was a scenario the Germans could not tolerate, as the defendants had indicated that they would retract their earlier statements and plead 'not guilty' in the civilian trial. This would have exposed the German 'confessions' as fabrications and the German trial as a farce. Which brings us to the crucial point. Only a small part of the statements used in the German trial was the fruit of lawful police techniques.



Queuing for food outside Pommier's in Fountain Street during the Occupation. It is likely that starving islanders resented the plentiful supplies enjoyed by the Germans. (Supplied by Ron Gould from the collection of Bert Gould 6449285)

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Being expert handlers of third-degree interrogation, the German police had obtained them through physical abuse, threats and trickery, a fact confirmed by Ambrose Sherwill, the defence counsel in the German trial. Tardif, for example, stated that he was shown the signed statements of colleagues (in German) and told that if he did not sign he would be shot. Once signed, his 'statement' was returned to the typewriter and additions were made. There is very little variation in the accounts of his co-defendants, except that their maltreatment was often worse. The men were systematically pressurised into signing false confessions, drafted in a language they could not read, and the content of which they would not learn until the day of the trial.

Biel's letter drove the civilian authorities into a corner, leaving them with no option than a trial using the material collated by the Germans; unless they were prepared to risk embarrassing the German military court (which they were not). Therefore the defendants had to be brought back into line. This the civilian authorities achieved by intimating that if the accused withdrew their 'confessions' they could be returned to the Germans for a second trial. According to Bailey (but this is confirmed by others), Martel softened the blow by suggesting 'that it would all count for nothing after the War and would be washed out'. As a result most of the men reversed track, confirming their prior 'confessions' and sticking to pleas of 'guilty'. The fallout of the manoeuvre was particularly conspicuous in the charge against Burton, Friend, Short and Quin, concerning a theft of alcohol, which was later disowned by the Privy Council. Questioned in court, Short declared that he had made

his statement voluntarily and pleaded guilty after having been shown 'a letter', followed by an immediate retraction, 'I know in my own mind I have never entered this store for any illegal purpose'. The evidence used to convict the other three was similarly garbled. Still neither these nor any of the other contradictions in the statements were picked up by the court. Biel's letter wasn't even submitted as evidence, a serious procedural irregularity according to the Privy Council. Explanations as to why the Guernsey authorities went ahead with the trial under these conditions rely on the idea that they were driven by the desire to spare the men from worse, i.e. a lengthening of their sentences in a second German trial, or convictions on the grounds of sabotage. Neither of these two holds up to scrutiny. Considering their methods of coercion, it is inconceivable that the Germans could not have sustained a charge of sabotage in their first trial, had they wanted to. The reason for the German lack of interest in a sabotage trial was the fact that convictions on a charge of sabotage would have led to death sentences. This scenario was politically undesirable, as it clashed with Hitler's wish that Channel Islanders be treated with more consideration than people elsewhere in occupied Europe.

Secondly, a sabotage charge was undesirable because the policemen had gained widespread notoriety in the island, and not necessarily in a negative sense. There is no reason to believe that individual islanders did not resent the plenty to which Germans had access, while they went without. Equally, no reason exists to believe that the raids on German stores were not viewed with sympathy. Without a civilian trial the German campaign against the policemen may have turned into a propaganda

debacle. De-focusing from sabotage, diverting public attention to the raids on islander-owned stores and destroying the reputation of the policemen allowed the Germans to save face (as Bailey would write later, being duped by the local police for so many months made the Germans 'look very silly indeed'); it also deflected public attention from the thieving of the Occupation force, something the local police, previously, had had the temerity to report to the German authorities.

The heart of the matter

While the contradictions of the case may never allow a definitive resolution, other than that a significant amount of the action of the policemen appears to have been driven by higher motives, and while the legitimacy of the policemen's action can be argued both ways, there is one area where there can be no equivocation: occupation of a territory does not give an occupier carte blanche to engage in lawlessness. Likewise, a ruling by a British court that does not conform to elementary provisions of British law – such as by being based on false or doubtful evidence – cannot be considered equitable and fair.

One of the reasons for the difficulty in coming to terms is the fact that, in contrast to all former occupied territories, collective memory in Guernsey still clings to the notion of 'orderly and correct relations' with the German occupier, while resistance is talked down. This attitude has a long tradition. We can see it at work in the lack of difference in the post-war treatment of those policemen convicted

in both courts, as opposed to those convicted in the German court only. In other countries conviction by a German court did not exclude rehabilitation after the war. Not so in Guernsey. Having dismissed the policemen convicted in both courts, the Guernsey Police Committee did not modify its decision after the war. And when five of the seven men convicted in the German court only approached the authorities of the island about back payments on salaries lost due to deportation – something to which States employees were entitled – they were turned down. Why, if they had committed no offence against the law of the island, were they treated in the same way as the group sentenced in both courts? The question answers itself. In Guernsey, offences against German authority were viewed – and continue to be viewed – with the same dim eye as offences against the law of the island. As a moral position the non-rehabilitation of the 17 policemen is inadequate. All the more so as all equitable law requires that the punishment be proportionate to the crime. This hardly applies to the case of these men who suffered in prisons, labour and concentration camps. The torment sustained by them as a result of their incarceration is endless. Recently surfaced material documents the brutal murder of Smith by his German guards. Tuck saved his life, but lost part of his lung. And, as late as 1951, Harper was still seeking TB treatment in a sanatorium, a procedure involving spending over 20 months in a plaster cast. Once healthy and fit men would suffer very bad ill-health well into old age. The time has come to stop burying one's head in the ground. It is on all these grounds that official amends are a moral necessity.

THE AUTHOR...

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TO BE ON TV...

THE police trials of the German Occupation will be featured on Saturday's episode of Walking Through History with Tony Robinson, which will be devoted to the 'Nazi Occupation' of the Channel Islands. The author of this article, Dr Paul Sanders, will be seen discussing the general dilemmas of the Occupation, including those about rules by which people should live, with the C4 presenter as he takes a four-day walk through Guernsey and Jersey, 'finding out what life was like there for the five years of German Occupation'.

■ Saturday, Channel 4, 8pm.