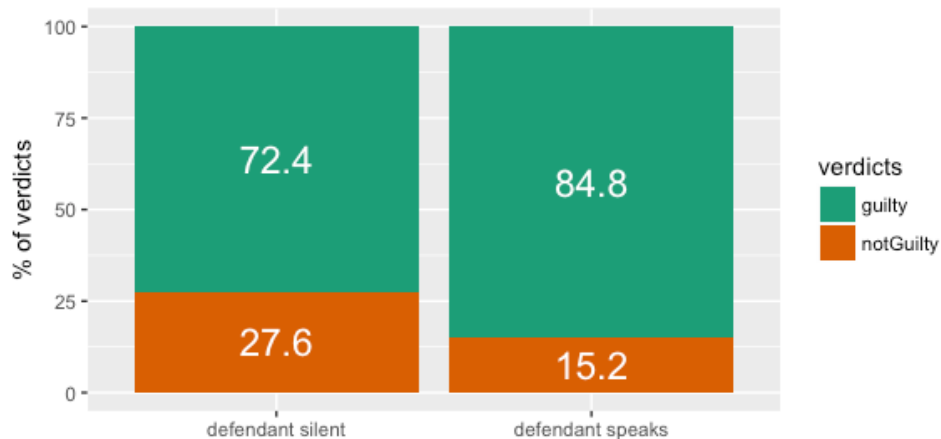


Defendants' voices and silences in the Old Bailey courtroom, 1781-1880

Sharon Howard
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Defendant speech and verdicts in the Old Bailey



Defendants' voices are at the heart of the DP VOA research theme I've been working on. We know that defendants were speaking less in OBO trials as the 19th c went on, and have tended to put this in the context of growing bureaucratisation and the rise of plea bargaining.

I want to think about it slightly differently today. This chart compares conviction/acquittal, in trials containing direct speech between 1781 and 1880, for defendants who spoke and those who remained silent. it suggests that for defendants themselves, their voices were a liability. This won't surprise those who've read historians' depiction of the plight that defendants found themselves in 18th-century courtrooms without defence lawyers, in the "Accused Speaks" model of the criminal trial (Langbein, Beattie)

And: I want to suggest that, once defendants had alternatives to speaking for themselves (ie, representation by lawyers and plea bargaining), they made the tactical choice to fall silent rather than it being something imposed on them.

About the Data

Old Bailey Online and Old Bailey Corpus

Combines linguistic tagging (direct speech, speaker roles) and structured trials tagging (including verdicts and sentences)

Single defendant trials, 1781-1880

20700 trials in 227 OBO sessions

15850 of the trials contain first-person speech tagged by OBC

The Old Bailey Corpus, created by Magnus Huber, enhanced a large sample of the OBP 1720-1913 for linguistic analysis, including tagging of direct speech and tagging about speakers. [In total 407 Proceedings ca. 14 million spoken words, ca. 750,000 spoken words/decade.]

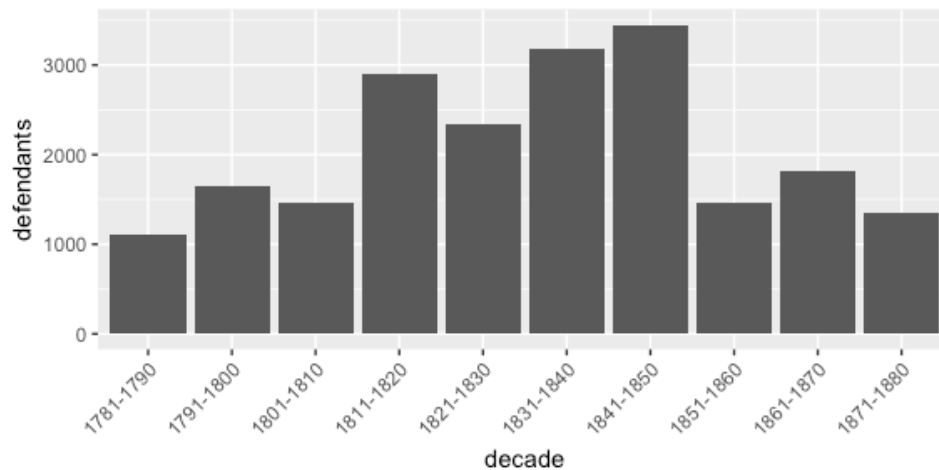
Trials with multiple defendants have been excluded from the dataset because of the added complexity of matching them to utterances (and they aren't always individually named). Trial outcomes have also been simplified; if there are multiple verdicts or sentences only the most "serious" is retained.

Include only trials ending in guilty/not guilty verdicts, omits a handful of 'special verdicts' etc.

[Data includes OBO trial reference and session date; whether a trial report contains tagged speech; whether the defendant speaks in the trial; total word count; spoken word count (OBC); count of OBC-tagged utterances; spoken word and utterance counts for the

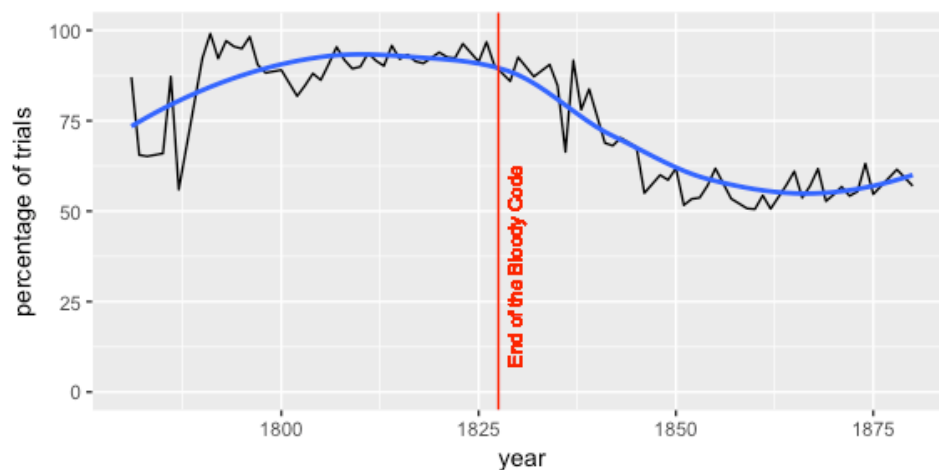
defendant; counts of types of utterance for defendants; offence, verdict and sentence categories; defendant name, gender, age (if present) and occupation (as tagged, if present).]

Distribution of trials 1781-1880



The number of cases peaked during the 1840s and dramatically fell in the 1850s. (Following the Criminal Justice Act 1855, many simple larceny cases were transferred to magistrates' courts.)

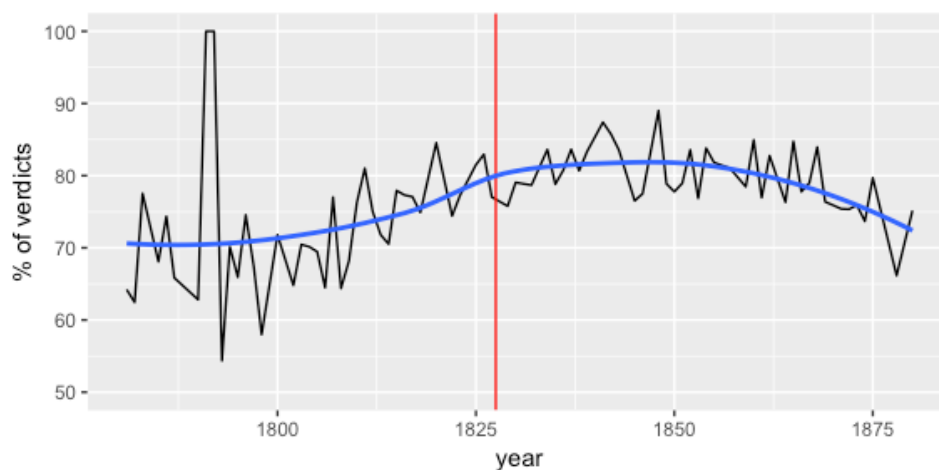
Percentage of trials containing speech



Percentage climbs from 1780s (in 1778 Proceedings became semi-official record), peaks early 19th c and then after major criminal justice reforms of late 1820s swept away Bloody Code shown by red line, substantial fall in proportion of trials containing speech.

This is due to increase in guilty pleas - plea bargaining - which were previously rare. After the change, 2/3 of trials without speech are guilty pleas; before 1800, more often because prosecutor/witnesses didn't turn up, or likely censorship of trials that ended in acquittal.

Conviction rates, including guilty pleas

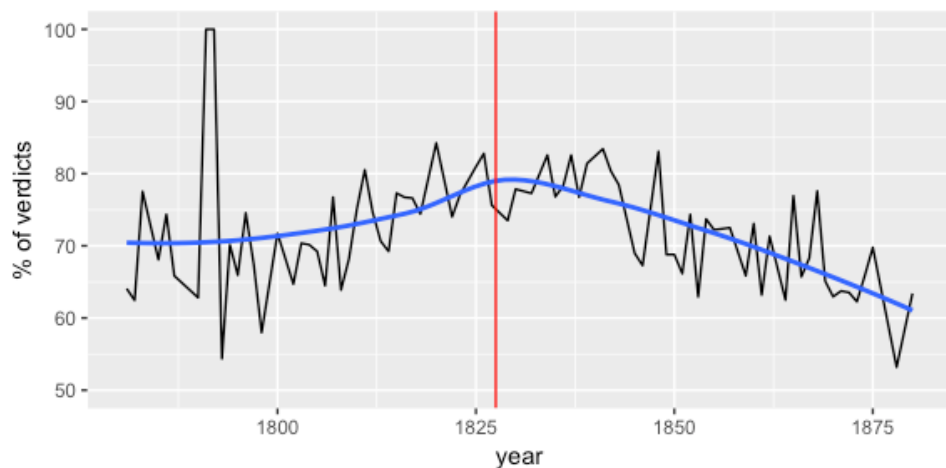


(Ignoring the spike around 1792, due to censorship of acquittals) gradual increase in

conviction rates which declines again after mid 19th c. red line is again the Bloody Code reforms

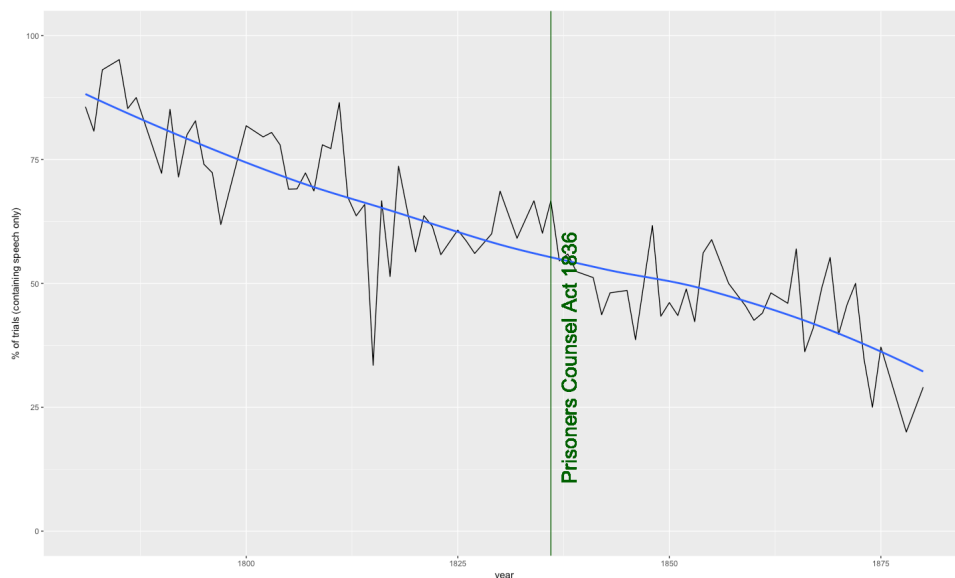
But if we exclude guilty pleas and look only at jury trials, the pattern is rather different.

Conviction rates, jury trials only



Conviction rates in jury trials after the 1820s rapidly decrease - not much over 60% by end of 1870s. That's much closer to 18th-century conviction rates (when nearly all defendants pleaded not guilty), in spite of all the transformations inside and outside the courtroom in between.

Percentage of trials in which the defendant speaks



green line is the Prisoners' Counsel Act of 1836, which afforded all prisoners the right to full legal representation. trend line shows it had no significant impact on defendant speech. Defendants had, at the judge's discretion, been permitted defence counsel to examine and cross-examine witnesses since the 1730s.

Legal historians emphasise the transformative effect of the Act; but from defendants' point of view it seems less so.

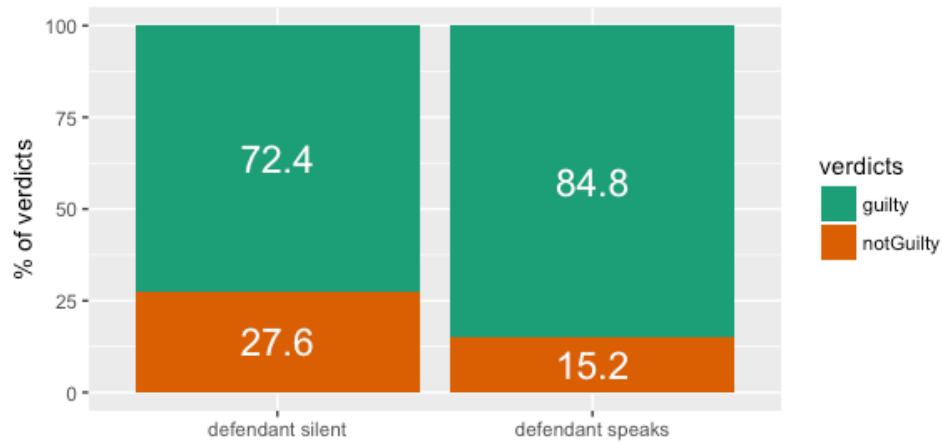
Caveat

Working assumption is that nearly all silent defendants do have a lawyer and the majority of defendants who speak, don't. The OBC tagging doesn't distinguish between prosecution and defence lawyers. And not all lawyer speech was actually reported. Is it safe to assume that silent defendants have a lawyer?

Occasionally defendant speech was actually censored in the Proceedings (in trials where other speech was reported), eg a man on trial for seditious libel in 1822 whose defence "was of such a nature as to shock the ears of every person present, and is of course unfit for publication". that was a very unusual case. (Google Books, Trial of Humphrey Boyle) But should bear in mind that I am making this assumption.

Defendant speech and verdicts

quickly revisit original slide...

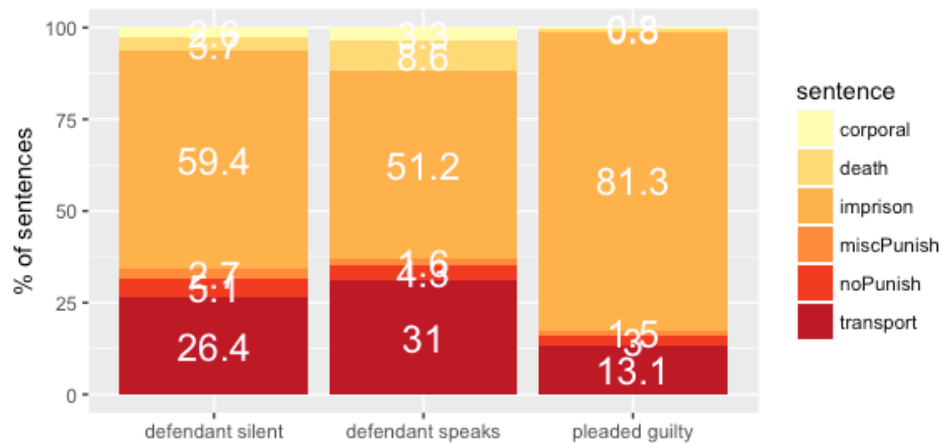


Consistent throughout period, though exact % and proportions vary a bit from decade to decade

Moreover...

Defendant speech/guilty pleas and sentences

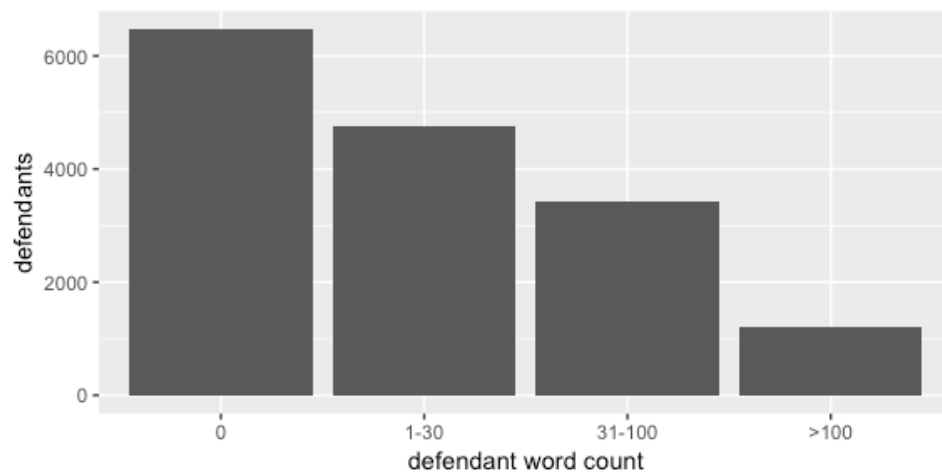
recorded sentences only



Harsher outcomes for defendants who speak continues into sentencing. Plea bargaining -> most likely imprisonment, much less likely to receive transportation (or death) sentence. Defendants who speak are most likely to face tougher sentences - death or transportation.

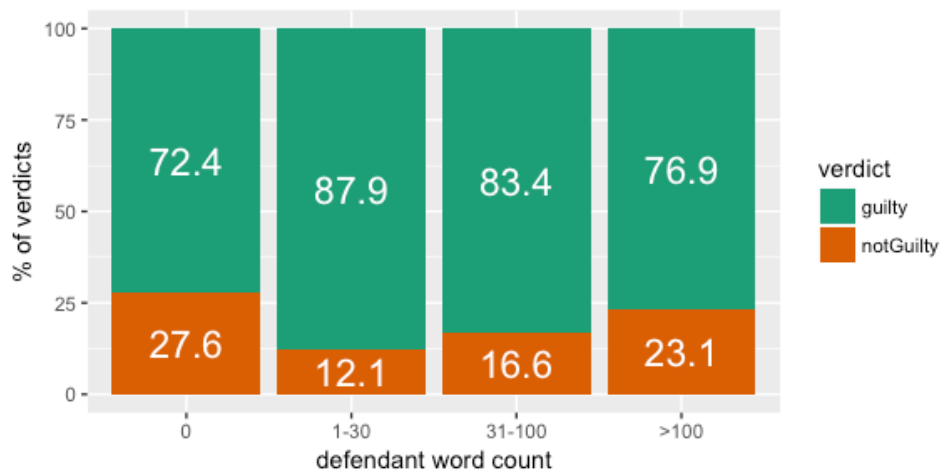
(not yet got actual outcomes...)

Defendant word counts



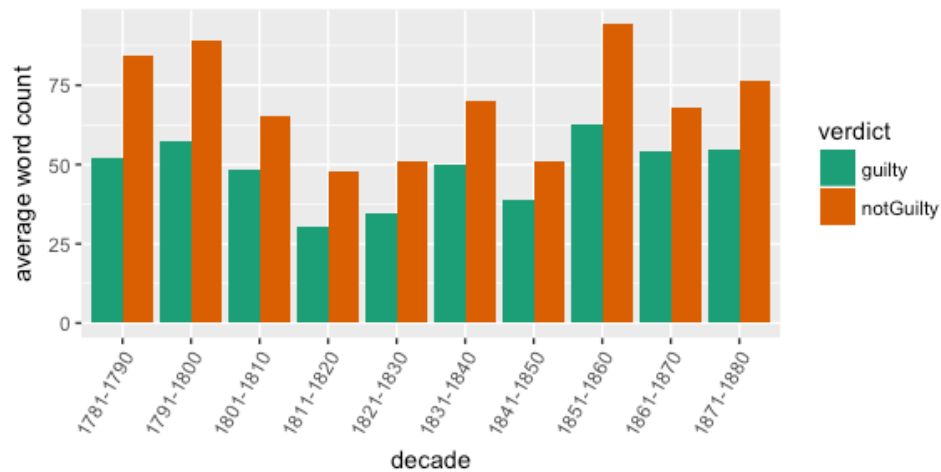
Largest single group of defendants is the silent (0 words). But even those who spoke usually didn't say very much. [average overall 55 words] Eloquent, articulate defendants few and far between!

Defendant word counts and verdicts



If you did speak, it was better to say plenty! IOW, more articulate defendants had a better chance of acquittal (though they were still slightly worse off than the silent).

Defences: average lengths and verdicts



Finish with focus on defendants' defence statements - made by nearly all defendants who spoke and for most the only thing they did say

word counts of defence statements overall * guilty (7696) average wc 44.97 * notguilty (1414) average wc 65.15

On average, defence statements by the acquitted were longer. Again highlights that more articulate defendants do better.

Also, there is more *variety* (less repetition) in the statements of acquitted defendants. 98% (1374) of their 1414 defence statements are unique. [8 short statements used more than once.]

Whereas 93.17% (7170) of statements by convicted defendants are unique [95 used more than once]

Start to look more closely at what they say? Not possible yet to investigate in depth, but use some simple linguistic measures.

Defences: Words least associated with acquittal

mercy
picked
man
i
distress
carry
along
them

beg
stop
up
young

In linguistics, keywords are "items of unusual frequency in comparison with a reference corpus". Here comparison of the larger set of defence statements by defendants who were convicted with defence statements by defendants who were acquitted

the words *least* likely to be associated with *acquittal* - ie, the least successful defence statements...

highlight:

mercy + beg

picked (+ perhaps also **carry**)

i

distress

Remember that many defence statements were not really 'defences'; they were more of an appeal to the judges' clemency *after* sentencing - Begging for mercy or claiming extenuating circumstances (distress) in particular. Also Playing down offence - 'I found the things'. many short bare statements beginning with "I" rather than more complex narratives.

Four hopeless short defences

picked four of the most frequent short (non-)defences that are heavily associated with convictions, to explore a bit further. (excludes use of any of these within longer defences)

defence	frequency % convicted	
nothing to say	109	98.17
mercy	125	98.40
picked up/found	223	93.72
distress	82	97.56

statement is 20 words or fewer - some might contain additional equally brief sentence like 'i have no witnesses' but excludes any more elaborate defences that include similar claims

I have nothing to say

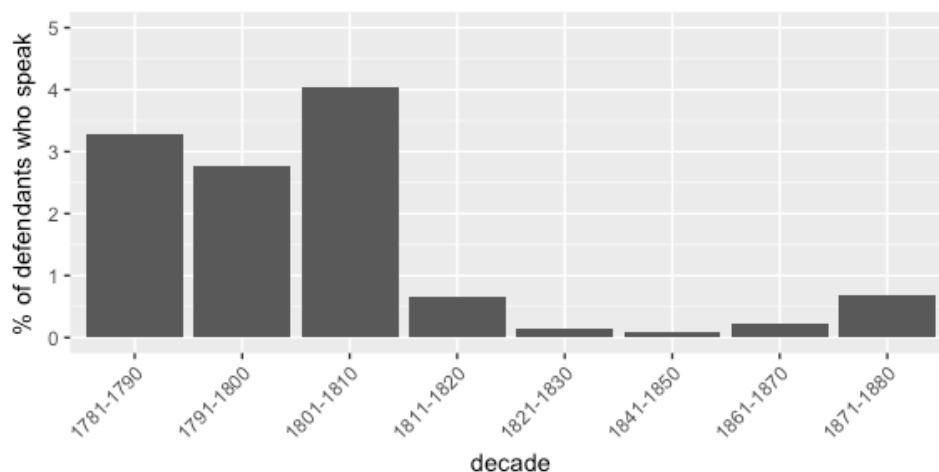
I beg for mercy/leave it to the mercy of the court/throw myself on the mercy of the court

I picked it (them) up/found it

I was in (great) distress/I was distressed/I did it through distress

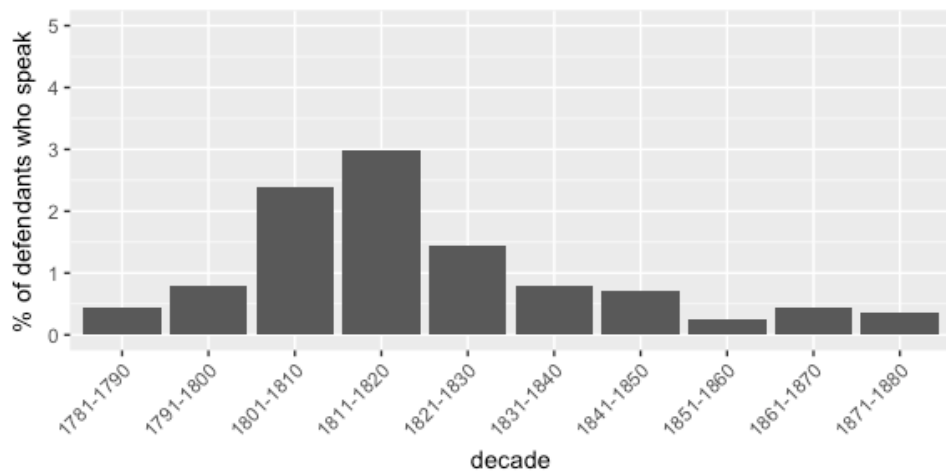
Percentage of defendant speakers who use X phrase in short defence statements (20 words or less), by decade (ie % of speakers in decade)

I have nothing to say



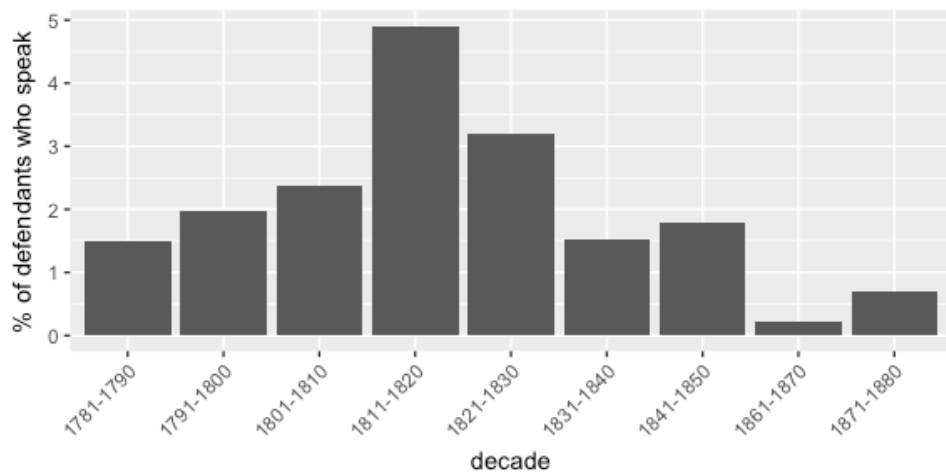
popular before 1810s - peaks at use by 4% of defendants who speak in decade 1801-10 and then rapidly disappears

I beg for mercy/leave to the mercy of the court



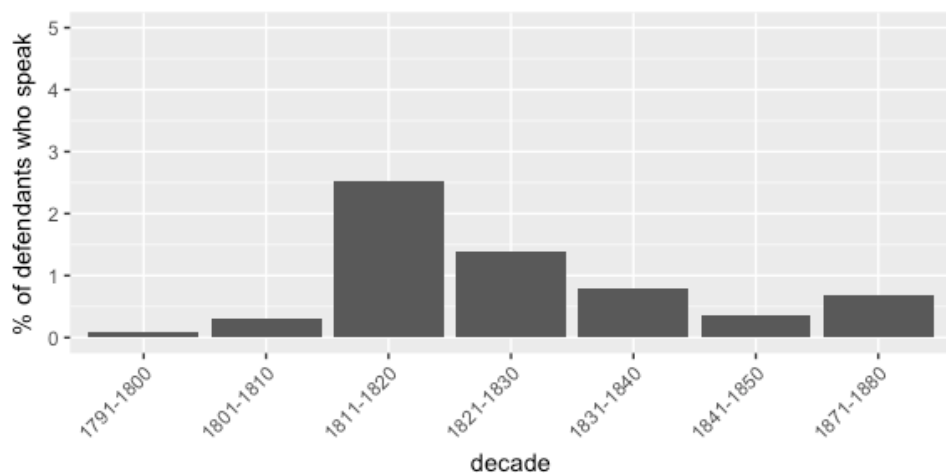
decline after 1810s

I picked it up/found it



decline after 1820s, but less dramatic

I was in distress/did it through distress



why doesn't appear in 1780s? peaks 1810s and then declines slowly

Concluding

So there are variations in timing/speed of decline, but these hopeless 'non-'defence statements, which are almost certain to be followed by conviction, are all declining in use and rarely heard in the courtroom after the 1820s. That fits with both the gradual decline in defendant speech and the more rapid rise from the late 1820s of plea bargaining.

First, the defence lawyer option meant that defendants were better off keeping quiet and finding the money for a lawyer who could try to undermine the prosecution case through aggressively examining witnesses.

And Second, the plea bargaining option from the late 1820s meant that if they had no viable defence, had been caught red-handed, they were better off pleading guilty for a less harsh punishment.

And so: for defendants who wanted to walk free or at least lessen their punishment, if not for later historians trying to hear their voices and understand what made them tick, Silence was golden.

Further information

[VoA research theme page](#)

[OBV2 data](#)

[OBC page](#)