

## Jersey & Guernsey Law Review – February 2008 "HARROW!" QUOD HE

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1 "Haro! Haro! Haro! A l'aide mon Prince. On me fait tort" [Haro! Haro! Haro! Help me, my prince. I am being wronged.]"<sup>1</sup>. The *clameur de haro* is one of the oldest and most remarkable institutions of Channel Island jurisprudence. By declaiming these time-honoured words in appropriate circumstances, the private individual may, without any judicial intervention, impose an immediate interim injunction upon the perpetrator of an allegedly wrongful interference with his or her possession of immovable property. The precise manner (if not circumstances) in which the *clameur* may be raised varies somewhat between the Islands<sup>2</sup> but in both Bailiwicks the legal effect is the same: the other party must, on pain of contempt of court, immediately cease the alleged wrongdoing. The claimant must then bring the matter before the court so that the injunction may be lifted or confirmed and the parties' differences resolved. It is not so much that the *clameur de haro* is a remedy of self-help that makes it unique but rather that it enables the private individual to co-opt the power of the courts in proclaiming an injunction. Such a powerful tool is not to be invoked incautiously. A claimant who is found to have raised the *clameur de haro* incorrectly risks not merely a penalty in costs but also punishment for contempt of court.

2 The *clameur de haro* is recorded in some form or another in Norman law since the thirteenth century but it is only in the Channel Islands that it remains in force. In this article I wish to examine some popular beliefs about this ancient and picturesque remedy.

(a) Referring to various earlier sources, sixteenth and seventeenth-century commentators on Norman customary law, such as Terrien, Godefroy, Berrault and Basnage, tell us that William the Conqueror's funeral in 1087 was interrupted by an

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<sup>1</sup> This is the cry in the Channel Islands other than Sark, where it is apparently "*Haro! Haro! Haro! Au nom de Dieu et la Reine, laissez ce travail!*": see [www.clameur.gg](#). This website contains much information about the practice of the *clameur de haro* in Guernsey.

<sup>2</sup> It is beyond the scope of this article to set out all the requirements for a valid raising of the *clameur* or the subsequent legal procedures. It has been held in Jersey that following Norman custom there must be a state of "*appert péril*", that is, "a specific visible wrongful act in the course of commission and which can be brought to a stop by the raising of the *clameur*": *Bailhache v Williams* 1968 JJ 991. This appears consistent with the law of Guernsey: Dawes, *The Laws of Guernsey* (Oxford, 2003), Chapter 19. The *clameur de haro* is an *action possessoire* which is available for the protection of the claimant's possession of immovable property: *AG v De Carteret* 1987-88 JLR 626; *In re Kirk's Clameur de Haro* [1985] 1 GLJ 60. Besnier, "*L'Actualité de la Clameur de Haro dans le droit de l'Île de Guernesey*", in *Etudes historiques offertes à Jean Yver* (Paris, 1976) considered that the *clameur* in the Islands had become a means of protecting title, an *action pétitoire*, but this is contrary to authority and the decision of the Jersey Royal Court in *De Carteret*. Since the time of Le Geyt (1635-1716) it has been available in Jersey only in the case of immovables. This is also the case in Guernsey: *In re Kirk*; however, as regards what may be called "technical movables", see also the argument of de V. Carey outlined in footnote 50 below. Both Islands require there to be two witnesses. In Jersey Le Gros tells us that the *clameur* must be raised bare-headed, on knees and with hands clasped: *Droit coutumier de l'Île de Jersey*, 1943; new edition, 2007), p. 31. In Guernsey, genuflection is also practised and the Lord's Prayer and the Grace are recited in French. Whilst religious, headdress and postural formalities appear to have been mandatory in the past, it can hardly be contested that they should now be regarded as merely traditional rather than mandatory. In particular, any implication in Guernsey that the remedy is only available to the practitioners of a particular religion would surely be contrary to the Human Rights (Bailiwick of Guernsey) Law, 2001 (Schedule 1: Article 9 - Freedom of thought, conscience and religion; Article 14 - Prohibition of discrimination; Article 1 First Protocol – Protection of property).

audacious *clameur de haro* raised by a dispossessed burgher of Caen.<sup>3</sup> This story is repeated in a number of later legal texts and has found its way into many popular histories. Indeed this is sometimes said to be the first known instance of the *clameur de haro*.

(b) The same commentators also inform us that the *clameur de haro* has its origin in an appeal to Rollo, the Viking founder of the Norman dynasty in 911 who was, they say, renowned for his strict integrity and justice. Rollo was known as Rou in the Norman French vernacular. According to this theory, the origin of the *clameur* is revealed by the word "*haro*" itself: the vernacular word for the latinized "*Haro*" was (in one spelling) "*Harou*" and "*Harou*", so the theory goes, is a contraction of "Ha! Rou!". The *clameur de haro* was thus originally an appeal to Rollo himself. It is a pleasing story, which has similarly stuck. The form of invocation used in Jersey and Guernsey today, as quoted above, is still implicitly based on the notion that the claimant's appeal is to the posthumous authority of "Prince" Rollo.

(c) Allied to this is the notion that the *clameur de haro* was an institution peculiar to the law of Normandy and that the word itself was a specifically Norman word.

How much of this is actually true?

3 Godefroy, writing in the 1620s, provides a convenient summary of the two stories referred to above -

*"... tous sont d'accord que l'origine de cette clameur est fondée sur l'intégrité [du] premier duc Roul ou Rollo . . . [à] cause de la grande Justice et intégrité duquel, ceux qui estoient opprésés s'escrivoient Ha-rou, comme l'appellant à leur aide; & depuis ce cry a passé en forme d'action & clameur ordinaire à la posterité, pour empescher tous malefices & voyes de faict, & retenu le nom de son auteur . . . Cette clameur fut pratiquée apres la mort de Guillaume le Bastard, pour empescher sa sepulture en l'Eglise que luy-mesme avoit fait bastir à Caen, sur la terre d'un pauvre homme qu'il avoit prise sans payer."*<sup>4</sup>

[. . . everyone agrees that the origin of this cry is founded on the integrity of the first duke Rou or Rollo . . . by reason of whose great Justice and integrity those who were oppressed cried Ha-Rou, calling him to their aid; and since those times, this cry has become a form of action and ordinary *clameur*, in order to prevent all wrongs and assaults and it has retained the name of its author. This *clameur* was practised after the death of William the Bastard in order to prevent his burial in the church which had had himself built at Caen, on the land of a poor man which he had taken without payment.]

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<sup>3</sup> Terrien, *Commentaires du Droit Civil de Normandie* (Paris, 1574), p. 272; Godefroy, *Commentaires sur la Coutume Reformée de Normandie* (Rouen, 1623), I p.246; Berault, *La Coutume Reformée de Normandie* (1612); Basnage, *La Coutume Reformée de Normandie* (Rouen, 1694), p. 104.

<sup>4</sup> Godefroy, *Commentaires sur la Coutume Reformée de Normandie* (Rouen, 1623), Vol. 1, p. 246

## William the Conqueror's funeral

4 William the Conqueror's funeral took place in the autumn of 1087 at the abbatial church of St. Stephen in Caen. The first surviving description of that event is to be found in the *Gesta Regum Anglorum* (*Deeds of the English Kings*) by the Anglo-Norman monk William of Malmesbury, a work which he completed in about 1120<sup>5</sup>. William of Malmesbury tells us that the King William's body was buried at Caen in the presence of a large number of clerics. "At this point," he goes on,

"the pitiful ups and downs of human life were well displayed: that great man, who at one time reflected honour on the whole of Europe and was the most powerful of all his line, could obtain no place for his eternal rest without due process of law; for there was a knight to whose ancestral property the land belonged, and he maintaining with a loud voice that this was robbery forbade the interment, saying that the soil was his by inheritance from his forebears, and the king ought not to rest in a place which he had seized by brute force. At the wish, therefore, of his son Henry, the only one of his children present, this bold claim was settled by paying a hundred pounds of silver to the claimant."

5 It will be noted that, though William of Malmesbury relates the well known story, he makes no mention of the *clameur de haro*. The next surviving account is that of another Anglo-Norman monk, Orderic Vitalis of the abbey of St Evroul in Normandy. This account is contained in Book VII of Orderic's *Ecclesiastical History*<sup>6</sup>. According to the work's editor, Majorie Chibnall, it is a reasonable hypothesis that Book VII was written between 1130 or 1131 and 1133. There are some interesting further details in Orderic's account. Most importantly he gives us a name for the claimant – he was "Ascelin, son of Arthur" – and he also purports (less believably) to quote from the claimant's own words. In Orderic's account, Ascelin is said to have stepped forward from the crowd and, after telling his story, he is supposed to have proclaimed in a loud voice: "I lay claim to this land, and openly demand it, forbidding in God's name that the body of this robber be covered by earth that is mine or buried in my inheritance." Faced with this claim, so Orderic goes on, the assembled bishops and magnates appeased Ascelin with gentle words and offered him sixty shillings for the place of burial, payable then and there, with a like sum to follow for the remainder of the land. Thus was the matter settled. But, once more, there is no mention of the *clameur de haro*.

6 Orderic was merely the first of at least three authors to place a speech in Ascelin's mouth, each differing from the other. The next was Jersey-born Wace who put the same story into vernacular verse in his *Roman de Rou* some thirty or forty years after Orderic Vitalis.<sup>7</sup> In this respect Wace is late and largely derivative of Orderic. In Wace's account,

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<sup>5</sup> William of Malmesbury, *Gesta Regum Anglorum*, edited and translated by R Mynors, R Thomson and M Winterbottom, (Oxford, 1998), I p. 513.

<sup>6</sup> Orderic Vitalis, *The Ecclesiastical History*, translated and edited by M Chibnall (Oxford, 1998), IV, p. 107.

<sup>7</sup> Wace, *Roman de Rou*, translated by Glyn Burgess (Jersey, 2002), p. 297.

Ascelin makes his appeal "In the name of Almighty Jesus and by the pope in Rome – I cannot invoke any higher authority." There is likewise no mention of the *clameur de haro*.

7 In view of the lateness of Wace's account, he cannot be treated as an historical source for the event itself, let alone for the actual words spoken. Even William of Malmesbury and Orderic Vitalis were not writing anything like contemporaneously with the events of 1087. This might cause one to entertain a degree of doubt as to the truth of their story, but, as chance would have it, surviving documentary evidence independently attests to the existence not only of Ascelin but of certain houses belonging to Ascelin's family on the site where the abbey of St. Stephen was built.<sup>8</sup> In particular contemporary evidence attests to the acquisition of certain land from Ascelin's father and the renunciation by his son, Ralph, of his rights therein. It thus appears entirely reasonable to accept that Ascelin did indeed exist and that he probably interrupted William's funeral in order, in some way, to assert his right to the land.

8 But the idea that Ascelin specifically raised the *clameur de haro* is quite another matter. The historical record makes not the slightest mention of it. It would have been noteworthy if it had. The legal institution of *haro* is not referred to at all in the earliest Norman customary, the *Très Ancien Coutumier*, whose Latin redactions appear to date between about 1200 and 1230.<sup>9</sup> The first reference in any surviving Norman legal context to the *clameur de haro* is in the somewhat later *Summa de Legibus* of Normandy (known as the *Grand Coutumier* in its French version), whose probable dates of composition lie within the period 1235 to 1258. The *clameur de haro* was presumably settled practice by the time of the *Summa de Legibus* in the thirteenth century, but in this, its earliest known form, it is permitted to be raised only in criminal matters, in the presence of imminent peril in the form of assault, robbery, rape, murder and the like – and even within this category it appears to have been restricted to crimes that were "*de sang et de plaie*" [of blood and wound].<sup>10</sup> The use of the *clameur* for possessory claims, which began not long afterwards in the thirteenth century, gradually assumed greater and greater importance. By the time of the *Style de 1515* the shift is complete and the *clameur de haro* is restricted solely to possessory matters. It is perhaps not surprising, then, that lawyers of the sixteenth and later centuries, versed in the civil law *haro*, readily assumed that Ascelin's claim would have taken the form of a *clameur de haro*.

9 Did the commentators derive this notion from any specific source? Basnage cites "*notre vieille Chronique*". By "*vielle Chronique*" he presumably means the work known as the *Grande Chronique de Normandie*, a popular late compilation of Norman history compiled in the fourteenth century, which was based to a large extent on the *Roman de Rou* of Wace. As such, it is late and of no independent historical value for events that took

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<sup>8</sup> Orderic Vitalis, ., footnote 1, p.106; L. Musset, *Les Actes de Guillaume le Conquérant et la Reine Mathilde pour les Abbayes Caennaises* (Caen, 1967), p. 45-46; Bates, *Regesta Regum Anglo-Normannorum* (Oxford, 1998), No. 53, p. 249ff.

<sup>9</sup> Pissard, *Le Clameur de Haro dans le droit normand* (Caen, 1911). Comments on the history of the *clameur* in this article, where not footnoted otherwise, are drawn from Pissard. As to the dating of the customary sources, see Nicolle, *The Origin and Development of Jersey Law* (Jersey, 1999).

<sup>10</sup> Pissard, *Clameur*, p. 21-22.

place in 1087.<sup>11</sup> Le Royer de la Tournerie refers us to a genuine historical source, Orderic Vitalis<sup>12</sup>. But as we have seen Orderic makes no mention of "haro" either. Godefroy, in his account of Ascelin's *haro*, refers us to Paul Emile, Baronius and William of Malmesbury. Of the three, only Malmesbury is an historical source for the point in question and the "*clameur de haro*" is, of course, entirely absent in his work. The two other authors cited by Godefroy are not period sources but writers of the sixteenth century. Caesare Baronius (1538-1637) was an Italian cardinal and ecclesiastical historian. Paul Emile (variously Paul Aemyle, Paolo Emili and Paulus Aemylius) was an Italian historian who lived from c. 1455 to 1529. He is also cited by Terrien.

10 It is beyond the scope of the research possible for this article to attempt to identify with certainty the earliest source for the story of Ascelin's *haro*. Pissard in his study published in 1911 restricted himself to the conclusion that the story was "*une légende assez tardive*".<sup>13</sup> The earliest account of Ascelin's *haro* to which I have found reference is that of Paul Emile.<sup>14</sup> It is possible that the story is no older than that. Invited to Paris by Charles VIII (1483 – 1498) to compose a Latin history of the kings of France, Paul Emile wrote his *De Rebus Gestis Francorum (The Deeds of the French)* during the first three decades of the sixteenth century. It is in the third book of this work that we can at last find Ascelin's supposed words quoted in a way that specifically associates his claim with Rollo. But even here there is no mention of the *clameur de haro*, only a general appeal to the laws of Rollo. The relevant passage has become well known in the Channel Islands, for it was reproduced and translated from the Latin by Philip Falle (1656-1742) in his *Caesarea or an Account of Jersey* (1694). Falle's translation is as follows<sup>15</sup> -

"The ground wherein you are going to lay this man is mine; and I affirm that none may in justice bury their dead in ground which belongs to another. If after he is gone, force and violence are still used to detain my right from me, I APPEAL TO ROLLO, the Founder and Father of our Nation, who though dead, lives in his Laws. I take refuge in those Laws, owing no authority above them."

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<sup>11</sup> I have not been able to consult any version of the *Grande Chronique* aside from Jean Nagarel's *Historie et Chronique de Normandie revue et augmentée outre les précédentes impressions* (Rouen, 1581). Here the story of the plucky interruption is duly re-told; but as with Wace there is no mention of Rollo or any cry of "haro".

<sup>12</sup> Royer de la Tournerie, *Nouveau Commentaire portatif de la coutume de Normandie* (Rouen 1771).

<sup>13</sup> Pissard, *Clameur*, p. 13. Pissard did find that the story was also reported in the seventeenth century by the Norman poet, historian and lawyer Jacques Moissant de Brieux (1614-1674): *Oeuvres Choisies* (Caen, 1875), p. 40. Moissant de Brieux states that Caesare Baronius (1538-1637) quotes in his works from Ascelin's speech and intriguingly the Latin speech as re-quoted by Moissant de Brieux appears to take the form of an appeal to the laws of Rollo. What is more, Baronius, according to Moissant de Brieux, tells us that William of Malmesbury – a genuine historical source - is the source of the speech. Pissard duly chased up these references but found to his consternation that the mysterious speech cited by Moissant de Brieux was to be found neither in Malmesbury nor even Baronius. The answer to this puzzle lies in the work of Godefroy. In his *Commentaires sur la Coutume Reformée de Normandie* Godefroy reports substantively the same speech and, by the incautious manner in which he does so, incorrectly implies that the quotation (a) was published by Baronius and (b) comes from William of Malmesbury's *Gesta Regum Anglorum*. In fact the speech comes from Paul Emile, not Baronius, and certainly not William of Malmesbury, and it corresponds to part of the passage quoted in paragraph 10 of this article in the translation of Falle. Moissant de Brieux must have relied on his reading of Godefroy (whose work he explicitly refers to on the same page) without checking the texts in question. The important point is that the speech invoking Rollo's authority is not, contrary to what Moissant de Brieux says, found in William of Malmesbury.

<sup>14</sup> Despite hoping otherwise, I have not actually been able to consult Paul Emile's *De Rebus Gestis Francorum*, or any translation of it, and have had to rely only on references to it. It may be that the work itself cites other authority or contains further clues as to the origin of the story. It exists in French translation by Jean Regnard as *L'histoire des faits, gestes et conquêtes des roys, princes, seigneurs et peuple de France* (1581).

<sup>15</sup> Falle, *Caesarea or an Account of Jersey* (London, 1734), p. 15-16.

## The Rollonid etymology

11 If the story that *haro* was cried at William's funeral is a late invention, what can be said of the theory that the word itself derives from an appeal to Rollo? This too must be placed in the category of things that would be nice if they were so, but are not. The verdict of the *Grande Larousse de la langue française*, as well as several other etymological dictionaries, is clear: the word "*haro*" comes from the expression *hara*, an interjection apparently meaning "Here!" in Old Frankish, the West Germanic language spoken by the Franks before it was superseded by Low Latin or proto-French.<sup>16</sup> Reference is also sometimes made to the related verb *haren*, to cry out. Pissard, in his seminal study of the *clameur*, likewise favoured the derivation from *hara/haren*, citing the works of Littré and Brunner;<sup>17</sup> it was a pity, he said, that the "Ha! Rou!" theory was no more than "*une légende charmante*".<sup>18</sup> *The Oxford English Dictionary* is more cautious, stating that the word is of obscure origin, but it does conclude without qualification that the Old French forms of the word are inconsistent with the popular notion that that *haro* was originally a call upon Rollo.<sup>19</sup>

12 Thus, to the extent that any theory has been preferred by etymologists, it is that the word derives from the Frankish *hara/haren*. Even when Pissard was writing, in 1911, this was far from being a novel idea. Pierre Caseneuve (1591-1652) suggested it, and he may have been the first, in an unpublished manuscript of French etymology that was subsequently included and referred to by Gilles Menage (1613-1692) in his *Dictionnaire étymologique* (1650, 1670). Caseneuve's view was followed by Menage and later by Johann Georg Wachter (1663-1757), a German linguist, in his *Glossarium Germanicum* (1737). It was also the view of Georges Metivier, the Guernsey poet and philologist, in his *Dictionnaire franco-normand* (London, 1870).

13 There have, however, been other views. Thomas Basin (1412-1491), the Bishop of Lisieux, disliked the *clameur* intently. He contented himself with the consolation that *haro* originated in an unknown barbarous idiom<sup>20</sup>. Aimar de Ranconnet and Jean Nicot in the *Thresor de la langue française* (1606) suggested a derivation either from Rollo or, curiously, Harold Klak, king of Denmark (d. 844). Pissard summarised a number of nineteenth-century etymological speculations, including the view of Paul Viollét that the word was derived from the Latin, *Ad latronem*, which may perhaps best be translated as "Stop! Thief!".<sup>21</sup> But Terrien and a long line of subsequent Norman jurists were in no doubt

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<sup>16</sup> Interestingly, the expression "*hara*" (and thus "*haro*") is expressly related by some works consulted by the author to the modern English "here" (and so also the German "*hier*"). See the *Larousse Dictionnaire de l'ancien français – le Moyen Age* (Paris, 1997) (under "*haro*") and Webster's *Dictionary* (1913) (under "harrow").

<sup>17</sup> Emile Littré (1801-1881), *Dictionnaire de la langue française* (1873); Henry Brunner, *Deutsche Rechtsgeschichte* (1887-92).

<sup>18</sup> Pissard, *Clameur*, p. 8.

<sup>19</sup> *The Oxford English Dictionary* (Oxford, 1989), under "Harrow".

<sup>20</sup> Thomas Basin, *Apologie ou plaidoyer pour moi-même*, tr. from Latin by Charles Samaran (Paris, 1974), Book II Chapter X, "*Du cri vulgairement appelé de haro et du statut des avocats en Normandie*".

<sup>21</sup> Pissard, *Clameur*, p. 18; Viollét, "*Notes pour servir à la législation sur le vol*" *Bibliothèque de l'Ecole des Chartes* 34 (1873), p. 331 - 342

that etymologically *haro* was an appeal to Rollo and this has proved to be the most lasting theory in the popular imagination.<sup>22</sup>

14 Whether, by the time of Terrien, there was already a long tradition in Normandy to this effect seems impossible to say; but if there was, the linking of the Norman cry with an idealized notion of Rollo – about whom in truth very little is known – would perhaps have helped to preserve and entrench the custom in law. Interestingly, it is known that a link with Rollo was made early in the fourteenth century by Guillaume Guiart: but Guiart's explanation is not as we might expect. Guiart was a French (but not Norman) chronicler and poet who, between 1304 and 1306, wrote a history of the French kings (*Branche des royaux lignages*). He asserts that at the Battle of Chartres in about 911 the defeated Northmen under Rollo cried "*Ha! Rous! Ha! Rous! Con tu nous mainnes malement*" [Oh Rollo! Oh Rollo! How badly you lead us]. As a result, says Guiart, it became the custom of Normans always to cry "Ha-rou" in time of danger or distress<sup>23</sup>. Though the fanciful etymology is the same, the import here, reflecting distinctly less favourably on Rollo, is of course entirely different. Guiart's version does not appear to have been taken up by any Norman writer.

#### **A Norman word?**

15 It is sometimes said that "*haro*" is a special Norman word. This is certainly untrue in so far as the word "*haro*" (in various forms) appears in many non-Norman sources from the twelfth century onwards as an ordinary cry of help, divorced from any Norman context. The question of etymology is for expert resolution but it would hardly be surprising if both the Norman legal *haro* and the wider usage outside Normandy shared a common origin in a cry of help in the ordinary language of the Dark Age northern Franks. At any rate, the story of the word "*haro*" in literary sources outside Normandy is interesting, indeed surprising, in itself and has never been retold in the context of Channel Island legal history. It can be sketched with the help of examples in dictionaries, of which the following account gives only a selection.

16 The word is first found in surviving Old French sources in a twelfth-century poem by Marie de France. The poem is entitled *De l'asne ki volt jüer a son seignur* (The Ass who Wanted to Play with his Master). It is one of over a hundred fables which, if we are to believe Marie's own words, were translated by her for a francophone audience from a now lost Anglo-Saxon collection, itself (apparently) a translation from the Latin by King Alfred the Great. Marie's *Fables* have been dated, somewhat roughly, to between 1160 and 1190.<sup>24</sup> The story is of an ass who, seeing his master often playing with a pet dog, becomes jealous and wishes to frolic with the master too. The idea, however, is hopelessly misconceived. He kicks his master over and the master has to call for urgent help -

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<sup>22</sup> Du Cange, *Glossarium ad scriptores mediae et infimae Latinitatis* (1678) also favoured the "*Ha! Rou!*" theory, whilst additionally referring to the account of Guiart.

<sup>23</sup> Guiart, *Branche des royaux lignages* – *Collection des chroniques nationales françaises* ed. Buchon (Paris, 1828), VII, p. 199.

<sup>24</sup> Marie de France, *Fables* ed. and translated by H. Spiegel (Toronto, 1987)

*"Pur un petit ne l'a crevé  
Si li sires nen eüst crié  
Haro! Haro! Aidez mei!"*

[He would have been killed  
Had he not cried out  
Help! Help! Help me!]

17 The identity of the author who describes herself as "Marie ...de France" has never been ascertained and she remains one of the elusive characters of medieval literature. She appears to have been living in Plantagenet England and, though French, it is by no means certain – and perhaps doubtful – that she was of Norman origin.<sup>25</sup>

18 The fanciful etymology of the vernacular "*Harou*" proposed in the early fourteenth century by Guillaume Guiart has been referred to above. Later in the same work, when describing the commencement of the battle of Bouvines, Guiart puts the cry of "*Harou*" into the mouths of heralds -

*"Harou, dient-il, quel mortaille  
Quel ocision, quel bataille  
Est ci endroit a avenir"*

[Help, they said, what death  
What killing, what battle  
Is going to take place here]

19 From the gore of war to the pangs of love: in the courtly love songs of the High Middle Ages we find the cry of "*Hareu*" used as an expression of anguish at unrequited love. Adam de la Halle (c. 1237-c.1288), a hunchback from Arras, composed a rondeau which repeats the plaintive cry "*Hareu, li maus d'amer m'ochist*" [Help, the pain of love is killing me].<sup>26</sup> Guillaume de Machaut (c.1300-1377), whose merits as the greatest composer of his Age are still celebrated by the International Machaut Society, hailed from the champagnoise city of Reims. One of his works, a three voice motet, commences thus<sup>27</sup> -

*"Hareu! Hareu! le feu, le feu  
D'ardant desir, qu'ainc si ardant ni fu  
Qu'en mon cuer ha espris et soustenu Amours"*

[Help! Help! The fire, the fire  
Of burning desire, which has never been so hot  
As love has kindled and sustained in my heart]

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<sup>25</sup> See Burgess and Busby, *The Lais of Marie de France* (London, 1999) for discussion of Marie's identity.

<sup>26</sup> CD: *Trouvères – Courtly Love Songs from Northern France*, Sequentia (Deutsche Harmonia, B000025SO9)

<sup>27</sup> CD: *The Art of Courtly Love*, Early Music Consort (Veritas, B000002SSB)



20 It would be rash to suppose that the plaintive cry of the love-struck poet was in any sense directed at the founder of Normandy. Rather, these examples appear further to illustrate that the word was an ordinary cry of help, commonly understood in the *langue d'oïl* across northern France and with no intrinsic Norman connection.

21 Across the water in England the word was known and used by the insular speakers of French. *La Estoire de Seint Edward le Rei* is probably by Matthew Paris (c. 1200-1259), the celebrated monk of St Albans. The work has been dated to the period 1236 to 1245.<sup>28</sup> In the course of the poem the author describes (in the language of his own time) an incident of theft in King Edward the Confessor's chamber. The theft has, in fact, been witnessed by the half-asleep king and the culprit, a poor man, has been forgiven by him. But the king's chamberlain does not know this. On discovering the crime -

"*Li chamberlains . . .  
Lors cum esbaiz s'escrie  
'Harro!' Mes li rois l'en chastie  
'Tees, Huguelins'.*"

[The chamberlain . . .  
Like one astonished cries out  
'Help!' But the king rebukes him.  
'Silence, Huguelin.']

22 What is more, it was not only French speakers in England who began to use the word, and herein lies another twist. As is well known, successive waves of French-speaking settlers after the Norman invasion in due course enriched the Middle English language with thousands of new words. Our "*haro*" was among them. The *Middle English Dictionary* reports that in 1276 it is recorded that one Arnold entered the priory of Wales and took wine and other goods against the will of the monks, who cried "*Harou*".<sup>29</sup> By the following century the word appears frequently in Middle English texts as a cry of help, distress or outrage. Spelling varies: it occurs, for example, as *harrow*, *harro* and *arrew*. Chaucer (1343-1400) uses our expression several times. In *The Nun's Priest's Tale*, a man is distraught to find that his friend has been murdered<sup>30</sup>-

"'I crye out to the ministres,' quod he  
'That should kepe and rulen this citee.  
Harrow, allas! Heer lyth my felawe slayn!'"

23 At the end of *The Physician's Tale* we find the cry of "*haro*" directed, rather alarmingly, against the legal profession itself<sup>31</sup> -

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<sup>28</sup> *La Estoire de Seint Ædward le Rei*, attributed to Matthew Paris, edited by K Y Wallace (London, 1983), p. 29, ll. 1010-1018.

<sup>29</sup> *Middle English Dictionary* (Ann Arbor, 1970)

<sup>30</sup> Chaucer, *The Nun's Priest's Tale*, ll. 3840ff.

<sup>31</sup> Chaucer, *Introduction to the Pardoner's Tale*, ll. 288ff.

"Harrow!" quod he, 'by nayles and by blood!  
This was a fals cherl [low fellow] and a fals justice!  
As shameful deeth as herte may devyse  
Come to thise juges and hire [their] advocatz!"

24 There are numerous other examples of the cry of "Harrow" in the literature of fourteenth and fifteenth-century England. In the popular re-enactments of religious stories known as Mystery Plays the word was familiar in the mouths of devils. In the *Ludus Coventriae* ("Coventry" or N-Town plays) the devils' comeuppance duly arrives on the Day of Judgment<sup>32</sup> -

"Harrow and owt! What shall we say?  
Harrow, we crye, owt and alas!  
Alas! Harrow! Is this that day  
To endles peyne that vs must pas?  
Alas, harrow, and owt, we crye!"

25 In parenthesis, it may be added that a popular scene in the Mystery Plays was the "Harrowing of Hell" in which Jesus, between the crucifixion and the resurrection, was shown descending into hell in order to retrieve righteous souls held captive since the beginning of the world. The expression "harrowing" in this sense meant "harrying"; it does not relate to our "*haro*". It derives from an older Anglo-Saxon root and is first found in this context in Aelfric's *Homilies* (c. 1000). Another unrelated word with an Old English root is the noun "harrow", an agricultural instrument for breaking the surface of the soil, and the associated verb "to harrow". Figuratively, this last meaning developed a secondary meaning of severely wounding someone's feelings or causing great distress.<sup>33</sup>

26 The use of the word in the last sense survives in Modern English – as in "a harrowing experience" – but by the end of the sixteenth century the parallel French-derived use of "Harrow!" as a synonym for "Help!" was becoming rarer. It soon disappeared. As a cry of help, the expression occurs three times in Spenser's *Faerie Queen* (1590-96) but not at all in the whole of Shakespeare's *oeuvre*. The ghost of Hamlet's father certainly utters the word "harrow" to memorable effect, when he appears in front of his petrified son, but this is as a verb in the older English sense of "lacerate" or, figuratively, "distress greatly"<sup>34</sup> -

"I could a tale unfold whose lightest word  
Would harrow up thy soul, freeze thy young blood,  
Make thy two eyes, like stars, start from their spheres,  
Thy knotted and combinèd locks to part

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<sup>32</sup> *Ludus Coventriae or the Plaie called Corpus Christi*, ed. K S Block (London, 1922), p. 374.

<sup>33</sup> On these meanings and their etymologies, see *The Oxford English Dictionary* (Oxford, 1989) under "harrow".

<sup>34</sup> *Hamlet*, Act I, Scene 5.

And each particular hair to stand on end,  
Like quills upon the fretful porpentine."

27 We may conclude that far from being purely Norman, or even French, "*haro*" was for many centuries a familiar word in the English language, albeit that its usage after Shakespeare's day must have tended increasingly towards conscious archaism. In France this mode of talking was also replaced by the modern "*Au secours!*" Outside of the Norman legal "*haro*", the word survived, and still survives, in the French expression "*crier haro sur ...*" – to denounce or shame. Le Gros quotes an example from a fable of Jean de la Fontaine (1621-1695), *Les animaux maladies de la peste*, in which the animals "*cria haro sur le baudet*" merely because the donkey, although having morals no worse than the rest, was perceived to have the lowest social status<sup>35</sup>. Today the expression "*Haro sur ...*" is a staple of headline writers in the French-speaking world. "*Haro sur les paparazzi*" was thus one newspaper headline in the immediate aftermath of the death of Princess Diana in 1997.

### **Norman legal institution**

28 The history of the *clameur de haro* is treated in detail and at length by Pissard in his well-known study. In the earliest legal source to mention the Norman *clameur de haro*, the thirteenth-century *Summa de Legibus* or *Grand Coutumier*, it appears only a remedy for criminal matters. It was permitted to be cried in cases of imminent peril from fire, assault, rape, robbery and the like. Upon the cry of *haro*, the culprit could be immediately arrested and imprisoned but a person who was found to have cried *haro* without good cause was liable to strict punishment. Those who heard the cry were also obliged to rush to the victim's aid and to arrest the culprit or, if necessary, to chase the culprit whilst raising a renewed cry of *haro*. A principal function of the original *clameur de haro* was thus the press-ganging into action of an improvised police force.

29 This sort of custom was far from unique to Normandy. In earlier times the Franks had analogous laws; Pissard refers to the law of *ligatio*, which appears also to have been premised on a formal cry by the victim. Such laws, Pissard suggests, never fell into desuetude in Normandy but were taken up, formalised and expanded by the Norman sovereigns at the end of the twelfth and the beginning of the thirteenth centuries. Pissard further notes that similar laws existed or developed in Germany, the Scandinavian countries and especially England, with its "hue and cry", which is treated in the *Legibus Et Consuetudinibus Angliæ* associated with Henry Bracton (c. 1210-1268), as well as its earlier laws of collective responsibility for policing. Moreover, in other parts of France during the Middle Ages, there were many cries which resembled, more or less, the Norman *haro*, and sometimes even bore the same name. Thus in Philippe de Beaumanoir's *Coutumes de Clermont en Beauvaisis* (1283) it is apparent that, in order for a husband to have the right to kill his wife, when the latter is caught "*en flagrant délit*", he

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<sup>35</sup> Le Gros, *Droit coutumier de Jersey*, p. 28.

must have raised a cry; that those who seek aid must shout “*Hareu, hareu*”; and that this cry obliges neighbours to render immediate assistance to the victim and to arrest the villain.<sup>36</sup> Other examples of the use of the cry from outside Normandy are referred to by Valerie Toureille<sup>37</sup>. We should also remember that in an age defined by low literacy, the cry of *haro* was but one of many cries that were heard in the narrow streets to spread news, issue warnings or make other pronouncements.

30 What, then, was special about the Norman *haro*? Pissard informs us that what particularly characterised the early Norman *haro* was that the sovereign of the duchy made the *haro* a matter of jurisdiction for his own court and officers, regularizing its usage and formalising it within a system of laws designed to keep the peace. Whereas in the rest of France the notion that the king was the guardian of public order advanced only slowly, in Normandy this idea was present at an early date and is illustrated through the making of *haro* a *cas ducaal*. But what truly made the *clameur de haro* particular to Normandy, and what turned it into the remedy that we know today, was its development into the civil sphere. In matters of possession, the cry of *haro* became an additional remedy to the plea of *novel disseisin*, speeding up the procedure by stopping the act in dispute then and there.<sup>38</sup> As already noted above, this development into the civil sphere was already evident in the late thirteenth century: Pissard notes two judgments, dating from 1292 and 1293, in which the *clameur de haro* functioned as a civil remedy. Though the primary domain of the *haro* long remained the criminal law, its importance as a possessory remedy grew and by the sixteenth century the criminal *haro* was almost unknown.<sup>39</sup>

31 Evidently, not everyone was pleased by this development. One such was Thomas Basin (1412-1491), Bishop of Lisieux and chronicler of his times<sup>40</sup>. Writing in the second half of the fifteenth century, he complains that it would take a long book to set out all the inconveniences that were daily being caused by the *clameur de haro*. The cry of *haro*, to which all had recourse, served only to fan the flames of disputes concerning possession of property of all types, whether movable or immovable. It sufficed only for a single word to escape from someone’s mouth for the procedure to be commenced, but once commenced the parties would find themselves trapped in its net and could escape only at great cost and with difficulty, even if they had become reconciled. The only people, he continued, who had reason to be pleased by this “invention of the cry of *haro*” were the lawyers. The *clameur de haro* was but one of many iniquitous *coutumes* of “my poor Normandy” which had served to enrich the legal profession. Not the least of his complaints was that some lawyers had now become so wealthy on the back of the *clameur de haro* and other

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<sup>36</sup> Philippe de Beaumanoir, *Coutumes de Clermont en Beauvaisis* (Paris, 1970), II, paras. 1571, 1956.

<sup>37</sup> Valérie Toureille, “*Cri de peur et cri de haine: haro sur le voleur*” in *Haro! Noël! Oyé! Pratiques du cri au Moyen Age* ed. Lett and Offenstadt (Paris, 2003).

<sup>38</sup>K. Parrow, *From Defence to Resistance: Justification of Violence during the French Wars of Religion* (Philadelphia, 2007), p. 17-18.

<sup>39</sup> Pissard, *Clameur*, Chapter VI.

<sup>40</sup> Thomas Basin, *Apologie ou plaidoyer pour moi-même*, tr. from Latin by Charles Samaran (Paris, 1974), Book II Chapter X, “*Du cri vulgairement appelé de haro et du statut des avocats en Normandie*”.

iniquitous laws that it was not unknown for nobles to rejoice if they found an advocate or an advocate's son to take their daughter's hand in marriage.

32 It may have been complaints such as these that lead to an *Ordonnance* of 1497, mentioned by Pissard, which provided for the parties' dispute to be settled at a final trial and for the parties to set out their respective cases in writing<sup>41</sup>. The procedures adopted for the civil law *haro* are described in some detail by Pissard and I have not sought to summarise them here.<sup>42</sup>

33 The *clameur de haro* and the special customs of Normandy were recognised as having such force that the kings of France added to their ordinances, edicts, declarations and letters patent a standard clause preserving the validity of what was ordered "*nonobstant clameur de haro et Charte Normande*". This practice continued until the fall of the *ancien régime* at the end of the eighteenth century and the abolition of Norman customary law.

34 The early use of the *clameur de haro* in Jersey in criminal matters is well illustrated by the numerous cases brought before judges sent to the Island from England to hear the 1299 and 1309 Assizes.<sup>43</sup> To what extent it is possible to analyse and describe the use and development of the *clameur de haro* in the Channel Islands down to the seventeenth century is beyond the competence of this author but the local custom appears at any rate to have followed a parallel course to the continental: the civil *haro* must have been recognised and growing in importance it eventually eclipsed the criminal. In the late seventeenth century Poingdestre (1609-91) wrote, somewhat surprisingly, in his *Commentaires sur l'Ancienne Coutume de Normandie* that the *clameur de haro* applied in Jersey to criminal as well as civil matters. The scope of the latter extended not only to the possession of land but also to "*rentes, services, servitudes, bastiments ou autres ouvrages, Jurisdictions, destournements d'eaux courantes, franchises & choses semblable*."<sup>44</sup> Writing not long afterwards Le Geyt (1635-1716) gives us a very different view as to whether the criminal *haro* still applied. The *clameur de haro*, he said, was not used in Jersey for criminal matters but only for "*des faits possessoires en Héritage*".<sup>45</sup> Thus, in his view, it was restricted to civil disputes concerning the enjoyment of possession of immovable property. This is consistent with the evidence before the 1861 Commissioners on the Civil Laws of Jersey and it is in this form that the *clameur de haro* survives as part of Jersey law.

## Conclusion

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<sup>41</sup> Pissard, *Clameur*, p. 104.

<sup>42</sup> Pissard, *Clameur*, Chapter VI.

<sup>43</sup> These have been recently gathered together in an accessible format by Lori-Ann Foley, *Raising a Clameur* (Jersey, 1999). Otherwise see *Rolls of the Assizes held in the Channel Islands 1309* (Jersey, *Société Jersiaise*, 1903); *The Jersey Assize Roll 1299*, unpublished ms. of Charles Stevens, 1978, held by the *Société Jersiaise*.

<sup>44</sup> Poingdestre, *Commentaires sur l'Ancienne Coutume de Normandie* (Jersey, 1907), p. 30-31.

<sup>45</sup> Le Geyt, *Constitution, Lois et Usages de Jersey* (Jersey, 1846), I p. 294ff.

35 The *clameur de haro* was not raised at William the Conqueror's funeral. The word does not derive from an appeal to Rollo. The form of words used in the Jersey and Guernsey today in order to raise the *clameur* is based on a myth. *Haro! Haro! Haro! A l'aide mon Prince. On me fait tort.* Does such a procedure truly belong in the laws of an international finance centre of the twenty-first century? Is it appropriate that the private individual may impose an injunction upon his fellow citizen by the mere utterance of a formula of words, a curious invocation to a long-dead prince which would seem more at home in the pages of the latest Harry Potter than a modern legal system? Is it right that a person may be liable for contempt of court for what in reality could be no more than a procedural error?

36 These questions are worth asking but it is submitted there is no case for abolition of the whole custom. The raising of the *clameur* in any of the Islands remains a rare occurrence; we are certainly far from being in the position described by Thomas Basin in the fifteenth century. This is not to say that the *clameur de haro* cannot be misused. Indeed it has often been wrongly raised and sometimes the abuse has been flagrant.<sup>46</sup> But the court has power to penalise a wrongful claimant in costs, and also, if justified, by way of contempt of court. Were the inappropriate raising of the *clameur* to become a real and pressing issue, the custom could no doubt evolve, rather than be abolished.

37 It is beyond the purpose of this article to consider the present-day legal procedures in detail. But there is, at any rate, surely scope in principle (even if it might require statutory intervention) for the courts, at the earliest possible opportunity after the *clameur* has been raised, to consider not only the whether the case falls within permitted jurisdiction at customary law, but also whether a "*haro*" injunction should be continued pending trial and, in that respect, to adopt the ordinary principles applied by the courts for status-quo preserving interim injunctions deriving from *American Cyanamid Co. v Ethicon Ltd.*<sup>47</sup> In this way the injunction privately obtained would be of strictly limited duration and the matter would thereafter be assimilated with the ordinary principles for interim injunctive relief.<sup>48</sup>

38 Whether a wrongful claimant is to be punished for contempt and, if so the fine or other penalty to be imposed, is a matter for court's discretion and good sense. But a penalty in costs is no doubt sufficient where an error has been made in good faith and the claimant need not in the normal course be found guilty of contempt except where that would otherwise be the case. The fact that the *clameur* is limited to matters of local immovable property<sup>49</sup> largely delineates it from the concerns of the finance industry. The

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<sup>46</sup> On abuse of the *clameur*, see de V Carey, *The Clameur de Haro*, [1991] 11 *Guernsey Law Journal* 31-35.

<sup>47</sup> [1975] AC 396. In Jersey see, by way of example, *Play Limited v Legato Assets Limited* [2006] JRC 021. In Guernsey the jurisdiction of the court to grant an interim injunction stems from the Law Reform (Miscellaneous Provisions) (Guernsey) Law 1987.

<sup>48</sup> A rather more drastic solution to the same end would be to introduce a requirement that the leave of the court must be obtained before raising the *clameur de haro*.

<sup>49</sup> De V Carey (then H M Procureur for Guernsey) suggested in 1990 that the *clameur* would be available in Guernsey to protect movable property in at least two instances: (a) to protect the possession of a tenant under a lease of an immovable (in Jersey, only a lease of less than nine years would count as movable property) and (b) certain fruits of the earth which are deemed by statute in Guernsey to have become movable on a particular date notwithstanding that they have not yet been harvested: see *The Clameur*

*clameur de haro* might be objectionable if, within its field of application, there was no alternative way to obtain an immediate *ex parte* interim injunction to preserve the status quo. But, in principle, an interim injunction could equally be obtained on matters of immovable possession by *ex parte* application under the *American Cyanamid* principles referred to above, as for other claims, even if those principles are more restrictive. Other improvements and clarification to the procedure could no doubt be made.<sup>50</sup> But that does not mean that the historic substance of the remedy need be lost. The formula of words used might be based on a myth. But it has stood for many centuries and in the process has acquired a life of its own. In any case, the appeal to “*mon Prince*” can equally be understood as an appeal to the Crown as constitutionally the ultimate guarantor of justice. In the final analysis, the *clameur de haro* belongs not to the intricate utilitarian workings of the law but to its public face. Like the public face of a fine historic building, the ancient customs of these Islands help define our sense of place, tradition and community. We would be poorer without them – and they remind others less familiar with our ways that we have a long and independent legal history.

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*de Haro* [1991] 11 Guernsey Law Journal at 34. It is submitted that in both these cases what is argued for is an extended definition of what technically counts as an immovable for other purposes, rather than an incursion into the area of what may be called movables proper. The link with land is evident in both cases. It is submitted that policy should not extend the ambit of the *clameur de haro* where other remedies are already available, so that the question of what strictly counts as immovable for the purpose of the *clameur* ultimately depends on what may be gleaned from a detailed examination of the prior practice of the Channel Island courts and other authorities.

<sup>50</sup> For discussion of the Guernsey position see De V Carey, *The Clameur de Haro* [1991] 11 Guernsey Law Journal 31 – 35.