PUTTING ONESELF ON WHOSE COUNTRY? CARMARTHENSHIRE JURIES IN THE MID-NINETEENTH CENTURY

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Prologue

IT is now many years since I had the dream I am about to recount, though I will never forget it. I was about to start teaching a course on medieval legal history at Aberystwyth at the time. It was an exciting period for me for I felt that at last, after a year of giving lectures on such topics as the law relating to cheques (my knowledge of which, like Bede's sparrow flying through the mead-hall[1], came from nowhere, flapped briefly and then returned into darkness forever) I was about to teach "my" subject. Then I had the dream. In it I emerged from the main lecture theatre having addressed the class on some weighty medieval issue. Outside on the steps stood the unmistakeable bearded figure of Dafydd Jenkins. He was shaking his head slowly from side to side. "Rubbish" he said, "Complete rubbish".

Dafydd Jenkins was a hard act to follow within the Aberystwyth Law Department, as my subconscious so graphically reminded me that night. I was, moreover, perhaps not the right person to try. Dafydd was, is, Welsh, a proud Cambridge graduate, eminent, elegant and imposing. I was, am, English, went to "the other place" and, well, none of the rest. I was frightened of him. Yet over the last quarter of a century the fear evaporated, to be replaced by rather different sentiments. The paper which follows is one which I associate particularly with Dafydd. I gave a first version of it to the Fourteenth British Legal History Conference held in Edinburgh in 1999. I well remember walking back with Dafydd from the city centre to the Hall of Residence in which we were both staying. It was not a short walk and the irony of the fact that I was troubled by a sore hip joint and was struggling to keep pace with a man considerably my senior was not lost on me. Thereafter, over a drink, I was comprehensively "out-anecdoted" in a most convivial evening. It is right too, I think, that the text should appear in a publication of

[1] Bede *Historia ecclesiastica gentis Anglorum* ii,13.

this Society. I travelled down with Dafydd for the Inaugural meeting in Cardiff. On our return, as the car flashed past Pont Abraham Services in the early hours of the morning my intellect seemed to have gone the way of my hip joint. Not so with Jenkins! "Let Helen hold Blackacre", I remember him beginning a critical exegesis on the law of obligations. He is still a hard act to follow, but while my respect for him remains the fear has given way to friendship and affection. It is with these sentiments that this paper is presented.

Introduction

I feel rather sorry for Talfourd J, though such sympathy for members of the nineteenth century judiciary is not a frequent response which I encounter in my researches into the administration of the criminal law. Thomas Noon Talfourd was a scholar and a member of a powerful literary circle[2]. The author of *Ion* and *The Athenian Captive* was a friend (and subsequent executor and editor) of Charles Lamb and knew Leigh Hunt, Wordsworth, Coleridge and, though he was rather more diffident about it, of the society painter and possible serial murderer Thomas Wainewright[3]. He was MP for Reading, which town he praised extravagantly in his poetry ("the cradle and the home of generous thought[4]") and made his legal reputation as the motor for change in the law of copyright which resulted in the Copyright Act 1842[5]. He died whilst charging the Grand Jury at Stafford in 1854. It was not, I suspect, the first time that a jury had taken his breath away.

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[2] For Talfourd see E. Foss *A Bibliographical Dictionary of the Judges of England* (London, 1870) pp.648-9, *Dictionary of National Biography* vol XIX (London, 1909) pp.343-6, A.W.B. Simpson (ed.) *Bibliographical Dictionary of the Common Law* pp.500-1.

[3] For Talfourd and Wainewright see A.Motion *Wainewright the Poisoner* (London,2000)p.ll8.

[4] The author had a Welsh connection. The volume of his poetry which 1 used in the National Library of Wales bears an autograph inscription from Talfourd to "William Jones of Glandwr".

[5] See C.Seville *Literary Copyright Reform in Early Victorian England* (Cambridge, 1999), which explores Talfourd's role.

In July 1851 Talfourd presided over his first[6] Assize in Carmarthenshire. He arrived in the county town at 6pm on a Saturday in "very unfavourable"[7] weather. He was met by the javelin men who had fortified themselves by partaking of a "handsome dessert and wine" at the Ivy Bush. Things did not start well however as the Commission did not arrive until the North Mail came in and Sir Thomas had to wait for two hours before events could officially begin. On the next day he will no doubt have been captivated by the preaching of the Assize sermon by Archdeacon Bevan at St Peter's church which took as its text "If thine eye offend thee, pluck it out". Talfourd opened the judicial business of the Assizes by congratulating both the Grand Juries (for Carmarthen, as we shall see was blessed with two) on an absence of crime in their jurisdictions. Criminal behaviour was, he said, often occasioned by a lack of education or by drink. I wonder if he had cause to remember the implied compliment to the learning and sobriety of the society of West Wales on his way home.

The criminal business of Assize was proceeding when Talfourd had his first surprise. During a recess one of the jurors, David Thomas the publican of the White Horse in St Clears, went home, having arranged for someone else to take his place. Talfourd was bemused "This is something novel. I am not aware that he has power to make any such arrangement"[8]. Thomas was fined £5 and the business continued. A number of cases had been decided before Samuel Jones was arraigned and, the trial having concluded, the jury was asked, under a procedure which had been introduced by statute in 1827[9] to prove an earlier conviction from Neath. "We know nothing about that at Neath" they say, provoking laughter in the courtroom. The judge explained the factual nature of the inquiry. "We know nothing of the Neath business" asserted the jury before finally agreeing that the earlier conviction was proven[10].

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[6] *Carmarthen Journal* 13/June/1851.

[7] The details are taken from the *Carmarthen Journal* 25/July/1851.

[8] *Ibid*

[9] 7&8 George IV, si 1.

[10] *Carmarthen Journal* 25/July/1851. Although the press report and the laughter in court suggest this was a simple misunderstanding of the jury's role in that they were not being asked as to whether the earlier conviction was correct in fact the jury's position is entirely defensible. The Act requires that there be "Proof of the Identity of

Then Morgan Thomas, a drover, was tried for forgery. The prosecution opened its case and evidence had been begun to be given when Talfourd stopped the proceedings and asked if the jury understood English. Several members replied in the negative. Perhaps choosing to ignore the worrying implications which such an answer might have for the business already transacted the judge had an interpreter sworn and continued with the trial". The case against the defendant was a very strong one and Talfourd's summing up was strongly in favour of conviction. The jury acquitted. The newspaper account reports an interesting exchange: "His Lordship: "Gentlemen is that really your verdict?". The Jury replied in the affirmative. The Judge: "Very well"[12].

Perhaps Talfourd was relieved when the County business was concluded, for another jury was empanelled to try the prisoners from the Borough. It was they who heard the evidence against John Davies, tried for obtaining by false

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the Person of the Offender", though it does not specify how, or to whose satisfaction, that proof should be made. The jury, in "knowing nothing" of the Neath proceedings presumably knew nothing as to whether the person named in the certificate of previous conviction was the same man who stood before them. As we shall see personal knowledge might be a matter of some import to the jury at this time. As will become apparent newspaper reports have been used extensively within this paper as evidence of activity in court and for direct quotation of speech. Clearly however such sources are not beyond question as to their authenticity. Not only may newspapers work to a political and editorial agenda (The *Carmarthen Journal* and *The Welshman* were politically opposed) but also the mechanics of transcription argue against the creation of an exact *verbatim* record, as differences between different newspapers' accounts of the same proceedings demonstrate. Nonetheless I have no reason to suppose misrepresentation in the reporting of the factual results of the cases, whilst I suspect -but cannot of course prove- that the essence of transactions in the courtroom is likely to be sufficiently accurate to qualify as useful evidence. Though I have enjoyed making use of "direct" quotation from individuals in reports, I cannot claim to be sure that they represent precisely the words spoken.

[1,] In the trial of William Perkyns for embezzlement on Assize at Cardigan in 1876 the judge, who had been moved to laughter by the antics of the jury, swore in an interpreter at the conclusion of a case after the jury had failed to reach a verdict and had his notes translated for the benefit of the jurors who did not understand English. Despite a summing up "strongly against the prisoner" the jury eventually returned a verdict of not guilty. See the *Cardigan and Tivy-Side Advertiser* 14/July/l 876. 1 am grateful to the staff at Ceredigion Archives for this reference.

[12] *Carmarthen Journal* 25/July/1851.

pretences. He was convicted after a long retirement by the jury, who however recommended the prisoner for mercy. Again the newspaper report suggests that the judge was rather unprepared for this turn of events: "His Lordship: "On what grounds Gentlemen?" The foreman "Because, my Lord of the great intricacy of the case" (roars of laughter followed this announcement). His Lordship: "Gentlemen, let me ask you whether you all understand the nature of the case". The Jury: "Yes my Lord"[13].

Whether Talfourd discussed these matters on his return to the dinner tables of literary London is unknown. He had at least had the satisfaction before witnessing the events of the courtroom of being able to congratulate the Grand Juries on the absence of crime to be tried. Such sentiments had been expressed by other judges who had been on the Circuit. Indeed it was a commonplace in the nineteenth century, with Wales - Gwlad y menyg gwynion ("Land of White Gloves") - known by the token given to those who presided over its crimeless "maiden" Assizes[14]. In such a degree of order, as Baron Pigott, told the Court in Carmarthen in 1866, the Welsh were superior to their Eastern neighbours: "I wish the English counties could boast of the same minimum of crime as you have in Wales"[15]. Not all however were convinced that the Grand Jury was performing its duties with the utmost diligence. A discordant note in the chorus of praise apparently came from Brett LJ addressing the Grand Juries of Cardiganshire and Pembrokeshire in the 1880s: "Gentlemen," he said "I would willingly congratulate you on the non-existence of crime in your several counties IF it did not exist, but as I believe it does exist, though by some means it is not brought before me, my congratulations must assume a modified form"[16].

" *Ibid.*

[14] See D.Jones *Crime in Nineteenth Century Wales* (Cardiff, 1992) ch.l. For an example of the practice see the presentation of gloves to Crompton J. there being no prisoners from Carmarthen Borough, *Camarthen Journal* 23/July/l 852.

[15] *Carmarthen Journal* 20/July/1866.

[16] Quoted in Jones *Crime in Nineteenth Century Wales* p.3. Like Jones (see his footnote 9) I have some difficulties with the quotation, my own being that it, by his account, was addressed in the same terms to both Grand Juries. I do not doubt its substance however.

The aim of this paper is to investigate jury behaviour in an area of Wales in the mid-nineteenth century. The survey concentrates in particular upon the County of Carmarthenshire and its boroughs between around 1845 and 1875 and forms part of a continuing investigation of the treatment of crime and disorder within that area and period. The analysis offered here does however draw on evidence from outside the county and reference will be made in particular to events in neighbouring Cardiganshire. The validity of the conclusions which may be drawn from this analysis for other areas of Wales and beyond is a matter which awaits the historians of those other areas, but for my own part I suspect that at least some of the findings may have resonance in other counties. The picture presented here is of competing models of law enforcement in collision: an asocial legal model which looks to the establishment of guilt of an individual offence by an individual offender within the courtroom and a rather differently contextual ized view of the legal system which finds expression in the contribution of lay participants in the legal process. It is, I think, improbable that such models should have come into conflict only in one county or even (though in the piece which follows I will address specific issues which undoubtedly give a specifically Welsh dimension to that conflict) entirely to Wales. Such speculation however is not my current concern[17].

I have stated that this paper is concerned with jury behaviour, but a problem immediately arises. Which jury are we to look at? I have already mentioned both Grand and Petty juries, and County and Borough juries, but even this oversimplifies[18]. I have looked at the behaviour of 8 different juries

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[17] Note the perceptive comments of T.A. Green discussing the English jury in *Verdict According to Conscience* (Chicago, 1985). Having ascribed the decline of "jury equity" to changes in policing and punishment regimes in the nineteenth century Green remarks: "Reform of the law of sanctions had an immediate impact on jury behaviour in many trials for felony. Parliament had largely removed the need for massive and daily jury-based intervention on behalf of criminal defendants.... Jury-based intervention did not end in the middle of the nineteenth century. It remains a pervasive and vital aspect of the (so-called) fact-finding process even in lesser felonies where life is not at stake. In that setting, however, it has not always been noticed" (p.363).

[18] The Grand Jury, an institution effectively abolished in 1933, was responsible for determining whether the indictment should proceed to trial before the Petty (or trial)

having different social compositions - from the Justices of the Peace, Members of Parliament and members of the leading gentry families of the County Grand Jury at Assize, their rather inferior landholding counterparts at the County Quarter Sessions, the manufacturers and newspaper proprietors of the Borough Grand Jury at Assize and the ironmongers and confectioners of the Borough Grand Jury at Quarter Sessions and the respective petty jurymen. These latter were comprised to an overwhelming degree of farmers within the County, though the identities of Borough petty jurors remain elusive[19]. Clearly then "the jury" was an institution which in its particular

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Jury. For details of procedure see D.Bentley *English Criminal Justice in the Nineteenth Century* (London, 1998).

" Jury qualification for County Quarter Sessions Grand juries and County trial juries was settled by the Juries Act 1825 (6 Geo.IV c.50) s.l which lays down the property qualification for such bodies as, in brief, £10 a year in freehold land and/or rents or £20 worth of property under a long lease. For Wales the qualification was three fifths of this amount. This differential was removed, and qualifications further amended in an Act of 1870 (33&34 Viet, c.77, s.7). Assize Grand Jurors are not mentioned in the 1825 Act specifically, their elevated composition being apparently a matter of settled custom at this time. Qualification for Borough Grand and Petty juries at Quarter Sessions are fixed by the Municipal Corporations Act 1835 (5&6 Will.IV c.76, s. 121) and dependent simply on the status as burgess. Carmarthen Borough's rights under its Charter to jurisdiction over felony which was tried before Assizes (taking this role at the demise of Great Sessions in 1830) necessitated an Assize Grand Jury, but the 1835 Act does not regulate this. To discover the types of individuals actually on the juries involves a little cross referencing. Grand Juries (Assize and Quarter Sessions, County and Borough) are listed in *The Carmarthen Journal* in its reports of sittings and the names can be checked against Census data. Petty jury lists do not appear. For Quarter Sessions (but not Assizes) the list of those summoned appear (though not invariably) in bundles of Quarter Sessions papers. Rarely the clerk has ticked those who actually serve. The preponderance of farmers on trial juries which is anecdotally mentioned in newspaper references (and which 1 take to be applicable to Assizes also) is confirmed in this source. For example, for the Easter Quarter Sessions 1841 all 35 names on the list were farmers (Carmarthen Record Office-hereafter CRO -QS Box 2), in July 1846 52 out of a total of 60 are so described (CRO QS Box 6) Not much changed after the 1870 Act, in January 1871 32 out of 36 on the list are farmers, in October 1871 35 out of 36 (both CRO QS Box 14). The most elusive individuals are the Borough trial jurors, I have found no names for these at Assize or Quarter Sessions. It is possible that they represented a greater social mix because of the relatively small number of persons entitled to sit. The report which preceded the 1835 Act and which revealed significant political manipulation of the Carmarthen jury

manifestations was comprised of a range of property holders, its composition more clearly marked by those it excluded than those it included. It might be thought dangerous to ascribe any element of shared community mentality to such a diversity of persons. Indeed I will in the ensuing discussion distinguish at times between the sentiments which might inform the different juries. Yet I will also propose that there are important links, cemented by experience, between factors which influenced the operation of the different juries as well as important differences.

The Petty Jury and the "Perverse" Verdict.

Throughout the nineteenth century Welsh trial juries had a reputation for the perversity of their verdicts. Anecdotal evidence as to this general reputation is seen in a number of sources, whether dating from the early or later decades. So, for example, evidence brought before the Select Committee on the Administration of Justice in Wales 1817-21 spoke of jurymen determining their verdicts before hearing the evidence, whilst the 1829 Commissioners on the Superior Courts of Common Law saw the partiality of jurors as a major deficiency in the operation of the moribund Court of Great Sessions[20]. Haifa century later the same sentiments are still current. In 1877 an article in the *Cornhill Magazine* makes the first reference I have come across to the story of the eminent Welsh judge remarking as his hounds overtook a hare "By G-d, A Cardiganshire jury can't save her now!"[21] The author of the piece remarks that "A man who is tried [in Wales] by a jury of his neighbours has always a splendid chance of escape, but if some of them

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stated that "one or two of the labouring class" were known to have served. *(First Report of the Commissioners to Inquire into Municipal Corporations in England and Wales,* 1835, *Parliamentary Papers,* vol.xxiii, p.213). Information after 1835 has, if it survives anywhere, eluded me. I am confident however that separate trial juries for the Borough continued to sit during the whole period covered by this paper.

[20] See G.Parry *A Guide to the Records of the Great Sessions in Wales* (Aberystwyth, 1995) pp.xxix-xxxii.

[21] "F.P.C." "The Celt of Wales and the Celt of Ireland" (1877) *Cornhill Magazine* p.674. Whilst preparing this article to be sent off I came upon a splendid anecdote related by Lord Hooson and quoted in the obituary of Roderic Bowen Q.C. *(The*

happen to be also his fellow chapel-goers of the same denomination, his acquittal may, it is feared, be predicted with approximate certainty"[22]. It may be remarked in passing that this anecdote appears in an article entitled *The Celt of Wales and the Celt of Ireland,* for on other occasions when Welshmen do the "right" thing in respect of law and order they are classed by their contemporaries with the English, when the "wrong" they may find themselves grouped with the Irish[23]. Comments from observers as to the Welsh juries' lack of impartiality could be multiplied, but whilst they speak of a powerful impression, important in itself, they are no proof that Welsh juries are more likely to act contrary to evidence than any other. Ideally the researcher would be able to prove the point statistically.

I cannot do this. I have subjected Carmarthenshire's acquittal rates in respect of felony prosecutions to computer analysis and will refer to the results later, but even if I had a suitable control sample against which to judge the findings the difficulty, at this distance of time and without the benefit of listening to the evidence, of identifying "perverse" verdicts would

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Independent 24/July/2001). On the first visit of Lord Parker L.C.J. to Wales Bowen is said to have remarked: "You are about to meet a Welsh jury for the first time. Beware. Welsh juries are against sin-but not dogmatically so".

[22] *Ibid.*

[23] See the expressed intention of the Home Secretary, James Graham, during the Rebecca disturbances that Wales should not become "a second Ireland", quoted in D.Jones "Rebecca,Crime and Policing: A Turning-Point in Nineteenth Century Attitudes" (1990) *Trafodion Anrhydeddus Gymdeithasy Cymmrodorion* p. 105. Lewis Morris (infra note 36) subsequently claimed that if not for governmental concessions after Rebecca Camarthenshire and Cardiganshire would have been left "at the level of Tipperary and Westmeath". See also the comments of the *Carmarthen Journal,* following the lack of an arrest for the murder of Ruth Jones: "It is said of the *Irish* peasantry that their assistance is much more easily procured *against* the law than for it; and Mrs S.C.Hall in her "Stories of the Irish Peasantry", states, that in Ireland, "hundreds of sober honest (?) men will absolutely *know* where a villain is concealed, and yet suffer him to escape and commit more crimes, because their prejudices will not suffer them to *inform."* It is apprehended that our humbler countrymen are not quite free of similar "prejudices"; and the publication of a Welsh translation, or adaptation, of Mrs Hall's short tale of "Do you think I'd inform" would be a work of great benefit to the Welsh peasantry" *Carmarthen Journal* 12/September/1851 (italics original).

make me very wary of statistical analysis. Whilst the electronic manipulation of archival evidence has done much to enable us make sense of quantities of that evidence, it is of limited value in the determination of its quality and the human processes which it records. Anyone who would pretend otherwise would deserve to be considered as the legal-historical equivalent of a snake oil salesman!

Yet having worked with the records for some years I have no doubt that there is substance in the unease of contemporaries in relation to the capacity of Carmarthenshire's juries to surprise those who had heard the trials upon which they sat. It is not only in the cases that went before Talfourd J. that press reports of criminal trials record the surprise of the judge or indeed of the whole court. Insofar as we are able to attempt to reconstruct the state of the evidence (and we must be very cautious indeed if we attempt to do so) against the accused, we are perhaps able to comprehend an element of astonishment. Esther Anthony, tried for larceny before Quarter Sessions in 1851, had the evidence of two witnesses against her. Her alibi having been disproved she put in no other defence. "After a brief summing up by the learned Chairman," the *Carmarthen Journal* relates, "the jury to the astonishment of the whole court, returned a verdict of *Not Guilty.* Another specimen of the intelligence of a Welsh Jury!"[24]. In 1853 two policemen and a railway inspector testified that Elizabeth Henfield, a 13 year old, took coal from the railway. The prosecutors obviously knew that it would be difficult to obtain a conviction, the youth of the offender and the impersonality of the company which was the victim making such a difficulty predictable, and the court was reassured in advance that only a token sentence was sought. Henfield was acquitted. The Chairman of the Sessions offered the defendant some advice which seems to indicate that the physical requirement of the offence, at any rate, had been satisfied. "I hope", he admonished, "that this will be a warning to you and that in future you will not attempt to take anything that does not belong to you, whether in sport or earnest"[25].

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[24] *Carmarthen Journal* 7/March/l 851.

[25] *Carmarthen Journal* **1/July/l** 853. It is of course possible that the defendant was found by the jury to have lacked the necessary *mens rea,* the reference to "sport" perhaps suggesting this. It is also possible, as the prosecutors seem to have feared, that they did not dwell too long upon such legal subtleties. For a similar attempt to

Sometimes it is the lack of surprise at acquittal which is the telling detail. Thomas Davies, the farmer tried in 1866 for an unnatural offence with a heifer (he is unforgettably listed in the Felons' Register, which carries a photograph of his lugubrious countenance, in the box reserved for the description of his complexion. Amongst the many descriptions of individuals as "pallid" or "fair" Davies's "cadaverous" adds a rare Gothic touch[26].). Davies would not be convicted of this offence. As we will see, none of those charged with it before a jury ever were in the evidence assembled for this paper. *The Welshman* newspaper knew as much, observing with a knowing smile that "perhaps the strongest evidence in favour of the prisoner was given by his sister who stated that on the day in question (a Sunday) she saw her brother read the Pilgrim's Progress. What jury could withstand such evidence?"[27].

While the vast majority of "perverse" verdicts are acquittals this is not universally so. The choice of the jury to reach its verdict independently of the evidence could operate against the prisoner on occasion. In 1853 John Harries, a quack doctor, was found guilty of theft despite the Chairman of the Quarter Sessions issuing the instruction that there was "insufficient evidence to convict". Rather apologetically, I think, he sentenced the luckless Harries to one day's imprisonment.[28]

Perversity, Independence and Exclusion

Why were Welsh juries, even to an age not entirely unaccustomed to the practice of "jury equity" regarded as so notably unreliable? One solution which found favour at the time was quite straightforward: ignorance. We have seen that the county petty jurors were fanners, those of the Borough probably even less genteel. If this were not bad enough for a society for

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cast acquittal as an admonition see the trial of William and Mary Ann Fagan for theft before Crompton J. on Assize: "His Lordship in discharging the prisoners said they had met with a merciful jury, and he hoped they would take the warning given them." *(Carmarthen Journal* 23/July/l 852).

[26] CRO *Felons* '*Register* (Acc.4916-hereafter F.R.) DO. 1133.

[27] *Welshman* 9/March/1866

[28] *Carmarthen Journal* 1/July/l 853.

whom the tilling of the field was an antiquated if necessary means of earning a living, its ancient practices ripe for improvement by science and by estate-owners but still less exciting than manufacture, then the fact that the property qualification for Welsh farmers was less than for their English equivalents was bound to arouse suspicion. It was, of course, difficult to believe that a poor man might be clever. The differential property qualification was abolished in 1870 and it is possible that discontent with Welsh verdicts lay behind the change. This is however difficult to establish as the Bill was barely debated in its passage, though the "little dissatisfaction" which judges had voiced on the matter was put directly to one of the two Welsh witnesses to the Select Committee to which the Bill was referred. William John, the Town Clerk of Haverfordwest, in reply, said that he thought the difference in qualification was not material to the issue. I am inclined to agree with him[29]. We have seen that the ensuing Act did not alter the balance of professions of County jurymen, nor did it render the "reliability" of their verdicts immediately unimpeachable.

It was true that Counsel knew that farmers were very knowledgeable about certain matters, as the provision of details in the courtroom which might require some agricultural knowledge indicates[30]. But they could also apparently be prejudiced. In the case of William Jones in July 1871 his Counsel argued of the defendant, accused of theft, that "if the prisoner had not borne the character of an honest man he would not have been able to get a farm" The jury were called upon to deliver an "honest verdict". *The Welshman* newspaper laconically reported the subsequent acquittal under the headline "A Dishonest Verdict"[31]. Such behaviour could be lampooned by those who had, or aspired to, the intellectual prowess which these men so clearly lacked. A press report of 1851 mocks the jury foreman for not

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[29] See the *Select Committee on The Juries Bill* (1870,vi, Parliamentary Papers) p.l03ff.

[30] See the trial of David and Ann Davies for theft of wool *Carmarthen Journal* 1/July/1853. The jury's knowledge of the "semi-civilized" people of Llangeler was also invoked in this case.

[31] *Welshman* **7/July/l 871**. But compare the trial of Margaret Evans accused of stealing milk where the defendant's counsel unsuccessfully tried to refute the evidence having presciently observed that "the Jury as farmers would no doubt wish to protect the interests of farmers" *Carmarthen Journal* 24/October/l 851.

understanding how one transported previously could still be in the country (a question which may have baffled some learned researchers of our own day) and describes him, in terms which indicate that his only relation to advanced knowledge could be as its object not its subject, as having "a countenance which might have been a beautiful study for Lavater"[32]. However, these men, though they may not have been learned, were not necessarily stupid. We are not obliged to, and I certainly do not, accept their verdicts as evidence of rustic imbecility.

They did on occasion display one specific educational failing - they might not, as we have seen, speak English, the language of the courtroom. The 1851 case with which we started is by no means unusual, indeed the *Carmarthen Journal* had drawn attention to the problem more generally earlier in that year[3']. In evidence to the Commissioners on the State of Education in Wales in 1847 the magistrates clerk at Lampeter had revealed that even a Grand Jury at Cardigan had needed him to translate into Welsh for them[14]. Amongst petty jurors the lack of comprehension of English was a much more common event. It is no wonder that evidence might be misunderstood or minds made up in advance of hearing that evidence when it was given in a foreign language. It is true that translators would be provided by the court where a need was seen to arise, though I believe that their task was generally -though apparently not exclusively, as our first case shows—conceived of primarily as being to translate evidence from Welsh to English, not *vice versa.* That case also shows that they were not always requested, a circumstance probably indicative of a reluctance, evident from

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[12] *Carmarthen Journal* IO/January/1851. The newspaper might have been a little more circumspect in its endorsement of physiognomy. On August 13th 1847 it had reported that Mr Jefferson of Montreal had delivered an "admirable" lecture on the subject in Laugharne. The issue of September 3rd carries the story of the lecturer fleeing without paying his bills!

[33] "Some of the jury... who are placed in the box frequently are unable to understand a word of English. It is true both the prisoners and the jury have the advantage of an interpreter, but as the trials are conducted in the English language, the whole of the jury ought to be familiar with that language", *Carmarthen Journal* **11 /July/1**851.

[14] See the comments of Mr Williams in the *Report of the Commissioners on the State of Education in Wales* (1847, *Parliamentary Papers* vol. xxvii Part II) p.61. He relates further that a juryman had once asked him "what was the nature of an action in which he had given his verdict", *ibid.*

other sources, to own up to not speaking English[35]. Yet ignorance of that tongue within Carmarthenshire at this time is unsurprising.. At mid century the county's jury roll contained approximately 2,500 persons. According to the best figures we have, derived from Ravenstein's survey of 1871, some 94% of Carmarthenshire's population was Welsh speaking of whom approximately one third spoke only Welsh. English was not the principal language of the locality'[6]. Nor was any linguistic discrimination of the kind revealed to the Select Committee in 1870 as routine in Pembrokeshire, where jurors were not summoned from the Welsh speaking part of the County unless they were known to speak English, possible within a County which knew no such geographical division.[37]

In 1871 a remarkable letter from Lewis Morris of Rolls Chambers[38] appeared in *The Times* and was reprinted for domestic consumption in *The Welshman.* "Of any twelve common jurors in Mid Wales", asserted the author, "from one half to three quarters are absolutely ignorant, for speaking purposes, of more English than the monosyllables Yes And No. They, or some of them, can understand a little, but a very little, more of the colloquialisms in everyday use, such as relate to the price of food or other necessary matters. The foreman, probably, has as much knowledge as will enable him, if you speak very slowly and with a strong Welsh accent, and use none but the commonest words, to follow a very brief and very clear explanation of the facts". Having gone on to describe the employment of "indifferent" translators in trials, Morris concludes: "And at the end of it all the poor puzzled peasants put their heads together and come to a thoroughly independent decision, which very likely goes the round of the papers as an "Extraordinary Verdict of a Welsh Jury".[39] Interestingly, in the light of what

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[15] See D.Parry-Jones *Welsh Country Upbinging* (London, 2nd ed. 1949) p. 103.

[16] See D.Jones *Statistical Evidence relating to the Welsh Language 1801-1911* (Cardiff, 1998) pp.212, 223.

[17] See the evidence of William John, Town Clerk of Haverfordwest to the *Select Committee on the Juries Bill* (1870 *Parliamentary Papers,*\\) pp. 103ff.

[18] I suspect that this was Lewis Morris the author. It is, I think, improbable that it was his father of the same name, who was the rather more distinguished lawyer. Both were practitioners at this point, the father was on the bench. Both were from Carmarthen.

[19] *Welshman* 24/November/1871

will be stated shortly about the role of the Grand Jury, Morris was of the opinion that this state of affairs presented no great problem for Assize cases since they were so few in number in Wales, but related his observations as to possible remedy only to the ongoing debate about the County Court.[40]

Sometimes in a court where jury, witnesses and defendant all spoke Welsh it was the legal personnel who were very much the outsiders. As Mark Ellis Jones suggests in relation to earlier Great Sessions cases of this character: "In a sense....the interpreter was sworn in mainly for the benefit of the judge and counsel".[41] Sometimes too it seems that defendants would know this. In 1866 Evan Jones, charged with bigamy addressed the jury directly in Welsh assuring them that the charge had been contrived against him by his brother. Bigamy being a crime which was, as the judiciary were well aware, susceptible of easy documentary proof, a fact which served to outflank the jury's tendency towards independent decision making. Jones, like almost all the other persons prosecuted for this offence in the sample studied, was convicted.[42]

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[411] Sometimes the results of the linguistic complication are particularly interesting. Bridget Dowd, an Irishwoman tried by Quarter Sessions in 1853 for theft could speak only Irish and many of the jurors could speak no English. Two translators are used to remedy the mutual incomprehensions and the trial concluded in three languages. I cannot resist mentioning here the proceedings against Julia Gautiere in respect of the theft of shoes in 1851. Taken for a Frenchwoman she is offered the ancient privilege of a jury *de medietate linguae,* an institution preserved by s.47 of the 1825 Juries Act (see Bentley *English Criminal Justice* p.90). In her next appearance in a newspaper report she is described as representing herself as Swiss. She was, in fact, Irish. The prosecutrix having failed to appear she never stood trial in any language, *Carmarthen Journal* 4/July/l 851, 5/September/l 851, 10/October/l 851.

[41] See M.Ellis Jones ""The Confusion of Babel"? The Welsh Language, Law Courts and Legislation in the Nineteenth Century" in G.Jenkins (ed) *The Welsh Language and its Social Domains 1801-1911* (Cardiff,2000) p.589.Note also the case discussed by T.G.Davies , *Who can Expect Health?* (Neath,n.d.) p. 100 where the evidence of an English speaking doctor was preferred to that of a Welsh speaking one who had examined a monoglot defendant in a case of fitness to plead.

[42] F.R. no. 1140, see *Carmarthen Journal* 20/July/I866. Compare F.R. nos. 144, 480, 776, 783, 892 (acquiited),! 176, 1316.

Not surprisingly opinion as to the appropriate remedy for this mutual incomprehension was divided. The Education Commissioners in 1847 predictably stated that it lay though Welsh learning English. The Welsh language periodical *Seren Gomer,* which has been active in the campaign for linguistic pluralism in the arguments surrounding the County Courts Act of 1846, disagreed strongly, expressing outrage at the report of the dismissal of monoglot Cardiganshire Assize jurors in 1847 and carrying an impassioned cry for Welsh speaking judges.[43]

Whilst I have so far concentrated particularly upon the issue of language, the distinction between the law and the jurors is, I think, not simply linguistic but more broadly cultural. It was, apparently, in English that the defendant John Hughes, a solicitor's clerk, made his direct appeal to the jury in a case of embezzlement before the Borough Quarter Sessions in October 1865, reminding them that he was "a native of the town and of respectable parents", who were known to the jury members. He was acquitted, but probably remained in court long enough to catch the laconic observation of the Deputy Recorder: "Well gentlemen, that is your verdict and not mine".[44] Issues of community, of locality may also have been in operation.

The Assize in particular might be seen as rather more than a trial of individuals but also a moral audit of the countryside. The Welsh still felt the outrage which the observations on morality introduced into the Report by the Education Commissioners in 1847 had produced. Ieuan Gwynedd Jones has examined the role of *Brad y Llyfrau Gleision,* the "Treachery of the Blue Books", in the development of Welsh political consciousness in the nineteenth century.[45]1 think that the reaction may have extended also into an attitude toward the law, particularly perhaps law as exemplified by Assize judges perceived as outsiders by virtue of residence, language and religion.

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[43] See *Seren Gomer* 1847, p. 126. For the County Courts argument see for example the petition reproduced in *Seren Gomer* for 1845, p.61. The debate is considered in Ellis-Jones,"Confusion of Babel"p.593 et seq.

[44] *Carmarthen Journal* 20/October/1865.

[45] I.G.Jones *Mid-Victorian Wales* (Cardiff, 1992) Ch. 5. "The politicization of the people of Wales grew out of, and was nurtured by, the cultural gap between, on the one hand, what the Blue Books reported and, on the other, the reality as perceived by the communities themselves" (p. 104)

In short I propose that it is possible to see a connection between the blue books and the white gloves.

I have noted in an earlier paper how difficult it was to secure convictions within Carmarthenshire within the period here discussed not only for infanticide but also in respect of other offences related to childbirth, even those where the legal penalty was not so grave as it was for child destruction.[46] I would tentatively suggest, though the point is not without difficulty,[47] that this pattern extended beyond those offences to a wider set of those which we might broadly describe as those connected with "morality" in a sexual or domestic sense - bestiality (to which reference was made earlier),[48] rape and indecent assault,[49] and, to an extent, intrafamilial violence.[50] Such offences, as *Seren Gomer* admitted in relation to

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[46] R.W.Ireland " "Perhaps My Mother Murdered Me": Child Death and the Law in Victorian Carmarthenshire" in C.Brooks and M.Lobban (eds) *Communities and Courts in Britain 1150-1900* (London, 1997) p.229 *et seq.*

[47] It would be possible to go into further details of the cases discussed below, in particular to analyze the characteristics of particular defendants, but I have not done so for the purposes of this paper.

[48] See F.R. nos.333 (no bill), 378 (discharged without trial), 1130 (no bill), 1133 (discharged without trial), 1357 (acquitted). But note that before 1861 this was a capital offence and thereafter subject to a minimum of 10 years' imprisonment (24&25 Viet c.l 00 s6l). The cases could, I concede, represent instances of traditional "jury equity". The last three postdate the Act. Evidential issues may also have proved difficult in such cases.

[49] I have taken these offences together since the indictments tend to be rather elastic (see *infra,* note 60). See F.R. nos. 120 (rape-no bill), 173 (carnal knowledge of a child-discharged without trial), 335 (assault with intent to rape-convicted of common assault), 342 (rape-no bill), 444 (assault with intent to rape-no bill), 733 (assault with intent to rape-convicted), 744 (assault and rape-discharged without trial), 796 (attempted rape-convicted of indecent assault), 803 (assault with intent to rape-acquitted), 938 (assault with intent to rape-acquitted), 974 (assaulting child with intent to rape-acquitted), 986 (assault and rape-discharged before trial), 1094 (indecent assault on a child-acquitted), 1209 (three defendants, "violent and indecent assault"-all acquitted). Note the problems of evidence, in particular where child victims were involved. And see, for example the comments on the cases tried at petty sessions of Henry Morris *(Carmarthen Journal* 29/August/1851) and John Roberts *(Carmarthen Journal* 23/December/l 853).

[50] Most domestic violence was tried, if at all, summarily. What I have in mind are cases such as F.R. nos.258 (attempting to strangle wife-discharged without trial), 527

infanticide, could be seen as bringing shame not simply upon the individual but upon the parish as a whole and, though the journal did not itself pursue the point, by extension upon Wales itself. The glee with which the same periodical seizes upon instances of shocking crimes in England, such as an instance of incest in Hull, indicates that the criticisms of the Education Commissioners still smarted amongst those who wrote, and probably those who read, such material. I am far from suggesting that every jury acquittal can be construed as an act of political nationalism. Rather I believe that older, less legalistic conceptions of order (which included a sense that dirty washing, even very dirty washing, need not necessarily be aired in public) of a kind once to be found more generally in England too persisted in areas insulated, albeit of course not wholly so, by topography and language from the inexorable encroachment of Victorian uniformity and legal individualism. Yet by the same token I am persuaded that the sense of grievance and of a sense that Welsh people had not only been misrepresented but misunderstood by English officialdom was hardly conducive to a rapid and total surrender of traditional practice to the representatives of the Common *(sic)* Law.

Grand Juries: Class and Community

Yet in the areas of "morals offences" there may have been a reluctance not only among petty jurors to convict but also among Grand Juries to sanction prosecution in the first place, by returning as "True Bills" the allegations laid before them. Surely it cannot be argued that the prejudices of the farmers who might distrust the intrusions of the legal system were shared by elements within the local gentry who were (for Justices of the Peace featured prominently on County Grand Jury lists[51]) its agents? The particular social condition of petty jurymen has certainly been considered in some studies of

(murder of wife-convicted of manslaughter, apparently to the consternation of the judge, who remarked; "a nicer shade of distinction between this case and murder is scarcely possible", *Welshman* 16/March/1855), 785 (manslaughter of wife-acquitted), 964 (assaulting wife-tried by petty sessions, insane), 1166 (attempting to poison husband-acquitted).

[51] They acted, it need hardly be said, in a judicial capacity at both petty and-significantly in the context of this discussion-Quarter Sessions.

jury activity which consider the role of wealth and class in jury composition.[52] Yet there are, I suggest, instances of actions by Grand Juries every bit as wilfully "perverse" as those of their socially inferior countrymen.[5'] In the Borough Quarter Sessions for January 1851 Mary Thomas, who "could not speak the English Language very fluently" was before the court on a count of larceny of a coat. The Recorder pointed out as the indictment was proposed that the defendant had given a false account of how she came by the coat and having reminded the Grand Jury that they were not trying the case (for their task was only to judge whether there was sufficient evidence for the trial to proceed) he pointed out that there was "not the slightest difficulty in the case". The Jury returned "No Bill".[54] They did so too in the case of Ellen Donoghue in 1869 on a count of concealment of birth. The body of a child, wrapped in a carpet, was found buried in the field next to her house on the day that Donoghue left the locality. Medical examination revealed, and the defendant did not deny, that she had just given birth. The Grand Jury's inscrutable pronouncement ensured that the case would never be heard.[55] Why such a reluctance to prosecute? It is perhaps significant that it was the Grand Jury who received the praise for the conduct of the population they oversaw when the legal audit of morality was played out at Assize (at least when Brett LJ was not the auditor).[56] But again I think that narrow self-interest was unlikely to be the only motive for an at times

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[52] So, despite their concentration upon evidence from England at an earlier period than that discussed here, the reader is referred to P.J.R. King "Illiterate Plebeians, Easily Misled: Jury Composition, Experience and Behavior in Essex 1735-1815 (p.254) and D.Hay "The Class Composition of the Palladium of Liberty; Trial Jurors in the Eighteenth Century" (p.305), both in J.S.Cockburn and T.A.Green (eds.) *Twelve Good Men and True: The Criminal Trial Jury in England 1200-1800* (Princeton, 1988).

[53] There is local evidence of poor attendance of Grand Jurymen, even at Assize. See for example the comments of Blackburn J. in 1865 (Carmarthen Journal 17/March/1865).

[54] *Carmarthen Journal* 10/January/1851. Note the earlier comments about the relative social position of Borough as opposed to County Grand Jurymen.

[55] *Carmarthen Journal,* 4/June/1869. See Ireland "Perhaps My Mother" p.237.

[56] See for example the praise given to the County Grand Jury by Crompton J viewing the light Assize Calendar: "It showed that the efforts of the wise and good amongst them of late were really taking effect and bringing forth fruit", *Carmarthen Journal* 23/July/1852

exaggerated conception of the requirements of a *prima facie* case. A knowledge, based upon experience, of the futility of sanctioning a prosecution doomed to failure may certainly have played a role. Whilst it might be impossible to predict the outcome of every case, the Grand Jury who viewed Ellen Donoghue's appearance in court might be forgiven for assuming that no conviction would be forthcoming in a trial of that nature. If the legal historian at a distance of almost a century and a half can predict what the petty jury would decide, I am pretty sure that those who sat in the same courtroom could do so, and the temptation to put an early and covert end to proceedings rather than have the embarrassment of an acquittal after the evidence had been adduced in court may have been considerable. Judges too may have shared in the complicity. At the Spring Assizes in 1851 Vaughan Williams J, a native of Carmarthenshire who had learned his trade as recorder of Kidwelly, had suggested that the cases of rape and of bestiality which appeared in the calendar should not be brought to trial "unless necessary", in order to avoid the publicity "which promotes such crimes", although such a sentiment, at least in respect of the latter offence, appears not to have been restricted to proceedings in Wales.[57] Yet I think that these are not the only considerations which might inform the Grand Juries' decisions. Whilst wealth and status might distance the gentleman who perused the indictment from the farmer who determined guilt, experience beyond that gained within the courtroom might unite them.[58] Grand Juries were not

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[57] *Carmarthen Journal* 21/March/1851. No Bill was found against either David Davies (bestiality) or David Thomas (rape). The suggestion that such a comment was general in respect of bestiality cases is derived from comments by Blackburn J. on Assize, *Carmarthen Journal* 9/March/l 866. Note also the comment of Crompton J to the Grand Jury in a case of perjury in 1854 when counselling caution in the indictment unless there is a likelihood of conviction, "since a number of persons escaping conviction on such a charge has a most mischievous result upon the community" *(Carmarthen Journal* 24/March/1854). Whether or not the comments were specific to the locality 1 cannot say, but I am reminded of a comment by the Rev.D.Edwardes about perjury: "Small nationalities, small sects, the oppressed party are rarely conspicuous for truthfulness" *Reminiscences* (Shrewsbury, 1914) p. 14.

[58] Compare T.A.Green in *Twelve Good Men* at p.386 on the trial jury: "It will not do to define the jury solely in terms of the class ties of its members, or of their politics in the simple sense of their conscious identification with, or rejection of, authority. We need to know to know the constraints within which juries acted, even when they

isolated from their countrymen in small face-to-face communities. Serving on the Borough Quarter Sessions Grand Jury in January 1851 was Charles Hill, who lived in the same street, Lammas Street, as the notorious Mary Ann Thomas, a "nymph of the pave" second only in celebrity in Carmarthen to Ann Awbery, who herself lived just around the corner in Goose Street. Stephen Awbery (possibly a relative of Ann's), another member o£th.is jury, could probably look out of his bedroom window in Spilman Street directly onto the crowded and turbulent lodging houses of Dan y Bank.[59] Moreover Grand Jurymen could expect to be approached directly by those who had an interest in a case, such behaviour apparently being common in cases of indecent assault (the rarity of prosecutions for which we have noted earlier, and an offence which allowed of an easy manipulation in the form of the indictment) even into the twentieth century.[60] The crowds that surrounded the courtroom through which the jury men travelled were also capable of conveying ideas that went beyond the rules of evidence.

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were not cognizant of those constraints, and we need to know the psychology that jurors typically possessed when reaching determinations of life and death, even when they were unaware of those feelings". An appreciation of such complexities is, I maintain necessary, *mutandis mutatis,* in the analysis of the behaviour of both Grand and petty juries.

" Residence details are taken from the 1851 census, the Grand jury lists appear in *Carmarthen Journal* 10/January/1851. Much more could be written about Mary Ann Thomas and Ann Awbery. The latter was committed to gaol in 1851 for what the Mayor declared to be her fourteenth time. Mr Alderman Morris suggested it was closer to her hundred an fourteenth! *(Carmarthen Journal* 18/July/1851). Again the position of Assize Grand Jurymen is not exactly comparable, but similar considerations may, I feel, apply.

[60] In 1902 the *Carmarthen Weekly Reporter* stated that when "respectable" persons were charged with indecent assault "every man on the Grand Jury is seen before the trial comes on". An instructive case is that of Henry Davies, alias Jones in 1851. He was indicted for indecent assault although originally he had been charged with "a more serious offence" (presumably rape). The Grand Jury found a True Bill only for common assault, *Carmarthen Journal* 10/January/1851. It was not however only in cases of this nature that the Grand Jury might be briefed in advance. At the trial of Jeffrey Davies in 1861 who confessed to the theft of a watch his father's claim that the defendant was " not in his senses", "and this circumstance seemed to be well known to some of the Grand Jury", *Carmarthen Journal* 11/January/1861. For other such "medical" instances see my comments on the cases of Eugene Buckley and of Frances Anne Jones from 1846 in R.W.Ireland "Eugene Buckley and the Diagnosis of

Another factor may be of importance too. Juries knew that a failure to indict or an acquittal need not be the end of the matter. The extra-legal consequences of offending might be more potent than the activities in the courtroom with older notions of compromise and of stigma brought into play. In one 1870s sheep stealing case the jury acquitted the defendant but it was stated that "all the blotting paper in the kingdom would not wipe the stain from his character".[61] Counsel knew it too, the distinction between legal and social punishment being adverted to in an address to the jury in the case of seventy year old Owen Jones (previously acquitted in Pembrokeshire and Cardiganshire) in 1853: "They (the jury) could not remove the stigma that would *ever* attach to the grey-headed old prisoner for being suspected of such an offence, but they could throw open the prison doors to him and restore him to the bosom of his family" (my italics). He was, of course, acquitted.[62]

As was indicated earlier a statistical analysis of indictment and prosecution records, even though possible, must be approached with considerable caution. At first sight then it seems to run counter to the hypotheses about language and community expressed above to learn that a minority of those cases of felony in the period between 1844 and 1871 which resulted in acquittal, only around 46%, apparently involved defendants born within Carmarthenshire. A very similar proportion of those against whom Grand Juries failed to find a true bill (around 45%) were "natives" of the county. Quite apart from the technical pitfalls which inhere in this analysis,[63] the proportion of occasions upon which "outsiders" were remanded for felony to the gaol (the sample upon which the statistical survey is based) would seem surprisingly high, accounting for (excepting for a moment the technical problems in arriving at this figure) some 57% of remands for

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Insanity in the Early Victorian Prison" (1993) *Llafur* p. 15.

[61] I fear that I have been unable, in producing these footnotes, to find the source of this quotation in wading through the masses of material 1 used in preparing this paper. 1 promise that I didn't make it up!

[62] *Carmarthen Journal* 23/March/l 853

[63] The figures are taken from computer analysis of the 1448 entries in the Register of Felons (for the details see R.W.Ireland and C.Breay "Hard Labour on a Hard Disk": Carmarthen's Register of Felons on Computer" (1993) xxix *The Carmarthenshire Antiquary* p. 61). There are a number of difficulties in the analysis. Firstly the cases represent instances of (generally but not invariably!) custodial remands, not individuals, *i.e.* the same person may appear more than once on different occasions.

felony. In a county the Census return for which in 1851 suggested that 88% of the recorded population were born within the boundaries, a proportion which had dropped only to 85% in 1881, the high representation of "strangers" is compatible with a number of explanations.[64] One of these which may have merit is that the remanded "native" population was already a class which had undergone a more rigorous selection procedure before the decision to remand, leaving a comparison of the jury dispositions of the two groups based on unmatched samples. In any event I stress that it is no part of my contention that local people were not prosecuted or convicted by Carmarthenshire juries, for indeed the corollary to the above indications that sometimes the verdict was more likely to be general to the offender rather than specific to the offence easily accommodates conviction as well as acquittal in particular cases. Rather I think that it is important to recognize that juries were dealing not with statistical aggregates, but with individual cases. In at least some of these, I have no doubt, factors of language and of locality of the kind discussed above, played a part in the construction of the jury's decision. Nothing that I have seen on my computer screen has led me seriously to doubt that.

Secondly I have not investigated within the overall totals the class of persons discharged off remand before trial. Thirdly not all entries include details of place of birth. Fourthly where these are given they often depend on the assertion of the prisoner, who may have good reason not to tell the truth. Finally the question of birth county is not necessarily determinative of community or linguistic cohesion-a drover from Cardiganshire might be a well known "local" figure. In preparing this paper I undertook an analysis of the last residence of the remands as well as their place of birth. In addition to the difficulties outlined above I realized that without any clear indication by those making the record of the qualification for "residence" the figures may beg many questions. It would seem that temporary residence in a lodging house might not qualify, as the details of F.R. no 780 Mary McDermott, recorded as of "no settled home" indicate (see the discussion of her case in R.W.Ireland "Confinement with Hard Labour: Motherhood and Penal Practice in a Victorian Gaol" (1997) 18 *Welsh History Review* p.631), but no clear indication as to positive qualification is apparent. For what the figures are worth they read as follows (all percentages are approximate): Total of remands whose last residence is given as Carmarthenshire-63%, percentage of those acquitted recorded as having last residence in Carmarthenshire-74%, percentage of those against whom "No Bill" was found recorded as having last residence in Carmarthenshire^ 1%

[M] D.Jones *Statistical Evidence* p. 149.

Conclusion

Previous studies have, I suggest, tended to look at jury behaviour too narrowly. Often the acquittal against evidence is seen as being related entirely to the severity of anticipated punishment in a classic instance of "pious perjury". This is clearly important, but I think that the focus may narrow our perspective, one of the many evils of the prevalent fault of taking serious crime as the focus of criminal justice history. Traditional explanations of this kind struggle, I think, to explain the intriguing paradox of farm servants who felt sufficient shame to conceal their pregnancies from the fanners who employed them, only to be routinely acquitted at trial on indictments for concealment of birth by groups of similar farmers.[65] I think jury activity is better seen as part of a wider approach to law and dispute settlement prevalent in rural Wales exemplified by the recollections of D.Parry-Jones in respect of the shooting of a woman by her rejected lover:

> There was a trial, but the court never knew half of what the unsworn juries discussed in the fields. They could tell you how the murderer ran; at what time and at what farm he re-appeared to establish an alibi; who was with him; who met him in his flight to take his gun, and who made the bullet. They related enough, were it related in a proper place, to hang two or three men. But the trial was in an alien tongue and men became mute as they thought of it. Were it a trial in their own tongue where they could feel at home they would possibly have spoken up, for they had no sympathy with the murderers. However a family of considerable means was alleged to have become poor; a few cottagers were alleged to have found it not altogether an ill wind. At any rate they were perfectly and happily convinced that retributive justice overtook the murderer, for he never slept again.[66]

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[65] The flexibility of the extra-legal response to wrongdoing has been discussed in Ireland "Perhaps my Mother Murdered Me" pp.239 et seq. Note also the comments of the Reverend Jenkins to the mother of an illegitimate child "1 asked her how she had the face to come to the sacrament on the Sunday before", *Carmarthen Journal* 24/November/1865.

[66] D.Parry-Jones *Welsh Country Upbringing* p.32. The tombstone of the murdered Eleanor Williams of Llangyfelach, Carmarthenshire dating from 1832 similarly invokes Divine retribution against the unprosecuted murderer.

For the people of Wales the criminal law was part of a process of dispute settlement, not as yet the monopoly force of social control. The "independence" of rural Welsh jurors should be viewed in this broader context, as should the reservations which were expressed in respect of it. Such jurors negotiated, with a knowledge of the circumstances of the offender and the conditions of the community or communities in which he or she moved, the boundaries between legal and social condemnation and punishment. As the paradigm of a uniform and de-socialized conception of the Rule of Law became dominant as the nineteenth century progressed one of the reasons advanced for an expansion in summary jurisdiction has been that it represented a desire to restrict the element of waywardness which the involvement of juries necessarily carried.[67] The idea no doubt depended on the idea that Justices of the Peace were more "sound" and objective in their application of the law than were jurors. Such a belief is not, I think, necessarily true for rural Wales either: but the justification for such an assertion requires another paper![68]

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[67] See the comments by R.Wiener in (1987) 26 *Journal of British Studies* p.88.

[68] I would simply remind readers at this point of the presence of JPs on Grand Jury panels as discussed earlier.