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Judicial impartiality and the use of criminal law against labour:

the sentencing of workplace appropriators in Northern England, 1840-1880

Barry Godfrey[1]

This article explores the framework of penalties available to magistrates for the punishment of workplace embezzlers; and the penalties actually imposed on thousands of factory woollen workers in nineteenth-century Yorkshire. That period saw a key shift in the social composition of petty sessions' courts which raised issues of judicial impartiality. For example, a first glance, the impact of magistrates who were themselves owners of woollen factories on conviction rates for embezzlement seems considerable. Approximately eight out of every ten accused workers who stood in the dock before them were convicted and sentence to a large fine, or one month's imprisonment. This article will explain how such high conviction rates were achieved, and the part that judicial biases may have played in their production.

Cet article étudie le cadre juridique des peines frappant le détournement de biens sur le lieu de travail, ainsi que les peines effectivement appliquées à des milliers d'ouvriers des filatures de laine dans le Yorkshire du 19e siècle. Au cours de cette période, une modification déterminante de la composition sociale des tribunaux compétents dans ce domaine conduit à s'interroger sur leur impartialité. Par exemple, à première vue, l'influence de magistrats propriétaires de filatures sur le taux de condamnation pour ces infrations paraît considérable. Environ 80% des ouvriers jugés par eux étaient condamnés à une forte amende ou à un mois d'emprisonnement. Cet article explique les raisons d'un tel taux de condamnation et le rôle qu'une justice partiale a pu tenir dans ces circonstances.

The late twentieth-century has witnessed a refocusing by criminologists on the issue of judicial bias in the lower courts. Various writers have raised concerns that the sentencing of women, the poor, the young, and ethnic minorities in Britain is unjustly harsh; and, that in part, this state of affairs has arisen because the social and political composition of the magistrates' benches do not match the economic, race and other demographic profiles of the communities they judge[2]. Like their colleagues, historians have asserted that the application of justice in the petty sessions may have been skewed in a way which was critical to the reinforcement of

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2 See, amongst others, Carlen, Worrall (1987), Carlen (1988), Darbyshire (1997), Dignam, Wynne (1997).

class hierarchies, in particular with reference to work disciplines in capitalist society[3]. However, systematic biases against offending workers have never been demonstrated at petty sessional level in the nineteenth-century, possibly because of the unsatisfactory nature of the available record sources[4]. In order to present a new perspective on the use of sentencing dispositions against labour, this article will use the detailed records of the private employer-controlled nineteenth-century agency[5] which attempted to eradicate illegal workplace appropriation or «theft»[6] in the northern textile districts. By utilizing these sources, this article will be able to offer more substantial conclusions concerning the partiality of magistrates in one of the largest and most important industrial regions of mid-nineteenth-century England. In particular, it will consider the impact that the changing social and occupational composition of the West Yorkshire magistracy had on the conviction rates and disposal of workplace appropriators in the mid-nineteenth-century.

There, is of course, a discussion to be had about the role of State agencies in «refereeing» private disputes in private arenas e.g. factory workspaces, and the public «good» that may or may not accrue when both public and private law enforcement agencies combine in this manner. This is too large (and important) a debate to be encompassed within this article. Indeed, the most fruitful approach would be a Europe-wide survey both of the existence and operation of factory workers' customary right to take home workplace materials, and of the responses of the various governments and policing agencies involved in curtailing or accommodating those real or imagined rights. This kind of investigation would be of benefit not only to European social historians, but also help to place into context a significant part of English crime history research. For now, however, we must content ourselves with a thorough exploration of the English experience.

I.

As with most offences, there was a statutorily determined punishment framework for workplace appropriation, which is outlined in Table 1. However, despite there being seven acts passed in this period which could have been used for the prosecution of workplace embezzlers, the 1777 Worsted Acts[7], as they were known, (17

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[3] See Emsley (1996), p. 121-150, Trainor (1993), Hay (1983), Styles (1983), (Godfrey (1999).

[4] For example, the usefulness of the only sets of archival data which could reveal judicial biases against industrial labour – records of Master and Servant and Factory Acts prosecutions – are limited since neither national nor local master and servant statistics survive, or ever existed, for much of the nineteenth-century. Similarly, Factory Act prosecution records, despite being the subject of a considerable amount of study, have not produced a consensus on the partiality of their application. See Carson (1970,1979); Bartrip, Fenn (1983); Nardinelli (1985), Bartrip (1985); Peacock (1985).

[5] The Worsted Committee and their Inspectors were a private, state-funded, detection and prosecution agency which was in operation between 1777 and 1965. The Committee kept quantifiable records of the prosecutions they launched between 1844 and 1876, as well as considerable qualitative material concerning judicial decisions made in those prosecutions.

[6] Workplace appropriation was the illegal taking home of materials which employees came upon during the process of manufacture.

[7] Worsted was a type of wool used by manufactures in the West Riding of Yorshire, and in parts of Cheshire and Lancashire in cloth production.

Geo. III c.56)[8] and the Committee responsible for prosecuting the legislation (created by 17 Geo.III c.11) were the primary weapons used by the employers[9]. The main clauses of 17 Geo. III c.56 proscribed the mere possession of woollen or worsted

Table 1: The punishment structure for illegal workplace appropriation, 1777-1875

Year	Act	Offence	1st offence	2nd offence	3rd offence
1777	17 Geo.III c.56 (the Worsted Acts)	Embezzlement/ Unexplained possession	£20 fine/ 1 mth gaol	£30 fine/ 2 mths gaol	£40 fine/ 3 mth gaol
		Buying embezzled goods	£20-£40/ 3-6 mths	£50-£100/ 3-6 mths	£50-£100/ 3-6 mths
		Selling embezzled goods	£20-£40/ 3-6 mths	£50-£100/ 3-6 mths	£50-£100/ 3-6 mths
1823	4 Geo.IV c.9	Breaking contract	Damages/ 1 mth gaol	Damages/ 1 mth gaol	Damages/ 1 mth gaol
1827	7 & 8 Geo.IV c.29	Larceny of wool in process of manufacture	4 years gaol/ 7 yrs transportation	4 years gaol/ 7 yrs transportation	4 years gaol/ 7 yrs transportation
1843	6 & 7 Vict. C.40	Frauds by Workmen	Restatement of clauses of 17 Geo.III c.56 (1777)		
1861	24 & 25 Vict. c.96 s.62	Larceny of wool in process of manufacture	penal servitude 3-7 yrs/ 2yrs gaol	penal servitude 3-7 yrs/ 2yrs gaol	penal servitude 3-7 yrs/ 2yrs gaol
1867	30 & 31 Vict. c.141	Breaking contract	Damages/ 3mths gaol	Damages/ 3mths gaol	Damages/ 3mths gaol
1875	38 & 39 Vict. c.86	Breaking contract	£20 fine/ 3mths gaol	£20 fine/ 3mths gaol	£20 fine/ 3mths gaol

goods whose ownership was in dispute, as well as the selling/buying of embezzled workplace materials. In order to detect and prosecute infringements of the act a Committee of the most powerful worsted manufacturers in Yorkshire, Lancashire

[8] References to English laws follow the convention of first giving the year of the reign in wich the act was passed, followed by the name of the reigning monarch (in the case the act was passed in 1777, the seventeenth year of the reign of George the Third).

[9] Approximately 184 workers per year were prosecuted in petty sessions courts under the Worsted Acts between 1844 and 1853, when the Committee was at its most active, whereas only approximately thirty workers per year were prosecuted under larceny statutes at quarter sessions between 1840 and 1855, after which the 1855 Criminal Justice Act removed most of even that small number to petty sessions jurisdiction.

and Cheshire (where the acts applied)[10] organized a team of Inspectors who patrolled the region, searched suspects' houses, and were called in by factory owners and foremen to apprehend workplace offenders[11].

The table below (Table 2) portrays the penalties that were imposed on workplace appropriators in the West Riding quarter sessions' courts during 1840 to 1880, as well as the punishments dispensed at petty sessions (where 95% of workplace appropriation cases were heard).

Table 2: Punishments for appropriators dispensed at West Riding quarter sessions, totals for 1840-1845 and 1870-1875[12], and at petty sessions, totals for 1844-76[13]

Length of imprisonment	No. (%) of cases	No. (%) of cases
	Quarter Sessions	Petty Sessions
One to three months	56 (50.0%)	459 (98.5%)
Four to six months	40 (35.7%)	7 (1.5%)
Seven to twelve months	16 (14.2%)	0 (0%)

However, should one wish to reveal judicial biases, these general patterns of punishments may be less useful than an analysis of the sentences imposed on particular occupational groups. Rag dealers or gatherers, waste dealers or fudders, scrap-dealers, and pawnbrokers were repeatedly condemned by West Riding magistrates for providing an outlet for the sale of embezzled goods, and thereby encouraging the crime. Indeed, some justices declared the dealers to be worse than the «thieves» themselves, and wished that they could be eradicated or «put down» like animals[14]. Do these comments indicate that waste and scrap dealers received disproportionately harsh treatment at the hands of magistrates, and if they did, does that mean that judicial biases had intervened in the application of justice?

In order to test this, the occupations of convicted appropriators have been grouped into three categories. As Table 3 reveals, pawnbrokers and dealers did receive the heaviest penalties, and, since the table excludes the offences of buying and selling appropriated goods which attracted severe sentences, the relatively harsh penalties for dealers can only be explained in three possible ways.

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[10] Although, in reality the majority of Committee members were drawn from the major worsted producing regions of Bradford and Halifax.

[11] For an early history of the Worsted Committee see Soderlund (1998) and, for the later period, see Godfrey (1999).

[12] Quarter Sessions depositions,1840-1845, 1870-1875, *West Yorkshire Archives: Wakefield* QS1.

[13] Worsted Committee Registers, 1844-1876 *West Yorkshire Archives: Bradford* 56D.88/4/3.

[14] See 16 Mar. 1848; 11 Oct. 1849; 1 Dec. 1853; 11 Oct. 1855, *Bradford Observer.*

Table 3: Sentences for embezzlement/unexplained possession, by occupation, West Riding, 1844-1876[15]

Occupation	less than 1 mth	£20/ 1 mth	£30/ 2 mths	£40/ 3 mths	4-6 mths	No. cases
Factory employee	3.7	65.5	7.5	21.2	3.7	857
Manufacturer	0.0	93.7	0.0	6.2	0.0	124
Dealer/pawnbroker	0.0	74.9	0.0	0.0	24.9	182

First, it is possible that approximately a fifth of the convicted dealers had previous convictions and consequently received heavier penalties. This is unlikely, since convicted pawnbrokers and dealers would have received heavy attention from the police, and would have found it difficult to keep trading. An alternative explanation is that the magistrates imposed more severe penalties solely because of the occupation of the accused. However, if that was the case, why was the conviction rate for pawnbrokers/dealers (65.3%) lower than that of factory employees (76.9%)? One reason is that the evidence against factory workers tended to be very strong – many employees, for example, were apprehended with appropriated material on their person, or hidden in their houses, which were was difficult to explain away. Moreover, dealers had more reasons to have unmarked cloth on their premises, which lessened the impact of circumstantial evidence, and one supposes that many could «rustle up» an invoice if one should be needed to prove ownership. The third, and most likely explanation, though it cannot be proven, is that those pawnbrokers who found themselves unable to escape conviction suffered heavier punishments to compensate for those that got away. Although they may not have had the chance to punish all the dealers they wished to, magistrates were sure to insist that the ones that they could reach received comparatively «stiff» penalties.

From the figures presented above, it seems that a direct causal link between the occupation of the defendant and the severity of their punishment cannot easily be established. However, this problem can be examined from other angles. For example, the rate of conviction for workplace appropriation, which was higher than that for comparable offences. Whereas the conviction rate for all cases prosecuted by the Worsted Committee between 1844-76 was 82.4%, the conviction rate for the offence of simple larceny at Bradford petty sessions between 1865 and 1870 was only 64.0%, and for the larceny of goods valued at less than five shillings it was only 62.0%[16]. From these statistics it is clear that the Worsted Acts had a much greater success rate than other comparable acts. Was this due to appropriation cases being judged by magistrates who made their money by manufacturing, and was the occupation of the magistrate a predictor of the trial result?

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[15] Worsted Committee Registers, *West Yorkshire Archives: Bradford* 56D.88/4/3-4.

[16] Chief Constable of Bradford's Reports, 1865-70, *West Yorkshire Archives Bradford*, BBC1/1/2.

II.

By approximately 1830, under the pressure of rapid population growth and an expansion of judicial business, the Lord Lieutenant of Yorkshire had been compelled, despite his own grave personal reservations, to appoint men engaged in commerce and manufacturing to the Bench[17]. Knipe suggests that he resisted this administrative imperative long into the nineteenth-century not because of his own prejudice against merchants and industrialists, but because he feared that manufacturing magistrates would not be able to act impartially in cases involving industrial workers[18]. This problem had, however, already presented itself, with rural landowning magistrates being markedly sympathetic to eighteenth-century cottage workers who had fallen foul of early anti-embezzlement laws, as John Styles has noted. Presumably the Lord Chancellor had not known of these problems of partiality, or had decided that the situation could only get worse when industrialists became involved in the business of justice[19].

However, despite the Lord Lieutenant's fears that the aristocratic and landed elements on the county benches would be swamped by industrialists, only 12.5% of those eligible to sit on the West Riding Bench came from the manufacturing and trade sections of Yorkshire society in the 1840 to 1880 period[20]. Similarly, in industrialized Lancashire, less than 5% of the county bench were manufacturers at the mid-point of the century[21]. Indeed, even if the manufacturers were disproportionately likely to convict workplace offenders, their influence could only have been slight at quarter sessions. Statistically, in those courts, there was only a one in eight likelihood that an appropriation trial would be attended by a manufacturer, and even then his influence would be mediated by his fellow justices. However, as previously stated, in the worsted-producing districts, appropriation cases were mainly tried at the petty sessional divisions. Only if sufficient evidence was available to prove a felony had taken place, would employers hazard the quarter sessions. Even then they may still have preferred summary justice, since jury trial was unreliable[22]. Approximately six hundred cases initiated by the Worsted Committee were tried at petty sessions in either Halifax, Bradford or East Morley (an area stretching nearly to Leeds, to Halifax and to Colne, excluding the borough of Bradford, which was under a separate jurisdiction from 1847). Those last two courts, which together dealt with all of Bradford's minor court cases, had three-hundred and seventy cases brought to them by the Worsted Committee in the 1844 to 1876 period. Those cases were judged by sets of magistrates who were drawn from similar social backgrounds. Moreover, they shared trade interests, with 80% of Bradford and East Morley's magistrates being millowners[23].

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17 Harewood Estate, Lord Lieutenant's Papers, Box Two, Harewood to Lord Cottenham, Lord Chancellor, 3rd December, 1837, *West Yorkshire Archives: Leeds.*

18 Harewood to Lord Cottenham, 3 Dec. 1837. Harewood Mss, uncatalogued, *West Yorkshire Archives: Leeds.*

19 See a summary of J. Styles paper to the Society for the Study of Labour in Styles (1987).

20 Knipe (1970, p. 28).

21 Foster (1971, appendix 1). For a discussion of the changes to the social composition to the English magistracy in this period, see Thompson (1963, p. 110); Swift (1992, p. 77); Philips (1976), Zangerl (1981).

22 Sweeney (1985, p.83).

23 See Elliot (1982).

There exists today a judicial principle that magistrates should not judge a case with any motivation other than the execution of justice. Self-interest on behalf of the magistrate is, in theory, precluded from the judicial process[24]. However, the vast majority of eighteenth and nineteenth-century statutes did not include clauses which prevented those magistrates who had an interest in any particular case from acting as judicial arbiters. Those statutes which did attempt to limit conflicts of interest in legal cases came mainly in the last quarter of the nineteenth-century. For example, the *Bradford Observer* reported in 1872 that:

> Under the new Trade Union Act, the Bench were disqualified by the clause relating to jurisdiction, in so much as they were themselves engaged or interested in the cotton trade, out of which the dispute arose. The prosecution at Leigh was withdrawn as every magistrate in the division was covered by the clause[25].

However, the boundaries of a magistrate's moral and legal jurisdiction were established in the main by case law not by statutes. It was ruled in 1851, for example, that magistrates who held shares in a company should not try cases involving that company[26]; neither should magistrates try cases where they had a direct pecuniary interest, however small[27]. Further, it was held that there was a danger of «*substantial bias*» when members of committees, boards or members of prosecution associations, acted as JPs in the trials of certain offenders where they might have an interest[28].

As these examples show, case law ruled only over very specific circumstances, but together these rulings and the reasoning which underlay them collectively established a more general code of conduct. This code was summed up in one case ruling: «*it is highly desirable that justice should be administered by persons who cannot be suspected of improper motives*»[29]. Furthermore, magistrates should not place themselves in a position where they are interested in promoting one particular verdict out of self-interest, «*since no man may be a judge in his own case*»[30]. These rulings and legal opinions often presumed they defended justice from an individual magistrate's greed, envy or prejudice, but they did not preclude magistrates from acting collectively from class interest, or with pejorative views shaped by the dominant societal views of the class from which most defendants emerged.

Judicial principles notwithstanding, there is an historical consensus that justices from particular occupational groups had a direct or indirect interest in some of the cases they judged. Moreover, it has been asserted that the existence of any such interest precluded any hope of a fair trial for the accused. In the East Midlands, for example, Chapman asserts that the factory owners used the summary courts simply

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[24] The acts which forbade certain magistrates being involved in their administration are listed in Palley, (1818, p. 15-19).

[25] 20 Sept. 1872, *Bradford Observer*.

[26] R. v. Gamorganshire JJ, 1857, see *The Justice of the Peace*, 21, p.773; R. v. Hammond,1863, *Justice of the Peace*, 27, p.793.

[27] Per Blackburn, J., R. v. Rand; R. v. Justices of Bradford, 1866, *Justice of the Peace*, 30, p.293.

[28] R. v. Henley, 1892, *Justice of the Peace*, 56, p.391. See 28 & 29 Vict. c121., s. 61 and R. v Allan 4 B & S. 915.

[29] Per Mellor, J., *in* R. v. Allan, 1864.

[30] R. v. Hoseason, 1811, 14 east p. 605; see Harris (1969, p. 273-274).

as an extension of their private powers[31]. Similarly, in the West Midlands, Hay states that «*the local magistracy and the great manufacturers saw eye to eye*»[32], and described how this close co-operation worked in practice:

> So that lessons would not be lost, the firm could also rely on at least some occasions on the willingness of the bench to order punishment where it would do most good: in 1789 a thief they successfully prosecuted was then publicly whipped at the factory over a distance of 150 yards at noon hour, before being sent to the House of Correction for three months' hard labour[33].

Trainor agreed that in Staffordshire, «*although the JPs sometimes dismissed cases brought by masters, the magistrates frequently betrayed their own self-interested bias...and magistrates only showed sympathy to working-class defendants when neither industrial discipline nor public order was at risk*»[34]. Did West Riding magistrates similarly reinforce the authority of the manufacturers, and did, as Storch has suggested[35], the West Riding magistrates and police sometimes act together as a weapon of the employers?

III.

Heaton's assessment of the relationship between the magistrates and the manufacturers includes a curious paragraph. He asserts that the Worsted Committee had to contend with the

> ignorance, apathy, or actual hostility of the magistrates...Many cases which were brought forward by the inspectors were dismissed by magistrates who did not know the nature of the Worsted Acts, and the committee was constantly printing digests of the law, handbills &c., or sending deputations to explain to these benighted justices the wonders of the statutes. But knowledge when it came, did not convince the local authorities of the error of their ways. Doubtless they objected to being taught their duty by an upstart industrial organization[36].

In his monograph, Heaton had previously made a strong case for the potency of manufacturing interest in judicial affairs. Clearly, however, there were a number of tensions within the «strange alliance»[37]. Both the Worsted Inspectors and the Factory Inspectors complained that magistrates, either through ignorance or complicity[38], were obstructive of prosecution cases brought against employers[39]. In his exasperation one complainant conflated two possible reasons for their truculence.

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31 Chapman (1967).

32 Hay (1983, p. 48).

33 Hay (1983, p. 38).

34 Trainor (1993, p. 142, 170).

35 Storch (1981, 10, p. 93).

36 Heaton (1965, p. 428).

37 Heaton (1965, p. 428-431).

38 Field (1990).

39 In Factory Act cases, and in prosecutions undertake by the Committee against employers who had bought appropriated materials from workers employed by their competitors.

> The conduct of some of the magistrates is simply abominable», he said, «The magistrates either will not or cannot understand the Worsted Acts. I frequently find them making mistakes in their interpretation of the clauses. Judging by their decisions I should infer that they regard the Worsted Acts as devised and passed for the oppression of the poor working man – not for the protection of the manufacturers[40].

Occasionally Worsted Inspectors were moved to statements of incredulity and incomprehension at the magistrates' decisions: «*I beg to state that I never had a better case for conviction, and never failed before with such materials and respectable witnesses as I should before the court at Otley*»[41]; and at Leeds, a case was dismissed «*contrary to all expectations of the Public in the court which consisted of many highly respectable manufacturers from Bradford who heard the evidence*»[42]. With the majority of failed cases, however, the Inspectors strove to find reasons to explain their lack of success, and the ignorance of magistrates was as good a reason as any[43]. It seems unlikely that, as an Inspector alleged in one case, neither the clerk of the court, the defending advocate nor any of the magistrates understood the provisions of the Worsted Acts since they had all witnessed so many cases brought under those Acts[44]. However, this reason was possibly more palatable to the Committee than accepting that magistrates opposed the Worsted Acts per se. Nevertheless, some magistrates did make statements which revealed a clear understanding of, and contempt for, the provisions of the 1777 Acts. It is therefore worthwhile examining these statements in order to understand why some magistrates held the Worsted Acts to be morally repugnant.

First, it must be understood that the statements made by magistrates in court, and occasionally rehearsed in the *Bradford Observer* were not part of a coherent attack on the Worsted Committee and their works. Nor was there ever a co-ordinated attack made on the Worsted Acts by the whole, or by a significant section of the magistrates. The focus of the magistrates' criticism was dispersed, and reflected concern over the plight of the poor working people, as much as anti-manufacturing rhetoric, or a desire to reform the laws regulating workplace appropriation. Occasional statements made by magistrates were unequivocally antagonistic, not least those made by Joshua Pollard. This prominent magistrate, ironmaster and coalmine owner continued a campaign of scepticism, hostility and distrust against the Worsted Inspectors. Having carped at Inspectors' actions, and criticised their investigative techniques[45], the *Bradford Observer* reported that: «*Previous to the case being gone into, Mr Pollard asked the Inspectors if they or the constable had taken the goods to the prisoner's house, and that in future he would invariably ask that question*»[46]. Pollard's reputation as an enemy of the Committee may have been strong enough to deter Inspectors from bringing cases before him. For example, one case which Pollard was about to try was withdrawn when the victim accepted an offer of com-

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[40] Room (1882, p. 8).

[41] Apr. 1873, Worsted Committee Minute Books, *West Yorkshire Archives: Bradford.* 56D.88/1/5.

[42] 30 Mar. 1863, Worsted Committee Minute Books, *West Yorkshire Archives: Bradford.* 56D.88/1/5.

[43] It was an excuse also much used in the eighteenth century, see Soderlund (1992, p. 425/427).

[44] 2 Jan. 1888, Worsted Committee Minute Book, *West Yorkshire Archives: Bradford.* 56D.88/1/6.

[45] 29 Mar. 1844, Worsted Committee Minute Book, *West Yorkshire Archives: Bradford.* 56D.88/1/4.

[46] 23 Nov. 1848, *Bradford Observer.*

pensation on the advice of the Worsted Inspector. It is possible that the settlement was considered by the Inspector to be preferable to a court case made uncertain by a notoriously obstructive magistrate[47], and, in fact, the proportion of Pollard's cases which were settled before the trial is more than double the average[48]. Certainly Inspectors feared and resented particular magistrates - one Inspector going so far as to refuse to divulge to an obstructive magistrate that he worked for the Worsted Committee for fear that the prosecution would then fail[49]. Better by far, for the Inspectors, to find magistrates more sympathetic to their cause. Edward Lister, for example, one of the eighty manufacturers who judged appropriation cases in West Yorkshire between 1840 and 1880, who regularly held summary hearings in an extension of his own home[50]; or Mr. Holdsworth, a member of the Worsted Committee, who tried his workers inside his own factory[51]. It is little wonder that these men were concerned with the control of appropriation, their membership of the Worsted Committee proved as much. But were such men blinded to justice inside the courthouse by their own interests?

IV.

There is a strong suggestion that the «strange alliance» between the magistrates and the Worsted Committee[52] was cemented by an interest in the punishment of workplace offenders. Co-operation between the two agencies even reached a stage where the magistrates once asked for the Committee's advice before sentencing an offender. The accused had already been convicted for the possession of appropriated materials, but the magistrates had not enforced the conviction «*in wishing the opinion of the Committee*». The Committee, «*Resolved to write to the Magistrates that the Committee feel obliged by their courtesy and leave the matter in their hands, having the fullest confidence that they will deal with the case with justice to all parties*»[53].

Alone amongst modern commentators, Firth alleges that the co-operation of the magistrates could not be relied upon. He cites Henry Wickham as one who constantly thwarted the wishes of the Worsted Committee[54], yet Soderlund has talked of the warm relationship between the Committee and Wickham, who, after all convicted approximately eight-hundred appropriators between 1777 and 1781[55].

The West Riding petty sessions magistrates and the Worsted Committee seem at the very least to have recognized a common disciplinary language, even if that language was not spoken by all magistrates. But clearly it has not been possible to exa-

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47 Dec. 1866, Worsted Committee Minute Book, *West Yorkshire Archives: Bradford.* 56D.88/1/5.

48 The average proportion was 2.2%, whereas Pollard had 5.7% of his cases settled, Worsted Committee Registers, *West Yorkshire Archives: Bradford* 56D.88/4/3-4.

49 10 Dec. 1846, *Bradford Observer.*

50 Firth (1990, p.185-186).

51 Lower Agbrigg petty sessions 1839 - 1880, *West Yorkshire Archives: Wakefield,* P7/9.

52 Heaton, *Yorkshire,* p. 426.

53 29 Mar. 1949, Worsted Committee Minute Books, *West Yorkshire Archives: Bradford,* 56D.88/1/4.

54 Worsted Committee Minute Books, 1777-1786, quoted in Firth, *Bradford,* p.145.

55 Wickham averaged 182 convictions per year between 1777 and 1781, see Soderlund, (1992, p. 423-424).

mine the issue of judicial impartiality by use of qualitative data alone. Fortunately, the Committee's minute books recorded the names of the petty sessions' magistrates who convicted or dismissed appropriators, which has allowed a quantitative analysis of the occupational bias of magistrates to be constructed.

V.

The Worsted Acts required two magistrates to sit in judgement, and in 77% of the prosecutions brought by the Worsted Committee at least one of the magistrates was a manufacturer, while 21% were judged by two manufacturers. In addition, between 1844 and 1876, 27% of the magistrates who tried appropriation cases were also members of the Worsted Committee[56]. Moreover, in approximately 3% (22 cases) of all prosecutions brought by the Worsted Committee, both magistrates were Committee members, and in most of those cases, both of the magistrates had attended the Worsted Committee meeting immediately preceding the trial. Not only did those magistrates have an implicit interest in the case as manufacturers, but they had already discussed the case with the Worsted Inspector and the victim of the appropriation. Indeed the Committee would not have proceeded with the prosecution had they not decided that there was a good likelihood of conviction. Unless the potential arbiters of the case sat at Committee meetings blindfolded, with their hands over their ears, they would have had at the very least a good knowledge of the case before it reached the courts.

Given that a significant proportion of the magistrates who tried appropriation cases were manufacturers in the same line of business as the prosecutor, sat on a committee which decided whether to prosecute offenders, and had an indirect commercial interest in the outcome of the case, it would seem that the previously described legal principles were not adhered to. Indeed, many attempts to complain that magistrates had a direct interest in appropriation cases were ignored[57]. But this would only seem to matter if magistrates exerted undue influence over the outcome of trials. What evidence is there that this was the case?

The statistics taken from the Worsted Committee Registers and portrayed in Table 4 are somewhat surprising given the previously described remarks of Chapman, Hay and Trainor. There was no completely consistent link between abnormally high conviction rates and «manufacturing magistrates». Conviction rates were 12% below average in the small number of cases in which neither of the magistrates was a textile manufacturer, and were 5.4% above average when at least one of the two adjudicators was such a manufacturer. However, cases in which both magistrates were textile masters had only average conviction rates and most surprising of all, when both magistrates belonged to the Worsted Committee, the conviction rate was only 72.7%. This was slightly (3%) below the conviction rates of summary cases involving either Joshua Pollard or William Murgatroyd, two magistrates notoriously antagonistic to the Worsted Committee, and 10% below the overall average[58].

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[56] Proportions of the 1.176 magistrates whose occupation is known, Worsted Committee Registers, *West Yorkshire Archives: Bradford.* 56D.88/4/3-4.

[57] 21 Apr. 1864, *Bradford Observer.*

[58] Ninety-four cases judged, sixty-eight convictions, Worsted Committee Registers, *WestYorkshire Archives: Bradford* 56D.88/4/3-4.

Again, no consistent causal link between the occupation of the magistrates and the conviction rate of appropriators can therefore be established through statistical analysis - the occupation of the magistrate had some impact but is not a clear predictor of the likelihood of conviction. Did more subtle factors exist which affected the statistics?

Table 4: Conviction rate by combination of magistrates (%), 1844-1876[59]

Occupation and Combination of Magistrates	Conviction Rate (%)	Number of cases
A textile manufacturer plus one non-textile manufacturer	87.8	123
Both textile manufacturers	82.1	246
Both Worsted Committee members	72.7	22
Neither textile manufacturers	70.2	26
All cases in which magistrate's occupation is known	82.4	417

There are a number of possible explanations for the apparent lack of occupational bias in the magistrates' treatment of appropriators. First, almost all of the magistrates in the textile districts may have made assumptions about the characters of factory employees which lead the majority of magistrates to convict them in large proportions[60]. Worsted Committee members, manufacturers, magistrates and employers of all kinds may have shared not only similar views on the nature of appropriation, but also informal and formal social networks[61]. These associations obviously could not «bind» elites together into a homogenous whole, whose members thought and acted the same way. Trade competition and personal rivalries between various magistrates were undoubtedly a factor from time to time. One report by an Inspector reveals as much: «*The plain fact of the matter was an old score or grudge Luccock* (the presiding magistrate) *has against us which prevented him doing us justice. A former case I had against Mewlay Dye Works, in which Luccock had at that time a business interest, appears not to have left his memory*»[62]. Nevertheless, generally it can be assumed that magistrates of all occupations disapproved of appropriation whoever the victim, and shared with the Worsted Committee many of the underlying assumptions concerning the protection of manufacturers' property.

Membership of the Worsted Committee involved more than attending an annual dinner, however. Most members attended the quarterly meetings for long periods of time, where they discussed the best ways of prosecuting appropriation. Only a quarter of the Committee members left voluntarily over a forty year period, with

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[59] Conviction rates by occupational status of all magistrates where known, Worsted Committee Registers, *West Yorkshire Archives: Bradford* 56D.88/4/3-4.

[60] Plint (1851, p. 82-130, 144-158).

[61] For a description of the close relationship between manufacturers in the 1820-30 period see Myatt (1980, p. 33).

[62] September, 1868, Worsted Committee Minute Books, *West Yorkshire Archives: Bradford*. 56.88/1/5.

16% dying, and 59% attending regularly from 1840 to 1880[63]. Committee members were dedicated and diligent men who willingly gave up their time and energy to prosecute appropriation. Why then did they convict a *lower* than average proportion of appropriators?

Either the Committee JPs were cautious in their judgements, and showed leniency to defendents, since they anticipated and indeed experienced bitter criticism from prominent sections of West Riding society, or there may have been mechanisms which acted to pre-select the cases that were heard before particular magistrates. If the weakest prosecution cases were arranged to be judged by Worsted Committee members, then the rate of conviction may not have been relatively low, but relatively high. This would only be possible if petty sessions could be managed in this way, which seems unlikely since any magistrate who cared to turn up could sit in on a case. Nevertheless, when sessions were held in magistrates' houses, or in at least one instance inside a magistrate's factory[64], it may not have been impossible.

Fortunately, there are more likely explanations than envisaging the scenario of Worsted Committee members separating the wheat from the chaff before quickly dragging the weakest cases over to sessions to be judged before another magistrate turned up. Only 5% of workplace appropriation cases were judged by two Worsted Committee members sitting together in a summary hearing. It may be that Worsted Committee members strove to avoid such situations lest they be accused of bias against working people. When this situation was unavoidable, perhaps because only two eligible magistrates turned up to sessions that day, and they both belonged to the Worsted Committee, they probably took great pains to apply the law in a transparently fair way. Indeed, two Worsted Committee members, sitting together, may have demonstrated more leniency, whenever that was possible, than other combinations of magistrates were inclined to do.

If the relatively low conviction rates, in cases when two Worsted Committee magistrates presided, is puzzling, the generally high conviction rates in workplace appropriation cases is easier to explain. The editor of the *Bradford Observer* stated, in 1853, «*There can be no doubt that the provisions of the Worsted Acts are exceedingly harsh and* oppressive, and that for a very venial fault, and sometimes for no fault at all, men have been subjected to its severe discipline»[65]. In other words, the framing of the Worsted Acts ensured a high conviction rate. For example, the conviction rate for the offence of simple larceny at Bradfrord petty sessions between 1865 and 1870 was 64.0%, while for the larceny of goods valued at less than five shillings it was 62.0%[66]. Both rates, for comparable offences to workplace theft, were relatively low compared to Worsted Act cases. However, in those cases, the prosecution had to establish two relationships - the one between the stolen goods and the accused; and the link between the goods found in the possession of the accused and the their rightful owner. If both of those links could be established, then any reasonable doubt that the accused had not unlawfully taken and carried away the

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63 Figures for the period 1840-1880, Worsted Committee Minute Book, *West Yorkshire Archives: Bradford* 56D.88/1/3-6.

64 An «embezzlement» case was held at Holdsworth's works in January1860, for example. See Wakefield Petty Sessions *West Yorkshire Archives: Wakefield* P7/2.

65 3 Feb. 1853, *Bradford Observer*.

66 Chief Constable of Bradford's Annual Reports, 1865-1870, *West Yorkshire Archives: Wakefield*, BBC1/1/2.

goods was dispelled, and the case was proved. However, since the origin of more anonymous goods, such as woollen waste or finished cloth, were more difficult to determine, and the relationship between rightful owner and the goods found with the accused more tenous, the Worsted Acts were framed ratherdifferently. The prosecution in Worsted Act cases had merely toestablish that the accused could not prove that goods found in his/her possession were not taken from their place of work for the case to be proved. With that in mind, only magistrates who determinely set their face against a prosecution could make a case fail. Moreover, to avoid a successful appeal by the Worsted Committee against the decision, those magistrates had to find some evidential reason to justify their doubting the prosecution's case. Since only a few magistrates were interested in seeking out this doubt, most cases were decided in the Committee's favour, with no need to act upon any biased judgements the magistrate may have held.

VI.

The issue of judicial partiality is a slippery one. The qualitative and quantitative analysis produced in this article suggests in the strongest terms that manufacturing magistrates were keen to convict offending workpeople. Yet the laws against workplace appropriation were

tightly framed, and the criteria for conviction were easily met compared to other property offences. These factors are, in themselves, sufficient to cast doubt on overdramatic assertions of judicial bias. Nevertheless, on this, possibly the richest and most full evidence which will ever be available on this issue, the balance of proof lies against the nineteenth-century West Riding industrial magistrates.

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