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The administration of justice in Wales during the long eighteenth century

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Abstract

While the last four-and-a-half decades has seen a growing body of historical scholarship on the administration of justice in England during the long eighteenth century, the administration of justice in Wales is a relatively neglected topic. This article reviews the relatively small historiography on the administration of justice in Georgian Wales, highlighting the ways in which patterns of indictments, convictions and executions were both similar and, crucially, different to those found in England during the period. After introducing the superior courts in the Principality during this period—the Wales Courts of Great Sessions - the article discusses the patterns of indictments, convictions and executions in the Great Sessions. The article then concludes by suggesting avenues of further research in the area.

1 | INTRODUCTION

Over the course of the last 40 years or so, a growing body of historical scholarship has emerged exploring various aspects of crime and the administration of justice in England and Wales during the long eighteenth century. Scholars have, for example, explored areas of interest such as the administration of the so-called Bloody Code, 'old' policing methods, sex and crime, representations of crime and criminality, and patterns of violent crime to name but a few (for standard textbooks, see Taylor, 1998; Godfrey & Lawrence, 2005; Godfrey et al., 2008; Gray, 2016). To date, however, much of this work has been skewed heavily towards the south east of England, and particularly towards metropolitan London's Old Bailey, and, consequently, there has been comparatively little published work on the periphery. Indeed, one geographical region of England and Wales that has generated comparatively little work in this area is Wales itself. As Katherine Watson has observed, Wales is

> …one of the most under-researched constituent nations of the United Kingdom. Indeed, in comparison with the extensive historiography of violence and criminal justice in England, there has been little research on the relationship of the Welsh people to the criminal justice system and less still examining gender, crime and violence in the Principality (Watson, 2013, p. 246).

Richard Ireland, in his recent history of crime and punishment in Wales concurs:

> The experience of Wales seems to be regarded as either inexplicably different to the position in England or as unproblematically the same, or (and I suspect that this is the most common position) it is simply not considered at all (Ireland, 2015, p. 6).

This is a significant omission; and as, as will be discussed below, while England and Wales possessed the same law and comparable legal structures, both attitudes towards the law and the administration of justice in the Principality differed in significant ways from that found in England during the period.

This article will review the relatively small historiography on the administration of justice in Wales during the long eighteenth century. In doing so, it will highlight the ways in which patterns of indictments, convictions and executions were both similar and, crucially, different to those found in England during the period. The article will be structured in five main sections. The first will introduce the superior courts in the Principality during this period—the Wales Courts of Great Sessions [hereafter the Great Sessions]—providing a brief outline of both their history and administration. This section will also discuss the main sources for studying the work of the Great Sessions, as well as their strengths and limitations. The following three sections will then explore in turn three key themes highlighted in the historiography of the Welsh courts. First, the pattern of indictments found within the Great Sessions. Here two trends in particular will be discussed: the lower level of indictments found at the Great Sessions than those typically found in English assizes during this period, and the relatively high proportion of indictments for forms of non-fatal interpersonal violence and riot found in the former compared to the latter. Second, the seeming perversity of Welsh grand and petty jury decision making and, consequently, the higher acquittal rates found within the Great Sessions compared with the English courts. Finally, and arguably most significantly, the seeming reticence of the Welsh to execute convicted property offenders compared with their neighbours over the border. The final section will then conclude the review and suggest avenues of further research in the area.

2 | THE WALES COURTS OF GREAT SESSIONS

The Great Sessions were established under the 1542 Laws in Wales Act, and operated as the superior court in Wales—comparable to English Assize Courts—until they were abolished in 1830. The Act divided Wales into 12 shires, modelled on English counties with a capital town, grouped into four judicial circuits: Chester (comprising Flintshire, Denbighshire and Montgomeryshire); North Wales (comprising Anglesey, Caernarfonshire and Merionethshire); Brecon (comprising Breconshire, Glamorganshire, and Radnorshire); and Carmarthen (comprising Carmarthenshire, Cardiganshire, and Pembrokeshire).[1] The Act also enacted that Courts of Great Sessions presided over by one Justice (two after 1576) should be held twice a year for 6 days, typically in the spring and autumn. In addition, the Act established Quarter Sessions presided over by Justices of the Peace. All legal business in the Great Sessions was to be conducted in English, and, like English Assize courts, they had both civil and criminal jurisdiction. The major practical distinctions between the English and Welsh courts were that, in contrast to English Judges whose bi-annual perambulations frequently took them to different Assize circuits, Welsh Justices always visited the same circuit. In addition, Welsh Justices were also allowed to practice at the Bar in England (Williams, 1919, chapter 4; Parry, 1995; Watkin, 2007).

In contrast to some English Assize circuits, the records of the Great Sessions are generally well preserved. Court records from the 1540s through to 1830 are held at the National Library of Wales (NLW) in Aberystwyth, with

surviving gaol files containing indictments alongside other important documents such as examinations, depositions, recognizances, and jury lists (for details see Parry, 1995). The NLW also hosts a Crime and Punishment database that contains information on just under 21,000 indictments from the Great Sessions from between 1730 and 1830.[2] Although the website is comparatively old, dating from the early 2000s, it nevertheless allows users to search indictments via the accused's name, the county where the alleged offence took place, the category of offence, the date of the alleged offence, and the sentence handed down. Each entry also contains a file number referencing the physical gaol file at the NLW, as well as details of what other documents associated with each indictment are available. The criminal registers for the Great Sessions covering the period 1805 until 1830 can also be accessed physically at the National Archives or online via a subscription to Ancestry.co.uk.

There are a number of issues with the above records that need to be borne in mind when using them to construct an image of the administration of justice in Wales during the period. Primarily, the survival rate for gaol files differs significantly between circuits. While it has been estimated that only 0.3%, 0.5% and 3% of gaol files are missing from the Chester, North Wales Circuits and Brecon Circuits respectively, just over 14% are estimated to be missing from the Carmarthen Circuit (Parry, 1995). Moreover, according to Parry (1995), ignoramus bills were routinely destroyed as they were not regarded as an official record of the court. Consequently, in some cases bills of indictments are either missing, or, more perplexingly, exist but are not recorded in sessions files (Powell, 1990). There are some errors on both the actual files and, in some cases, on the transcribed records. In the gaol files, for example, the prisoner's residence is frequently given as the parish in which the alleged crime took place. Similarly, as is the case with court records from this period, males are often classified as 'labourer' or 'yeoman' rather than their specific occupation while females are classed in terms of their relationship to males; as 'spinster', 'married' or 'widow' (see Beattie, 1981; Shoemaker, 1993). The date given on the indictment is also not when the trial took place, but when the alleged crime is said to have occurred (which itself may not be accurate). In some cases, multiple indictments exist for the same person, seemingly where court clerks have included both initial version(s) containing errors as well as the correct version (Horler-Underwood, 2014). A more pressing problem is that in a great many cases, neither verdicts nor sentences are given in the gaol files. For example, in his work on the Brecon Circuit between 1760 and 1830, the author found that out of the 4437 indictments, 1226 omitted a verdict (28%), and that 86 of the 1017 guilty verdicts provided no details regarding the sentence passed (8%) (Walliss, 2018). Although it is possible to overcome some of these issues by triangulating the gaol files with other sources, these are nonetheless significant limitations that need to be borne in mind when using them.

3 | PATTERNS IN THE ADMINISTRATION OF JUSTICE

3.1 | The pattern of indictments

The first important distinction between the administration of justice in Wales and England is that significantly fewer persons were indicted at the Great Sessions than English assizes. For example, between 1750 and 1830, an average of 168 persons were indicted per year across all the Wales Courts of Great Sessions (minus Chester), with some Courts, such as Caernarfonshire Anglesey, Merionethshire indicting on average fewer than 10 persons per year. Even the busiest Court—in Glamorganshire—only indicted on average 27 persons per year over the period. In contrast, over a similar period (1760–1830), an average of 67 and 136 persons were indicted per year at the Lancashire and Kent county assizes respectively (Walliss, 2018). A.A. Powell has described the Justices in Breconshire between 1733 and 1830 as being 'underemployed', with 19 sessions between spring 1791 and spring 1815, dealing with fewer than four indictments, and two having no criminal business to transact whatsoever. These differences in judicial workload were also noted by contemporaries and, indeed, one key reason why the Courts of Great Sessions were abolished in 1830 was because it was felt that the Welsh justices were significantly underworked compared to their peers in England, whose duties included regular sittings at the Old Bailey alongside their biannual assize circuits (Ellis Jones, 1998;

Escott, 2007). In his evidence to the Select Committee on the administration of justice in Wales in 1817, for example, the Welsh justice Hugh Leycester related that the average number of prisoners that he tried was "Very few; sometimes two, three, four or five; and it has happened to me to go to two circuits, and not at some of the places have one prisoner" (Select Committee on Laws, 1817, p. 16).

Several reasons have been offered by historians to explain this state of affairs. Primarily, it undoubtedly reflected the smaller population of Wales compared with some English counties during this period. Although there is no reliable official population data until the first census in 1801, estimates from the mid-nineteenth century for 1750 have the population of Wales as 450,994, compared with, for example, 325,716, 329,398, and 341,451 for the West Riding of Yorkshire, Devon and Lancashire respectively.[3] Obviously, all things being equal, a smaller population will be reflected in a smaller number of indictments. Secondly, as was the case in England as well, many victims may have preferred, or been encouraged, to reach a private settlement (albeit illegally) with the alleged offender rather than incurring the costs and inconvenience of pursuing formal legal sanctions. Such extra-legal negotiations between neighbours would save the victim the cost and inconvenience (or even possibly threats of violence) of pursuing the alleged offender through the courts, would ensure that some degree of justice in the eyes of the victim and community was achieved, and, of equal importance, help to preserve the reputation of the community (Humphreys, 1996). As Richard Ireland (2001) has noted, formal legal proceedings represented not only an attempt to discover the innocence or guilt of a particular offender and then press legal sanctions on the guilty, but also what he terms 'a moral audit of the countryside'—an audit conducted by those from outside the community via an externally imposed legal system (not to say through the medium of an alien language). In such a situation, a community may have felt that it was better to deal with their problems, and problematic neighbours, within the community and not to 'wash their dirty linen in public'. This, he suggests, was particularly the case with moral crimes, such as rape and infanticide, that would reflect badly also upon the broader community.

Although the broad range of offences tried by the Courts of Great Sessions paralleled those found in English assizes, with indictments for larceny dominating in both (Howell, 2000; Humphreys, 1996; Minkes, 2005; Powell, 1990; Walliss, 2018),[4] the former was notable for a high proportion of indictments for forms of non-fatal violence and riot. Thus, whereas only 2% of those indicted at the Kent, Lancashire and Oxfordshire county assizes between 1760 and 1830 were accused of forms of non-fatal assault and wounding, including stabbing, just over a fifth of those indicted on the Brecon Circuit were so accused (21%). Indeed, just under a third of all the indictments at the Radnorshire Court of Great Sessions during this period were for these forms of offence. Similar patterns may be observed for indictments for riot; whereas only 1% of those indicted at the above English county assizes were accused of riot, just over a fifth of those indicted on the Brecon Circuit were so accused (22%) (Walliss, 2018). Clearly, then, judging by indictments, Wales would appear to have been a significantly more violent, at least in terms of non-fatal violence, and riotous society during this period than that found across the border. As David Howell has wryly observed,

> A reading of the eighteenth-century gaol files of the Great Sessions leaves the strong impression that this was a rough, brutal and unsqueamish society, in which men and women alike turned naturally to assaulting those who in any way offended them. For many, life was held cheaply (Howell, 2000, p. 213)

Such riotous behaviour could take a variety of forms, detailed by Howell and Sharon Howard (2001), ranging from food and wage riots, through to violence directed towards strangers and the authorities. Melvin Humphreys (1996, p. 226), however, has cautioned against concluding that Wales was a notably violent and unruly society, arguing instead, that the large number of such indictments at the Great Sessions may "…say more about the anxieties of the prosecutors than they do about the nature of violence in this community". For example, in many cases, accusations of assault were brought to court by officials seeking its support in disputes, or were part of ongoing feuds between families. This was particularly the case among propertied families, for whom, Humphreys claims, "…the use of the law courts in this way was a confirmed habit" (Humphreys, 1996, p. 226). In other cases, victims of simple assault used claims of "riot" to add weight to their allegations against their alleged attackers.

3.2 | The reticence to convict

Welsh juries also had a reputation among their contemporaries—a reputation that has only grown in the subsequent historiography of the Great Sessions—for their high acquittal rates. Welsh juries regularly mitigated the severity of the capital code in practice either by, in the case of grand juries, returning indictments as ignoramus or, in the case of petty juries, finding defendants either not guilty or guilty on a lesser, non-capital charge. While such forms of what the English Jurist Sir William Blackstone referred to as 'pious perjury' were commonplace in England during this period (see Beattie, 1986), they were without doubt endemic within the Welsh courts. Supporting an attempt in the 1720s to remove two accused murderers from Pembrokeshire so that they could be tried at the Hereford assizes, the Court of King's Bench asserted that:

> …it was very difficult to have justice done in *Wales* by a jury of *Welshmen*, for they are all related to one another, and therefore would rather acquit a criminal than have the scandal that one of their name or relations should be hanged; and that to try a man for murder in Wales was like trying a man in Scotland for high treason, those crimes not much regarded in their respective places (Leach, 1795, p. 137).[5]

More recently, and also more generously, Melvin Humphreys has noted of jurists at the Montgomeryshire Great Sessions between 1760 and 1819:

> Wherever a jury could feel compassion for the offender, wherever there was felt to be a local case of need, wherever the stolen goods were anything other than a horse, or wherever the offender was not a persistent and notorious lawbreaker, it was highly probable that a Montgomeryshire jury would pass a partial verdict (Humphreys, 1996, p. 245).

Thus, 15 of the 25 guilty verdicts for capital property offences in sampled years in Montgomeryshire between 1760 and 1784 were reduced to a non-capital punishment by a partial verdict (60%). Similarly, in his comparative analysis of the Brecon circuit and four English counties between 1760 and 1830, the present author found that whereas English grand juries returned 84% of the bills they considered as 'true bills', grand jurors on the Brecon circuit did so only just over 70% of the time. Petty jurors on the Brecon circuit were also significantly less likely to return guilty verdicts than their peers in England (32%/67%), and were also twice as likely to return partial verdicts for serious capital offences (21%/11%). This was particularly the case with burglary, where just over two in five (41%) of those indicted for this crime received a partial verdict compared with just 28% in the four English counties (see Walliss, 2018, Figs. 2.5, 4.4, 6.1; See also Powell, 1990: chapter 4).

Again, the reasons for this state of affairs would appear to stem from the tension between cultural and legal norms, and the desire to keep justice within the community itself.[6] As the leading figures in their communities, grand jurors may have believed that it would be better to return an ignoramus bill, possibly hoping that the closure of the legal route to redress would encourage victim and alleged offender to return to community mediation. Indeed, as community leaders, they may have felt even more sharply the desire to keep justice within the community itself, not least as they were the ones who received the praise or condemnation for the conduct of their populations, as manifested by the size of the calendar of prisoners, by the visiting Justice during their opening address. Petty jurors may have returned not guilty verdicts for the same reason, and it is likely that many a person who left the court judged not guilty nevertheless received some type of community sanction if it were believed by their neighbours that they had committed an offence. In this way, as Ireland has observed (2001:66), the Great Sessions operated at the collision point of two competing models of law enforcement: "an asocial legal model which looks to the establishment of guilt of an individual offence by an individual offender within a courtroom and a rather more contextualised view of the legal system which finds expression in the contribution of lay participants in the legal process".

This, as noted above, was particularly the case with moral crimes, such as rape, and infanticide. Such crimes were notoriously difficult to prosecute during this period and, consequently, both indictment and prosecution rates

were exceedingly low across England and Wales (see Clark, 1987; Malcolmson, 1977). However, both indictment and prosecution rates for these crimes were notably lower in the latter than in the former. Only 35 women were indicted for infanticide on the Brecon Circuit between 1760 and 1830, with only one conviction and execution.[7] Only three women were executed for this crime across the whole of Wales between 1730 and 1830 (Horler-Underwood, 2014; Walliss, 2018; Woodward, 2007). Likewise, of the 54 males indicted for rape across Wales over the same period, just over a third never faced a trial jury, either because of an ignoramus verdict or because their alleged victim did not attend court to prosecute, and of those who did stand trial, none were convicted. Indeed, only one man was executed for this crime in Wales between 1730 and 1830, and he was convicted in Monmouthshire, and thus by an English court. This state of affairs has led Katherine Watson (2013) to argue that females were seen as less significant than males in the Welsh courts as both offenders and victims of violent crimes. While there is evidence, such as was cited above, that this would appear to be the case, it is not clear how far this attitude differed from those towards females as victims and alleged perpetrators of violent crime in England during this period. Certainly, there were more executions for rape and infanticide in England than in Wales during this period, as there were for a range of other crimes. However, this arguably reflected - as will be discussed in the next section - different attitudes towards, and concomitantly rates of, capital punishment in both places.

3.3 | The land of White Gloves & the (un)Bloody Code

Finally, extending on the previous points, there is also evidence of a seeming reluctance of Welsh Justices to impose the sanguinary heights of the Bloody Code on their countrymen. In his pioneering article on the Bloody Code in Wales, David V. Jones (1981, pp. 538, 545) argued not only "that those found guilty of a serious crime in eighteenth-century Wales might well have received more favourable treatment than their counterparts across the border", but that by the turn of the nineteenth century "the [Welsh] authorities did not need the death penalty or ceased in practice to regard many property offences as capital offences". This was part of a larger process during this period, identified by Peter King and Richard Ward (2015), whereby execution rates for property offences declined the further that one moved away from the centre/south-east out of England to the periphery. Developing King's earlier work on the role of decision makers within the eighteenth-century criminal process, King and Ward argue that the combined actions of prosecutors, grand juries and petty juries on the periphery created "a particularly potent set of mutually reinforcing mechanisms for mercy" that limited the number of felons going to the gallows. Primarily, within contexts that emphasised informal processes of restitution and where there was an aversion to capital punishment, fewer victims would have been willing to pursue offenders through the courts, particularly for capital property offences. This would have reduced the size of the assize calendar that met the visiting assize judge; one of the key indicators for them of both the level of crime in the county and the number of exemplary executions that were required. Grand juries in their turn could reduce the calendar further by returning large numbers of bills as ignoramus, while petty juries could return partial verdicts to limit the number of offenders sentenced to death.

The first two of these mechanisms were clearly operative at the Great Sessions during this period. In terms of the latter, although those convicted of homicide stood no chance of receiving mercy on either side of the border, Jones was undoubtedly correct in both of his assertions regarding the administration of the death penalty in Wales. Whereas 9%, 10%, and 16% of capitally convicted property offenders were executed in Cornwall, Oxfordshire, Lancashire and Kent between 1760 and 1830 respectively, over the same period 6%, 7% and 11% were executed on the Brecon, Camarthen, Chester and North Wales Great Sessions circuits respectively. Throughout the 70-year period, the number of property offenders going to the gallows across Wales remained relatively static except for a dramatic increase in the latter half of the 1780s, never rising above nine per decade in the entirety of the principality. Only 14 years between 1760 and 1830 saw more than one property offender executed per year across the whole of Wales, and 40 saw none at all executed. While the law classed many property offences as capital offences during the period, and sentences of deaths were passed on numbers of Welsh men (and

some women), in most cases such sentences were just a legal formality. Rather than being a regular occurrence, executions for property offences were an extremely rare aberration in the life of the community. A resident of Denbighshire and Glamorganshire, for example, would have only seen on average one property offender die on the gallows every six and 7 years respectively over the period. In Radnorshire and Caernarvonshire, it would have been once every 23 years, in Breconshire and Anglesey, once every 35 years; in Merionetheshire, only once in 70 years. Indeed, by the mid-nineteenth century at least, Wales was popularly referred to as "the land of White Gloves" (*gwlad y menig gwynion*) in reference to the gloves that were given to visiting justices at maiden assizes, but it is clear that the appellation could have been given to the principality at least a century beforehand (see Ireland, 2015).

4 | CONCLUSION

This article has reviewed the literature on the administration of justice in the Wales Courts of Great Sessions during the long eighteenth century. It has revealed an image of the administration of justice in Wales that, while similar in some respects, differs in important ways from that in England during the period. Primarily, the Great Sessions were considerably less busy with criminal business than English assize courts, a state of affairs that led to their abolishment in 1830. While the Great Sessions, like the English assize courts, handled a large number of indictments for larceny, they also handled a not-insignificant number of indictments for forms of non-fatal interpersonal violence and riot. However, the most important differences between the two concern the pattern of convictions and, for capital offences, executions. Welsh grand- and petty-jurors were significantly more likely to return ignoramus bills, and not-guilty and partial verdicts respectively than their counterparts on the other side of the border. For their part, Welsh Justices were also less willing to execute convicted property offenders than English assize judges. While those convicted of murder on both sides of the border rarely escaped the gallows, David V. Jones is surely correct in his assertion that those convicted of serious crimes in Wales during this period "… received more favourable treatment" than those similarly convicted in English assize courts. Indeed, the Welsh courts represent the archetypal example for King and Ward's (2015) thesis of how, within a context that both emphasised processes of informal resolution and had an aversion to capital punishment, the combined actions of prosecutors, grand- and petty-juries could mitigate against the severity of the capital code during this period.

As noted in the introduction, despite the wealth of extant material, the administration of justice during this period is relatively under-researched when compared with the English courts. While the NLW Crime and Punishment database is not as sophisticated as the Old Bailey Online, it nevertheless provides a good starting point for research on the administration of justice in the Principality. There are a number of avenues of further research in this area. Primarily, to date research on the Court of Great Sessions has either focused on one county or one circuit. There is thus a need for further quantitative work on all of the Courts of Great Sessions during this period to provide a broad, comparative picture of the administration of justice in Wales. This, in turn, may be used to situate further county-based research into the broader context. Another notable lacunae in the literature are the administration of the county Quarter Sessions in Wales during this period. Finally, there is comparatively little published work on females in the Welsh courts. This, again, is an area that merits further research, not least bearing in mind Katherine Watson's contention that females were both perceived and treated as notably less significant as offenders and victims of violent crime in the Welsh courts. Further comparative work on the English and Welsh courts would go some way to assessing whether or not this was indeed the case.

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ENDNOTES

[1] Monmouthshire, while ostensibly the 13th shire of Wales was included within the Oxford Assize circuit.

[2] https://crimeandpunishment.library.wales/-%20for%20a%20discussion, see Horler-Underwood, 2014, p. 1.6

[3] Figures taken from the 1841 Census, Abstract of Answers, 'ESTIMATED POPULATION OF ENGLAND AND WALES, 1570–1750'

[4] For detailed analyses of key crimes tried at the Great Sessions, see the articles by Nicholas Woodward on burglary (2008a), sheep stealing (2008b), and horse theft (Woodward, 2009).

[5] The situation does not appear to have improved even a century and a half later. According to the author of an article in the Cornhill Magazine in 1877:

> 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 happen to be also his fellow csshapel-goers of the same denomination, his acquittal may, it is feared, be predicted with approximate certainty (quoted in Ireland, 2001, pp. 70–1)

[6] Another possible factor was, of course, language. The business of the Courts of Great Sessions was transacted in English, something that would clearly have led to misunderstandings by Welsh jurors as well as the alleged criminal, victims and witnesses. For a discussion, see Ireland (2001).

[7] Several factors worked together to lead to this particular outcome. First, there were obvious signs of violence on the body of the deceased infant. Second, the young woman in question, Mary Morgan, confessed to the crime, declaring in court that she "…determined, therefore, to kill it, poor thing!…". Finally, there is also evidence that the presiding Justice, George Hardinge, disapproved of recent changes to the law regarding infanticide and was determined to make an example after a jury 2 weeks previously had returned a partial verdict in the case of a woman who had been accused of murdering her infant in similar circumstances (see Parris, 1983).

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