



Provided by the author(s) and University College Dublin Library in accordance with publisher policies., Please cite the published version when available.

Title	The Terror of Their Lives: Irish Jurors Experiences
Authors(s)	Howlin, Niamh
Publication date	2011-08
Publication information	Law and History Review, 29 (3): 703-761
Publisher	Cambridge University Press
Item record/more information	http://hdl.handle.net/10197/4259
Publisher's version (DOI)	10.1017/S0738248011000319

Downloaded 2019-03-24T13:45:56Z

The UCD community has made this article openly available. Please share how this access benefits you. Your story matters! (@ucd_oa)



Some rights reserved. For more information, please see the item record link above.



“The Terror of their Lives”: Irish Jurors’ Experiences

NÍAMH HOWLIN

1. Why Consider Jurors’ Experiences?

A commentator noted in 1881 that Irishmen regarded jury service as “the greatest burden that can be inflicted upon them . . . they would be delighted if trial by jury was suspended tomorrow.”¹ He later added, “[o]f course an enormous outcry would be raised about it in the national press, and in public meetings; but jurors . . . would give anything in the world not to serve . . . because it is the terror of their lives.”² Much has been written about the poor state of the nineteenth-century Irish jury system,³ and it is certainly true that for various social, economic and political reasons, in comparison

1. *Report from the Select Committee of the House of Lords on Irish Jury Laws*, House of Commons Parliamentary Papers 1881 (430), xi, 1, per James Hamilton QC, chairman of the County Sligo quarter sessions, para. 3282.

2. *Ibid.*, para. 3308.

3. See David Johnson, “Trial By Jury In Ireland 1860–1914,” *The Journal of Legal History* 17 (1996): 270–93; David S. Johnson, “The Trials of Sam Gray: Monaghan Politics and Nineteenth Century Irish Criminal Procedure,” *Irish Jurist* 20 (1985): 109–34; John F. McEldowney, “‘Stand By for the Crown’: An Historical Analysis,” *Criminal Law Review* (1979): 272–83; John F. McEldowney, “The Case of *The Queen v McKenna* and Jury Packing in Ireland,” *Irish Jurist* 12 (1977): 339–54; John D. Jackson, Katie Quinn, and Tom O’Malley, “The Jury System in Contemporary Ireland: in the Shadow of a Troubled Past,” *Law and Contemporary Problems* 62 (1999): 203–32; and Niamh Howlin, “Controlling Jury Composition in Nineteenth-Century Ireland,” *The Journal of Legal History* 30 (2009): 227–61.

Niamh Howlin is a lecturer in the School of Law, Queen’s University Belfast, Northern Ireland <n.howlin@qub.ac.uk>. She is grateful to the staff of the various archives and libraries consulted in the preparation of this article. She also thanks Dr. Heather Conway and the anonymous reviewers for their helpful comments.

with that in England, the Irish system appears to have operated in a way that fell somewhat short of ideal.⁴ This article seeks to provide an understanding of the realities facing the jurors themselves, and will examine their experiences of the justice system before, during, and after the trial.

There are several justifications for such an examination. First, it is hoped that adopting this unique perspective of the trial process will aid understanding of how civil and criminal trials operated in Ireland, and deepen our understanding of the flaws and weaknesses of the justice system more generally. Second, it is hoped that by taking into account jurors' experiences, it will be possible to make clearer the practical operation of Irish jury trials and their impact upon the lives of those in the community. Third, it is suggested that jurors' experiences directly impacted upon their verdicts, and may be an important factor in interpreting conviction rates and verdict trends. Fourth, it is hoped that this article will contribute to

4. See the work done in this area by McEldowney and Johnson, above, and contemporaneous commentary such as Anon., "Our Jury System," *Dublin University Journal* 32 (1848): 717; Arthur Houston, "Observations on Trial by Jury, with Suggestions for the Amendment of our Present System," *Journal of the Dublin Statistical Society* 3 (1861): 100–109; Mark S. O'Shaughnessy, "The Venue for Trials, Civil and Criminal," *Journal of the Social and Statistical Inquiry Society of Ireland* (hereinafter *J.S.S.I.S.I.*) 4 (1865):193–203; William H. Dodd, "Some Grievances of Jurors," *J.S.S.I.S.I.* 8 (1879–85):223–27; and Albert Venn Dicey, "How is the Law to be Enforced in Ireland?" *Fortnightly Review* (ns) 3 (1881): 537–52. Pamphlets written in the late nineteenth century highlight some of the more political problems with the jury; examples include Roger O'Connor, *A View of the System of Anglo-Irish Jurisprudence and of the Effects of Trial by Jury, when Individuals Consider Themselves Belonging to a Faction, Rather than to a Community* (London, 1811); Henry Holmes Joy, *On Peremptory Challenges of Jurors, with the Judgment of the Queen's Bench in The Queen v. Gray* (Dublin: Andrew Milliken, 1844); Edward Patrick Sarsfield Counsel, *Jury Packing* 2nd ed. (Dublin: M.H. Gill and Son, 1887); Daniel Crilly, *Jury Packing in Ireland* (Dublin 1887); and United Irish League, "Stand Aside," *Trial by Jury in Ireland in the Twentieth Century* (Dublin: United Irish League, 1903). A number of parliamentary committees appointed to inquire into the state of Ireland more generally examined some of the difficulties associated with Irish juries: see, for example, *Report of the Select Committee Appointed to Inquire into the Disturbances in Ireland* House of Commons Parliamentary Papers 1825 (20), vii, 5; *Report from the Select Committee of the House of Lords Appointed to Enquire into the State of Ireland in Respect of Crime*, Part 1, H.L. 1839 (486), xi, 1; *Report from the Select Committee on Outrages (Ireland)*, House of Commons Parliamentary Papers 1852, (10), xiv, 438. Parliamentary committees established specifically to examine the working of the Irish jury system had no English counterpart: see *Report from the Select Committee appointed to inquire into the working of the Irish jury system*, House of Commons Parliamentary Papers 1873 (283), xv, 389; *Report from the Select Committee on the working of the Irish jury system*, House of Commons Parliamentary Papers 1874 (244), ix, 557; and *Report of the Select Committee of the House of Lords on the Operation of Irish Jury Laws as regards Trials by Jury in Criminal Cases*, H.L. 1881 (430), xi, 1.

the debate as to why the Irish jury system appears to have been held in such low esteem during the nineteenth century. Fifth, this should, by extension, shed light on the difficulties experienced when jury trial was extended to other countries. Finally, jurors' experiences have not traditionally attracted a great deal of scholarship, in the sense that most works examining juries⁵ have tended to take a more institutional approach, examining the operation and functioning of the jury trial in the wider context of the justice system as a whole.⁶ One reason for this, largely attributable to the traditional secrecy surrounding jury deliberations, is the relative paucity of sources providing insight into the experiences of the jurors themselves. Furthermore, as King notes about the internal dynamics of jury decision making, contemporaries tended to note the exceptional rather than the typical,⁷ and this may also be true of descriptions of jurors' experiences.⁸ However, there are various sources, generally anecdotal, which have not hitherto been synthesized,

5. See for example, William Robert Cornish, *The Jury* (London: Allen Lane, 1968); David Bentley, *English Criminal Justice in the Nineteenth Century* (London: Hambledon Press, 1998), 89–96; John W. Cairns and Grant McLeod, eds., "*The Dearest Birth Right Of The People Of England*" *The Jury in The History of the Common Law* (Oxford: Hart Publishing, 2002); James Swanston Cockburn *A History of English Assizes* (Cambridge: Cambridge University Press, 1972); Neal Garnham *The Courts, Crime and Criminal Law In Ireland, 1692–1760* (Dublin: Irish Academic Press, 1996), 133–48; Thomas A. Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury 1200–1800* (Chicago: University of Chicago Press, 1984); James Oldham, *Trial By Jury: The Seventh Amendment and Anglo-American Special Juries* (New York: New York University Press, 2006); Antonio Schioppa, ed., *The Trial Jury in England, France, Germany 1700–1900* (Berlin: Duncker and Humblot, 1987); and Conor Hanly, "The Decline of Civil Jury Trial in Nineteenth-Century England," *The Journal of Legal History* 26 (2005): 253–78.

6. Some notable exceptions here are Peter King, "Illiterate Plebeians, Easily Misled, Jury Composition, Experience and Behaviour in Essex, 1735–1815," in *Twelve Good Men and True: The Criminal Trial Jury in England, 1200–1800*, ed. James Swanston Cockburn and Thomas A. Green (Princeton: Princeton University Press, 1988); Peter Lawson, "Lawless Juries? The Composition and Behaviour of Hertfordshire Juries, 1573–1624," in Cockburn and Green, *Twelve Good Men*; James Swanston Cockburn, "Twelve Silly Men? The Trial Jury at Assizes, 1560–1670," in Cockburn and Green, *Twelve Good Men*; A. Browne, *The Juryman's Handbook* (London: Harvill Press, 1951); Richard Ireland, "Putting Oneself on Whose County? Carmarthenshire Juries in the Mid-Nineteenth Century," in *Legal Wales: Its Past, Its Future*, ed. Thomas Watkin (Cardiff: Welsh Legal History Society, 2001); and David Seipp, "Jurors, Evidences and the Tempest of 1499" in Cairns and McLeod, *The Dearest Birth Right*.

7. King, "Illiterate Plebeians," 292.

8. Seipp, "Jurors, Evidences," 75, notes that jurors are "the unsung heroes of the common law . . . Jurors were always just off-stage in the pages of the Year Books, a silent unseen presence . . . When jurors did make an appearance, it was usually because something had gone wrong with the jury process."

and it is hoped that by gathering these together for the first time, it will be possible to establish a more coherent picture of what jury service in the nineteenth century entailed. Useful sources in this regard are submissions made to parliamentary committees, biographical sketches, sources from the National Archives of Ireland, commentary from regional newspapers, and details provided in case reports, especially in individual reports of trials. However, it ought to be highlighted at the outset that many of these accounts are by their nature intrinsically biased, depending upon the commentator's political agenda or standpoint. In addition, the anecdotal nature of many of the accounts means that their accuracy may also be somewhat questionable; nevertheless the various sources help to establish an overall picture of jurors' experiences.

2. Jurors in Ireland and Around the Common Law World

The common law was introduced to Ireland in the thirteenth century,⁹ and amongst other things Ireland inherited the English system of trial by jury.¹⁰ As has been pointed out elsewhere, Ireland represented the first "adventure" of the common law.¹¹ As well as echoing many experiences – and indeed, problems and pitfalls – of jury trials in England,¹² the difficulties associated with the Irish justice system were often forerunners of problems later experienced in other countries. In the nineteenth and early twentieth centuries, jury trial was introduced in various shapes and forms to all corners of the British Empire.¹³ Attempts were made to tailor jury trial to its new surroundings; for example, smaller juries were used in place

9. See Francis Headon Newark, "Notes on Irish Legal History," *Northern Ireland Legal Quarterly* 7 (1947): 121–39.

10. The origins of trial by jury have been the subject of extensive debate; see, for example, Joseph B. Thayer, "The Jury and its Development," *Harvard Law Review* 5 (1892): 249–73, 295–319, 357–88; Ralph V. Turner, "The Origins of the Medieval English Jury: Frankish, English or Scandinavian?" *Journal of British Studies* 7 (1968): 1–10; and Mike Macnair "Vicinage and the Antecedents of the Jury," *Law and History Review* 17 (1999): 537–90.

11. William Johnston, "The First Adventures of the Common Law," *Law Quarterly Review* 36 (1920): 9–30.

12. Parallels may be drawn between nineteenth-century Irish juries and problems experienced at earlier stages in England. For example Lawson, "Lawless Juries?" 124–26 cites abuses in relation to the compiling of the jury lists, and, *ibid.*, 138 "the practical inconveniences under which jurors . . . labored." Cockburn, "Twelve Silly Men," 163–71 examines the sixteenth-century problem of jurors repeatedly serving. All of these later presented difficulties in Ireland.

13. See, generally, Richard Vogler, "The International Development of the Jury: The Role of the British Empire," *International Review of Penal Law* 72 (2001): 525.

such as Lagos (Nigeria),¹⁴ Singapore,¹⁵ and Southern Rhodesia (Zimbabwe).¹⁶ Knox-Mawer points out that “[i]t was appreciated that local conditions operated against the introduction of a universal right to the unanimous verdict of twelve jurors upon all indictable charges, but with modifications such as smaller juries, majority verdicts and the restriction of the unfettered right to jury trial to capital cases, the system was introduced to the Gold Coast, Gambia and Sierra Leone.”¹⁷ This may be seen as a facet of the wider difficulties associated with imposing British laws and legal institutions on diverse and far-flung societies. The assumption that trial by jury was a superior method of dispute resolution was tempered by allowances for the unique characteristics of the societies in question.

One example of an Irish problem repeated elsewhere is the non-representativeness of the jury, which later proved to be a problem in Australia¹⁸ and the United States.¹⁹ Also, in many territories, such as New Zealand,²⁰ Rhodesia, and the South African states,²¹ as in Ireland,

14. This was provided for under an 1864 Ordinance; see Emmet V. Mittlebeeler, “Race and Jury in Nigeria,” *Howard Law Journal* 18 (1973–75): 88–106, 90.

15. Molly Cheang, “Jury Trial: the Singapore Experience,” *University of Western Australia Law Review* 11 (1973–74): 120–32.

16. J.H. Jearey, “Trial by Jury and Trial with the Aid of Assessors in the Superior Courts of British African Territories: II,” *Journal of African Law* 5 (1961): 36–47. See, further, Roger Howman, “Trial by Jury in Southern Rhodesia,” *Rhodes-Livingstone Journal* 7 (1949): 41.

17. Ronald Knox-Mawer, “The Jury System in British Colonial Africa,” *Journal of African Law* 2 (1958): 160–63.

18. The representativeness of Australian juries in the twentieth century is considered by Michael Chesterman, “Criminal Trial Juries in Australia: From Penal Colonies to a Federal Democracy,” in *World Jury Systems*, ed. Neil Vidmar (Oxford: Oxford University Press, 2000) 136–43.

19. See Nancy Jean King, “The American Criminal Jury,” in Vidmar, *World Jury Systems*, 108–14 for a discussion of some of the problems surrounding jury composition and the representation of African-Americans on juries in the United States.

20. In New Zealand, Maori were initially barred from sitting on juries (except on mixed-race civil juries where one party was Maori), and it was not until 1962 that they became eligible for general jury service: see Neil Cameron, Susan Potter, and Warren Young, “The New Zealand Jury,” *Law and Contemporary Problems* 62 (1999): 103–40. Disputes between Maori or criminal cases involving only Maori could be decided by juries of Maori: *Report of the Royal Commission on the Courts* (Wellington: E.C. Keating, 1978), 16.

21. For a history of jury trials in South Africa, see Ellison Kahn, “Restore the Jury? Or ‘Reform? Reform? Aren’t Things Bad Enough Already?’ I,” *South African Law Journal* 108 (1991): 672–87; Ellison Kahn, “Restore the Jury? Or ‘Reform? Reform? Aren’t Things Bad Enough Already?’ II,” *South African Law Journal* 109 (1992): 82–111; and Ellison Kahn, “Restore the Jury? Or ‘Reform? Reform? Aren’t Things Bad Enough Already?’ III,” *South African Law Journal* 109 (1992): 307.

the tension between different social, ethnic, or religious groups proved to be a difficulty. The issue of unanimous versus majority verdicts was hotly debated in the United States²² and in England and Ireland. The use of special juries in controversial or difficult criminal cases was common to both Ireland and Sierra Leone.²³ Irish controversy over the rules and principles surrounding jury challenges was echoed in Malta,²⁴ and later became the subject of consideration in Canada.²⁵

Although many of the experiences of Irish jurors discussed in this article were, because of political, economic, and religious factors, unique to Ireland, it is suggested that an examination of how jury service was experienced in one common law jurisdiction might go some way toward highlighting the types of issues pressing upon jurors in others. It is also suggested that some of the difficulties associated with juries in Ireland had already been experienced in England at earlier stages. Although a detailed consideration of the issues arising in overseas jurisdictions is beyond the scope of this article, it is worth pointing out that despite Ireland's unique social and political conditions, many issues raised by jury trial were not in fact uniquely Irish.

3. A Brief Sketch of the Irish Courts System

In nineteenth-century Ireland, criminal prosecutions and civil disputes were generally dealt with at a local level.²⁶ Several times a year the judges from the superior courts in Dublin travelled around on circuit to preside at county assizes to hear important civil and criminal cases. The quarter

22. See, for example, Stephen Landsman, "The Civil Jury in America," in Vidmar, *World Jury Systems* 400–402.

23. Knox-Mawer, "British Colonial Africa," 163.

24. John J. Cremona, "The Jury System in Malta," *American Journal of Comparative Law* 13 (1964): 570–82.

25. See Neil Vidmar, "The Canadian Criminal Jury: Searching for a Middle Ground," in Vidmar, *World Jury Systems*, 231–38.

26. There was also a "confusing conglomeration" of local courts; they "were numerous and varied considerably in respect to jurisdiction, procedure and terminology": Robert Brendan McDowell, *The Irish Administration 1801–1914* (London: Routledge and K. Paul, 1964), 115. These included the borough courts (known as Tholsel courts) and the manorial courts (the courts baron and leet). See also, generally, Richard McMahon, "The Court of Petty Sessions and Society in Pre-Famine Galway," in *The Remaking of Modern Ireland 1750–1950: Beckett Prize Essays in Irish History*, ed. Raymond Gillespie (Dublin: Four Courts Press, 2004) 101–37, for a discussion of the Petty Sessions Courts' role within society.

sessions²⁷ were held four times a year or more, if necessary. They were presided over by judges known as “Justices of the Peace,”²⁸ and dealt with less serious criminal offences.²⁹

In the nineteenth century, criminal justice was administered by both grand juries³⁰ and petty juries, the former consisting of “gentlemen of

27. See Bentley, *English Criminal Justice*, 57–58, 77 on quarter sessions in England. For Ireland, see McDowell, *The Irish Administration*, 116–18; John F. McEldowney, “Some Aspects of Law and Policy in the Administration of Criminal Justice in Nineteenth-Century Ireland,” in *The Common Law Tradition: Essays in Irish Legal History*, ed. John McEldowney and Paul O’Higgins (Dublin: Irish Academic Press, 1990), 132; Garnham, *The Courts*, 77; and P.J. McKenna, “On the Criminal Jurisdiction of Quarter Sessions in Ireland,” *Journal of the Dublin Statistical Society* 1 (1856): 276–85.

28. McDowell notes that Justices of the Peace were unpaid amateurs, and performed a wide variety of duties, and dealt with some questions of legal complexity. In England, the Justice of the Peace was traditionally a landed gentleman, but in Ireland, because of absenteeism, the religious divide, and agrarian unrest, there were difficulties, and in the early nineteenth century, some “unsuitable” persons served as Justices of the Peace. Although things improved somewhat in the 1820s, from 1830, Justices of the Peace were attacked not for incompetence, but for political bias. McDowell, *The Irish Administration*, 112. Justices of the Peace also presided over petty sessions, used for the summary trial of minor offenses.

29. Bentley, *English Criminal Justice*, 8, notes that “in theory, Quarter Sessions had jurisdiction to try all crimes except treason. In practice, all they tried were case of petty larceny and misdemeanour.” Although broadly similar, there were some differences as to the use of jurors at quarter sessions; for example, it was generally observed that the jurors summoned for quarter sessions were socially inferior to those summoned for assizes: see, for example, *First, Second, and Special Reports from the Select Committee on Juries (Ireland)* House of Commons Parliamentary Papers 1873 (283) xv, 389, per Charles Hemphill, para. 8. For the assizes, jurors were summoned from the whole county. For the quarter sessions, they came from the quarter sessions divisions, which were smaller: *ibid.*, para. 3405–8. Procedurally, men who were qualified to sit as special jurors sat on the grand jury at quarter sessions (see below, note 31, for a description of the duties of grand jurors).

30. William G. Huband, *The Grand Jury in Criminal Cases, the Coroner’s Jury and the Petty Jury in Ireland* (Dublin: Ponsonby, 1896), 2–22 traces the origins and development of the grand jury in the context of criminal prosecutions. See also the Grand Jury (Ireland) Act 1836 (6 & 7 Wm. IV, c. 116). The other function of the grand jury related to local government. Presentments would be made to the grand jury at assizes for the purpose of agreeing on rates and raising revenue for local services. These would then be approved by the assize judge. See, further, Virginia Crossman, *Local Government in Nineteenth Century Ireland* (Belfast: The Institute of Irish Studies, Queen’s University of Belfast for the Ulster Society of Irish Historical Studies, 1994), 25–41. She notes that the grand jury was both the most important and the most criticised local body in rural Ireland (25). In 1898, grand juries ceased to exist as administrative bodies, and “local government passed into the hands of elected councils.” See Ian Bridgeman, “The Constabulary and the Criminal Justice System in Nineteenth-Century Ireland,” in *Criminal Justice History: Themes and Controversies from Pre-Independence Ireland*, ed. Ian O’Donnell and Finbar McAuley (Dublin: Four Courts Press, 2003), 117. Studies of the local government function of specific grand juries include Thomas King, “Local Government Administrators in Carlow—from Grand Jury to County Council,” *Carloviana: Journal of the Old Carlow Society* 47

the best figure of the county.”³¹ First, at the beginning of an assizes, a grand jury decided whether the bills of indictment against accused persons were “true bills”; in other words, whether the prosecutor had made a *prima facie* case.³² Up to twenty-three grand jurors were empanelled,³³ and a minimum of twelve had to agree in order for a true bill to be found.³⁴

Once the grand jury had found a true bill against a defendant, that defendant then went on to be tried by a petty (or petit) jury, consisting of twelve men. The petty jury could either be common or special. The common jury decided the vast majority of both civil and criminal cases, whereas the special jury was used chiefly for commercial cases and politically-tinged criminal prosecutions.³⁵ The special jurors themselves tended to be of a higher social standing, and were often men of commerce themselves. The Juries (Ireland) Act 1833 prescribed that they were to be merchants, bankers, or esquires,³⁶ which was more or less in line with the qualifications for English special jurors.³⁷ Whereas all of those who served on

(1999): 77–78 and Tom Donovan, “Miscellanea: Some Records of Limerick Assizes,” *North Munster Antiquarian Journal*, 45 (2005): 151–54.

31. William Blackstone, *Commentaries on the Laws of England*, 15th ed., Vol. 4 (London: A. Strahan, 1809), 301.

32. See Huband, *The Grand Jury*, 123–208 for details of the operation of grand juries in Ireland. See, also, Cornish, *The Jury*, 62 and Gerald O’Carroll, *Mr. Justice Robert Day (1746–1841): the Diaries and the Addresses to Grand Juries 1793–1829* (Tralee: Polymath, 2004), 3.

33. Charles H. Foot, *The Grand Jury Laws of Ireland*, 2nd ed. (Dublin: Hodges Figgis, 1884), 24.

34. Huband *The Grand Jury*, 184, noted that “[a] finding by less than twelve grand jurors is erroneous.” Hale wrote that “if there be thirteen or more of the grand inquest, a presentment by less than twelve ought not to be. But if there be twelve assenting, though some of the rest of their number dissent, it is a good presentment.” Matthew Hale, *The History of the Pleas of the Crown*, Vol. 2 (London: E & R Nutt and R Gosling, 1736), 161. Any twelve jurors could agree to the bill; it was not necessary that the foreman be one of them: *In re Grand Jury for County of Down* (1845) 3 Cr & Dix CC.

35. On the special jury in the English context, see James C. Oldham, “The Origins of the Special Jury,” *University of Chicago Law Review* 50 (1983): 137–221; James C. Oldham, “Special Juries in England: Nineteenth Century Usage and Reform,” *Journal of Legal History* 8 (1987): 148–66; and J. Oldham, *Trial by Jury*. For an Irish context, see Niamh Howlin, “Merchants and Esquires: Special Juries in Dublin 1725–1833,” in *Georgian Dublin*, ed. G. O’Brien and F. O’Kane (Dublin: Four Courts Press, 2008) 97–109.

36. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 24.

37. The property qualifications for Irish jurors were always lower: see Garnham, *The Courts*, 135. In relation to special juries, another difference was that the Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 24, contained a proviso that the bankers and wholesale merchants were not to carry on retail trade, whereas the English County Juries Act 1825 (6 Geo. IV, c. 50), s. 31 made no such stipulation. Sons of peers were listed in the Juries

trial juries had to hold property of a certain value, the property requirements were higher for special jurors.³⁸ The focus of this article is the common petty juror; the most frequently-encountered juror in the nineteenth century.

4. Who Were the Irish Jurors?

King writes that the various questions we have about jurors “cannot be adequately answered without a detailed understanding of who the jurors were (and of the relationship between contemporary perceptions of the capacities and social status of jurors and their actual wealth, status and abilities).”³⁹ Jury composition undoubtedly had (and arguably continues to have) a significant impact on the trial process, although as King warns, the precise relationship between jury behaviour and jury composition is “extremely difficult to assess.”⁴⁰ Although a detailed examination of the composition of Irish juries is beyond the scope of this article, it is possible to make a few general statements about the type of men on whom the nineteenth-century jury system rested. Their minimum age was twenty-one, and the upper age prescribed by legislation varied between sixty and seventy years.⁴¹ Most jurors were freeholders, although other interests in land

(Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), but not in the County Juries Act 1825 (6 Geo. IV, c. 50). Similarly, there was a difference in relation to men qualified to serve as grand jurors at the assizes and sheriffs. Section 6 of the Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65) reaffirmed the right of those legally entitled to be called “esquire” to serve as special jurors.

38. Section 29 of the Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91) set out the qualifications for special jurors, which related to their social status rather than simply the value of their land. This is similar to the County Juries Act 1825 (6 Geo. IV, s. 50), s. 31. Under the Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), sch. iv, special jurors in most counties had to be rated for the relief of the poor to the value of £50, compared with £20 for common jurors. Under the Jurors Qualification (Ireland) Act, 1876, sch. i, special jurors were rated at between £50 and £150 in most counties, compared with the common jurors’ rating qualification of £10 to £40. In England, the Juries Act 1870 (33 & 34 Vic., c. 77), s. 6 provided that a special juror had to occupy a private house rated for £100 in towns of 20,000 inhabitants, or £50 elsewhere; alternatively he could occupy a farm rated at £300 or another premises at £100. See below, note 51.

39. King, “Illiterate Plebeians,” 256.

40. *Ibid.*, 289.

41. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 1, lowered the age limit from seventy to sixty years, and it was raised again by the Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65) to 65. It was subsequently lowered by the Juries (Ireland) Act 1873 (36 & 37 Vic., c. 27), s. 3 to sixty years. See Anon., “Juries Bill 1871,” *Irish Law Times and Solicitors’ Journal* 6 (1872): 326–27. In England, the County Juries Act 1825 (6 Geo. IV, s. 50),

could also suffice,⁴² and the actual amount of land they had to hold varied throughout the century. Certain persons could claim exemption from service despite satisfying the property requirement; these included peers, clergymen, physicians, surgeons, apothecaries, parish clerks, postmasters, army and naval officers, schoolmasters, civil engineers, publicans, and masters of vessels.⁴³ Others were barred from sitting on juries; these included outlaws, persons suffering from disease or disability,⁴⁴ and, later in the century, persons who could not read and write the English language.⁴⁵ Beyond these statutory requirements, it is possible to learn more about jurors in specific cases, as surviving records sometimes indicate not only their names and addresses, but also their religion and professions.⁴⁶

As noted, jurors had to hold a certain amount of property, as prescribed in legislation.⁴⁷ Under the Juries (Ireland) Act 1833⁴⁸ one had to have either £10 annually in land or rents held in fee simple, fee tail, or for life, or £15 annually in lands held by a lease originally made for not less than twenty-one years.⁴⁹ One could also be classified as a resident

s. 1 provided an upper age limit of sixty; this was not altered by the Juries Act 1870 (33 & 34 Vic., c. 77).

42. Under the Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), persons who held leases originally made for more than twenty-one years could also qualify as jurors, if the lease was worth £15 per annum; see below, note 50. See also the County Juries Act 1825 (6 Geo. IV, s. 50), s. 1.

43. See the Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 2; the Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 6, sch. 2; and the Juries Procedure (Ireland) Act 1876 (39 & 40 Vic., c. 78), s. 20, sch. 1. For an English context, see the County Juries Act 1825 (6 Geo. IV, s. 50), s. 2; and the Juries Act 1870 (33 & 34 Vic., c. 77), s. 9.

44. This common law rule was reaffirmed in the Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 12.

45. The Juries (Ireland) Act 1873 (36 & 37 Vic., c. 27), s. 3.

46. See, for example, *Report from the Select Committee on Privilege (Mr. Gray)* 1882 House of Commons Parliamentary Papers (406) xii, 503, in which details are given of the religious beliefs of jurors (including those who were challenged) in the trials of Francis Hynes (see below, text accompanying notes 228–246), John O'Connor, Patrick Walsh, Michael Walsh, Laurence Kenny, William Bryan, Thomas Caesar, John Brennan, and George Richmond. The professions of those on the 1844 Dublin jury panel (and the jurors who tried Daniel O'Connell) may be found in the *Return to an order of the Honourable the House of Commons, dated 2 April 1844; — for, copies of the lists returned by the collectors of grand jury cess for the county of the city of Dublin to the clerks for the peace for the said county*, House of Commons Parliamentary Papers 1844 (357), xlv, 385.

47. Vaughan discusses the principal legislative qualifications for jurors in William E. Vaughan, *Murder Trials in Ireland 1836–1914* (Dublin: Four Courts Press, 2009), 121–23.

48. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 1.

49. The County Juries Act 1825 (6 Geo. IV, s. 50), s.1 provided that a juror should hold £10 per annum in lands or tenements held in freehold, copyhold, or customary tenure, of

merchant, a freeman, or a householder in a town, with an annual value of £20.⁵⁰ A new system was introduced by the Juries Act (Ireland) 1871,⁵¹ whereby one had to be rated for the relief of the poor with respect to lands of a specified annual value (£20 in most counties⁵²). The effect of this Act was to significantly widen the jury franchise, admitting men who would hitherto have been excluded.

Qualifying as a juror was not necessarily an indication of social stature, especially after 1871. From 1870 until the end of the century land ownership gradually transferred from landlords to tenants, and increasingly, farmers owned the land on which they lived and worked.⁵³ In 1875, 30% of the landowners in Ireland held less than 100 acres.⁵⁴ Of these 5,919 landowners, 2,377 held less than 25 acres. Such farmers, although possibly better off than those who held their lands under leasehold interests, were by no means wealthy men.⁵⁵ Nevertheless, although commentators such as court officials, lawyers and judges considered these men to be extremely poor, they still represented a minority—of the approximately

ancient demesne; or in rents; or £10 per annum in fee simple, fee tail, or for the life of himself or some other person. He could alternatively hold a long lease. It also provided for the qualification of persons rated or assessed for the poor rate or the inhabited house duty, to the value of £20 in all counties except Middlesex, where the value was to be £30. A juror could also be a householder with a house of not less than fifteen windows.

50. There was an additional category for cities and towns: resident merchants, freemen, or householders with personal estate to the value of £100. This was the first time that personal property sufficed as a jury qualification.

51. Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 5. Known as “O’Hagan’s Act,” this was introduced by Thomas O’Hagan, the Irish Lord Chancellor, a liberal reformer who had also been responsible for the Landlord and Tenant (Ireland) Act 1870 (33 & 34 Vic., c. 46), known as the Land Act, which sought to legalize the Ulster tenant-right custom. The drafting of the 1871 Act has been detailed by McEldowney, in John F. McEldowney, “Lord O’Hagan (1812–1885): A Study of his Life and Period as Lord Chancellor of Ireland (1868–1874),” *Irish Jurist* 14 (1979): 360–77; and John F. McEldowney, *Lord O’Hagan and the Irish Jury Act 1871* (PhD diss., Cambridge University, 1981).

52. Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), sch. 4.

53. For a description of living conditions and changing standards in the latter half of the nineteenth century, see Catriona Cleary, *Social Change and Everyday Life in Ireland, 1850–1922* (Manchester: Manchester University Press, 2007).

54. See *Return to an Order of the Honourable the House of Commons, dated 20 July 1876;— for, copy “of a return of the names of proprietors and the area and valuation of all properties in the several counties in Ireland, held in fee or perpetuity, or on long leases at chief rents,” prepared for the use of Her Majesty’s Government 1876* House of Commons Parliamentary Papers (412) lxxx, 395. In 1875 there were 19,288 landowners in Ireland, 5,919 of whom held 100 or fewer acres.

55. Hay points out how difficult it is to use land tax returns for estimating how many acres would be worth £10: Douglas Hay, “The Class Composition of the Palladium Of Liberty: Trial Jurors in the Eighteenth Century,” in Cockburn & Green, *Twelve Good Men*, 313–16.

4,000,000 people living in Ireland in 1875, for example, fewer than 20,000 were landowners—approximately 0.45%.⁵⁶

5. Law and Politics in Nineteenth-Century Ireland

The wider legal, political, and social context in which jury trial operated in Ireland is worth considering briefly. After the Act of Union in 1800,⁵⁷ the justice system functioned under increasingly difficult conditions. Waves of crime, usually associated with political agitation, saw increased activity by secret societies, which sought at times to control jury verdicts by the use of threats or violence.⁵⁸ Often such problems led to the crown's adoption of various "stratagems" to secure convictions.⁵⁹ As is clear from Ireland's recent history, in a turbulent society, trial by jury can be one of the first casualties of a criminal justice system.⁶⁰ Two instances in the 1880s also

56. See *Return to an Order of the Honourable the House of Commons, dated 20 July 1876;—for, copy of a return of the names of proprietors and the area and valuation of all properties in the several counties in Ireland, held in fee or perpetuity, or on long leases at chief rents, prepared for the use of Her Majesty's Government 1876* House of Commons Parliamentary Papers (412) lxxx, 395.

57. This Act created the United Kingdom of Great Britain and Ireland. See Patrick Geoghegan, *The Irish Act of Union: A Study in High Politics 1798–1801* (Dublin: Gill and Macmillan, 1999) and Daire Keogh and Kevin Whelan, eds., *Acts of Union: the Causes, Contexts and Consequences of the Act of Union* (Dublin: Four Courts Press, 2001).

58. For an examination of the relationship between sectarianism and homicide in the early nineteenth century see Richard McMahon, "'The Madness of Party': Sectarian Homicide in Ireland 1801–1850," *Crime History and Societies* 11 (2007): 83–112.

59. For further discussion of the means employed by the crown to secure criminal convictions in controversial or difficult cases, see Howlin, "Controlling Jury Composition" and Johnson, "Trial by Jury."

60. See Jackson, Quinn, and O'Malley, "The Jury System." The "Troubles" in Northern Ireland, which began in the late 1960s, saw 3,000 deaths as a result of political violence: see Paul Bew and Gordon Gillespie, *Northern Ireland: A Chronology of the Troubles, 1968–1993* (Dublin: Gill and Macmillan, 1993), v. The recommendations of a commission led by Lord Diplock led to the passing of the Northern Ireland (Emergency Provisions) Act 1973, which allowed for non-jury courts, known as Diplock Courts, for scheduled offences connected with the political agitation. Over 10,000 individuals were tried before such courts between 1973 and 1993: see, generally, John Jackson and Sean Doran, *Judge Without Jury: Diplock Trials in the Adversary System* (Oxford: Clarendon Press, 1995). Dermot Walsh found that a sizeable proportion of cases tried before the Diplock Courts were in fact ordinary criminal cases: Dermot Walsh, *The Diplock Process: Today and Tomorrow* (Belfast: Committee on the Administration of Justice, 1982), 2. Another example is the Special Criminal Court in the Irish Republic, established under the Offences Against the State Act 1939. It was extensively used during what was known in Ireland as the "Emergency" (World War II). It operated briefly between 1961 and 1962, and during the "Troubles," a government proclamation in 1972 created a Special Criminal Court, which is,

highlight this. After the murder of Lord Frederick Cavendish, the chief secretary,⁶¹ and his undersecretary, Thomas Henry Burke,⁶² “coercion” legislation was passed in 1882.⁶³ This revoked the right to jury trial and allowed for special commissions of three judges to try cases of treason, murder, and assault. It proved to be highly controversial,⁶⁴ as did the Criminal Law and Procedure (Ireland) Act 1887,⁶⁵ which also provided for summary trials in relation to certain offences.⁶⁶

The criminal justice systems of England and Ireland differed on several counts; for example, Ireland had a professional and centralized constabulary and magistracy⁶⁷ and a comprehensive system of public prosecutors at an earlier stage.⁶⁸ As well as structural differences between the two countries’ justice systems, the focus of debate over issues such as the role of the jury also differed. For example, Getzler suggests that the decline in popularity of the civil jury in England stems from “a drive to efficiency” in the courts’ “internal procedures of law making.” He comments that “[j]udges and jurists looked askance at the jury because of its high costs in time and money, and also for the imprecision, uncertainty, irrationality

controversially, still in existence. See Fergal Francis Davis, *The History and Development of the Special Criminal Court, 1922–2005* (Dublin: Four Courts Press, 2007). In 1968, Cornish noted that “[i]n places such as the first West African colonies, the jury was introduced for the whole populace, but such foreseeable obstacles to success as anti-African prejudices, inter-tribal partisanship and extensive bribery of jurors led to its abandonment in the later nineteenth century for civil cases, and to severe curtailment or supersession by trial with assessors in criminal cases.” Cornish, *The Jury*, 15–16.

61. The representative of the crown in Ireland was the Lord Lieutenant, and his will was expressed through the office of the chief secretary. On the powers and responsibilities of the chief secretary, see McDowell, *The Irish Administration*, 29–34.

62. See Tom Corfe, *The Phoenix Park Murders: Conflict, Compromise and Tragedy in Ireland, 1879–1882* (London: Hodder & Stoughton, 1968).

63. The Prevention of Crime (Ireland) Act 1882 (45 & 46 Vic., c. 25).

64. See Howlin “Controlling Jury Composition,” 250–51.

65. Criminal Law and Procedure (Ireland) Act 1887 (50 & 51 Vic., c. 20).

66. Both of these acts also provided for the use of special juries in certain criminal prosecutions.

67. See Bridgeman, “The Constabulary.”

68. William E. Vaughan, *Landlords and Tenants in Mid-Victorian Ireland* (Oxford: Clarendon Press, 1994), 139. See John H. Langbein, “The Origins of Public Prosecution and Common Law,” *American Journal of Legal History* 17 (1973): 313–35; William H. Dodd, “The Preliminary Proceedings in Criminal Cases in England, Ireland, and Scotland, Compared,” *Journal of the Statistical and Social Inquiry Society of Ireland* (1878): 201–9; and John McEldowney: “Crown Prosecutions in Nineteenth-Century Ireland,” in *Policing and Prosecution in Britain 1750–1850*, ed. Douglas Hay and Francis Snyder (Oxford: Clarendon Press, 1989), 428. See also Howlin, “Controlling Jury Composition,” 244–45.

and lack of intelligence perceived to infect lay decisions.”⁶⁹ Although some of these criticisms (notably those relating to imprecision, uncertainty, and irrationality) could be extended to juries in Ireland, this would largely relate to juries in criminal cases. Generally speaking, nineteenth-century Irish jury trials presented their own unique problems, and criticisms of jury trial in Ireland were usually more general than was the case in England.

Social differences between the two countries also specifically affected the way jury trial developed and was experienced. For example, the structure of Irish rural society did not lend itself to the existence of an extensive pool of middle-class landowners to sit as jurors.⁷⁰ Especially in the early 1800s, there was a large rural population of subsistence farmers, who did not hold freehold or long leasehold interests⁷¹ in the land they farmed,⁷² and

69. Joshua Getzler, “The Fate of the Civil Jury in Late Victorian England: Malicious Prosecution as a Test Case,” in Cairns and McLeod, *The Dearest Birth Right*, 220.

70. This also proved to be a difficulty in most other regions to which jury trial was extended; see below, note 345, for example.

71. Although traditionally the freehold was an essential requirement for jury service, by the eighteenth century, provision was made for the qualification of certain leaseholders. A 1730 Regulation of Juries Act (3 Geo. II, c. 25) provided that the holders of any “Lease or Leases for the absolute Term of five hundred years or more, or for ninety-nine years or any other Term determinable on one or more Life or Lives,” with a yearly value of £20, were qualified to sit on juries in the same manner as freeholders. A 1731 Act (4 Geo. II, c. 7), s. 3 amended this in relation to jurors in Middlesex: leaseholders in that county were to serve on juries where their improved rent amounted to £50 per annum. A 1755 Act (29 Geo. II, c. 6), s. 12, entitled “An Act for Better Regulating Juries,” provided that jurors on any trial in the four courts, or before justices of assize or *nisi prius* (except aliens on juries *de medietate linguae*, and except in cities and towns), should hold £10 in freehold. Protestants could qualify if they held leasehold interests with clear profits of £15, where the lease still had fifteen years unexpired, or the lease was of sixty-one years determinable on life or lives. A 1765 Act for the Regulation of Trial Juries in Cork (5 Geo. III, c. 24), s. 6 provided that “the want of freehold shall not be a legal or sufficient objection or challenge to any person summoned” to the Recorder’s Court in Cork; as long as a person was “worth fifty pounds over and above all his just debts,” this would be sufficient. The Juries Act (Ireland) 1871 provided that those who were rated for the relief of the poor could qualify as jurors; note that the Irish Poor Law Act 1838 (1 & 2 Vic., c. 56) allowed for the holders of leases to be rated for the relief of the poor, where the net annual value of the land exceeded £5. (If the land was worth less than £5, then by virtue of s. 72, the lessee, rather than the occupier, could be rated). See William Stanley, *Poor Laws—Ireland: The Injustice of Assessing Landlords and the Impracticality of Assessing Landholders* (Dublin: Milliken and Son, 1837).

72. See James C. Brady, “Legal Developments, 1801–79,” in *A New History of Ireland; V, Ireland Under the Union 1801–1870*, ed. William Vaughan (Oxford: Oxford University Press, 1989) for a discussion of land reforms in the nineteenth century, particularly the statutes allowing the conversion of certain leases to fee farm grants, “enabling tenants to acquire the fee simple of their holdings subject to the payment of a perpetual rent. Such

therefore could not qualify as jurors at the assizes or quarter sessions, although they may, however, have sat upon juries in the less formal manor courts.⁷³ Furthermore, those at the lower end of the socioeconomic scale tended to be Roman Catholic, whereas the ruling elite were usually Protestant; in England, by contrast, there was not the same religious divide between the classes. Differences in religious affiliation were in some parts of Ireland accompanied by a language barrier; in the poorer areas in the west of the country, Irish was the language spoken.⁷⁴ All of these issues added to the tensions that dogged the Irish justice system in the nineteenth century.

6. Jurors' Experiences Before Trial

a. Getting One's Name on the Jurors' Book

In order to be summoned as a juror, one's name had to appear in the county jurors' book.⁷⁵ This book was supposed to be updated annually to contain the names of all persons qualified under the law to sit on juries, although in Ireland, as had earlier been the case in England,⁷⁶ there were often abuses and inaccuracies in the drawing up of the lists. Under the Juries (Ireland) Act 1833,⁷⁷ within a week after the commencement of the midsummer sessions,⁷⁸ the clerk of the peace in every county, city, or town issued and delivered a precept⁷⁹ to the high constable and the collectors of the

conversion fee-farm grants uniquely combined the grant to a freehold estate with leasehold tenure," 452. It was also common in Ireland to grant leases for lives renewable forever. Brady points out that the popularity of these leases was partially attributable to "the fact that they combined the best of both worlds, giving to the landowner the extensive remedies available to a landlord while giving to the tenant an estate that approximated in status to a fee simple," 453.

73. See Richard McMahon, *The Courts of Petty Sessions and the Law in Pre-Famine Galway* (MA diss., National University of Ireland Galway, 1999), 16–35.

74. In 1871, there were 714,313 persons in the country who could speak both English and Irish, and 103,562 persons who could not speak English. This had dropped to 64,167 by 1881 (half of these were in Connaught), while the figure for those fluent in both languages had increased. Figures taken from the 1881 Census, Table xxxiv, available in Thomas E. Jordan, *The Census of Ireland 1821–1911*, 3 vols. (New York: Edwin Mellen Press, 1998).

75. These procedures have been detailed elsewhere: Howlin, "Controlling Jury Composition," 234–36. For an English context, see the County Juries Act (6 Geo. IV, s. 50), ss. 5–10 and the Juries Act 1870 (33 & 34 Vic., c. 77) ss. 11–14.

76. See Lawson, "Lawless Juries," 124–26.

77. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91).

78. The Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65) was more specific as to the dates by which the various elements of the procedure had to be completed.

79. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), sch. A.

grand jury cess (local rate) in each barony within the county.⁸⁰ This required them, within one month, to prepare a list of all duly qualified men within their districts.⁸¹ The high constable and the cess collector or collectors prepared a list of qualified jurors in alphabetical order, including the details of their address, title, business, quality, or calling.⁸² They delivered the list to the clerk of the peace, who kept it in his office for three weeks so that anyone who wished could examine it.⁸³ The lists were then presented before the local justices in November or December.⁸⁴ The justices, high constables, and cess collectors attended these special sessions, well-publicized locally, in order to determine whether the lists had been correctly drawn up.⁸⁵ The names of any unqualified men were deleted from the lists, and any qualified men who had been omitted had their names added. An amended list was then delivered by the justices to the clerk of the peace, who kept them among the county records and copied into a book, known as the jurors' book, to be delivered to the sheriff or undersheriff.⁸⁶ This was brought into use at the start of January.⁸⁷

In the early 1800s, before any assize or other court sessions where there were civil or criminal issues to be tried by jury, a writ of venire facias was issued, directing the sheriff to return "Twelve good and lawful Men from the Body of his County."⁸⁸ Under the Juries Act (Ireland)

80. Under the Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 8, the precept was issued to the clerk of each poor law union, except in Dublin, where, under s. 10, it was issued to the collector-general of rates.

81. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 4. Under the Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 8, the precept required "a true list, in writing . . . of the names of all men rated for the relief of the poor within the said union, who are qualified and liable to serve as jurors."

82. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 5. Under the Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 9, the clerk of the poor law union, made "due inquiry" with the assistance of the poor rate collector or collectors. They then prepared the list in alphabetical order of surnames, and this was called the "General List of Jurors for the Barony."

83. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 9. In England, the County Juries Act 1825 (6 Geo. IV, s. 50) provided in s. 9 that the lists were to be affixed to church doors, and kept by churchwardens for inspection.

84. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 9. A similar procedure was laid down in the Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 12.

85. In England, s. 10 of the County Juries Act 1825 (6 Geo. IV, s. 50) provided for the revision of the lists at petty sessions.

86. The same procedures were used in the preparation of the special jurors' book. See also the Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 11. See Vaughan, *Murder Trials*, 123.

87. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 9.

88. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 10. See also the Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 13.

1871⁸⁹ there was no writ of venire facias, but the sheriff's duties in this regard were essentially the same.⁹⁰ The sheriff took the names from the current jurors' book for the county, and under the Juries (Ireland) Act 1833 he had discretion as to the names he selected.⁹¹ Because of frequent allegations of biased or corrupt sheriffs however, the Juries Act (Ireland) 1871 provided that he was obliged to take the names from the book "in a regular alphabetical series," taking one name from each letter of the alphabet and going through the alphabet as many times as necessary.⁹² Although this meant that the sheriff had less discretion in the framing of the jury panel, it did at times give rise to problems; for example, in some parts of Ireland, there would be large numbers of people living locally who shared the same surname; often, they would be members of the same family or extended clan.⁹³

When returning the writ of venire facias, the sheriff annexed a panel listing the names and other details of "a competent Number of Jurors named in the Jurors' Book." There were to be between thirty-six and sixty jurors listed, unless the assize or session judge ordered otherwise. These men were competent to try all the issues at the next assizes or sessions.⁹⁴

89. The Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65).

90. The Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 18. Before a court requiring a jury was to sit, it had to procure all precepts "necessary for commanding the return of jurors before the court." The sheriff (or other officer) had to "select a sufficient number of names" from the relevant jurors' book, "and prepare a panel thereof." A written or printed panel containing the jurors' names, addresses and other information, as well as whether or not they had previously been summoned as jurors in the past two years, was prepared by the sheriff seven days before the date mentioned in the precept. A printed copy of this panel was to be made available, upon the payment of a fee, to any party requiring it.

91. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 11. If there was no jurors' book, the sheriff was to use the book from the previous year. The jurors' names were arranged according to rank and property, so that those of higher social status were placed higher on the panel; see Vaughan, *Murder Trials*, 123.

92. The Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 19. See Vaughan, *Murder Trials*, 127–28.

93. The sheriff was obliged to take one name from each letter of the alphabet, and letters such as X, Y, and Z were quickly exhausted. Eventually, only a few letters would remain – surnames beginning with O or M were often very common. Lewis Mansergh Buchanan, the clerk of the peace for County Tyrone, told the Parliamentary Committee on Juries in 1881 that at the recent spring assizes in his county, in one case "all the jurors were Macs and ten out of twelve were Catholics." *Report from the Select Committee of the House of Lords on Irish Jury Laws*, House of Commons Parliamentary Papers 1881 (430), xi, 1, para. 334. See also para. 329–33. See also the comments of Constantine Molloy, a Q.C. who had drafted the 1871 Juries Act, para. 643.

94. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 12.

The sheriff kept a copy of the panels in his office for seven days before the court sat, for the parties to inspect if they wished.⁹⁵

Until 1871 all jury summonses in Ireland were served by the sheriff.⁹⁶ Generally, he would bring the summons to the prospective juror's home and show it to him; if the juror was absent, a written note containing the substance of the summons was usually left with whoever was home.⁹⁷ The Juries Act (Ireland) 1871⁹⁸ provided for the summoning of jurors in the county of the city of Dublin by post. This provision was not extended to rural areas, because the postal system was not considered to be reliable enough outside the main city.⁹⁹ The Juries Procedure (Ireland) Act 1876¹⁰⁰ provided that summonses were to be made by a constable or subconstable of the Royal Irish Constabulary. The summons was to be delivered "to the person to be summoned, or in case he shall be absent from his usual place of abode, by leaving such summons with some person therein inhabiting." In order to prove that each jury summons had been duly served, every constable or subconstable was required to record the name of every person summoned, the day on which the summons was served, and the manner and particulars of the service.¹⁰¹ Under the Juries (Ireland) Act 1833, the jurors were then summoned six days before their attendance was required.¹⁰² Subsequent legislation provided that four days notice would suffice.¹⁰³

The name of every man summoned was written on a piece of parchment or card, and these were delivered to the judge's clerk and stored in a box. Whenever any issue came to be tried, the clerk, in open court, drew out twelve cards. If any of the men whose names were called did not answer, or were challenged, then more cards could be drawn until a

95. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 14.

96. The subsheriff or undersheriff could also perform this task. Similarly, under section 18 of the Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), the jury summons was to be served by the sheriff or "proper Officer" of the court.

97. See s. 18 of the Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91).

98. The Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 22.

99. The postal summons was one of the issues considered by the 1873 parliamentary committee, and there was considerable disagreement over whether it could or should be extended to the rest of the country. See *First, Second, and Special reports from the Select Committee on Juries (Ireland)* House of Commons Parliamentary Papers 1873 (283) xv, 389. The question arose once more before in 1874: *Report from the Select Committee on the Jury System (Ireland)* House of Commons Parliamentary Papers 1874 (244) ix, 557.

100. The Juries Procedure (Ireland) Act 1876 (39 & 40 Vic., c. 78), s. 6.

101. This function had previously been performed by the sheriff.

102. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 18. In England, jurors were given ten days notice under s. 24 of the County Juries Act (6 Geo. IV, c. 50).

103. The Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 21 and the Juries Procedure (Ireland) Act 1876 (39 & 40 Vic., c. 78), s. 6.

jury of twelve was assembled.¹⁰⁴ These men were then sworn in¹⁰⁵ to try the issue.¹⁰⁶

Despite efforts to ensure that all jury summonses were duly served, prospective jurors did not always respond enthusiastically.¹⁰⁷ In particular, it was claimed that the Juries Act (Ireland) 1871,¹⁰⁸ which reduced the property requirement for jury service, also had the effect of lowering attendance rates.¹⁰⁹ In 1874, it was claimed that about a third of jurors failed to appear when summoned;¹¹⁰ if accurate, this appears to be quite a high proportion. Jurors who failed to appear when summoned, or who failed to answer when their names were called out three times in court were liable to be fined,¹¹¹ although fines, when imposed, were rarely enforced.¹¹²

104. The ballot procedure extended to civil cases under s. 19 of the Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91). This had been done in England by s. 31 of the County Juries Act 1825 (6 Geo. IV, c. 50). It was suggested in 1853 to a Royal Commission that the automatic right to a ballot ought to be extended to criminal cases: *Royal Commission to inquire into the process, practice and system of pleading in Superior Courts of Common Law, Second Report*, House of Commons Parliamentary Papers 1852–3 (1626), xl, 701, para. 2498–99. It was not until 1871 that the ballot was extended to both civil and criminal cases as a matter of right: the Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 41. See also the Juries Procedure (Ireland) Act 1876 (39 & 40 Vic., c. 78), s. 19.

105. Purcell gave the form of the oath to be as follows: “The clerk of the crown orders the crier to call the juryman who stands highest on the panel, and having directed the latter to look upon the prisoner, and to take the book in his right hand, he administers to him the following oath:— ‘*You shall well and truly try, and true deliverance make, between our sovereign lady the Queen and the prisoner at the bar, and all such other prisoners and traversers as shall be given you in charge, and a true verdict give according to the evidence.*’” Theobald Andrew Purcell, *A Summary of the Criminal Law of Ireland* (Dublin: Grant and Bolton, 1848), 188. The juror would take the Bible in his hand and the Clerk of the Peace would say “juror, look upon the prisoner. Prisoner, look upon the juror.” The juror then swore on the bible and kissed it.

106. The same jury could try several issues in succession if the parties consented. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), s. 19.

107. For a discussion of this in an American context, see Nancy Jean King, “Juror Delinquency in Criminal Trials in America, 1796–1996,” *Michigan Law Review* 94 (1996): 2673–752.

108. The Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65).

109. *Report from the Select Committee on Jury System (Ireland)* House of Commons Parliamentary Papers 1874 (244) ix, 557, per Baron Deasy, third Baron of the Irish Court of Exchequer, para. 2498–99.

110. *Ibid.*, per William Ormsby, the subsheriff of the city and county of Dublin, para. 488.

111. The Juries (Ireland) Act 1833 (3 & 4 Wm. IV, c. 91), ss. 32 and 41, and the Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 48. In England, see the County Juries Act 1825 (6 Geo. IV, c. 50), s. 52.

112. *Report from the Select Committee on Jury System (Ireland)* House of Commons Parliamentary Papers 1874 (244) ix, 557, per Ormsby, para. 558. According to s. 2 of the Fines Act (Ireland) 1851 (14 & 15 Vic., c. 90), an order could be made for the imposition of any fine. The officer of the court was to enter and maintain the particulars of such orders

Wealthier men who qualified as jurors were often reluctant to attend, and many of them were quite happy to take the risk of being fined. In any case, the majority of those who received jury summonses generally attended at court unless they could afford either to bribe the sheriff or pay the non-attendance fine.

b. Corruption, Intimidation and Bribery

The Irish jury was infamous for its apparent ability to be bought, persuaded, swayed, packed, or influenced by various political and religious groups. This was particularly true during periods of political unrest, such as the Catholic emancipation agitation of the 1820s,¹¹³ the Tithe War of the 1830s,¹¹⁴ the State Trials of 1848¹¹⁵ that followed the Young Irelanders' attempts to stage an uprising,¹¹⁶ the rise of Fenianism in the

in a special book, and was to send notices through the post to those who were fined, within fourteen days of the end of term, assizes, sessions, or sittings at which the fine was imposed. The person fined had thirty days in which to pay, or else a warrant would be issued. Within seven days, the judge's registrar or clerk was to certify "the Particulars of any Penal Sum which shall have been imposed or ordered to be levied by the said Court in such Case. Section 3 went on to state that where a fine was levied, and a warrant for its payment was issued after thirty days, the court officer could order distress or imprisonment in cases of non-payment. Such fines could be appealed, and under s. 9 the party in question could apply to the relevant court for a reduction or a remittance. An examination of the warrants issued in May between 1880 and 1883 in county Mayo show that this practice was frequently resorted to: *Office of the Clerk of the Crown and Peace, Co. Mayo 1881–1899* National Archives of Ireland, (hereafter N.A.I.) 1c/76/100a. It is clear that in Mayo there were a number of repeat offenders. One Robert Carson wrote as an excuse in 1895 that he had "a bad lump in my neck for the past 10 or 12 days" – a dubious excuse from a man who had ignored jury summonses almost every year for two decades. Under the Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65), s. 40 the court could fine any person who failed to appear after being summoned for jury service, unless some "reasonable excuse" was proved by oath or affidavit. The most common excuses seem to have been medical reasons, the bad state of the roads and economic hardship. *Office of the Clerk of the Crown and Peace, Mayo 1877–96*, N.A.I. 1c/76/102.

113. See Fergus O'Ferall, *Catholic Emancipation: Daniel O'Connell and the Birth of Irish Democracy 1820–30* (Dublin: Gill and Macmillan, 1985) and D. George Boyce, *Nineteenth Century Ireland: the Search for Stability* (Dublin: Gill and Macmillan, 1990), 57–86.

114. The tithe war was a period of violence and political agitation during the 1830s when there was widespread resistance among Irish Catholics to attempts to collect tithes for the established Church of Ireland. See Boyce, *Nineteenth Century Ireland*, 62–64.

115. These were the trials of John Mitchel, Thomas Francis Meagher, and William Smith O'Brien for sedition.

116. See below, note 139 and see also James S. Donnelly, Jr., "A Famine in Irish Politics," in *A New History of Ireland; V, Ireland Under the Union 1801–1870*, ed. William Vaughan (Oxford: Oxford University Press, 1989), 364–71; Alvin Jackson, *Ireland, 1798–1998: Politics and War* (Oxford: Blackwell Publishers, 1999), 55–57; Richard Davis, *The*

1860s, and the trials arising from the abortive rising¹¹⁷ and the Land War of 1879–1882.¹¹⁸ Bribes, threats, and in some cases physical violence affected verdicts, and these problems were apparently well-recognized in early nineteenth-century Ireland; for example, in 1832, during the tithe agitation, the Irish judges remarked that “the duty of Jurors is often discharged at the peril of Property and life.”¹¹⁹ Political and social pressures prevailing in Ireland meant that jury service was indeed perilous at times, and many were reluctant to participate.

As will be discussed subsequently, jurors’ reimbursement for their time was woefully inadequate, and one consequence of this was that bribing or attempting to bribe jurors was not uncommon. Tampering with the jury left one open to a charge of embracery.¹²⁰ The effects of receiving a bribe seem to have varied from case to case: if found guilty of embracery, a juror could be subject to a fine or imprisonment,¹²¹ but by the nineteenth century this was quite rare. Sometimes the verdict would be deemed void,¹²² or the jury might be discharged if the bribe was discovered at an early stage.¹²³ More often, however, the juror would be fined; in theory up to ten times the amount received.¹²⁴ It was not always the parties to the case who approached the jurors with the bribe; sometimes jurors themselves demanded advance payment from the parties.¹²⁵

Being at the receiving end of a bribe was sometimes the least of a juror’s worries; much more serious was the problem of juror intimidation. Interest groups often resorted to tough tactics when securing a certain verdict was perceived as essential, especially in cases with a political edge. Juror

Young Ireland Movement (Dublin: Gill and Macmillan, 1987); and Francis Stewart Leland Lyons, *Ireland Since the Famine* (London: Weidenfeld and Nicolson, 1971), 93–101.

117. See Boyce, *Nineteenth Century Ireland*, 139–53. See also Niamh Howlin, “Fenians, Foreigners and Jury Trials in Ireland, 1865–70,” *Irish Jurist* 45 (2010): 51–81.

118. On the reasons behind the land war, see Vaughan, *Landlords and Tenants*, 208–16. See also Lyons, *Ireland Since the Famine*, 156–69, 182, 185–86.

119. *Letter Regarding the Jury Bill 1833, from the judges of Ireland to E.G. Stanley*, February 1833, N.A.I. OP/1833/14.

120. See James Fitzjames Stephen, *A Digest of the Criminal Law* (London: Macmillan and Co., 1877), 77–78 and William Hawkins, *Treatise of the Pleas of the Crown*, 4th ed., Vol. 1 (London: E. Richardson and C. Lintot, 1762.), 259.

121. Jury Act 1833 (3 & 4 Wm. IV, c. 91), s. 48.

122. According to Duncombe, “[t]o give the Jury money, makes their Verdict voyd.” Giles Duncombe, *Tryalls Per Pais* (London: George Dawes, 1655), 213. See, for example, the English case of *Sir John Smith and Peaze* (1687) 1 Leo 17; 74 ER 16.

123. See the English case of *Richard Noble* (1713) How St Tr 731.

124. Again, it is difficult to assess whether such fines were ultimately paid.

125. See the case of *Byrne v Chester & Holyhead Railway Co.* (1856) 8 *Irish Jurist* (os) 511, discussed below, note 283.

intimidation was particularly prevalent at times of unrest, and it was during such periods that the problem became the subject of public commentary. One example of this was the Tithe War.¹²⁶ The early 1830s were characterized by secret societies, such as the Ribbon Men,¹²⁷ waging war against landlords and tithemen, and corruption within the jury system was exacerbated. Testifying before a parliamentary committee on outrages in 1839, a resident magistrate named Hill Wilson Rowan said, for example:

those who act on Juries are perfectly conscious that Outrages are perpetrated very frequently on Persons acting in any way against Individuals either connected with that Society or supposed to be connected with it; because I find that in various Ways it influences the whole Mass of the rural Population; and from a general Impression, which with too much Reason exists, that their Numbers are very great, and that they are very ruthless in their Infliction of Punishments upon those who offend them or oppose them in any Way. Under those Circumstances I think the Jurors are affected as well as Witnesses; and I have positive Means of knowing that Witnesses are affected."¹²⁸

126. See above, note 114.

127. Jennifer Kelly, *"The Downfall of Hagan": Sligo Ribbonism in 1842* (Dublin: Four Courts Press, 2008) describes the Ribbon society, 1, as "an illegal Catholic sectarian society, formed in the early nineteenth century in opposition to the Protestant Orange Order." According to Michael Beames, ribbonism had an urban emphasis and a distinct regional character, strongest in Dublin, around the eastern seaboard, parts of Ulster, and in towns along the Royal and Grand Canals. In the pre-famine years, he argues, the movement gave expression to "diffuse and contradictory interests, ideals and aspirations: nationalism, republicanism, embryonic unionism and 'mutual aid' society activities." He considers it to have been ineffectual as a nationalist movement, and ascribes this to its "clumsy" organizational structure, and the fact that its oaths and catechisms "trapped it in a world of mystification and ritual which obscured any rational programme of action." Michael Beames, "The Ribbon Societies: Lower-Class Nationalism in Pre-Famine Ireland," *Past and Present* 97 (1982):128–43, at 129–142. By contrast, however, Garvin argues that some of these secret societies "developed into regional networks and tended to become politicized, some of them eventually becoming affiliated to quite elaborate all-Ireland organisations." Tom Garvin, "Defenders, Ribbonmen and Others: Underground Political Networks in Pre-Famine Ireland," *Past and Present* 96 (1982): 133–55. See also Tom Garvin, *The Evolution of Irish Nationalist Politics* (Dublin: Gill and Macmillan, 1981).

128. *Report from the Select Committee of the House of Lords, appointed to enquire into the state of Ireland in respect of crime, and to report thereon to the House of Commons Parliamentary Papers 1839* (486) xi, 1; xii, 2, para. 1882. Although there may have been an element of exaggeration to the submissions made before these committees, there were other witnesses who concurred with these views; see Major George Warburton, para. 1060–66, who spoke of jurors being attacked for their verdicts. In March 1833, a Kilkenny RM named Greene had reported that he received an application from a man named Mason seeking to be "excused attending as a Petit Juror." The man had "been informed of a Conspiracy" plotted against him by certain parties who had not

Another witness who testified before the 1839 parliamentary committee was a man named Patrick Flynn. Although not the holder of any official position, Flynn had served as a juror in a number of high-profile cases,¹²⁹ including the trial of a man named Slye for the murder of a Roman Catholic priest. This occurred in the aftermath of a parliamentary election, when a petition was pending in Parliament, and the area was experiencing some disturbances. Slye, who had been a supporter of the wealthy Protestant Kavenagh in the election, was accused of the murder. A number of Catholics were summoned for the jury, but Flynn was the only one who actually served. He attributed the other Catholics' not serving to apprehension: "In fact so great was the Intimidation abroad at the Time, that many of them told me they would sooner run the Risk of being fined 50/ than attend upon the Jury. . . . They were afraid of the menacing Attitude of the Carlow People; that if they should concur a Verdict of Acquittal of this innocent Man, they would not be safe in the County; that probably their Cattle might be houghed,¹³⁰ and their Houses set fire to; and in fact a Reign of Terror seemed to paralyse the entire Community."¹³¹

Again in the 1850s, witnesses before a parliamentary committee claimed that people were afraid to sit on juries because of the risk of assault or damage to property by members of secret organizations. The subsheriff of county Louth said that in agrarian cases, the jurors had "a great objection to being on the jury at all," and claimed to know of jurors using "ridiculous pretences to have themselves excused,"¹³² because of a "well-founded" fear that if they sat on a convicting jury, they would be endangering their lives.¹³³ One stipendiary magistrate cited three men who preferred to be fined £20 apiece than serve on juries,¹³⁴ and another

been pleased with his conduct at the last assizes. *Memorandum on Juror Intimidation*, 1833, N.A.I. OP/1833/579.

129. *Report from the Select Committee of the House of Lords, appointed to enquire into the state of Ireland in respect of crime, and to report thereon to the House of Commons* Parliamentary Papers 1839 (486) xi, 1; xii, 2, para. 10,531.

130. This was slashing the tendons at the back of the leg.

131. *Report from the Select Committee of the House of Lords, appointed to enquire into the state of Ireland in respect of crime, and to report thereon to the House of Commons* Parliamentary Papers 1839 (486) xi, 1; xii, 2, para. 10,528–29. Slye was acquitted in the case. Flynn did not believe that the Protestant jurors would have reasoned thus, because "the Protestants have, I think, in many Instances, displayed more Firmness of Character." He claimed, *ibid.*, para. 10,540–42, that Catholics such as himself, who were not susceptible to intimidation and threats, were known as "Bloody Orange Catholics."

132. *Report from the Select Committee on Outrages (Ireland)*, House of Commons Parliamentary Papers 1852 (438), xiv, 1, per Burton Brabazon, para. 4214.

133. *Ibid.*, para. 4215–19.

134. *Ibid.*, per Captain Bartholomew Warburton, a stipendiary magistrate, para. 78–82.

magistrate claimed that it was “almost impossible to have a fair trial in the county, say of Monaghan . . . from the intimidation that exists.”¹³⁵ If these claims were accurate, then the terrorization of jurors appears to have been a significant problem in rural Ireland.

The intimidation took many forms: threatening notices posted up around the area, anonymous or signed letters, verbal threats, fisticuffs, or damage to land or livestock as an indication of what was to come if the desired verdict was not delivered. For example, in *R v Fay*,¹³⁶ an 1872 murder trial, intimidation and terrorism was reported as being “systematically” practised upon both crown witnesses and jurors. Fay’s family apparently exercised considerable influence over the local tradesmen, and furthermore had connections with the Fenians, who enjoyed extensive support in the area.¹³⁷ After three abortive trials, it was claimed that:

the prisoner’s father had collected a large sum of money which had been employed in tampering with the jury; that a rumour prevailed extensively throughout the county that any one of the jury who would take the part of the prisoner would get a handsome reward . . . that the jurors generally, throughout the county, were afraid of injury to their farms or trade, if they should find a verdict of guilty . . . that eleven jurors who had been summoned had deliberately absented themselves, and preferred to pay fines of £50 each rather than serve on the jury; that several jurors . . . were apprehensive of personal violence if they should serve on the jury and convict the prisoner . . . that a juror, in reply to an observation of the sub-inspector as to jurors trifling with their oaths, said, “Would you rather commit perjury, or be shot?” . . . that other jurors had expressed their belief . . . that they would incur danger of personal injury.¹³⁸

A further example of the type of intimidation practiced upon jurors comes from around the time of the 1848 State Trials,¹³⁹ which attracted significant attention from both extremists and moderates. The following placard, which

135. *Ibid.*, para. 803, per Edward Golding, a county Monaghan magistrate.

136. *R v Fay* (1872) IR 6 CL 436.

137. Anon., “The Ballyjamesduff Murder Case. Motion to Change the Venue,” *Anglo Celt*, June 22, 1872, 3.

138. *R v Fay* (1872) IR 6 CL 436, 438–9.

139. Widespread misery and discontent after the Great Famine of the 1840s had driven many young men to join such groups as the Young Irelanders, which were an extremist section of the earlier Repealers. See Boyce, *Nineteenth Century Ireland*, 115–17; Garvin, *Irish Nationalist Politics*; 51 and Donnelly, “A Famine in Irish Politics,” 362–67. In 1848 they staged an abortive uprising which was opposed by the clergy, and was easily quashed. The three leaders of Young Ireland were prosecuted for sedition: Thomas Francis Meagher and William Smith O’Brien for inflammatory speeches, and John Mitchel for seditious articles published in his newspaper *The United Irishman*: see Donnelly, “A Famine in Irish Politics” 267.

appeared before the trial of John Mitchel, one of the leaders of the Young Ireland movement, is an interesting and relatively mild example of the type of pressure brought to bear on jurors in high-profile political cases:¹⁴⁰

TO THE JURORS OF DUBLIN
GOD'S TRUTH
Has been spoken and written by
JOHN MITCHEL.

He has proclaimed to the world the labourer's right to live in the land
of his birth by the sweat of his brow; the farmer's right to the fruits
of his labour, his capital and his skill.

THIS IS GOD'S TRUTH!

Will you jurors pronounce by your verdict God's truth to be a seditious
Libel — a Felony?

If you do (which God forbid), then the blood of that innocent man
of truth, JOHN MITCHEL, be on you and yours to all eternity!

The curse of God will fall upon you! The fate of perjurers and
assassins await you!!

Attend to your OATHS and a TRUE VERDICT GIVE!!!

ONE OF THE PANEL

In the majority of cases involving threats or intimidation, the agitation was for the acquittal of a criminal defendant whose prosecution was linked to whatever civil or political disturbance happened to be rocking the country at that time. Of course, as well as some jurors being bullied into delivering acquittals, there were also those jurors whose natural sympathies or allegiances led them to disregard their oaths,¹⁴¹ which had to be equally as frustrating for the authorities. Other jurors found ways around the oath, either by returning no verdict at all,¹⁴² or by “kissing the thumb” rather

140. This placard was widely circulated, and was reproduced in *Freeman's Journal*: Anon., “Another ‘Kirwan’ Movement—Incitement to Tumult,” *Freeman's Journal* May 25, 1848, 2. See the report of the trial: *R v Mitchel* (1848) B1 D & O. Mitchel was convicted and transported to Van Diemen's Land, and in 1853 he escaped and made his way to the United States, where he worked a journalist: see Lyons, *Ireland Since the Famine*, 98.

141. See *Report of the Royal Commission on the Land Law (Ireland) Act, 1881, and the Purchase of Land (Ireland) Act, 1885* (1887) House of Commons Parliamentary Papers [C.4969] [C.4969-I] [C.4969-II] xxvi, 1, 25, 1109, per James Hamilton QC, at para. 18,574.

142. *Report from the Select Committee of the House of Lords on Irish Jury Laws*, House of Commons Parliamentary Papers 1881 (430), xi, 1, per Lord Emly, para. 3394 and Justice John Fitzgerald, para. 4280.

than the Bible, so as to avoid the sanctity of the oath.¹⁴³ Sometimes jurors appeared simply to disregard their oaths entirely. Whether or not threats had been made against him, once a juror received his summons and attended for service, further discomfort awaited him during the trial itself.

7. Jurors' Experiences During the Trial

a. Conditions at the Courthouse

King notes that “[f]ar too little is known about the layout of eighteenth-century courtrooms,”¹⁴⁴ and although we know something of nineteenth-century Irish courthouses, it is clear that their layout varied.¹⁴⁵ Overcrowding was a problem common to city and rural courthouses: in addition to the various personnel in attendance, such as the clerks, sheriffs, lawyers, attorneys, judges, witnesses, parties, prisoners, and jurors, there would usually be a body of onlookers who came for gossip and entertainment.¹⁴⁶ It is unclear whether there was a specified space for the jury in every courtroom, or whether their deliberations were visible to the surrounding audience;¹⁴⁷ it appears that facilities and conditions varied around the country.¹⁴⁸ Courthouses built in the nineteenth century tended

143. Éanna Hickey, *Irish Law and Lawyers in Modern Folk Tradition* (Dublin: Four Courts Press, 1999), 115. The practice is also alluded to in several fictional works, such as Gerald Griffin's *The Collegians* (Belfast: Appletree Press, 1992), 376–77.

144. King, “Illiterate Plebeians,” 288.

145. See, for example, Charles Brett, *Court Houses and Market Houses of the Province of Ulster* (Belfast: Ulster Architectural Society, 1973); Billy Patton, *The Court will Rise: A Short History of the Old Courthouse, Lifford, Co. Donegal* (Donegal: Lifford Association for Tourism, Commerce and Heritage, 2004); and Mildrid Dunne and Brian Phillips, *The Courthouses of Ireland: A Gazetteer of Irish Courthouses* (Dublin: The Heritage Council, 1999).

146. See Cockburn, *History of English Assizes*, 65–67, on the pomp and ceremony associated with the assizes in England, which were similar to those in Ireland. Garnham, *The Courts*, 104–7, notes that in the eighteenth century the assizes were of significant local importance; as well as the legal activities of the court, there was important local government business transacted, and sizeable crowds were attracted to the assize town. Fairs, markets and auctions, as well as balls and social events kept the town busy and crowded for the duration of the assizes and beyond.

147. This also appears to have been a problem in nineteenth-century Mississippi; see below, note 332.

148. See John Henry Brett, “County Courthouses and County Gaols in Ireland,” *Irish Builder* 17 (1875): 25–26. Brett, a civil engineer, described the accommodation required in the courthouses of Irish assize towns in a paper read at a meeting of the Architectural Association of Ireland. He recommended that “The jury box must contain accommodation for twelve men sitting, besides space in which another twelve may stand, as it sometimes happens when one jury retires to consider its verdict, another will be empanelled to try a new case. Therefore, when the old jury comes out again there should be space for it to sit

to incorporate designated jury rooms, and Brett's work on the courthouses of Ulster¹⁴⁹ indicates that there were separate designated rooms for petty jurors in several courthouses, including Coothill, County Cavan,¹⁵⁰ Clough, County Antrim,¹⁵¹ and Londonderry.¹⁵² Other courthouses which seem to have had designated jury rooms were Ballymahon, County Longford,¹⁵³ Carndonagh, County Donegal¹⁵⁴ Castleblayney, County Monaghan,¹⁵⁵ Donegal Town,¹⁵⁶ Moate, County Westmeath,¹⁵⁷ Nenagh, County Tipperary,¹⁵⁸ and Wexford Town.¹⁵⁹ It would also seem that in courthouses where there was a separate jurors' room, this was directly accessible from the jury box, with the intention that jurors should not have to walk through the courtroom to upon retiring to consider their verdict.¹⁶⁰

The petty jurors were not always kept in strict isolation.¹⁶¹ A newspaper report of the case of *Ryder v Burke*¹⁶² gives an interesting and vivid

without incommoding the new jury." He further recommended that "Petty jury rooms, accessible only from the jury boxes, are required; it is advisable to provide two such rooms for each court; the average floor space may be 200 to 250 square feet." He also suggested the inclusion of a waiting room for petty jurors.

149. Brett, *Court Houses*.

150. *Ibid.*, 56.

151. *Ibid.*, 30.

152. *Ibid.*, 17. A design for a courthouse at Ballyconnell, county Cavan also included a petty jury room just off the main courtroom, although this plan was never executed: *ibid.*, 13.

153. Dunne and Phillips, *Courthouses of Ireland*, 46–47.

154. *Ibid.*, 78–79.

155. *Ibid.*, 90–91.

156. *Ibid.*, 126–27.

157. *Ibid.*, 230–31.

158. *Ibid.*, 242–43.

159. *Ibid.*, 326–27.

160. Examples include the courthouse at Baltinglass, County Wicklow, built around 1810: Dunne and Phillips, *Courthouses of Ireland*, 52–53, and Listowel, County Kerry: *ibid.*, 212–13.

161. Philip Harding, a magistrate residing near Macroom in County Cork, described how jurors in the manor court were "sitting in the court mixing with the people, and they were talking to each other." *Report from the Select Committee on Manor Courts, Ireland 1837* House of Commons Parliamentary Papers (491) xv, 1, 81. At the trial of Francis Hynes in 1883 (discussed below in greater detail, text accompanying notes 228–246), the jurors stayed overnight in a hotel, and were seen in the hotel billiard room to be mixing with persons who were not on the jury. Francis Brady, a hall porter, later testified, "I remarked to the constable who was standing in the hall, 'Is it not a very unusual thing for a jury to be mixing with other people; I never saw jurors in a public billiard-room before.'" *Dublin Commission Court (Francis Hynes): Copies of any Documents in the nature of Evidence or Memorials, submitted for the consideration of the Irish Executive, with reference to the alleged Misconduct of Members of the Jury, the Verdict, and the Sentence, in the Case of Francis Hynes* House of Commons Parliamentary Papers 1882 (408) lv, 167, 5. Other jurisdictions, such as parts of the United States, seem to have experienced similar difficulties; see below at note 332.

162. *Ryder v Burke* (1847) 10 Ir LR 474.

account of the jury's confinement, which in that case was apparently on show for the general public:

It was quite evident that the jury had "agreed to differ", and had at a very early stage of the deliberation determined not to change their mind, and you might see them through the large open window in groups amusing themselves by chit chat, and sometimes addressing themselves to the crowd in the street. About 10 o'clock a large number of persons congregated under the window and a spirited fire of wit was kept up between them and the twelve gentlemen in durance. One of the jury called out for "three cheers for O'Gorman Mahon,"¹⁶³ which was enthusiastically responded to. Another called out for "three cheers for Repeal." Roars of laughter were elicited at the oddness of the thing, and certainly it was a strange way of keeping watch and ward upon a jury.¹⁶⁴

Although there was often a room to which jurors could retire to deliberate,¹⁶⁵ the standard of accommodation provided was usually poor. In 1875 a number of disgruntled jurors formed the Dublin Jurors' Association, the object of which was to address issues affecting the men serving on Dublin juries.¹⁶⁶ Chief among their complaints was the state of the jury boxes and jury rooms in Dublin courthouses. One member, F.W. Pim, claimed that the accommodation in one of the jury rooms had been so bad that he had complained to the Sanitary Association. He spoke of "want of ventilation, draughts of cold air, cramped seats, and filthy and sickening rooms." Another juror claimed that "in a jury upon which he himself served last year for some days one of the jurors became knocked up with rheumatism from the miserable nature of the accommodation afforded, and they had to go on with eleven. Next day another had to be let off from an attack of nausea and biliousness, brought on there, and then they had to go on with ten. The water-closet for jurors in the Queen's Bench was so positively disgusting that anyone going into it would become sick."¹⁶⁷ The *Freeman's Journal* was sympathetic to the plight of jurors, and an editorial complained that jury boxes were "the very perfection of misery."¹⁶⁸ It continued:

163. Charles O'Gorman Mahon was a supporter of O'Connell, a member of the Catholic Association, and had sat as an MP for Clare in 1830.

164. Anon., "Clare Assizes," *The Galway Mercury*, July 24, 1847, 1-2, 2.

165. Jurors did not always leave the courtroom for their deliberations. Particularly at the quarter sessions, they might simply huddle in the jury box for a few minutes before announcing their verdict.

166. Anon., "The Irish Jury System," *Freeman's Journal*, January 30, 1875, 7.

167. *Ibid.*

168. Anon., *Freeman's Journal*, June 25, 1875, 5.

As if it were not enough that they should be torn from their homes and their business – that they should be doomed to listen for hours to prosy counsel, to boisterous, offensive, insolent, and generally irrelevant bullying of witnesses, dignified with the name of cross-examination—to bear with occasional lecturing and not occasional snubbing from off the Bench—they have to sit through and tolerate it all whiles they are being stifled in a crowded court, and are being agonised, “cribbed, cabined, and confined” in boxes, where, all the time they are endeavouring to comprehend a case, they are writhing and wriggling in unspeakable suffering.¹⁶⁹

Things were no better in the courtroom: “[t]he boxes were almost as bad as the rooms and quite as uncomfortable. There was no place to stretch one’s legs, and nothing to write upon except a scrubby bit of a desk that no trader in Dublin would see in his own office.”¹⁷⁰ Pim also complained that judges were frequently late, and jurors were often kept “pent up in a dirty, stinking court waiting for the judges.”¹⁷¹

Jurors also complained at having nowhere to wait in the courthouse before and between cases. At the inaugural meeting of the Dublin Jurors’ Association, it was argued that “[t]here should be a good central waiting-room with a comfortable fire where the jurors could remain until they were called for and not be sent knocking about the courts or passages for days when not wanted.”¹⁷² It was also stated that jurors “were hopped about from court to court; some were outside, others were striving to get in, and pushing about through queer people of all sorts.”¹⁷³ Similarly, in 1878 Frederick Zurhorst complained of jurors having to walk around with “the scum of the city, who resort to the courts to find idleness and warmth in the galleries.”¹⁷⁴ Three years later, the secretary of the Waterford Jurors’ Association likened their treatment to that of cattle, complaining: “there is no place for them to sit down in, they have often to stand in the passages, and the fatigue is very great.”¹⁷⁵

In January 1876 a deputation from the Dublin Jurors’ Association met with Sir Michael Hicks-Beach, the chief secretary, and made representations regarding various grievances, one of which was the standard of

169. Anon., *Freeman’s Journal*, June 25, 1875, 5.

170. Anon., “The Irish Jury System,” *Freeman’s Journal*, January 30, 1875, 5, citing Pim.

171. Anon., “The Irish Jury System,” *Freeman’s Journal*, January 30, 1875, 5.

172. Anon., “The Irish Jury System,” *Freeman’s Journal*, January 30, 1875, 5.

173. Anon., “The Irish Jury System,” *Freeman’s Journal*, January 30, 1875, 5, citing McComas.

174. Anon., *Freeman’s Journal*, April 30, 1878, 5.

175. *Report from the Select Committee of the House of Lords on Irish Jury Laws*, House of Commons Parliamentary Papers 1881 (430), xi, 1, para. 821, per T. Newenham Harvey.

accommodation.¹⁷⁶ Hicks-Beach agreed that “[t]he duty which is expected from jurors is an unpleasant duty . . . I think it is only reasonable that they should be comfortably accommodated.”¹⁷⁷ In June 1877, he wrote to the Association’s secretary to inform him that the Board of Public Works would be making plans for the improvement of the jury boxes in the Four Courts over the summer vacation.¹⁷⁸

b. Frequent Service for Qualified Jurors

Another common complaint in Ireland was the frequency with which jurors were summoned for duty.¹⁷⁹ There was a dearth of suitably-qualified men available for jury service; this had been a problem in England at an earlier stage,¹⁸⁰ and was common in many of the territories to which jury trial was extended. In a letter to the chief secretary, Edward Stanley, in 1832, the Irish judges noted with approval that in England no Yorkshire juror could be returned to serve more than once in four years. In all other English counties the period was either one or two years,¹⁸¹ and this, wrote the judges, “seems equitable, and to be a desirable object, and it must be presumed that the state of England affords the means of carrying it into effect.” The judges had been asked to submit their views on a proposed Jury Bill for Ireland, which was modelled on the English Juries Act 1825,¹⁸² a consolidating and reforming measure introduced by the Peel

176. Anon., “Deputations to the Chief Secretary: The Saddlers’ Trade – Duties of Juries,” *The Belfast News-Letter*, January 14, 1876, 2; Anon., “The Grievances of Jurors” *Freeman’s Journal*, January 14, 1876, 3; and Anon., *Freeman’s Journal*, February 5, 1876, 5.

177. Anon., “Deputations to the Chief Secretary: The Saddlers’ Trade – Duties of Juries,” *The Belfast News-Letter*, January 14, 1876, 2.

178. Anon., “The Jurors of Dublin,” *Freeman’s Journal*, June 5, 1877, 5. These works were actually executed; see Anon., *Freeman’s Journal*, April 30, 1878, 5.

179. In the 1870s, there were five separate common jury panels at the superior courts, serving the Courts of Queen’s Bench, Common Pleas, Chancery, Probate, and the Consolidated *Nisi Prius* Court. A juror could be summoned to attend at more than one of these courts in a single term. There were four special jury panels for the city and four for the county. In 1874 the Statistical Society of Ireland recommended that there be just one panel of special jurors and one panel of common jurors at any time. This single panel could contain twice as many jurors as a traditional panel, it was argued. See the “Report of Committee on Suggestions for Diminishing the Excessive Summoning of Jurors in the County and City of Dublin 1874,” *Journal of the Statistical and Social Inquiry Society of Ireland* 6 (1870–79): 378–82.

180. See, for example, James Swanston Cockburn, “Twelve Silly Men,” 163–71 and John M. Beattie, “London Juries in the 1690s,” in Cockburn and Green, eds., *Twelve Good Men*, 218–19.

181. See the County Juries Act 1825 (6 Geo. IV, c. 50), s. 42. This did not apply to special jurors.

182. The County Juries Act 1825 (6 Geo. IV, c. 50).

administration. The judges expressed some surprise that “the Bill submitted to us, does not extend those provisions into Ireland,” adding that this must be because

Ireland is not at present so circumstanced, as to admit of those enactments being effectuated. The English statute evidently implies that the Jurors’ Book is likely to contain amongst those qualified, and liable to serve in respect of property, a great Majority who would be also fit to serve in other respects, but our Experience enables us to say that the present state of Ireland is different, and does not permit the application of those clauses to this Country, and if they were extended to it, that the due administration of Justice would be endangered. . .¹⁸³

Such concerns persisted throughout the nineteenth century, and were a common feature of attempts at jury reform.

c. The Rule that Jurors Could Not Separate

The problem of having insufficient numbers of suitable jurors was brought about largely by the demographics of Ireland in the nineteenth century. But there were other factors that added to jurors’ discomfort which had a more solid basis in law or the theory of trial by jury. One example of this was that in neither civil nor criminal cases were jurors allowed to separate until they had delivered their verdict, meaning that in long or complex cases they often had to stay in overnight.¹⁸⁴ On top of this, jurors were deprived of food and heat until they had delivered their verdict.¹⁸⁵ The length of some of the State Trials¹⁸⁶ in England at the end of the eighteenth century had, however, necessitated a relaxation of the rule against separation, and a trend of leniency in this regard continued in both countries during the nineteenth century.¹⁸⁷ Despite the rule against separation, it seems that the level of supervision varied greatly. It was not unheard of for a juror to wander off and sometimes even engage in conversation with other persons, and there was no cast-iron rule about how this should

183. *Letter Regarding the Jury Bill 1833, from the judges of Ireland to E.G. Stanley*, February 1833, N.A.I., OP/1833/14.

184. See below, section e.

185. See below, section d.

186. *Thomas Hardy’s Case* (1794) 24 How St Tr 199 and *Horne Tooke’s Case* (1794) 25 How St Tr 1.

187. This was evident both in felony cases, such as *R v O’Neill and Henderson* (1843) 3 Cr & Dix 146, and in misdemeanor cases such as *R v Wallace* (1853) 3 ICLR 38; 5 *Irish Jurist* 179.

affect the verdict. Sometimes the verdict was quashed, but particularly in civil actions and misdemeanours, and in the absence of any evidence of jury tampering or misconduct, the verdict stood.¹⁸⁸

At Daniel O'Connell's high-profile trial in 1844¹⁸⁹ the jury handed in their verdict at 11:30 p.m. on a Saturday, the twenty-fourth day of the trial.¹⁹⁰ It transpired that the verdict had been irregularly drawn up, and the jurors were re-instructed and sent back to their room. As midnight approached, the attorney general became anxious, stating that the verdict in this case could not legally be received after midnight on a Sunday. James Monahan, for the traversers, told Crampton J that he had no power to perform any judicial act on a Sunday.¹⁹¹ The judge, anxious that the jurors should experience as little discomfort as possible, after such a long trial, addressed them thus:

Gentlemen, I have a very unpleasant communication to make to you. The hour of twelve o'clock having now arrived, I am informed by the learned counsel for the Crown that my jurisdiction to receive your verdict is at end for this night, and until Monday morning. I am very much distressed at it . . . This is a fatality arising out of the hour of twelve having arrived; you will now retire to your chamber, where I have instructed the Sheriff to provide you with every accommodation. Indeed, he requires no instruction, for he is most anxious to do all he can to make you comfortable. There will be sleeping accommodation provided for you, and every other accommodation you may require, and the High Sheriff will, to-morrow, at a proper hour, accompany you to Divine Service, and accompany you back, but

188. In an English case from 1821, *R v Fowler and Sexton* (1821) 4 B & Ald 273; 106 ER 937, for example, a juror not only separated from the others, but had "conversed respecting his verdict with a stranger," and the verdict was quashed. Compare the Irish case of *R v O'Neill and Henderson* (1843) 3 Cr & Dix 146, in which the juror absented himself for an hour and a half. It was unlikely in a misdemeanor case to order a new trial in these circumstances. In the English case of *R v Kinnear, Wolfe and Levi* (1819) 2 B & Ald 462; 106 ER 434, Abbott CJ held that in cases of misdemeanor, the separation of the jurors would not render the verdict void. In the Irish case of *R v Wallace* (1853) 3 ICLR 38; 5 *Irish Jurist* 179, a libel action, the jury separated at the end of the first day of the trial. On appeal to the Court of Queen's Bench, Crampton J was emphatic that the "mere fact of the jury separating," in the absence of any "tampering with the jury" was insufficient to strike out the verdict.

189. *R v O'Connell and others* (1845) 1 Cox CC 411.

190. After some of the special jurors had indicated that they could not remain away from their homes and businesses for a month, they had been allowed to return home every evening during the trial itself, as long as they did not converse with anyone about the case. It was only when they were deliberating their verdict that they were obliged to remain overnight.

191. John Simpson Armstrong and Edward Shirley Trevor, *A Report of the Proceedings on an Indictment for Conspiracy in the Case of the Queen v Daniel O'Connell and Others* (Dublin: Hodges and Smith, 1844), 886.

you cannot separate out of his custody . . . I am extremely sorry to be obliged to announce this to you, but there is no alternative.¹⁹²

This is typical of a more humane approach toward the confinement of jurors, evident from the early nineteenth century.¹⁹³ It is also possible that Crampton J's solicitous, almost apologetic tone in this case stemmed partly from the fact that these were special jurors, and that he might not have been quite as concerned for their comfort if they had merely been common jurors. In any case, the burgeoning sensitivity toward jurors' well-being was promoted not only by a desire that jurors be comfortable and well looked-after, but also a realization that having verdicts delivered by exhausted, hungry jurors was almost tantamount to coercion, and reflected badly on the administration of justice.

d. The Rule Against Meat, Drink, Fire or Candle

*The hungry Judges soon the Sentence sign,
And Wretches hang that Jury-men may Dine*¹⁹⁴

Edward Coke wrote in the seventeenth century that "a jury after their evidence given upon the issue, ought to be kept together in some convenient place without meat or drink, fire or candle, which some books call an imprisonment."¹⁹⁵ This rule was still operative in the nineteenth century. The requirement of unanimity was one of the main factors behind the custom of keeping the jurors without food or fire until they had reached a verdict, the idea being that men who were hungry would more readily reach a consensus.¹⁹⁶ Since the nascent days of trial by jury, this was

192. *Ibid.*, 886–87.

193. In England, Abbott CJ had pointed out twenty years earlier that "it would have been most injurious to the cause of the defendants, that their case should be heard by a jury, whose minds were exhausted by fatigue." *R v Kinnear* (1819) 2 B & Ald 462; 106 ER 434.

194. Alexander Pope, "The Rape of the Lock," III.

195. John Henry Thomas, *A Systematic Arrangement of Lord Coke's First Institute of the Laws of England* (Philadelphia: Robert H. Small, 1827), 392 (Co. Litt. 227b). See also M. Bacon, *A New Abridgement of the Law*, Vol. 3 (London: H. Lintot, 1736–66) 269. It would appear that the latter part of this injunction was less strictly observed than the former; Purcell observed that "[t]he restriction as to candle-light has always been dispensed with on the retirement of the jury at night, when they require the inspection of documents which have been given in evidence." Theobald Purcell, *A Summary of the Criminal Law of Ireland* (Dublin: Grant and Bolton, 1848), 204. No such rule was applied to manor court juries. In fact, cases were sometimes heard in public houses. McMahon, MA diss., 24.

196. See J. Hope, *Dissertation on the Constitution and Effects of a Petty Jury* (Dublin, 1737), 11–12. It should be noted that jurors could partake of refreshment before retiring to consider their verdict. They did this, for example, in a case decided in Antrim in 1825: *Lessee John Hamilton O'Hara v Henry Hutchinson Hamilton O'Hara* (1825) Antrim

considered to afford accused persons “the best possible method of trial.”¹⁹⁷ An Irish commentator pondered in 1861 that although “various origins” had been assigned to the origin of the rule, “to me it appears to spring from that maxim of our law, which declares that the accused shall always have the benefit of the doubt. If the case against him were such that it could not be proved to the satisfaction of the entire of the twelve men who had listened attentively to the evidence, a doubt would in fact subsist, and he would be entitled to the advantage of it.”¹⁹⁸ This rule must have impacted significantly on verdicts in long or complex trials, with jurors reaching consensus simply so that they could break their fast. The tradition was not universally approved. Writing in 1737, an Irish writer using the pseudonym “J. Hope,” for example described the practice as follows:

The twelve Men are to be kept close in the most uncomfortable Confinement till they can agree . . . unless their Porter is so charitable as to damn his Soul for their Relief, till they can all think one Way. The Contrivers of this Expedient being sensible that there is a very strict Connection between the Mind and Body of Man, and not knowing how to strike immediately at the Mind, play'd their Engine against the Body, by distressing of which they proposed to reduce Reason and Conscience to a proper Pliancy. It is manifest, that they took more Care to have a Verdict, than that Justice shou'd be done, tho' the latter was the only End to be obtained, and the Jury itself but the Means.¹⁹⁹

There were occasional cases in which jurors flouted the rule against refreshment, and such instances varied from the relatively innocent smuggling of sweetmeats or dried fruit, to the more dubious habit of sneaking bottles of whiskey into the box or the jury room.²⁰⁰ In the English case

Summer Assizes; reported in Peter Burke, *Celebrated Trials Connected with the Upper Classes* (London: W. Benning and Co., 1851), 343. Sometimes the jurors declined to do so: see the trial of McClure, in *Reports of Proceedings at the Special Commission (1867) for the county and city of Cork and the county and city of Limerick* (Dublin, 1871), 195.

197. Matthew Hale, *Pleas of the Crown: or, A Methodical Summary of the Principal Matters Relating to that Subject*, Vol. 1 (London: Shrewsbury and Leigh, 1678), 33. See also Blackstone, *Commentaries*, Vol. 3, 379. An English writer in 1821 defended the unanimous verdict as opposed to the majority verdicts allowed in Scotland and France: David Booth, *Observations On the English Jury Laws In Criminal Cases with Respect to the Distinction Between Unanimous Verdicts and Verdicts by a Majority* (London: E. Wilson, 1821). See also: John Campbell, *Considerations on the Immoral Tendency of a Law Requiring Unanimity of Juries* (Edinburgh: Oliphant, Waugh and Innes, 1815).

198. Houston, “Observations,” 104.

199. Hope, *Dissertation on the Constitution and Effects of a Petty Jury*, 12.

200. See the English cases of *Welcden v Elkington* (1578) 2 Plowd 516; 75 ER 763; *Mounson v West* (1588) 1 Leon 88, 132; 74 ER 82, 123; *Richmond v Wise* (1683) 1 Vent 124; 86 ER 86; *Everett v Youells* (1833) 4 B & Ad 681; 110 ER 612; and *Cooksey v*

of *R v Newton*,²⁰¹ a very strict approach to the rule against sustenance was adopted by Rolfe CB at the Shropshire summer assizes. One of the jurors claimed to be ill, and a doctor told the court under oath that it was his opinion that the juror's life would be endangered without suitable medicines for his colic. The following exchange took place:

- Rolfe B:* If he is in such a state that he cannot go on without food, I have no power to order it: but he may have medicines.”
- Mr Clement:* Might I order him strong beef tea?
- Rolfe B:* He can have no nutriment.
- Mr Clement:* The man is of such a habit, that one of the best medicines I could prescribe for him would be a glass of brandy
- Rolfe B:* Anything which you, as a medical man, in your discretion will give him *bona fide* as a medicine, he may have; but not sustenance.

Thus there seems to have come about the rather ridiculous situation whereby a juror was allowed to drink brandy, but not beef tea. One might be tempted to agree with the sentiment that “there cannot be an Instance given of a more barbarous Attack upon Reason.”²⁰²

The effect of jurors procuring refreshment without the judge's consent depended upon the circumstances: if they did so at their own expense they were subject to a fine, but if it was at the expense of one of the parties the verdict could become void. This was only an issue if one or both of the parties provided refreshments before a verdict had been delivered; it was acceptable to pay for a meal for the jurors *after* they had decided the case. The English courts appear to have taken a varied approach to such cases. In *Cooksey v Haynes*,²⁰³ the jurors let a string down from a window, and managed to procure beer and food. The court held that the verdict should be set aside, and emphasized that the secretive manner in which the jurors had obtained the food indicated that they knew that they were in the wrong. There was no suggestion that either of the parties had been directly or indirectly involved, and no indication that the verdict had been affected by this. The court instead focused on the jurors' “indifference to right,” which meant that they were, overall, not to be trusted. This seems to have been a rather extreme case; by contrast, in *Morris v*

Haynes (1858) 27 LJ Exch 371. In *Morris v Davies* (1828) 3 Car & P 216, 427; and 172 ER 393, 486, Gaselee J, on being informed that the special jurors, having remained locked up together overnight, were unable to agree, allowed each of them to have two sandwiches and a glass of wine and water, prepared by his own butler.

201. *R v Newton* (1849) 3 Car & K 85; 175 ER 473.

202. Hope, *Dissertation*, 12.

203. *Cooksey v Haynes* (1858) 27 LJ Exch 371.

Vivian,²⁰⁴ two special jurors dined and slept at the defendant's house after the first day of trial. One of the two jurors had apparently met earlier with the plaintiff, who regrettably was unable to entertain guests in the absence of his wife. The defendants claimed that it was customary in Glamorganshire for gentlemen travelling some distance to the assize to be accommodated in the houses of the neighbouring gentry, and that the single inn nearby offered "very indifferent accommodation." They also averred that there had been no discussion of the case with either of the jurors during their stay. The court refused to set aside the verdict, and Lord Abinger CB pointed out that there was no suggestion that the verdict had been against the weight of evidence.

In the English cases of *Richmond v Wise*,²⁰⁵ *Mounson v West*²⁰⁶ and *Welcden v Elkington*,²⁰⁷ mentioned previously, jurors who smuggled in food and drink were heavily fined. It seems that although courts were willing to impose hefty fines on individual jurors for having the audacity to smuggle in provisions, they were generally reluctant, in civil cases at least, to set aside verdicts on such grounds. In *Everett v Youells*,²⁰⁸ for example, the special jurors retired at eight o'clock and were unable to reach an agreement. They were to remain locked up until the following morning, and three hours into the confinement, the foreman's servant managed to "convey a sandwich to him by stratagem." Lord Tenterden CJ said that this "might be a ground for imposing a fine, but it is not a reason for setting aside a verdict."

The Irish courts appear rarely to have struck out verdicts as a consequence of such transgressions. At the close of the trial in *Harris v Harris*²⁰⁹ one of the plaintiff's witnesses admitted that at the luncheon break, he had treated two of the jurors to refreshments, and told them that he knew more about the case than he had testified. He had to be re-examined, but the verdict was allowed to stand. Fitzgerald B noted that it was "a very unpleasant fact" that the witness and jurors should have been communicating in such a manner, but pointed out that there was no indication that this witness was an interested party. He cited a recent case where the plaintiff drove home from court with one of the jurors before the trial had concluded, and the verdict had stood. Cases like these seem to have depended very much on their facts, and as with

204. *Morris v Vivian* (1842) 10 M & W 137; 152 ER 414.

205. *Richmond v Wise* (1683) 1 Vent 124; 86 ER 86.

206. *Mounson v West* (1588) 1 Leon 88, 132; 74 ER 82, 123.

207. *Welcden v Elkington* (1578) 2 Plowd 516; 75 ER 763.

208. *Everett v Youells* (1833) 4 B & Ad 681; 110 ER 612.

209. *Harris v Harris* (1869) IR 3 CL 294.

the occasions on which jurors separated without authorization, strong evidence of interference with the verdict was necessary. One must wonder, given the many statements about jurors being kept in isolation, how the two jurors in *Harris* managed to be so unsupervised as to enter into such conversation at all. As noted, the supervision of jurors varied in its effectiveness from place to place, and it would seem that there was a general trend toward relaxing these various rules between the early and mid-nineteenth century.

By the nineteenth century, even members of the judiciary appeared on occasion to defy the rule against refreshment, as in the 1845 case of *R v Locke and McGarry*.²¹⁰ Here, the jurors deliberated all night without reaching a verdict, and the following morning informed Perrin J that they were “suffering the effects of confinement and want of sustenance.” After the surgeon of the county infirmary examined the jurors and confirmed that this was indeed the case, the judge ordered the sheriff to give the jurors some breakfast.²¹¹ Furthermore, it seems that a number of courthouses built in the early nineteenth century contained fireplaces in the jury room.²¹²

In 1852 the common law commissioners recommended “unhesitatingly” that the practice of jurors fasting be abolished.²¹³ They suggested that jurors be furnished with “every fitting accommodation, and with necessary refreshment.” Jurors, they said, were “tempted to escape from prolonged hunger and suffering by compromising his conscience and his oath.” The custom was described in the House of Commons as “barbarous,”²¹⁴ and the rule against fire and refreshment was formally abolished in Ireland in 1876,²¹⁵ having been discontinued in England six years previously.²¹⁶

210. *R v Locke and McGarry* (1845) 3 Cr & Dix CC 393. See also *Ryder v Burke* (1847) 10 Ir LR 474.

211. By the mid-nineteenth century legal commentators were critical of the rule against refreshment; see Anon., “Our Jury System,” where it was described, 723, as “an absurd and monstrous custom.”

212. Dunne and Phillips, *Irish Court Houses*, for example, identify fireplaces in the jury rooms in Castleblayney, County Monaghan (90–91), Donegal Town (126–27) and Moate, County Westmeath (230–31).

213. *Royal Commission to inquire into the process, practice and system of pleading in Superior Courts of Common Law, Second Report* House of Commons Parliamentary Papers 1852–53 (1626), xl, 701, 710.

214. *Hansard* 3, vol. 200, col. 1416, per A.W. Young.

215. *Juries Procedure (Ireland) Act 1876* (39 & 40 Vic., c. 78), s. 12. Jurors were to be allowed the use of a fire when out of court, and reasonable refreshment at their own expense.

216. *The Juries Act 1870* (33 & 34 Vic., c. 77), s. 23.

e. Overnight Stays for Jurors

It has been noted that jurors were required to remain together until they had reached a verdict.²¹⁷ Although this rule was relaxed in civil cases at a relatively early stage, the rule against separation in felony trials operated until the nineteenth century. When jurors were prohibited from separating, this extended to obliging them to remain together overnight in longer trials. It seems that in the early part of the century it was common for the jury, if they were to remain together overnight, to stay at the courthouse. At the 1833 Monaghan spring assize, the jury in one case was locked in deliberations. The court adjourned while they considered their verdict, and resumed at 11:00 p.m., but the jurors had not yet reached agreement. They remained in the jury room all night (presumably without heat or refreshment), and were called in again at 10:00 the following morning. They were eventually discharged later that day without a verdict.²¹⁸ At Daniel O'Connell's 1844 trial, it was suggested by the Attorney General that the jurors stay in a hotel during the trial, which was predicted to last several weeks.²¹⁹ However, after several jurors made representations to the court as to the necessity of their being able to tend to their business affairs, the court ruled that they could return home in the evenings. It will be recalled, however, that before they could deliver their verdict they were obliged to remain together overnight, and they stayed at the Green Street courthouse.²²⁰ A witness before the 1881 parliamentary committee on Irish juries described the conditions facing jurors who were obliged to stay overnight: "I know, within my own knowledge, two cases where a jury were detained over night, and the discomfort was so extreme, from the way in which they were packed together in this jury box, and from the damp beds, that I do not believe they would have waited another night on any consideration."²²¹

It is difficult to make an authoritative statement as to the type and standard of accommodation provided for jurors. Clearly there were variations between urban and rural areas, and between different types of trial. In

217. See above, section b.

218. *Return of persons for trial at last spring assizes in the counties of Monaghan, Armagh, Antrim and Down, and how disposed of* 1833 House of Commons Parliamentary Papers (402) xxix. 407, 1.

219. See above, text accompanying notes 191–192.

220. *Return to an address of the Honourable the House of Commons, dated 21 May 1844; – for copies of all affidavits and pleadings filed in the cause of the Queen v Daniel O'Connell and others* House of Commons Parliamentary Papers 1844 (395) xlv, 225.

221. *Report from the Select Committee of the House of Lords on Irish Jury Laws*, House of Commons Parliamentary Papers 1881 (430), xi, 1, per Henry Arthur Blake, the resident magistrate at Tuam, County Galway, para. 222.

nineteenth-century Ireland, particularly outside the main cities, living standards generally were quite low, and it may be presumed that the rooms available for the use of jurors were not luxurious. However, it seems it was not always damp beds and unpleasantness. Sometimes jurors were accommodated in a hotel, as in the cases of *Attorney General v the Primate*,²²² *R v Barrett*²²³ and *R v Hynes*.²²⁴ The first two were both high-profile cases in which the trial had been moved to Dublin, from Galway and Cavan respectively, and the costs of hotel accommodation for the jurors were borne by the parties to the trial. It is difficult to pinpoint when exactly the practice of putting jurors up in such relatively luxurious accommodation began;²²⁵ the subsheriff in the 1883 *Hynes* trial remarked to some of the jurors who were staying overnight at the Imperial Hotel that times were ‘so altered from what they formerly were, the jurors now having so much liberty, while formerly they would have been locked up in Green-street all night.’²²⁶

The Gresham hotel²²⁷ appears to have been the lodging of choice for jurors in Dublin,²²⁸ and the jurors in the *Hynes* trial were certainly vocal

222. *Attorney General v the Primate* (1837) 2 Jones 362.

223. *R v Barrett* (1870) IR 4 CL 285.

224. See J. Frost, “The Case of Francis Hynes,” *Irish Law Times and Solicitors Journal* 16 (1882): 432–34. See also *Dublin Commission Court (Francis Hynes): Copies of any Documents in the nature of Evidence or Memorials, submitted for the consideration of the Irish Executive, with reference to the alleged Misconduct of Members of the Jury, the Verdict, and the Sentence, in the Case of Francis Hynes* House of Commons Parliamentary Papers 1882 (408) lv, 167, 16; and Anon., “The Trials in Ireland under the Crime Act. Unfounded Charge Against the Jury,” *The Leeds Mercury*, August 15, 1882, 5. The case was referred to as the Ennis Murder Case.

225. The practice of accommodating jurors in inns and taverns was also common enough in England. In the English case of *R v Stone* (1796) 6 TR 527; 25 How St Tr 1155, jurors spent the night in a tavern with six sworn bailiffs. In *Horne Tooke’s case* (1794) 25 How St Tr 1, the jurors stayed at the London Coffee House every night with sworn officers, and in *Thomas Hardy’s case* (1794) 24 How St Tr 199, they spent six nights sleeping with the sworn officers of the court at the Hummums. In the eighteenth century, this place was a combination of a steam bath, eatery, health center, and brothel, although by the nineteenth century it functioned as a somewhat seedy hotel; see Charles Dickens, *Great Expectations* (London: Chapman and Hall, 1862), chap. 45. See below, note 334 for an instance of a South African jury being accommodated in a hotel.

226. *Dublin Commission Court (Francis Hynes): Copies of any Documents in the nature of Evidence or Memorials, submitted for the consideration of the Irish Executive, with reference to the alleged Misconduct of Members of the Jury, the Verdict, and the Sentence, in the Case of Francis Hynes* House of Commons Parliamentary Papers 1882 (408) lv, 167, 16.

227. From the mid-nineteenth century, the Gresham was considered Dublin’s premier hotel. See Ulick O’Connor, *The Gresham Hotel 1865–1965* (Cork: Guy, 1965).

228. In 1867, Molloy pointed out that city jurors could be accommodated in the Gresham Hotel, whereas country jurors trying a case in the city would not be allowed to leave the

about their preferences. One of the jurors, John Beatty, later testified that the subsheriff's son "proposed that in the case of a lock-up the jurors should go to the Imperial Hotel;²²⁹ this we all strenuously opposed, and suggested the Gresham Hotel."²³⁰ At the end of the day, the judge mentioned that the jurors should be brought to the Gresham, but it transpired that the subsheriff had been unable to secure sufficient accommodation for them there. A juror named Edward Hamilton later said: "We were all much surprised when the Sub-sheriff told us to choose between the European and Imperial Hotels. We all remonstrated, requesting to be taken to the Gresham or Shelbourne Hotel, some jurors stating that they would prefer to pass the night in the room at the Court-house. The Sub-sheriff, however, ended the matter by informing us we had no choice, and that, as we refused to go to the European, he would have us at once removed to the Imperial."²³¹

Jurors who stayed in hotels appear to have done so in style. The *Barrett* case²³² resulted from an attempted assassination in Galway in 1869, and the case gripped the country. Barrett was tried three times, and the jurors in the third trial were accommodated at the Gresham. When authorizing this, Chief Justice Whiteside remarked that he hoped that the jurors "would not be the worse for it in the morning."²³³ The cost of maintaining the jurors for three days in the Gresham²³⁴ was £27.²³⁵ They were transported to and from the courthouse in cabs at a cost of £1 per day. It seems that the jurors were quite well looked-after in this instance. Records from 1871 indicate that the tariff at the Gresham hotel was 2 shillings per night for a room, one shilling and sixpence for breakfast, and between two and three shillings and sixpence for

courthouse, as this would amount to leaving the county. Constantine Molloy, "A Central Criminal Court for the County and City of Dublin," *J.S.S.I.S.I.* 4 (1867): 445–47.

229. The Imperial Hotel was also located on Sackville St.

230. *Dublin Commission Court (Francis Hynes): Copies of any Documents in the nature of Evidence or Memorials, submitted for the consideration of the Irish Executive, with reference to the alleged Misconduct of Members of the Jury, the Verdict, and the Sentence, in the Case of Francis Hynes* House of Commons Parliamentary Papers 1882 (408) lv, 167, 16.

231. *Ibid.*, 18. See also the statement of Graves E. Searight, 24.

232. *R v Barrett* (1870) IR 4 CL 285.

233. Anon., "The Attempt to Assassinate Captain Lambert. The Trial of Peter Barrett," *Freeman's Journal*, February 18, 1870, 6.

234. Anon., "Trial of Peter Barrett," *Freeman's Journal*, June 24, 1870, 2; and Anon., "The Trial of Peter Barrett," *Freeman's Journal*, June 25, 1870, 5. See Anon., "Court of Queen's Bench. The Third Trial of Peter Barrett," *The Daily Express*, June 25, 1870, 4. Sackville St. was renamed O'Connell St. in 1924.

235. *Account of Expenses incurred by the Sub-sheriff of the County of Dublin for Keep of Jury during Trial of defendant for a period of three days*, N.A.I. CCS/1870/197. The bailiffs and police who were in charge of the jurors cost £3 for the three days.

dinner.²³⁶ This amounts to roughly 6 shillings per juror per night; therefore the cost of maintaining the twelve jurors at a fairly basic level was probably no more than £21, excluding transportation. One might deduce that the remainder was spent on pre-dinner drinks, cigars, and wine to accompany the jurors' meals; certainly the facts that emerged in the *Hynes* case would indicate that this was highly likely.

*R v Hynes*²³⁷ concerned the murder, by a solicitor's son, of a caretaker in Ennis, County Clare.²³⁸ Hynes was tried by a jury entirely composed of Protestants before Lawson J, who was unpopular with nationalists.²³⁹ William O'Brien, editor of the nationalist newspaper *United Ireland*, was staying in the Imperial Hotel at the time, and in a letter to the *Freeman's Journal* a few days later, made some allegations of misconduct against the *Hynes* jurors:

... I was awakened from sleep shortly after midnight by the sound of a drunken chorus, succeeded after a time by a shuffling, rushing, coarse laughter, and horse-play along the corridor on which my bedroom opens. A number of men, it seemed to me, were falling about the passage in a maudlin state of drunkenness, playing ribald jokes. The door of my bedroom was burst open, and a man whom I can identify (for he carried a candle unsteadily in his hand) staggered in plainly under the influence of drink, hiccupping, "Hello, old fellow, all alone?" Having rung the bell, I ascertained that these disorderly persons were jurors in the case of *Queen v Hynes*, and that the servants of the hotel had been endeavouring to bring them to a sense of their misconduct. I thought it right to convey to them a warning, that the public would hear of their proceedings. The disturbance then closed.²⁴⁰

The foreman of the jury then brought this article to the attention of Lawson J, who notified the attorney general.²⁴¹ Each juror swore an affidavit detailing the occurrences of the night in question, and all claimed to have been sober going to bed, although staff from the hotel testified otherwise.²⁴²

236. O'Connor, *The Gresham Hotel*, 15.

237. See above text accompanying notes 230–235 .

238. Anon., "Ireland. Another Shocking Attempted Murder," *Daily News*, July 10, 1882, 3.

239. An attempt was later made on his life by Patrick Delany, in March 1882.

240. William Smith O'Brien, "The Jury in the Ennis Murder Case," letter to the editor, *Freeman's Journal*, August 14, 1882, 5.

241. Anon., "The Conviction of Francis Hynes. The Jury—The 'Freeman'—and the Law Officers," *Freeman's Journal*, August 15, 1882, 5.

242. See, generally, *Dublin Commission Court (Francis Hynes): Copies of any Documents in the nature of Evidence or Memorials, submitted for the consideration of the Irish Executive, with reference to the alleged Misconduct of Members of the Jury, the Verdict, and the Sentence, in the Case of Francis Hynes* House of Commons Parliamentary Papers 1882 (408) lv, 167.

Interestingly, it emerged from the evidence of several jurors that the subsheriff had authorized the purchase of alcohol. Lawson J fined the editor of the *Freeman's Journal* £500 and sentenced him to three months imprisonment for contempt of court.²⁴³ Corfe notes that “[s]ince the editor was no less a person than Edmund Dwyer Gray, former Lord Mayor and present High Sheriff of Dublin, and Nationalist MP the case created a considerable furore. The *Hynes* verdict, instead of fading into the obscurity of a minor country crime, achieved the publicity of a national *cause célèbre*, and Lawson himself became for a time the worst hated man in Ireland.”²⁴⁴

f. Taking Jurors to the County Line

An anonymous writer wrote in 1737 that until jurors reached a verdict, “they are all confin’d . . . nor can they be set at Liberty, till the judge is out of the County.”²⁴⁵ On occasion, jurors were transported to the county line if they had failed to reach a verdict by the time the judge was ready to depart at the end of the assizes. Bacon wrote that “if they agree not before the Departure of the Justices of Gaol-Delivery into another County, the sheriff must send them along in Carts, and the Judge may take and record their Verdict in a foreign County.”²⁴⁶ This seems to have been used as an alternative to discharging the jurors if they were unable to reach an agreement. There was no official rule as to when this was done. Much depended upon the nature of the case, the public interest in obtaining a verdict and the judge’s determination not to leave unfinished business in his wake. It indicates the lengths to which judges were willing to go in order to have cases disposed of, and justice seen to be swiftly delivered.

A detailed description of this practice near the turn of the century is given in Burke’s *Anecdotes of the Connaught Circuit*.²⁴⁷ In the case of *R v MacDiarmad*, tried at the 1793 Roscommon assizes, the jurors retired

243. Anon., “The Application Against Mr E.D. Gray, M.P. Judge Lawson’s Sentence. Imprisonment and Fine,” *Freeman’s Journal*, August 17, 1882, 3; and Anon., “The Charges Against an Irish Jury,” *The Pall Mall Gazette*, August 17, 1882, 10. See also Anon., “Mr Gray’s Imprisonment,” *Irish Law Times and Solicitors’ Journal* 16 (1882): 432.

244. Corfe, *The Phoenix Park Murders*, 233. A parliamentary committee was appointed to inquire into the case of Gray’s imprisonment: *Report from the Select Committee on Privilege (Mr. Gray)* 1882 House of Commons Parliamentary Papers (406) xii.503.

245. Hope, *Dissertation*, 9.

246. Bacon, *A New Abridgement*, iv, 269. Similarly, in *R v Ledgingham* (1682) 1 Vent 97, 104; 86 ER 67, 72, it was stated that if the jurors were unable to reach agreement before the departure of the judges, “they are to be carried in carts after them so they may give their verdict out of the country.”

247. Oliver Joseph Burke, *Anecdotes of the Connaught Circuit* (Dublin: Hodges Figgis, 1885), 163.

near 10:00 p.m. As there appeared to be no possibility of their reaching an agreement, the court was adjourned until the following day, by which stage they were still locked in disagreement. The members of the jury were informed that carts would be ready at three o'clock that afternoon to transport them to the county boundary, which lay some fifteen miles away. This threat plainly began to have the desired effect on some of the men, as Burke observes: "Now, the weather was cold and cheerless, and the majority were determined to enforce their arguments upon the minority in some way likely to ensure their coming to an unanimous decision." The foreman insisted that the four jurors who disagreed with the majority should accede to the views of the rest, and find the defendant guilty. The four men in question resolved not to do so, and as Burke tells us, "a hand-to-hand fight ensued. Fortunately the only fire-arms in the room were the fire-irons, but even these were too freely used."²⁴⁸ The uproar reached the ears of the judge, and the military intervened to stop the fighting; the jurors were brought "all battered and bleeding" into the court, their tempers still high. The judge proceeded to lecture them severely, and they were then led down to the waiting carts. They set off, accompanied by the subsheriff on horseback and a number of militia.²⁴⁹ As they left the town, the four jurors finally gave in and agreed to the guilty verdict, but the compromise had come too late. The judge had left the town, and they now had to travel on for hours before reaching him. The conditions were miserable: "[t]he rugged roads, up hill and down dale, were then almost impassable to wheel-carriages—and such carriages! The wheels, revolving on wooden axles, which were never oiled, made a detestable half-screaming and half-whistling sound, as they rolled along into ruts and out of them as best they could! We cannot say that either in their jury-room or in their equipage we envy these twelve men!"²⁵⁰ And all of this was for the sake of less than five shillings' worth of stolen property.

Such practices seem to have endured until at least the early part of the nineteenth century. The *Ulster Times*, for example, reported that after a

248. *Ibid.*, 164.

249. Unfortunately, the accuracy of this anecdote is somewhat questionable. The Irish Militia Act 1793 (33 Geo. III, c. 22), had established an army, although it was not the first Irish militia: see Ivan Francis Nelson, *The Irish Militia, 1873–1802: Ireland's Forgotten Army* (Dublin: Four Courts Press, 2007), 13–14. Widespread rioting across the countryside accompanied the passing of this Act, and Nelson, 57, describes county Roscommon as "probably the most disaffected county of all." Although the rioting did not prevent the establishment of the county militia regiment, it makes it unlikely that there was an operational militia available to escort jurors to the county line in that year. As Burke was retelling the story almost a century later, it may be that he had the wrong dates.

250. Burke, *Anecdotes*, 164.

two-day trial in Queen's County, the jurors were unable to reach a verdict after a further night and a day of deliberations. The three prisoners were placed in a chaise, and the jurors in carts, and the entourage proceeded to the county boundary. Torrens J met the jurors again at a nearby town, and once again they claimed that they had reached no verdict, and were finally discharged.²⁵¹

The tradition appears to have fallen out of favour by the middle of the century. An 1854 article in the *Irish Jurist* pointed out that formerly, "a jury unable to agree were carted to the verge of the county," but that "in our more polished age, a protestation on the part of the foreman, after the lapse of a few hours, as to the total impossibility of an agreement, usually induces the parties to a suit to consent to their discharge."²⁵² Seven years later, a paper published by the Dublin Statistical Society pointed out that the pressure on jurors to reach a unanimous verdict used to be "much more violent than at the present time." The paper stated that "[i]n modern times, happily, these barbarous practices, though not explicitly forbidden by the legislature, have been altogether discontinued."²⁵³ Indeed, in an English case from 1866, Mellor J described it as "so absolutely inconsistent with our modern ideas . . . no judge would commit an act so grotesquely absurd."²⁵⁴

g. Discharging the Jurors

As we have already mentioned, there was a rule that jurors in capital cases could not be discharged until they had reached a verdict. But what if, despite their long confinement, perhaps over a night or two, and their hunger and thirst, the jurors were simply deadlocked, unable to reach a unanimous verdict? Aside from taking them to the county line in carts, there were a few exceptional circumstances under which the judge could discharge them without a verdict.

If one of the jurors fell ill during the trial, the entire jury could be discharged²⁵⁵ after he was examined by a sworn physician. In most

251. 55. Anon., "Law. Queen's County Assizes. Murder of Mr. Carter," *Ulster Times*, March 31, 1836, 5. This was the trial of Doughney, Judge, and Egan for the murder of William Carter.

252. Anon., (1854) 6 *Irish Jurist* (os) 181.

253. Houston, "Observations," 104.

254. *Winsor v the Queen* (1866) 6 B & S 143; 122 ER 1150.

255. See, for example, Michael McMahon, *The Murder of Thomas Douglas Bateson, County Monaghan, 1851* (Dublin: Four Courts Press, 2006), 47. At the trial of Francis Kelly in February 1852, the jury retired at 7.30 on a Monday evening, and by Tuesday morning they were nowhere near reaching a verdict. By noon, it was claimed that two of them

cases, the physician swore that the juror's life was endangered, and that there was a high risk that he would die if not discharged. Sometimes this was caused, or exacerbated by the man's existing conditions, such as gout²⁵⁶ or old age,²⁵⁷ but in other instances it was brought about almost entirely as a consequence of the poor conditions under which the jurors were detained.²⁵⁸ An interesting case here is *R v Leary and Cooke*.²⁵⁹ Jeremiah Leary, John Cooke and Micheal Moylan were charged with the murder of John Nowlan near Roscrea in county Tipperary, in 1843.²⁶⁰ Leary and Cooke were tried at the Tipperary assizes in March 1844 before Ball J.²⁶¹ By ten o'clock on the second night of their confinement, the jurors had not reached a verdict, and claimed to be unable to do so. Ball J pointed out that he had no authority to discharge them without a verdict, to which the foreman replied, "I am sure your lordship would not wish us to be coerced into finding a verdict?"²⁶² They sought to be discharged, and the foreman indicated that he had heard of jurors at previous assizes being discharged after one night's confinement, without having reached any verdict. Ball J accepted that this had been allowed in some previous cases, and continued, "I am now obliged to tell you what I was not anxious to mention earlier," and he referred to a meeting held by the judiciary a short time before they set out on the circuits, at which it had been concluded that "whatever the practice may have been in particular cases hitherto, they were not warranted in discharging a jury for mere disagreement. Upon looking more accurately into the law, they have arrived at the conclusion, that it is not within the power of the judges to discharge a jury merely because they have remained for a considerable time without any prospect of an agreement." At this point, one of the jurors informed him that he had

were ill, and that there was no likelihood of reaching agreement, so Blackburne J discharged them. Sometimes the remaining eleven jurors were discharged and then re-sworn onto a second jury, along with one replacement for the sick juror; see the English cases of *Jeffrys v Tyndall* (1624) Palmer 411; 81 ER 1147, *R v Scalbert* (1794) 2 Leach 260; 168 ER 412 and *R v Edwards* (1812) Russ & Ry 224; 168 ER 772.

256. See, for example, *R v Barrett, Connors and two others* (1829) Jebb CCR 103.

257. See, for example, *R v Delany and Cheevers* (1829) Jebb CCR 106.

258. See, for example, *R v Dunne and others* (1838) Cr & Dix Abr 535. See also *R v Lecken* (1844) 3 Cr & Dix CC 174; and *R v Newton* (1849) 3 Car & K 85; 175 ER 473.

259. *R v Leary and Cooke* (1844) 3 Cr & Dix CC 212.

260. Anon., "Committals for Murder," *Freeman's Journal*, July 3, 1843, 3. Moylan was charged at the Nenagh assizes on August 2, 1843, whereas the trials of Leary and Cooke were put back until the following spring: Anon., "Wilful Murder—Capital Conviction," *Freeman's Journal*, August 5, 1843, 1.

261. Anon., "Tipperary (North) Assizes," *Freeman's Journal*, March 26, 1844, 1.

262. *Ibid.*

been very ill that day, and that further confinement would endanger his life.²⁶³ Ball J ordered a doctor to examine the man, and the doctor swore that the man's life was indeed in peril. The jurors were discharged,²⁶⁴ and Ball J noted that had it not been for the illness of this one man, they would have been detained until the end of the assize. One must wonder at the truth in the juror's claim of illness, which was so conveniently made after Ball J had made his position quite clear. There is the impression that Ball J was reluctant to confine the jurors any longer, and may have been unhappy with the consensus that had been reached by the judges. The discomfort of jury confinement—the cold, the lack of food, and the risk of the spread of illness—may have been factors in this decision.

8. Jurors' Experiences After Delivering their Verdict

a. Payment for Jurors

By the time the jurors were discharged, with or without a verdict, they could have spent anything from a day to a week attending the quarter sessions or the assizes, away from their farms and businesses. Assize jurors often had further to travel than quarter sessions jurors, because there would be several quarter sessions districts in each county, but only one assize town. In larger counties such as Tipperary, this would have posed some difficulty, especially in winter when bad weather and poor roads made the journey more difficult. This was compounded by the Winter Assize Acts, which provided for the joining of several counties as one "Winter Assize County," with the result that the judges on circuit did not have to travel to every county to deal with criminal matters in winter-time.²⁶⁵ As well as the cost of travel, jurors would have incurred expenses for their bed and board during their stay in the big town. An article in the *Irish Jurist* in 1854, for example, referred to a recent case where a five-day

263. These details were not given in the *Freeman's Journal*, but appeared in the official case report: *R v Leary and Cooke* (1844) 3 Cr & Dix CC 212.

264. Before they were discharged they gave a verdict of guilty in the case of Leary, but no verdict for Cooke: Anon., "Tipperary (North) Assizes," *Freeman's Journal*, March 26, 1844, 1.

265. The Winter Assize Act 1876 (39 & 40 Vic., c. 57) stated in its preamble that "it is usual to hold winter assizes in some counties and not to hold them in other counties in which there are but few prisoners awaiting trial." This Act was designed to provide for the speedy trial of such prisoners. Under s. 2, Her Majesty, by an Order in Council, could provide for the uniting of neighbouring counties and the appointment of a place where winter assizes could be held in such counties. See also the Winter Assize Act 1877 (40 & 41 Vic., c. 46).

trial had ended up costing a special juror an estimated £2 and 10 shillings.²⁶⁶ The same writer noted that it was “a well known fact that assizes time is the harvest of the inn-keepers and owners of lodgings in the town, and jurors have no special immunity from these extra charges.”²⁶⁷

It will be recalled that there were two main types of petty juror in the nineteenth century: special and common.²⁶⁸ Looking at common jurors, a further distinction can be drawn: between civil and criminal jurors. In terms of qualifications, there was no distinction between men who decided civil actions and those who sat on criminal trials. The difference, however, became significant after the trial, because traditionally, only jurors on the civil side were entitled to reimbursement of their expenses. Bacon noted in 1768 for example that “jurors in all civil causes are to be paid for their trouble and attendance, and the quantum is to be proportioned according to the distance of place, badness of the weather &c.”²⁶⁹ The amount they actually received was very small; in the nineteenth century, it varied between about a shilling and 1 shilling and 9 pence.

It is helpful to consider these sums in the context of average wages and the cost of living.²⁷⁰ The average cost of living throughout the United Kingdom, including Ireland,²⁷¹ roughly doubled between 1781 and 1815,²⁷² and average manual wages doubled between 1797 and 1851. The cost of living remained high until about 1876, then dropped again late in the nineteenth century. In relation to the financial impact of jury service on jurors, it was stated in 1881 that “[a]t some periods of the year at the time of harvest, the jurors feel it more than at others.”²⁷³ This is because the income of smaller farmers generally varied according to the

266. Anon., (1854) 6 *Irish Jurist* (os) 221.

267. *Ibid.*

268. See above, text accompanying notes 36–39.

269. Bacon, *A New Abridgement*, Vol. 3, 277.

270. See Frank Geary and Tom Stark, “Examining Ireland’s Post-Famine Economic Growth Performance,” *The Economic Journal* 112 (2002): 919–35; and Frank Geary and Tom Stark, “Trends in Real wages during the Industrial Revolution,” *Economic History Review* 57 (2004):362–95.

271. Charles Feinstein, “Changes in Nominal Wages, the Cost of Living and Real Wages in the United Kingdom over Two Centuries, 1780–1990,” in *Labour’s Reward: Real Wages and Economic Change in Nineteenth- and Twentieth-Century Europe*, ed. Peter Scholliers and Vera Zamagni (Vermont: E. Elgar, 1995), 3. See also Peter Scholliers, ed., *Real Wages in Nineteenth- and Twentieth-Century Europe: Historical and Comparative Perspectives* (New York: Berg, 1989).

272. Feinstein, “Changes in Nominal Wages,” 8, attributes this to the Napoleonic Wars, and repeated harvest failure.

273. *Report from the Select Committee of the House of Lords on Irish Jury Laws*, House of Commons Parliamentary Papers 1881 (430), xi, 1, para.1321.

season,²⁷⁴ and near 1846, the average daily wage of 6 pence could range from 10 pence in summer to a low of 4 pence in winter.²⁷⁵ These wages can be compared to those of skilled tradesmen, such as engineers and carpenters, who were earning between 30 and 40 shillings per week in Dublin by the late nineteenth-century.²⁷⁶

In a paper delivered before the Dublin Statistical Society in May 1881, William Dodd observed that “in the administration of the law . . . the only persons now who are not remunerated for their services are the high sheriffs, justices of the peace and jurors.”²⁷⁷ The first two, he argued, were positions of dignity, honour and respect, and were self-rewarding in that regard. Jurors, on the other hand, “cannot be said to receive either honours or social dignity . . . [or] any direct or indirect reward save the consciousness of having discharged a public duty.”²⁷⁸

*Byrne v Chester and Holyhead Railway Co*²⁷⁹ was an unusual instance of the jurors themselves seeking advance payment from the parties to the case. Before the trial commenced, one of the special jurors asked the plaintiff’s attorney whether he would agree to pay a guinea per day per juror for as long as the trial lasted. The attorney later explained that he had not thought it “prudent for his client’s interest to give a direct negative to the question so put in presence of most of the other jurors,” and he gave an evasive answer, indicating that this was a matter for the defendant’s attorney also. The plaintiff, a “poor, struggling cattle-dealer,” was in no position to pay such fees, and after a four-day trial the jury found for the defendants, whose attorney handed the court registrar £50 and 8 shillings to pay the jurors. The plaintiff’s attorney alleged that the jury had found for the defendant because it was a rich company and could easily

274. Arthur L. Bowley, *Wages in the United Kingdom in the Nineteenth Century* (Cambridge: Cambridge University Press, 1900), 45–50.

275. *Ibid.*, 48. Ordinary laborers earned on average two shillings per week in the period from 1833 to 1840, and earned approximately nine shillings and sixpence around 1892; figures taken from *ibid.*, 47. Agricultural laborers were less well-off, and tended to fare worse than their English and Scottish counterparts. Between 1833 and 1840 they earned an average of four shillings and sixpence per week, and by 1894 they were earning approximately ten shillings per week; *ibid.*, 50. This is based on a six-day week.

276. *Ibid.*, and Scholliers and Zamagni, *Labour’s Reward*, 118. This was slightly more than those living in Belfast, and notably less than those in London.

277. However, sheriffs charged fees for their services; see the *Fifteenth Report of the Commissioners Appointed to Inquire into the Duties, Salaries And Emoluments, of the Officers, Clerks, and Ministers of Justice, in all Temporal and Ecclesiastical Courts in Ireland* 1826 House of Commons Parliamentary Papers (310) xvii. 29.

278. Dodd, “Grievances,” 224. Similarly, Thomas De Moleyns described jury duty as a thankless and unpaid service: *Report from the Select Committee of the House of Lords on Irish Jury Laws*, House of Commons Parliamentary Papers 1881 (430), xi, 1, para. 1660.

279. *Byrne v Chester and Holyhead Railway Co* (1856) 8 *Irish Jurist* (os) 511.

afford to pay such fees. A bystander who was sworn in testified that on the second or third day of the trial he had overheard the defendant's attorney tell some of the jurors that "the plaintiff was a pauper and unable to pay the jurors a guinea per day if he got a verdict, but that he—putting his hand to his small-clothes' pocket—had the money to pay the jury if a verdict were given for the defendant." The court unanimously held that the verdict could not stand. Pigott CB "most deeply" lamented that such practices persisted in civil cases, and he appeared to be, if not quite sympathetic, at least sensible of the embarrassing position in which an attorney found himself under such circumstances. He pointed out that when jurors perceive the possibility of receiving a greater fee from the wealthier party, there was the distinct likelihood that jurors would disregard their oaths. He asked, "[s]hall we suffer jurors to be placed under this temptation, acting upon a mind not, perhaps, marked by the purest virtue. . .?"²⁸⁰

Similarly, a solicitor and attorney named William Henry Carroll had testified that in 1823, he was arguing the case of *Lindsay v Keatinge* in the Court of Common Pleas, and:

I obtained a verdict for the plaintiff, when the jury demanded to be paid before they handed down their finding, on which I threw up to the jury-box 12 English shillings, which they loudly insisted was not payment, and demanded 1 guinea; on which I appealed to the Court, and declared that, with the sanction of the Chief Justice, I should not pay any more; upon which the Court ordered the jury to hand down their verdict upon the payment I had made, observing, that it was a disgrace to the court to have such a demand made."²⁸¹

The fact that common jurors received so little by way of compensation for their time proved to be contentious, among not only the men eligible for jury service, but also the administration and the legal profession. In 1854, the *Irish Jurist* described it as an issue that "loudly call[ed] for reform." It was pointed out that although there was an aversion to "turning the honourable functions of a juror into a trade," nevertheless "when these services are compulsorily demanded, the parties should be in a degree indemnified against actual loss." Arthur Houston, writing in 1861, had this to say:

Amongst other defective characteristics of our system is the shamefully inadequate remuneration, if remuneration it can be called, which is made to jurors, even those on the special jury list. When a man has been obliged

280. *Ibid.*

281. *Fifteenth Report of the Commissioners Appointed to Inquire into the Duties, Salaries And Emoluments, of the Officers, Clerks, and Ministers of Justice, in all Temporal and Ecclesiastical Courts in Ireland* 1826 House of Commons Parliamentary Papers (310) xvii. 29, 429.

to attend day after day in court, waiting to be called on, has patiently endured the tedious witticisms and stereotyped eloquence of prosy *nisi prius* lawyers, has listened with stifled indignation to the conflicting evidence and evasive answers of dishonest witnesses, has then bestowed considerable time and infinite trouble on the cases he may have been called to decide—surely to hand him a shilling seems a wanton insult.²⁸²

The problem was exacerbated when the Juries Act (Ireland) 1871²⁸³ lowered the property qualification for jury service. Under that Act, jurors were to qualify according to their poor law rating.²⁸⁴ In most counties, the qualification for a common juror was that he was to be rated for the relief of the poor with respect to lands valued at £20, although the amount could be as low as £12 in some areas.²⁸⁵ This was a revolution in jury laws, giving rise to a whole new class of jurors, many of whom were considerably less affluent than their predecessors.²⁸⁶

One reason for the distinction between civil and criminal jurors was probably that in civil actions, the jurors' fees would be borne by the parties to the case, whereas this would be unworkable a criminal context: defendants would often be too poor to pay, and it was undesirable that the crown should have to pay these fees. Another reason for the distinction was that civil cases were considered to be more complicated, requiring a greater degree of intelligence. The demands on jurors' time were considered to be "proportionately greater" in civil cases.²⁸⁷ This is further evidenced by the fact that certain types of civil cases called for special jurors, deemed to be better-equipped to deal with complex issues.

b. Attacks on Jurors After they Delivered their Verdict

Even after the completion of their duty, jurors were not always safe. Having delivered an unpopular verdict, they faced the hostility of their neighbours, and the family and friends of, for example, the convicted person or the losing party. Where secret societies were involved, as was discussed earlier, the repercussions could be even more serious. Despite the alleged secrecy of the jury room, a juror who held out against the popular

282. Houston, "Observations," 108.

283. The Juries Act (Ireland) 1871 (34 & 35 Vic., c. 65).

284. Both freeholders and leaseholders could be rated.

285. Molloy, one of the bill's drafters, later commented that these sums had been reduced in the House of Commons, and that the original proposal had been for rating qualifications of £30 and £20 respectively. *First, Second, and Special Reports from the Select Committee on Juries (Ireland)* House of Commons Parliamentary Papers 1873 (283) xv, 389, para. 1760.

286. See Vaughan, *Murder Trials*, 130–31.

287. Anon., (1854) 6 *Irish Jurist* (os) 221.

vote sometimes found that his name became public.²⁸⁸ In a memorandum on juror intimidation compiled in 1833, during the tithe disturbances,²⁸⁹ a resident magistrate from Roscommon named Drought claimed that “[s]everal persons who are in the habit of serving as jurors” had told him that for certain agrarian offences, “if they dared to find the prisoners guilty,” they, their families and their property would be at risk.²⁹⁰ A resident magistrate from County Tipperary similarly reported that notices had been posted around the town of Fethard, “threatening Mr. William O’Leary, one of the jurors who brought in a verdict of guilty against the Anti-Tithe Composition.”²⁹¹ Instances of jurors being attacked after, or as a result of, an unpopular verdict can be difficult to identify however. After being discharged from the trial, such men were no longer jurors, and reports of assaults on them may not have identified them as ex-jurors.

In addition, there were several high-profile examples of juror intimidation, the best-known being the attack on Denis Field by a group known as the “Invincibles” in 1883.²⁹² Field had been a member of the jury that convicted Michael Walsh for the murder of police constable Kavenagh at Letterfrack.²⁹³ The foreman and Field had been seen passing what were in fact perfectly innocuous messages to and from the Crown solicitor and were “assumed to be asking his advice on their verdict.”²⁹⁴ Soon after the trial, Field was attacked while walking home,²⁹⁵ on the same night that an attempt was made on the life of Lawson J.

In the case of *R v Barrett*,²⁹⁶ discussed previously, the jurors at the first trial were discharged when they were unable to reach a verdict.²⁹⁷ It was later alleged that “several of the jurors were threatened, and thereby intimidated and prevented from attending the assizes.”²⁹⁸ John B. Greene,

288. In other cases, it was merely known how many jurors were in favor of an acquittal. For example, at the Smith O’Brien trial there were reputedly ten jurors in favor of a conviction, and two who held out, with the result that there was no verdict. See Anon., “Our Jury System.”

289. See above, note 114.

290. *Memorandum on Juror Intimidation*, 1833, N.A.I. OP/1833/579.

291. *Ibid.*

292. See Eaman P. De Blaghd, “Tim Kelly Guilty or Not Guilty?” *Dublin Historical Record* 25 (1971–72): 12–24. The Invincibles were the group responsible for the Phoenix Park murders.

293. Walsh was sentenced to death, but the sentence was commuted to life imprisonment by the Lord Lieutenant.

294. Corfe, *The Phoenix Park Murders*, 234.

295. Anon., “Ireland,” *The Times*, February 10, 1883, 10.

296. *R v Barrett* (1870) IR 4 CL 285.

297. Anon., “The Special Commission,” *The Galway Express*, October 2, 1869, 2.

298. *R v Barrett* (1870) IR 4 CL 285, 286.

a resident magistrate, swore that there had been “a system of terrorism and intimidation” “studiously and effectually practiced and exercised upon the jurors.” A rumor circulated that eleven of the jurors had been in favor of an acquittal.²⁹⁹ The name of the wayward juror (Jackson) became known, and the prosecution claimed that he had been “hunted, stoned and ill-treated by the mob, and was with much difficulty rescued by a Roman Catholic clergyman and a number of the constabulary.”³⁰⁰ Accounts of the attack on Jackson differed, with some claiming that his assailants were merely women and children.³⁰¹ It was also claimed that around the time when Jackson was being assailed, a rock or large stone was thrown at the carriage in which the judges were proceeding from the courthouse,³⁰² and one man, Mr. Stanford, was struck on the shoulder.³⁰³ The entire trial was said to have been accompanied by rioting violence and heavy drinking throughout the city.

9. Jurors’ Experiences in Other Common Law Countries

As was noted, many of the problems connected with juries in Ireland were mirrored in overseas territories. In the nineteenth century, while the Irish, and to a lesser extent, English and Welsh jury systems came under increasing criticism, the principle of trial by jury was simultaneously being extended to all corners of the Empire.³⁰⁴ Either the problems inherent in Irish juries were simply ignored, or there may have been a belief that these problems stemmed from uniquely Irish circumstances, and would not pertain elsewhere. It has been pointed out that the various criticisms of jury trial in England were even more pronounced in the

299. Anon., “Rioting in Town,” *The Galway Express*, October 2, 1869, 2.

300. *R v Barrett* (1870) IR 4 CL 285, 286. See also Anon., “Rioting in Town,” *The Galway Express*, October 2, 1869, 2, where it was reported that the mob had attempted “the summary execution of a refractory jurymen.” Jackson was “hooted and groaned,” and “attacked with bricks and stones, and one old woman seemed so bitter that she brought out a sod of turf and rolled it in the mud before throwing it at him.” The Attorney General believed that such happenings had “no precedent in the history of Irish trials”: *Freeman’s Journal*, January 17, 1870. See also the affidavit of Rev. John Dooley, November 29, 1869, N.A.I., CCS 1870/197.

301. Affidavit of Edward Rochford, October 3, 1869, N.A.I. CCS/1870/197.

302. *R v Barrett* (1870) IR 4 CL 285, 286. See Anon., “Court of Queen’s Bench. The Queen v. Barrett,” *Freeman’s Journal*, January 17, 1870, 4.

303. Anon., “A Juror Mobbed,” *The Daily Express*, October 1, 1869, 4.

304. Jury trial was exported to some territories earlier than the nineteenth century (for example, juries were brought to the early New England settlements in the seventeenth century, and were also extended to Sierra Leone in the eighteenth century), but the nineteenth century saw its rapid extension to all corners of the Empire.

colonies,³⁰⁵ and certainly some of the problems experienced at home were exacerbated by factors such as racial tensions and a shortage of “suitable” jurors abroad.

In many territories, once jury trial was established, it became immediately apparent that this system of adjudication would not operate smoothly, and, as in Ireland, modifications were necessary. In some instances these were rather extreme; the availability of a jury trial, or the right to sit on a jury was usually limited to British subjects or European settlers, either explicitly or indirectly. An example is Natal, where non-whites, though not expressly excluded by legislation, were unlikely to hold the required amount of moveable or immoveable property.³⁰⁶ Similarly in Lagos, jurors had to satisfy certain property requirements, and had to be able to speak and understand the English language.³⁰⁷ In many colonies, jury trial was found to operate particularly unsatisfactorily in civil disputes. In England and Ireland, the availability of juries in civil cases had been significantly curtailed in the 1850s³⁰⁸ and the late nineteenth and early twentieth century also saw the abolition of civil juries in many parts of the Empire.³⁰⁹

As well as the operational difficulties encountered, such as, for example, the unavailability of a sufficient pool of suitably-qualified persons—a problem in many colonies, such as Sierra Leone³¹⁰—it is clear that at times

305. Knox-Mawer, “British Colonial Africa,” 160.

306. P.R. Spiller, “The Jury System in Early Natal (1846–1874),” *The Journal of Legal History* 8 (1987): 129–47. However, s. 4 of Law 10 of 1871 limited eligibility for jury service to “Natives who have obtained their exemption from the operation of Native Law under Law 28, 1865.” The latter had allowed natives who proved themselves to be capable “of exercising and understanding the ordinary duties of civilised life” to be relieved from “Native Law.” See also Emmet V. Mittlebeeler, “Race and Jury in South Africa,” *Howard Law Journal* 14 (1968): 90–104.

307. Mittlebeeler, “Nigeria,” 92. The linguistic requirement was dropped in 1876, because of the difficulty in obtaining sufficient numbers of qualified jurors, but by 1945 it had become a valid ground for challenging jurors: Mittlebeeler, “Nigeria,” 93.

308. See Hanly, “Decline of Civil Jury Trial.”

309. For example, civil juries were abolished in Sierra Leone in 1867 (J.H. Jearey, “Trial by Jury and Trial with the Aid of Assessors in the Superior Courts of British African Territories: I,” *Journal of African Law* 4 [1960]: 133–46); in Gambia and the Gold Coast in 1866 (*ibid.*, 140); in South Africa in 1927 (S.A. Strauss, “The Jury in South Africa,” *University of Western Australia Law Review* 11 [1973–74]:133, 138); and by 1866 there were no civil juries in Lagos (Mittlebeeler, “Nigeria,” 90).

310. Knox-Mawer, “British Colonial Africa,” 163. This was also highlighted in 1865: *Index to the report from the Select Committee on Africa (Western Coast)* 1865 House of Commons Parliamentary Papers (412-I) v.1. 499, 323, 1. Broad categories of exemptions of jurors in the Commonwealth Caribbean led to a shortage of jurors: Ramesh Deosaran, “The Jury System in a Post-Colonial Multi-Racial Society: Problems of Bias,” *British Journal of Criminology* 21 (1981): 305–23. The problem of not having enough jurors presented itself differently in Canada. Parker observes that it was hard to maintain a complete

jurors' experiences bore similarities in places as far apart as Ireland and the Cape Colony. Although the religious and class divides that dogged the Irish jury system took the form of racial divides elsewhere, the overall impact on the functioning of the jury system was essentially the same.³¹¹ On a practical level, the shortage of jurors in many colonies often meant that the same men were frequently returned for service,³¹² meaning that jury duty became an irksome obligation, as was the case in the United States,³¹³ and as had earlier been the case in England.³¹⁴ The reluctance to discharge jurors without a verdict, save in extreme cases where the life or health of a juror was at stake, discussed previously, was also evident in Canada.³¹⁵ The rule that jurors were to deliberate without food appears to have been made use of in several territories. The ban against refreshment seems to have continued in existence in Malta after its abolition in England and Ireland; at least as late as 1964, jurors were forbidden to eat or drink without the express permission of the judge.³¹⁶ In nineteenth-century Natal, however, it appears that rather than a general practice, the denial of refreshment was a fairly extreme measure taken in exceptional cases.³¹⁷ The discomfort and lack of facilities for jurors that was highlighted by the Dublin Jurors' Association, was similar to conditions facing jurors in New Zealand. A Royal Commission on the Courts commented in 1978 that "[i]t seems that nowhere in the Empire was much thought given to the comfort of jurors—or indeed, to the other actors in the courtroom."³¹⁸ It cited an 1852 New Zealand newspaper report, which was "alleged to have commented that 'It is really too bad to pen up a Judge jury and bar in such a wretched bar as our present courthouse'."³¹⁹

jury system because of "the thinly populated vast territory, and the infrequency of visits by the assize judges." Graham Parker, "Trial by Jury in Canada," *The Journal of Legal History* 8 (1987): 178–89.

311. This was clearly a problem in Natal, where white jurors tried mostly black defendants: Spiller, "Early Natal," 134.

312. For example, it was said in 1865 that juries in the Cape Coast colony in South Africa tended to consist repeatedly of the same men: *Index to the Report from the Select Committee on Africa (Western Coast)* 1865 House of Commons Parliamentary Papers (412-I) v.1, 499, per W.A. Ross, 319.

313. James V. Campbell, "Some Hints on Defects in the Jury System" (1878–79) 4 *Southern Law Review* (ns) 4 (1878–79): 521–38.

314. Cockburn, "Twelve Silly Men" comments, 160, that "service on a trial jury in the sixteenth and seventeenth centuries was unpopular and that jurors at both assizes and quarter sessions were often in short supply."

315. See Anon., "Discharge of a Jury," *Canadian Law Times* 29 (1909): 748–49.

316. Cremona, "The Jury System in Malta," 580.

317. Spiller, "Early Natal," 141, citing *Peace, Blandy and Company v Hartley* (1868) Natal Supreme Court 2/5/7: 272 (Natal Archives).

318. *Report of the Royal Commission on the Courts* (Wellington: E.C. Keating, 1978), 3, 319. *Ibid.*

There is some evidence to suggest that judges and lawyers emigrating from England and Ireland to the colonies may have brought with them a certain amount of scepticism of the jury trial.³²⁰ In the South African colony of Natal, criminal juries were introduced in 1846, and this was extended to certain civil actions in 1852.³²¹ Henry Connor, an Irishman, served as a Supreme Court judge in Natal from 1858 to 1874, having previously practiced at the Irish bar for fifteen years. He was critical of trial by jury, and questioned the impartiality of white criminal juries where the accused was black.³²² Another Supreme Court judge, who hailed from England, was similarly sceptical, whereas the South African judges were more enthusiastic about trial by jury, perhaps because it was a relatively new concept and they were not yet familiar with its defects.³²³ However, despite whatever misgivings English or Irish settlers may have had, juries continued to be introduced overseas.

Corruption and intimidation were not exclusively Irish problems. Jury packing appears to have been an issue in pre-Revolution Massachusetts,³²⁴ and in the late nineteenth century, sheriffs and summoning officers in some states appear to have had considerable influence over the summoning of jurors, leading to abuses.³²⁵ Reid points to an eighteenth-century Massachusetts case where jurors were heckled and shouted at by onlookers in the courtroom;³²⁶ although it is interesting to note that the mob here were agitating for a conviction, whereas in Ireland, popular pressure generally demanded acquittals.

While it is evident that jurors in Ireland were often treated poorly, it should also be borne in mind that they in turn abused the system at times, as did their counterparts in other parts of the Empire. We have seen instances of Irish jurors breaking the rule against refreshments, for example, and smuggling in food and alcohol, and there are also instances of jurors in nineteenth-century United States separating during deliberations.³²⁷ When taken to inns or hotels for accommodation or refreshment,

320. Similarly, Bonsall notes that many Irish Resident Magistrates went on to higher offices in the overseas administration: Penny Bonsall, *The Irish RMs, The Resident Magistrates in the British Administration of Ireland* (Dublin: Four Courts Press, 1997), 63.

321. Spiller, "Early Natal," 129.

322. *Ibid.*, 131.

323. *Ibid.*, 132.

324. John Philip Reid, *In a Defiant Stance: The Conditions of Law in Massachusetts Bay, the Irish Comparison, and the Coming of the American Revolution* (Pennsylvania: Penn State University, 1977), 61.

325. Campbell, "Some Hints on Defects," 526.

326. Reid, *Defiant Stance*, 59–61.

327. See, for example, *Prescott v Spring*, Middlesex Supreme Judicial Court Records 4–97 and *Commonwealth v Cooms*, Essex Supreme Judicial Court Records 11–86, both cited

it seems that jurors everywhere displayed a tendency to over-indulge in alcohol. An account of the 1856 South African case of *Van Prehn v Murray*³²⁸ indicates that not only were jurors accommodated hotels, but they were apt to misbehave in a manner similar to Irish jurors, drinking excessively and running up large bills.³²⁹ In the late nineteenth-century United States case of *Riggs*, the jurors were taken to a public hotel and took their meals with “a crowd of guests.” The landlord and his servants had free access to the room in which the jurors were kept, and “an adjoining room was prepared for the jury in which intoxicating liquor was put, and to which “the jurors went separately to drink.” The jury had “cards, liquor and a fiddle,” all of which they used during the night.”³³⁰

Despite the supposed secrecy surrounding the deliberations in the jury room, it was not uncommon for the details of how particular jurors voted to become public knowledge. Again, this tendency was not confined to Irish jury trials—a Mississippi judge commented in 1887 on the difficulty in keeping jurors isolated from the various spectators of and participants in the trial.³³¹ His remarks make it clear that the layout of courthouses in that State was not dissimilar to some of the courthouses of early nineteenth-century Ireland, in which jurors were not entirely segregated.³³² We have also seen how jurors could be persuaded—gently or otherwise—to vote along a particular political line. Issues of religion

in William E. Nelson, *Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760–1830* (Cambridge: Harvard University Press, 1975). See also the case of *Skates v State* (1887) Mississippi Supreme Court, April 18, 1887, reported in *Criminal Law Magazine and Reporter* 9 (1887): 492, 494. In this case the jurors were escorted in a body to a yard, whereupon several of them entered a privy and several of them remained outside with the court officer, about seventy-five meters away. Although it was a public privy, there was no reason to suspect that the jury had been tampered with, and the conviction stood. This is similar to the approach taken in several Irish cases.

328. *Van Prehn v Murray* (1856) Natal Supreme Court 1/5/43: 458 (Natal Archives), as cited in Spiller, “Early Natal,” 140. The trial lasted eight days, and the jurors were accommodated at the Crown Hotel in Natal.

329. One juror in this case, a Joseph de Kock, known as “Fat” de Kock, was apparently “for nothing but good living at the hotel, where a bill of about £45 was run up against Mr. Murray [the defendant], who had given unlimited orders to the landlord to furnish food and drink for the jury, ‘ample wine’, as he called cider, and a very large and soft feather bed, which he sent for from his house, to save his rotund body from rolling about on the bare floor, on which they all had to sleep.” As cited in Spiller, “Early Natal,” 140.

330. *Rigg’s Case* 26 Miss. 51, cited in *Criminal Law Magazine and Reporter* 9 (1887): 492, 495. The verdict in this case was set aside.

331. *Skates v State* Mississippi Supreme Court, April 18, 1887, reported in *Criminal Law Magazine and Reporter* 9 (1887): 492.

332. “All our court-houses are in public places, and the public have right of access to them. At sessions of court many persons are there congregated, either from curiosity or

probably influenced their decisions in Ireland to a greater degree than would have been the case in England. In colonies such as Rhodesia, Natal and Fiji, where race relations placed the jury system under a “distinct strain,”³³³ this translated into voting along racial lines. Of course, there were other reasons why jurors might deliver “perverse” verdicts—in close-knit rural and urban Irish communities, personal relationships and extended kinship played an important role, as was also the case in various overseas territories.³³⁴ In addition to individual allegiances towards a particular political movement there may in some instances have been a more general antipathy towards law and order in Ireland,³³⁵ presumably, among some parts of the communities of the new settlements and colonies, there was a similar antipathy towards the imposition of foreign laws and customs.³³⁶ Reflecting on the problem of jurors appearing to disregard their oaths, even in cases with no obvious political element, a Canadian commentator commented in 1905, “[t]is but scant consideration that is given to the evidence by the average jury. All other considerations come first; the judge, the lawyers for and against, the prisoner, his friends, and then,—why then, if any time is left, the evidence comes in for a share of discussion.”³³⁷

10. Conclusions

Garnham has observed that jury service in Ireland was “time consuming and unrewarding,”³³⁸ and King cites some disadvantages of jury service

by reason of business for themselves or others. Jury-rooms open into the court-rooms, frequently filled with spectators, or by windows overlook the yards.” *Ibid.*, 497.

333. Taslim Olawale Elias, *British Colonial Law: A Comparative Study of the Interaction Between English and Local Laws in British Dependencies* (London: Stephens, 1962), 261–62.

334. An example is Malta: see *Copies or extracts of reports of the Commissioners appointed to inquire into the affairs of the island of Malta, and of correspondence thereupon. Part III*, 1839 House of Commons Parliamentary Papers (140) xvii.753, 107–8, where it was pointed out that this posed considerable difficulty in defamation cases.

335. See further Howlin, “Controlling Jury Composition.”

336. Although by contrast, in New South Wales, there was strong agitation for the introduction of jury trials in the 1830s. See John Michael Bennett, “The Establishment of Jury Trial in New South Wales,” *Sydney Law Review* 3 (1959–61): 463–85. Alex Low, “Sir Alfred Stephen and the Jury Question in Van Diemen’s Land,” *University of Tasmania Law Review* 21 (2002): 79–120 discusses the changes in New South Wales as model for Van Diemen’s Land.

337. Anon., “Trial by Jury,” *Canadian Law Review* 4 (1905): 245–47.

338. Garnham, *The Courts*, 144.

as including “the time and money lost, the waiting around, and the possibility of incurring the displeasure of customers, creditors or neighbours through an unpopular verdict.”³³⁹ Having considered some of the conditions under which juries operated in Ireland, it is difficult to refute these statements.

With his 1871 Act, Lord O’Hagan had been motivated by a desire to see those who had “suffered perpetual exclusion”³⁴⁰ given the chance, as he saw it, to benefit from “that moral and political training which has been of such profit to the English race, from their continual opportunities of taking a public and responsible part in the administration of justice.”³⁴¹ Although this attempt to make Irish juries more inclusive certainly brought some men into contact with the administration of justice for the first time, these men often viewed jury service as more of a burden than a privilege. In 1873, the year that the Act came into force, an official remarked that he had “tried to induce [the jurors] to believe that it was an honour and a privilege to be a juror, sitting there upon the property and lives of their neighbours and friends, and sitting so near the judge, but none of them would take that view of it.”³⁴² This was a rather over-optimistic and naïve view of how jury service was perceived by the general public. The better-off farmers and tradesmen no doubt enjoyed the opportunity to go into town and catch up on the latest local gossip, but to the poorer farmers it was a chore; a time-consuming, expensive, and at times, dangerous duty, to be avoided if at all possible.

This article has touched upon some the dangers faced by those undertaking jury service in the nineteenth century. Threats to their life and property were made at times of political unrest; often they were too intimidated to turn up for jury service; and at other times they were coerced into delivering verdicts favourable to a particular political group or influential individual. The article has also considered the paltry remuneration—or lack thereof in the case of criminal jurors—offered in exchange for their services. Dodd pointed out that it was “not unnatural” that jurors “should occasionally grumble” and “complain that their time and their money are not economised as carefully as might be.”³⁴³ On the whole it was a less than edifying experience, and Irish jurors appear to have endured greater

339. King, “Illiterate Plebeians,” 287–88.

340. Thomas O’Hagan, “Legal, Educational and Social Reforms in Ireland,” in *Occasional Papers and Addresses* (London: K. Paul, Trench and Co., 1884), 354.

341. *Ibid.*

342. *First, second, and special reports from the Select Committee on Juries (Ireland)* House of Commons Parliamentary Papers 1873 (283) xv, 389, per George Battersby, a Q.C. and a judge in the consistorial court, para. 1452.

343. Dodd, “Grievances,” 224.

discomfort than their English counterparts. Much of this had to do with the smaller number of qualified men, although the legislative reforms of the 1870s did little to ease their misery, and in fact exacerbated some of the problems. Although the political context, social conditions, and legal landscape were markedly different in the overseas territories, it is suggested that the experiences of jurors around the Empire were often remarkably similar. Although constraints of space inhibit a detailed consideration here of the impact of these experiences on jurors' decision making, it is suggested that the significance of such experiences in relation to the overall functioning of the justice system ought not to be discounted.

This article has brought together a wide range of sources, and painted what is hoped is a relatively coherent picture of what jury service in nineteenth-century Ireland entailed, notwithstanding the possible bias or inaccuracies inherent in some of the sources. This should enhance our insight into how and why jurors made their decisions; it may, for example, help explain the low conviction rates in Ireland during certain periods, or give reasons as to why Irish jurors apparently disregarded their oaths so freely. It should also indicate some reasons behind the various weaknesses of the justice system. Jury developments in the nineteenth century are particularly interesting because this was the heyday of the jury; as the Empire expanded, it was often one of the first legal principles to be transplanted in the colonies. It is speculated that there were likely to have been further shared experiences between the jurors of Ireland and of other common law jurisdictions. Perhaps in this regard, this exposition of Irish experiences may be of use to those seeking a greater understanding of the development of jury trials elsewhere. Similarly, the exploration of how British laws, legal institutions, and legal traditions more generally were adapted for Ireland could inform debate and scholarship relating to the wider common law world.³⁴⁴

344. For example, the operation of the Royal Irish Constabulary influenced the evolution and functioning of police forces in numerous colonies. Elizabeth Malcolm, *The Irish Policeman 1822–1922* (Dublin: Four Courts Press, 2006), 38–39 cites numerous examples of how Irish policing practices impacted on developments in Australia, New Zealand, Canada, South Africa, Ghana, Egypt, and Kenya. Killingray also points out that “[f]or the British, experience of colonial policing was honed in Ireland”: David Killingray, “Guardians of Empire,” in *Guardians of Empire, The Armed Forces of the Colonial Powers c.1700–1964*, ed. David Killingray and David Omissi (Manchester: Manchester University Press, 1999), 12; although Hawkins questions the assumption that there was an “Irish model” for colonial police forces: Richard Hawkins, “The ‘Irish Model’ and the Empire: A Case for Reassessment,” in *Policing the Empire: Government, Authority and Control 1830–1940*, ed. David M. Anderson and David Killingray (Manchester: Manchester University Press, 1991), 25.