



ARTICLES

*Christopher Fritsch**

DEFENDING THE COMMUNITY, DEFINING THE EMPIRE: A RESEARCH NOTE ON JURORS, MIXED JURIES AND LEGAL ELITES IN THE COURT OF OYER AND TERMINER FOR LANCASTER COUNTY, PENNSYLVANIA

COMMONALITIES between the eighteenth and twentieth centuries are often too easily assumed or never quite discovered. Two hundred years ago, Sir William Blackstone noted that the "trial by jury, or the country, per patriam, is also that trial by the peers of every Englishman, which, as the grand bulwark of his liberties, is secured to him by the great charter."¹ In an age in which jury trials such

* DPhil student, St Cross College, Oxford; Instructor of History, Moravian College, Bethlehem, Pennsylvania and Adjunct Assistant Professor of History, Lebanon Valley College, Annville, Pennsylvania.

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1 Blackstone, *Commentaries on the Laws of England* (University of Chicago Press, Chicago, 1st ed 1979) Vol IV pp342-343.

as the OJ Simpson trial become media events, modern commentator, Godfrey Lehman, wrote that "jurors, naive as they were, stood for individual rights against great pressure, [and] they advanced the people's liberties."² From the Enlightenment to the post-modern era, legal theorists and historians agreed on the value of juries to check arbitrary power.

Looking more closely at Lehman's comment about the value of juries, he notes that they advanced the people's liberties. In this, Lehman captured the obscurity in which juries exist and perform their public duty. Except in rare situations of high profile trials, juries and jurors remain anonymous. There is little understanding of the social and economic worlds in which these "guardians of public and private liberty" exist. Little research has been conducted to determine whether or not American jurors truly constitute a "jury of our peers."³

Beyond their gender, what of eighteenth century American juries? What do we know of their background and standing in the communities in which they lived?⁴ This work examines the socio-economic standing of jurors in

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- 2 Lehman, *We the Jury: The Impact of Jurors on Our Basic Freedoms* (Prometheus Books, Amherst, NY 1997) p30.
- 3 Interest in jurors, juries and the jury system is not new. Simon notes in *The Jury: Its Role in American Society* (Lexington Books, Lexington, MA 1980) that interest in the subject returned in the 1950s. Over a decade earlier, Kalven & Zeisel in *The American Jury* (University of Chicago Press, Chicago 1966) noted that juries and the jury system have had their proponents and detractors for centuries. Their short-list includes discussions by such noted political and legal commentators as Alex de Tocqueville, William Blackstone, Jeremy Bentham and Herbert Spencer. For the historical debate over juries, see Cockburn & Green (eds), *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton University Press, Princeton 1988). For an interesting historical comment upon how cultures view other legal systems, see Hay, "The Meanings of the Criminal Law in Quebec, 1764-1774" in Knafla (ed), *Crime and Criminal Justice in Europe and Canada* (Wilfrid Laurier University Press, Waterloo, Ontario 1981).
- 4 For a discussion of this point in an American context, see Stimson, *The American Revolution in the Law: Anglo-American Jurisprudence Before John Marshall* (Macmillan, London 1990) p59, where she comments: "The degree to which conformity to local moral, religious, and political standards was enforced in colonial society has been well documented. Juries served importantly to reflect and enforce, as well as to create, those standards". She, however, cites no substantive study of the American trial jury during this time period to further this claim. A very similar comment about the importance of participation and perception of crime by local residents has been presented by Herrup (in the seventeenth-century English context) in *The Common Peace: Participation and*

Lancaster County, Pennsylvania. Beyond having the available jury lists, Lancaster County is an interesting environment in which to study jurors' background. The county consisted of three major ethnic groups; English, Scots-Irish, and Pennsylvania Germans. Furthermore, these groups also included a variety of religious affiliations including membership in the Church of England; Lutheran and German Reformed congregations; Presbyterian churches; and sectarian groups including the Quakers, Amish and Mennonites.

Jurors from this type of environment might have had little in common with either judge, defendant or lawyers. In fact, barriers certainly existed between jurors, most importantly the lack of a common language. From statistical analysis, Lancaster County jurors appear to have come from a more socio-economically advantaged background than their non-serving neighbours. The impact that this elite then had was quite substantial; it defined the social norms for their communities and helped to extend the influence of English law in a very pluralistic part of the eighteenth-century British Empire.

In the middle of the night in January 1771, William and Mary Dickson (Dixon) came calling at the home of Allan and Anne Regan. Once Allan Regan opened the door, William Dickson demanded that Allan take a walk and discuss some important matter which existed between the two of them. As Allan refused the offer, Anne appeared near the doorway. Unafraid of either Allan or his wife, who would witness the impending actions, William Dickson pulled Allan Regan by the "hairs upon his head" and began to beat his head upon the floor. At the same time, Dickson's wife, Mary, began to beat him about the body. The wounds and injuries inflicted upon Regan were quite severe and barely healed before his fatal encounter with the Dicksons on 4 March 1771.⁵

On that night in March, the Regans walked to the Dickson home. Initially, the tensions between the two families seemed almost non-existent. But after some time had passed, and a good quantity of whiskey, an argument erupted between Allan and William, an argument not unfamiliar to either of the spouses. As the disagreement became more heated, Mary Dickson

the Criminal Law in Seventeenth-Century England (Cambridge University Press, Cambridge 1987).

5 The examination of Anne Regan is found in "Court Papers, Lancaster County, 1771, RG-33" *Records of the Supreme Court of Pennsylvania, Eastern District, Court of Oyer and Terminer* (Pennsylvania State Archives, Harrisburg, Pa).

picked up a "pot stick" and began to assist her husband in yet another beating of Allan Regan. Allan attempted to leave the building, but was beaten to the ground on three occasions by William and Mary. As the argument grew louder, it turned into what bystanders and neighbours determined to be a fight in which people were "killing each other."⁶ A neighbour came to the Dickson residence and helped a battered Allan Regan to leave, only to be pursued by William and Mary into the neighbour's home.⁷

By sunrise, Allan Regan lay dead, a victim of a brutal assault by William and Mary Dickson.⁸ At the inquisition, the coroner determined the cause of death to be the severe beating at the hands of the Dicksons. This warranted the arrest of William and Mary Dickson for the malicious murder of Allan Regan. In May, the Grand Jury indicted them on the charge and they were held in custody until the arrival of the Court of Oyer and Terminer.

The nuances of the trial escape our view, but perhaps eighteenth-century Lancaster County, Pennsylvania justice resembled descriptions provided by historians.⁹ Pennsylvania felony cases were heard by the justices of the Supreme Court of Pennsylvania on circuit, as a Court of Oyer and Terminer, similar to the Assized in Great Britain. A venire facias was sent in the name of the King to the attending Supreme Court Justice, who would hear all criminal causes involving the Crown. At this sitting of the Court of Oyer and Terminer for Lancaster County, Justice Thomas Willing of the Supreme Court, and Justice John Lawrence of Lancaster County, sat

6 As above.

7 Rowe notes that Anne Regan was the servant of Mary Dickson in "Women's Crime and Criminal Administration in Pennsylvania, 1763-1790" (1985) 109 *The Pennsylvania Magazine of History and Biography* 335. In Rowe's account of the incident, though, he fails to note that the argument existed prior to the night of the murder. However, since the Dicksons came to the Regan house in January 1771 and beat Allan the first time, the argument existed prior to the murder. As the Dicksons do not appear on the tax lists for 1771, this would seem to question Rowe's conclusion of the master-servant relationship, since it suggests they were sufficiently impoverished to not appear.

8 "Court Papers, Lancaster County, 1771, RG-33".

9 For example, see the description of the trial environment in: Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800* (University of Chicago Press, Chicago 1985) p271; Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England*. Although it is a nineteenth-century courtroom, the criminal court in Lancaster Castle in Lancashire, England has a similar appearance.

at one end of a courtroom in a building at the corner of King and Queen Streets in the borough of Lancaster. To the justices' right, William and Mary Dickson stood. Then, left of the justices, sat twelve men listening to the proceedings and deciding the defendants' fate. Directly in front of the justices, attorneys for the Crown and the defendants stood and beyond them, members of the Grand Jury, witnesses, other potential traverse jurors and interested parties from the town.¹⁰

- 10 There is little literature on the jury in eighteenth century colonial America. One work that does discuss the jury system during the eighteenth century is Stimson, *The American Revolution in the Law: Anglo-American Jurisprudence Before John Marshall*. This work primarily discusses cases of seditious libel. Beyond the author's comments in this area, there is little to apply to other types of colonial felony cases. An older study of juries in the Early Republic and their ability to decide law, as well as facts, is Howe, "Juries as Judges of Criminal Law" (1938-1939) 52 *Harv LR* 582. According to Howe, at 583, research in American legal history on the subject is quite different from its English counterpart. He states, at 584, "there were, however, many years in our history when juries were specifically instructed that they disregard the judge's opinion of the law and determine that matter for themselves". The majority of research on juries in the eighteenth century has focused upon the English jury. The initial piece of research in this area is Hay, "Property, Authority and the Criminal Law" in Hay, Linebaugh, Rule, Thompson and Winslow (eds), *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (Pantheon Books, New York 1975). Hay, on pp38-39, presents the interpretation that defendants understood that members of the jury were propertied men: "in most cases they were the equals and neighbours of the prosecutor, not the accused, and this was especially true in cases of theft". For support of the Hay-Thompson thesis on the advance of a class-oriented criminal law environment, see Chapman, "Crime in Eighteenth-Century England: EP Thompson and the Conflict Theory of Crime" (1980) 1 *Criminal Justice History: An International Annual* 139. Beyond the examination of the English jury trial by Cockburn & Green (eds), *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800*, two historians have criticised Hay's interpretation: Langbein, "Albion's Fatal Flaws" (1983) 98 *Past and Present* 96; and King, "Decision-Makers and Decision-Making in the English Criminal Law" (1984) 27 *The Historical Journal* 25. For a more careful interpretation see Beattie, *Crime and the Courts in England, 1660-1800* (Princeton University Press, Princeton 1986). Beattie argues that what really mattered was the experience which jurors had and, less significantly, their income. This argument has been examined and explored as a negative for the defendant: see Linebaugh, *London Hanged: Crime and Civil Society in the Eighteenth Century* (Cambridge University Press, New York 1992) p84. For a broader discussion of criminal justice and the trial jury, see: Innes and Styles, "The Crime Wave: Recent Writing on Crime and Criminal Justice in Eighteenth Century England" (1986) 25 *Journal of British Studies* 380; Langbein, "Shaping the Eighteenth Century Criminal Trial: A View from the Ryder Sources" (1983) 50 *U Chi L Rev* 1; Cockburn & Green (eds), *Twelve Good Men and True: The Criminal Trial Jury*; Gatrell, Lenman & Parker (eds), *Crime and the Law: The*

The trial may not have been a long and involved process. The Crown's Attorney presented the witnesses and examined them in "open court". Upon hearing these witnesses and their testimony, Willing J entered into the dialogue between prosecutor and witness, attempting to better reconstruct the events of that night:¹¹ What was the purpose of the visit? How much alcohol had the two men consumed? Who instigated the argument? Which man delivered the first blow? Did the other man respond? Did he try to leave? At what point did Mary Dickson begin to kick and hit the victim? How long did the attack last and how severe were her husband's wounds?

After the prosecution and Willing J had finished, the Dicksons had the opportunity to interrogate the witnesses. Then Willing J interrogated the defendants, exploring their motivations in the past attacks and the events of that fateful night: What provoked such a violent outburst? How could two people perform such an overt act of violence?

After a few minutes of silence or perhaps with a series of instructions on how to weigh the evidence presented, the Justices turned the matter over to the Traverse Jury.¹² Unfortunately, the minutes recorded at this court session failed to note the length of time in which the jury deliberated. We can conclude only that, since the Court tried other cases on the same day, the jury rendered a verdict in less than an hour and perhaps in just a few minutes.¹³ At that time:

To wit, John Weiser, Eberhard Michael, George Moore, John Brisbin, John Hoover, William Davis, Archibald Steel, James Cuninghame, Henry William Stiegle, James Marshall, George Hoofnagle, William Kelley who being duly impaneled returned elected tried chosen sworn [and] affirmed upon their oath and affirmation respectively do say that William Dickson is guilty of the felony and murder whereof he stands indicted in manner [and] form as he

Social History of Crime in Western Europe Since 1500 (Europa Publications, London 1980).

- 11 In *Verdict According to Conscience*, Green states, at p271, "the judge remained in the foreground, putting his own questions; he had no reservation about revealing his point of view".
- 12 There may have been little debate about guilt or punishment. See Hay, "Property, Authority and the Criminal Law" in Hay, Linebaugh, Rule, Thompson & Winslow (eds), *Albion's Fatal Tree*.
- 13 "Court Papers, Lancaster County, 1771, RG-33".

stands indicted [and] that Mary Dickson is guilty of the felony [and] murder whereof she stands indicted.¹⁴

Upon hearing the verdict, Lawrence and Willing JJ rendered judgment on the defendants.¹⁵ As the senior justice, Thomas Willing, if he said anything, perhaps addressed the court about the nature of the crime or the need to exact punishment for such a disturbing incident; a crime in which townspeople took the law into their own hands, or worse, townspeople who had no compelling reason to control their passions and attempt to live in a "well-ordered" society.¹⁶ With or without words of warning or an examination of Lancaster's social ills or communal aspirations, the bench's judgment made the strongest statement. Surely as a loud silence fell across the room, Willing J delivered the judgment that "William Dickson be hanged by the neck until he be dead" and that "Mary Dickson be hanged by the neck until she be dead."¹⁷ With these words, the case and lives of William and Mary Dickson came to a close and members of the jury had defined, in part, the limits of what their town would tolerate from its residents.¹⁸

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- 14 As above. It should be noted that the amount of time taken to determine guilt or innocence is a critical difference between eighteenth and twentieth century cases. The transition from a period when juries deliberated for minutes, to a time when they meet for hours or days would make an interesting study, especially when connected to the types and intricacies of the evidence presented.
- 15 The use of a "collegial bench" for felony cases was the norm. For an examination of this part of the process, see Langbein, "Shaping the Eighteenth Century Criminal Trial: A View from the Ryder Sources" (1983) 50 *U Chi L Rev* 1.
- 16 For an interesting treatment of this idea of a "well-ordered" society, see Wood, *Conestoga Crossroads: Lancaster, Pennsylvania, 1730-1790* (Pennsylvania Historical and Museum Commission, Harrisburg 1979) pp63-69. The author, though, does note the frequent occurrence of ethnic conflict. It seems doubtful that this form of ethnic violence was the foundation for the conflict between Dickson and Regan. Fear and hatred of Pennsylvania German residents, though, was not confined to Lancastrians. Benjamin Franklin and Rev William Smith feared the ethnic changes occurring in the colony. Smith was so worried about German and French unity that he favoured preventing non-English residents from holding political office. See: Thayer, *Pennsylvania Politics and the Growth of Democracy, 1740-1776* (Pennsylvania Historical & Museum Commission, Harrisburg 1953) p35.
- 17 "Court Papers, Lancaster County, 1771, RG-33".
- 18 According to Rowe, "Female Crime and the Courts in Revolutionary Lancaster County" (1983) 87 *Journal of the Lancaster County Historical Society* 64, Mary was granted a reprieve. Rowe notes that this information came from Teeters, "Public Executions in Pennsylvania 1682-1834" (1960) 64 *Journal of the Lancaster County Historical Society* 85.

Historians and social scientists have attempted to understand the nature of crime and violence. Academics on both sides of the Atlantic Ocean have debated capital punishment, the ability to redesign humanity through the advent of the prison, and understand law and justice as a tool of upper class oppression and rule. In this quest, historians have examined indictments, punishments, even the physical setting of the courtroom. Other aspects of the historiography explore legal thought, judicial systems, judges and the socioeconomic background of the criminals. In each of these circumstances, legal historians have put together an understanding of the nature of the criminal law, the types of crimes committed, the competing social backgrounds of judges and defendants, and the former's ability to draw upon a unique set of physical aids to instil and reinforce a sense of justice and legal continuity.¹⁹

Some of these interpretations assume that justice was completely in the hands of judges who rode into local counties and communities. This, however, is an incomplete and over-stated concept. According to the *Records of the Court of Oyer and Terminer*, Supreme Court justices rode a criminal circuit in which they heard capital crimes with justices from the local county courts. They did account for the bench in these trials, but certainly did not completely fulfil the concept of local justice or law and order. Much of the power to define the nature of local communities was in the hands of the members of the jury, either Grand or Traverse. What Lancaster or any other backcountry town would tolerate within its boundaries was defined by those members who judged evidence and determined guilt. Some attention should be paid to the world from which

19 See for example: Cockburn (ed), *Crime in England, 1550-1800* (Methuen and Co Ltd, London 1977); Gurr, "Historical Trends in Violent Crime: A Critical Review of the Evidence" (1981) 3 *Crime and Justice: An Annual Review of Research* 295; Sharpe, "Domestic Homicide in Early Modern England" (1981) 24 *The Historical Journal* 29; Stone, "Interpersonal Violence in English Society, 1300-1980" (1983) 101 *Past and Present* 22; Rude, *Criminal and Victim: Crime and Society in Early Nineteenth Century England* (Clarendon Press, Oxford 1985); Steinberg, *The Transformation of Criminal Justice, Philadelphia, 1800-1880* (University of North Carolina Press, Chapel Hill 1989); Sharpe, *Judicial Punishment in England* (Faber & Faber, London 1990); Cockburn, "Patterns of Violence in English Society: Homicide in Kent, 1560-1985" (1991) 130 *Past and Present* 70; Gatrell, *The Hanging Tree: Execution and the English People, 1770-1868* (Oxford University Press, Oxford 1994); Morris & Rothman (eds), *The Oxford History of the Prison: The Practice of Punishment in Western Society* (Oxford University Press, New York 1995).

these residents came and determined the fate of fellow residents and neighbours.²⁰

In 1771, twenty-four men were chosen to serve on the Grand Jury which indicted the Dicksons. According to the list returned by the Lancaster County sheriff, the Grand Jury consisted of the following county residents: Isaac Sanders, Adam Simon Kuhn, Zacheus Davis, Robert Boyd, Eberhard Gruber, James Work, John Philip Deharss, Thomas Halleday, Isaac Whitelock, Curtis Grubb, John Hopson (Hopsin), John Carpenter, John Kirk, John Bailey, Alexander Lowry, Peter Light, James Bailey, James Anderson, Bartram Galbreath, Samuel Lefever, William Dickey, Peter Grubb, Henry Rennicks and Abraham Dehuff. These men represented a number of areas of the county. In all, the twenty-four jurors lived in eleven different townships and the town of Lancaster.²¹

If they represented different areas of the county, how similar were their socio-economic backgrounds? According to the tax list for the year 1771, each grand juror was a property owner within the town of Lancaster or one of the townships. Only five of the twenty-four lived within the town of

20 Studies of seventeenth and eighteenth century communities include Wall, *Fierce Communion: Family and Community in Early America* (Harvard University Press, Cambridge 1990). Like the New England "town" study, Wall focuses upon areas of homogeneous population, such as Chesapeake, New England, and the Delaware River Valley in Pennsylvania, New Jersey and Delaware. In terms of completely understanding the operations of courts and the justice system, and to come to terms with the people involved, a more heterogeneous environment tells us much about power, acculturation, and legal participants. As stated earlier, Stimson's interpretation that juries had the defining ability during the eighteenth century is quite believable. The question remains, what community did they represent and serve?

21 "Court Papers, Lancaster County, 1771, RG-33". The original sheriff's list was then cross-referenced with the tax returns for the year 1771. Lancaster tax returns for the years 1771, 1772, 1773 can be found in Egle (ed), *Pennsylvania Archives: Third Series, Vol XVII* (State Printer, Harrisburg, Pa 1897). This is not an exact system. Most names were unique to the taxable list. At times, when researching the traverse jurors, names would appear more than once in different townships. At that point, these names were eliminated, since there was no specific way to distinguish one over the other. The greatest criticism of this process is usually the spelling process in such instances as the surname "Smith". These, too, were not used in the process of the research. Fortunately for the year 1771, most christian and surnames were unique and jurors were easily identifiable. Some of this process of picking a Grand Jury is in accordance with statements in Hale, *Historia Placitorum Coronae* (Professional Books Limited, London 1971).

Lancaster; the other nineteen were property holders outside the town in the more agricultural parts of the county. Most of these nineteen were substantial property holders. For example, Peter and Curtis Grubb owned 990 and 1200 acres, respectively. Other substantial holdings included the property of John Carpenter (1280 acres), Samuel Lefever (500 acres), and Alexander Lowry (500 acres). Not all of the members of the Grand Jury, however, owned property at these levels. Three members, William Dickey, Isaac Whitlock, and Everhard Gruber, owned less than one hundred acres.²²

However, these men seem exceptional when compared to the average landholders in other townships. According to the tax list for the same year, Rapho Township contained 18,907 taxable acres.²³ This land was owned by 149 listed property holders. This meant that the average size of real property was almost 127 acres per resident. Taxable acres per property owner was less in the Township of Manheim, Lancaster County. One hundred property holders owned 11,180 taxable acres. This resulted in an average taxable holding of only 111.8 acres. Another township further removed from Lancaster Borough, West Hanover Township, contained 10,106 taxable acres with 114 property owners. The average per owner was less than one hundred acres. Moreover, no resident of West Hanover owned more than three hundred acres.²⁴

Compared to other residents of these townships, members of the Grand Jury from areas outside the town of Lancaster represented the middle to upper end of county property holders. This conclusion can be extended to those residents of Lancaster Borough. Four of the five residents of the

22 On the average, these nineteen property owners held about 272 acres per person. Except for the five large landholders and three small holders mentioned, most of the jurors owned between 100 and 300 acres (thirteen of the nineteen). See the Appendix for the details.

23 As stated by Hoffer, "Counting Crime in Premodern England and America" (1981) 14(4) *Historical Methods* 187. Hoffer sees the necessity to quantify certain aspects of the history of crime. Juries would be no exception, especially in light of the number of assumptions previous authors have held about the socio-economic background of members of the grand and trial juries. There seems to have been little attempt to explore this through statistics on the part of Hay until his chapter in Cockburn & Green (eds), *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800*. His conclusion, on p354, that seventy-five percent of the population never sat as a member of a jury also applies to Lancaster County during the same time period.

24 Manheim Township had only two residents with land holdings of over three hundred acres and Rapho Township had seven property owners at this level.

town of Lancaster paid more in tax than over three quarters of the total population of the town. Robert Boyd was more representative of town taxpayers. Boyd paid only seven shillings and six pence in tax. The other four, Adam Simon Kuhn, John Hopson, Isaac Whitelock and Abraham Dehuff were representative of roughly one-fifth of the population. Kuhn, Hopson and Whitelock came from an even more elite group of Lancaster Borough residents; only fourteen of the 466 residents paid as much proprietary tax. Again, these men represent a small minority of upper end tax payers.²⁵

Traverse jurors varied little from this. In 1771, the county sheriff returned a list of 77 names of county residents who could serve as jurors. As with the members of the Grand Jury, a majority of the residents emigrated from the British Isles.²⁶ Secondly, many of these residents owned average or above average shares of property in their townships. In total taxable acreage, identified jurors owned over thirteen thousand acres. For those 48 residents outside the town of Lancaster, the average holding was 279 taxable acres per juror. In fact, a large percentage of the township residents owned over two hundred acres.²⁷ Jurors living in the town of

25 For an interesting discussion of the Grand Jury see Morrill, *The Cheshire Grand Jury 1625-1659: A Social and Administrative Study* (Leicester University Press, Leicester 1976). Morrill concludes, on p46, that:

the substantial freeholders who comprised the grand juries were much closer to the pulse of community life [compared to the more elite Justice of the Peace gentry]. They were men with essentially parochial interests and contacts, though often with lands in several townships in the area of their homes. Yet they were definitely "gentry", and their freehold security and possible social aspirations might have set them slightly apart from the social pressures and the consensus of opinion in the community. ... Above all, they were accepted by their fellows as "gentlemen" for reasons which were not purely economic but seem to include recognition of a certain independence in their outlook and character.

26 The same process was used to cross-reference the sheriff's return with the tax list for the year. Originally, the return listed 82 people. This total was reduced to 77, when it was realised that five of the residents were listed on both the grand and Traverse Jury returns. Of the 77 potential traverse jurors, 62 of the jurors were identified. Again some names, such as "Smith", were eliminated. 44 of the 77 were ethnically British.

27 In order to be sure that these property holdings were well above the average, taxable acres and the number of property holders were analysed for Conestoga, Earl and Salisbury Townships. These were chosen because they represent areas to the east and south of the town of Lancaster. Thus, British and Continental

Lancaster paid an average or above average amount of tax. For example, Caspar Singer and two others paid over a pound sterling in proprietary tax.

From examining the members of the Grand and Traverse Jury for the Court of Oyer and Terminer, it would be quite possible to conclude that prosecutors, judges and jurors came from a similar socio-economic background. But the class interest described by Douglass Hay as an aspect of the English courtrooms and trials is not enough to completely understand the people involved in defining the character of their communities in Lancaster County.²⁸ Three other questions arise from an examination of these jurors. First, were there no other large property holders in the county? Secondly, what about the issue of experience as a juror?²⁹ Thirdly, what was the ethnic composition of eighteenth century Lancaster County juries and what does this say about the people who determined the fate of other members of the community and the power relationships within this community?³⁰

What makes the Grand and Traverse Jury lists so interesting is not just the socio-economic background of the jurors. In connecting jurors with a specific location, conclusions could be drawn as to what types of residents come from specific regions of the county. For example, the oldest regions of Pennsylvania "Dutch" settlement exist to the south and east of the town. These are also the oldest British townships due to the westward movement from the original three Pennsylvania counties of Chester, Philadelphia and Bucks, and migration from the colonies of Delaware and Maryland. By the middle of the eighteenth century, townships to the north and west of the borough of Lancaster came under occupation.

What was significant throughout the decades prior to the American Revolution was the changing nature of immigration and occupation in Pennsylvania and, specifically, Lancaster County. Dutch and Swedish settlers arrived in the seventeenth century in the eastern and southern

Europeans occupied these regions prior to the creation of the county. These are areas where British surnames dominate the tax lists (Salsbury) and regions in which the original Swiss and Germans settled. In comparison, Conestoga, Earl, and Salsbury had an average holding size of 134.4, 113.7 and 122 taxable acres per property holder.

- 28 Hay, Linebaugh, Rule, Thompson, Winslow (eds), *Albion's Fatal Tree* pp33-48.
 29 Beattie, *Crime and the Courts in England, 1660-1800* p398.
 30 Constable, *The Law of the Other: The Mixed Jury and Changing Conceptions of Citizenship, Law and Knowledge* (University of Chicago Press, Chicago 1994).

portion of what was to become Lancaster.³¹ After the establishment of Germantown, outside of Philadelphia, other non-English sectarians came to Penn's colony and began to move beyond this older and more established "Dutch" town.³² By 1720, "church Germans" arrived in the colony. Over the next forty years, the largest percentage of Germans were Palatinate Germans of Lutheran and German Reformed religious backgrounds.³³ By 1755, German immigration began to decrease, but, due to increasing rents and religious issues in the Ulster portions of Ireland,

31 For a brief discussion about Dutch and Swedish migration from Delaware and English migration from Maryland into southern Pennsylvania and the resulting political problems, see Munroe, *History of Delaware* (University of Delaware Press, Newark 1979) pp31-43.

32 For a discussion of sectarian settlement, see Wolfe, *Urban Village: Population, Community, and Family Structure in Germantown, Pennsylvania, 1683-1800* (Princeton University Press, Princeton 1976). For a more in depth discussion of the advance of sectarian settlement into Chester and Lancaster Counties, see Lemon, *The Best Poor Man's Country: A Geographical Study of Early Southeastern Pennsylvania* (Johns Hopkins University Press, Baltimore 1972). Lemon draws an interesting conclusion about relationships between ethnic groups in the region. According to him:

Earlier attempts by provincial authorities to anglicise Germans had failed. Even so, at the least the leading Germans in rural areas and towns used English with ease, as is shown by the Anglicized tax returns from predominantly German townships in Lancaster County. ... Although a differentiating characteristic, language was less significant as an influence on social and especially economic processes than has often been stated.

33 The literature on "church German" immigration is extensive. See the following: Huebener, *The Germans in America* (Chilton Company, Philadelphia 1962); Woceck, "German Immigration to Colonial America: Prototype of a Transatlantic Mass Migration" in Trommler & McVeigh (eds), *America and the Germans: An Assessment of a Three Hundred Year History. Volume 1: Immigration, Language, Ethnicity* (University of Pennsylvania Press, Philadelphia 1985) pp3-13. For a discussion of immigration and ethnic pluralism, see Schwartz, *"A Mixed Multitude": The Struggle for Toleration in Colonial Pennsylvania* (New York University Press, New York 1988). Schwartz's thesis is based upon the idea of cultural contact and communal toleration; a thesis not too dissimilar to Lemon, *The Best Poor Man's Country*. For a discussion of church and community development see Glatfelter, *Pastors and People: German Lutheran and Reformed Churches in the Pennsylvania Field, 1717-1793* (Pennsylvania German Society, Breinigsville, Pa 1980) and Parsons, "The Pennsylvanisch Deitsch Community for Independence, 1758-1783" in Trefousse (ed), *Germany and America: Essays on Problems of International Relations and Immigration* (Brooklyn College Press, New York 1980).

Scots-Irish settlers arrived and settled west of the town of Lancaster in the townships of Donegal and Mount Joy and to the north in Derry Township.³⁴

In examining the residences of grand and traverse jurors some interesting patterns appear. In townships where older and more established Swiss and German settlers existed, British jurors dominated the lists. For instance, in Strasburg Township, John Wither, Michael Whither and John Ferree were named as traverse jurors. They owned 230, 130, and 18 acres, respectively. The lack of wealthy non-British residents, however, was not the reason for their non-appearance on the jury lists. Five Pennsylvania Dutch residents, Martin Bear, Jacob Eselman, Benjamin Graft, Henry Kendrick and Mathias Slaymaker, owned more than the average holding of the jurors on either Grand or Traverse Jury list.³⁵ Each of these men paid tax upon six hundred, eight hundred, six hundred, three hundred and three hundred acres, respectively. Over the next two years and three sittings of the Court of Oyer and Terminer, the sheriff never called these men.

If they were financially equal or socially superior to other British residents in the township, why were these men never called to serve? This raises some interesting possibilities. First, it is possible that these men were of Mennonite or Amish background. It has been speculated that non-English sectarians came to escape government and church control and thus had little involvement in local political elections. Richard K MacMaster believes that eighteenth century "Dutch" sectarians did not withdraw from the politics of the period.³⁶ He projects the thesis that since the death of

34 For the most recent discussion of Scots-Irish immigration during the eighteenth century see Fischer, *Albion's Seed: Four British Folkways in America* (Oxford University Press, New York 1989). Although he notes the difficulty of estimating the number of immigrants arriving in the American colonies, it is safe to conclude that well-over one hundred thousand, and perhaps as many as two hundred and fifty thousand, colonists arrived before the American Revolution. See also Connolly, *Religion, Law and Power: The Making of Protestant Ireland, 1660-1760* (Clarendon Press, Oxford 1992). Klein and Hoogenboom estimated that the population of Pennsylvania in 1776 was about three hundred thousand. They believed that each of the three dominant ethnic groups constituted one third of this population: see Klein & Hoogenboom, *A History of Pennsylvania* (Pennsylvania State University Press, University Park, Pa 1980) p45.

35 Egle (ed), *Pennsylvania Archives: Third Series, Vol XVII*.

36 MacMaster, Horst & Ulle, *Conscience in Crisis: Mennonites and Other Peace Churches in America, 1739-1789, Interpretation and Documents* (Herald Press, Scottdale, Pa 1979) p28.

William Penn, Mennonites block-voted in elections for the General Assembly. In these political actions, Lancaster sectarians worked to guarantee and maintain the original Penn "contract", primarily on the issue of religious toleration and personal conscience. The thought, then, that Lancaster sectarians chose not to participate should be qualified; they participated in local politics to meet specific ends and less as an aspect of civic duty.

If religious convictions toward government and politics did not prevent them from participating in elections for the General Assembly, what circumstances could have prevented them from acting as jurors inside their own communities? Language continues to be the most significant feature in determining the roles played by the Pennsylvania "Dutch". Some research has presented the idea that early sectarian residents were quick to adapt and adopt English culture. James Lemon, relying upon the "anglicisation" of German names within the Lancaster tax lists, states that differences "in customs and practices with national groups have also been misstated or exaggerated far out of proportion to their significance."³⁷ Lemon's direct goal was to examine the economic differences between ethnic-national groups. In this regard, Lemon found very little difference in the ability of either British or Dutch residents to prosper. Prosperity, however, does not fully determine acculturation and adaptation.

Lemon, however, goes further and maintains that many continental Germans had by the middle of the eighteenth century acculturated. Not only had Pennsylvania Germans acculturated, Lemon believes that leading Germans had assimilated with ease.³⁸ To substantiate this thesis, "German names with English cognates almost invariably appear in English." Lemon's argument relies upon the Pennsylvania "Dutch" assessors, who gathered the information and created the tax lists. Like his leading "Dutch" residents, Lemon relies upon a very small percentage of the overall county population to conclude any widespread acculturation to

37 Lemon, *The Best Poor Man's Country: A Geographical Study of Early Southeastern Pennsylvania* p15. As I have already noted, Strasburg Township had its share of prosperous British and Dutch property holders. This is even true within the town of Lancaster. What is critical is which groups maintained power within the legal structure and, thus, had the ability to define the values within Lancaster County.

38 As above. Lemon does not provide any relevant statistics to support the claim that this was a widespread phenomenon.

English language and culture.³⁹ In essence, Lemon's research may show the increasing establishment of an "anglicised" Pennsylvania "Dutch" elite within the politico-legal structure of the county.

It would seem more likely that most of the Pennsylvania "Dutch" maintained their own ethnic language and culture. If there had been widespread assimilation, Germans from all areas of the county would have had the ability to sit upon juries. Instead, "church Germans" constituted the largest percentage of jurors. They resided in the townships to the north, specifically Heidelberg and Lebanon and in the town of Lancaster.⁴⁰ In the latter, Pennsylvania Germans stood the best chance of adapting to English. As the county seat, Lancaster maintained a varied population that included German Lutherans, Reformed English Anglicans and Scots-Irish Presbyterians. It was also the main trading town with economic connections throughout the county and to Philadelphia and Baltimore.⁴¹

Secondly, some Pennsylvania German residents of Heidelberg and Lebanon Townships may have been part of the earliest western settlement by Conrad Weiser of Berks County. Weiser, a diplomat for the Penn government, was a firm supporter of English government, as he acted as a Justice of the Peace for Berks County. There is then some possibility that Weiser's influence extended into regions just over the border from his Berks County home.⁴²

39 As above. This argument has also been put forward by Roeber in a number of publications. I have argued against this notion of acculturation. At least in my examination of probate records for Berks County, the conclusion should be the exact opposite. Most Pennsylvania German residents did not write a will, and thus died intestate. Secondly, residents writing a will wrote the document in German. At best, only a small group of Berks County Germans were bilingual. It would seem unlikely that the results would be much different in Lancaster County. See Fritsch, *Testation Practices in Ethnic Groups of Berks County, Pennsylvania, 1752-1775* (Paper presented at the Southwestern Social Science Conference, Fort Worth, Texas 28-31 March 1991).

40 Glatfelter, *Pastors and People: German Lutheran and Reformed Churches in the Pennsylvania Field, 1717-1793*. See also Burgert, *Eighteenth-Century Emigrants from German-Speaking Lands to North America: The Northern Krachgau, Volume 1, The Palatinate, Volume 2* (Pennsylvania German Society, Breinigsville, Pa 1983).

41 By defining who was eligible, the sheriff defined the rest of the Lancaster "Dutch" as ineligible to serve on juries. This topic is discussed at the end of this paper.

42 Roeber, "The Origins and Transfer of German-American Concepts of Property and Inheritance," (1987) 3 *Perspectives in American History* 115. See also

Finally, it is apparent that the Pennsylvania "Dutch" were able to participate in local government and participate in the courtroom as jurors. According to the *Act for Naturalization* 1700, the Proprietary granted alien residents citizenship. Although repealed by the Queen in Council five years later, some form of citizenship continued throughout the eighteenth century in order to allow non-British residents the ability to participate in the legal system.⁴³ As Penn worked to grant citizenship to non-British residents, the need to utilise the British legal practice of mixed juries became evident in a world where increasing numbers of Pennsylvania residents did not speak English.⁴⁴

This, though, did not restrict the use of non-British Lancastrians to cases involving non-British citizens. In the case of William and Mary Dickson, there were a number of non-British jurors. On the Grand Jury, the list included eight non-British jurors of the twenty-four men. The list for the Traverse Jury named 33 non-British residents of the 77 total. The most striking aspect of the Dickson trial, however, was that one third of the trial jury consisted of non-British Lancastrians: John Weiser, Eberhard Michael, Henry William Stiegle and George Hoofnagle.⁴⁵ This was also the case in the trial of Patrick Kelley for arson that same day. The jury in this case included four non-British residents of the county, including John Weiser and George Hoofnagle.⁴⁶

Roeber, *Palatines, Liberty, and Property: German Lutherans in Colonial British America* (Johns Hopkins University Press, Baltimore 1993).

43 Mitchell & Flanders (eds), *The Statutes-at-Large of Pennsylvania from 1682-1801, Volume II, 1700-1712* (CM Busch, Harrisburg, Pa 1896) pp30-31. This immediately solved the issue of the status of previous settlers, such as the Netherlands Dutch and the Swedes, who had settled parts of south eastern Pennsylvania and Delaware in the seventeenth century.

44 Constable, *The Law of the Other: The Mixed Jury and Changing Conceptions of Citizenship, Law and Knowledge* pp126-134. See also Beattie, *Crime and the Courts in England, 1660-1800* p340.

45 The John Weiser listed in this jury list is the son of Frederick Weiser and the grandson of Conrad Weiser. According to the probated will of 1773 for Frederick Weiser, he gave the Heidelberg plantation to his son John, the one noted in the jury list for the year 1771. Thus, as the grandson of one of the most influential Pennsylvania-German residents in the colony, it should not be surprising that John had the ability to sit upon a trial jury. Presumably, he knew English, and a certain amount of English law, through the family. See Fritsch, *Testation Practices in Ethnic Groups of Berks County, Pennsylvania, 1752-1775*.

46 The trial jury in *R v Patrick Kelley* also included Henry Hottenstein and Christian Bough.

These two trials may tell us a number of things about Lancaster County on the eve of the American Revolution. First, whether approved of by the Crown or not, Pennsylvania "Dutch" residents had a certain amount of local "citizenship" and involvement. Secondly, as Marianne Constable points out, the eighteenth century was a transition period in which the idea of impartiality developed; this might also be true in provincial America, as non-British residents judged the guilt or innocence of former residents of the British Isles.⁴⁷

Finally, experience counted. The same men sat and heard successive cases. Weiser and Hoofnagle sat and heard both the *Dickson* and *Kelley* cases, as did Archibald Steel and James Cunningham.⁴⁸ Jurors who had served in one year also seem to have been called upon to serve again in subsequent terms. In 1768, William Dobbins and Thomas Hannon appeared before the Court of Oyer and Terminer indicted of the burglary of Wendal Horning. Ten of the twelve jurors were of British background. The two non-British members of the panel were Nicholas Hussegger and George Clingen (or Clingin). One year later, Clingen would appear again as a juror in the Court of Oyer and Terminer. This time he would be joined in the jury box with five other non-British Lancastrians. These were Peter Becker, Ludwick Ziegler, Rudolph Haub, Philip Ehright and George Tush. In this instance, the Court tried the case of *R v John Adam Barger*. Barger, a Pennsylvania "Dutch" resident of the county, stood indicted for murder and was found guilty.⁴⁹

In *Barger*, the use of the mixed jury is obvious. Between the years 1768 and 1773, the use of six British jurors and six non-British jurors occurred in three other cases. In 1772, the case of *R v Catherine Smith* was heard. Smith, indicted for murder, had her case heard by twelve men, including Adam Ort, Andrew Graeff, Stephen Hornberger, Peter Kucher, George Tush, and William Bausman. Although it is difficult to ascertain Smith's ethnic background, if Anglo-American law continued to provide mixed juries in those cases in which language was an issue for the defendant, as in *Barger*, Catherine Smith may well have been entitled to the same

47 Constable, *The Law of the Other: The Mixed Jury and Changing Conceptions of Citizenship, Law and Knowledge* p131.

48 Beattie, *Crime and the Courts in England, 1660-1800* pp397-398.

49 "Court Papers, Lancaster County, 1771, RG-33".

considerations. This would explain the high number of non-British jurors at her trial.⁵⁰

In 1773, the Court of Oyer and Terminer tried two cases involving non-British defendants. During the June term of the court, John Nicholas stood indicted for manslaughter. Nicholas's case was determined by a mixed jury of six British residents and six non-British residents. Five months later, Samuel Brandt appeared before the Court, indicted for murder. His case was heard also by six non-British jurors. These included George Rhine, Leonard Ellmaker, Casper Striver, George Heist, Philip Kleiss and Henry Sweitzer. They and their six associates found Brandt not guilty.⁵¹

These cases in which the mixed jury was utilised raise some interesting issues about life in a "pluralistic" society, the workings of a legal system, and the nature of community power. What is unavailable to the historian is how these types of mixed juries functioned in deciding upon a verdict. Was the jury led by the foreman and a small group of jurors? Or, did the entire jury stand and debate and deliberate the evidence presented and testimony heard?

In cases involving non-English speaking defendants, Pennsylvania "Dutch" jurors held a special position within the courtroom. In order for them to serve upon the jury and understand the nature of the "English" proceedings, these men must have had an English-speaking background. Chosen to hear cases involving defendants with potentially less English comprehension, these jurors were, at the least, bilingual. Thus, they would have played a key role in determining the fate of defendants by translating and elaborating upon the testimony presented and in developing a sense of judicial impartiality.

In cases across this time period which involved residents with a British background, non-British Lancastrians never constituted more than fifty percent of the jury. In all other felony cases, *R v William Dobbins and Thomas Hannon* (1768), *R v Patrick Kelley* (1771), *R v William and Mary Dickson* (1771), *R v Henry Welsh* (1773), and *R v William McKee* (1773), Pennsylvania "Dutch" jurors consisted of between one and four members

50 As above. Although not focused upon Pennsylvania, the most recent discussion of contemporary women and the law is Dayton, *Women Before the Bar: Gender, Law and Society in Connecticut, 1639-1789* (University of North Carolina Press, Chapel Hill 1995).

51 "Court Papers, Lancaster County, 1771, RG-33".

of the jury.⁵² Although it demands greater examination in other jurisdictions, the differences between these sets of felony cases is striking enough to conclude that mixed juries were in use within Lancaster County, Pennsylvania. When non-English speaking residents stood to lose their life, mixed juries became a necessity, probably for the benefit of defendant and jury members alike.

Being bilingual may not have been the only reason trial jurors were chosen. Between 1768 and 1773 in the six sittings of the Court of Oyer and Terminer, heads of Lancaster families or other members of their families served a number of times as jurors in the Court. George Clingen (Clingin) sat as a juror in the case of *R v William Dobbins and Thomas Hannon* (1768).⁵³ Clingen would return to the jury box in 1769. Other Lancastrians returned more often than this. George Tush sat as a juror in the Court of Oyer and Terminer in 1769, 1771 and 1772 and Stephen Hornberger sat each year between 1771 and 1773. Others, like Henry William Stiegle, the Baron of Manheim, and Abraham Dehuff, were named as members of the Grand Jury and the Traverse Jury in different years.

Some surnames repeat themselves between the jury lists. In 1768, Thomas Clingen (Clingin) and George Clingen (Clingin) were both listed on the sheriff's return. Also names like Ellmaker, Orth, Dehuff, Wilhelm, Weidley (Weidly) and Fetter appear quite often on the returns. While difficult to prove, if some Lancaster residents had the ability to speak and understand English to a standard where they could be a juror, it is highly likely that other family members had the same ability and they, too, would be chosen, such as in the case of John Weiser.

What can these issues tell us about the nature of juries and their relationships to the law in Lancaster County during the eighteenth century? At one level eighteenth-century defendants, either British or Pennsylvania "Dutch", were adjudged by a jury of their peers. This jury of peers, however, was limited to language comprehension. As the statistics show, to a fair degree of reliability, Lancaster jurors owned average or above average amounts of property. Also, there was a core group of jurors and legal leaders within the County. Many jurors, both English and "Dutch", repeatedly sat on Grand Juries, Traverse Juries, local county

52 "Court Papers, Lancaster County, 1771, RG-33".

53 As above.

courts and as Justices of the Peace.⁵⁴ This may well have taken the established political and economic elite of British and "anglicized" Dutch within Lancaster County and developed them into a legal elite.

For example, jury participation of one Pennsylvania "Dutch" family, the Hubleys, was part of a broader political-legal power base. Prior to the Revolution, the American patriarch of the family, Adam Hubley, served as Justice of the Peace and later as an officer in the war, while other members of the Hubley family served on the Traverse Jury for the years 1771 and 1772.⁵⁵ The Hubleys and other "Dutch" families that frequently participated in Anglo-American legal structures hardly constituted the norm. Most Pennsylvania "Dutch" rarely became this involved in the local legal system due to their lack of language acculturation.⁵⁶

Lancaster juries failed to produce strong democratic tendencies on the eve of the American Revolution. The legal system seems to have been in the hands of a strong economic group of British and bilingual, acculturated Pennsylvania "Dutch" residents, who, as they did in the case of William and Anne Dickson, defined those actions which were too corrupted or corruptible and demanded greater legal sanctions.⁵⁷ These groups, however, left a vast majority of the county population outside the local power structures of the legal system, but with the ability to prosecute cases

54 The latter two have been noticed through a brief study of the dockets for the Lancaster Court of Common Pleas and the Court of Quarter Sessions of the Peace held by the Lancaster County Historical Society, Lancaster, Pennsylvania. Also, in a more detailed examination of litigants in the Court of Common Pleas, it would appear that often these same men appear in court. Quite possibly then, these men not only heard cases, but, through their appearance as jurors, gained more detailed knowledge about the construction and adjudication of their own cases, or vice versa.

55 The Justice of the Peace records for Adam Hubley exist in the manuscript collections of the Lancaster County Historical Society.

56 This seems contrary to the line of thought presented by Stimson, *The American Revolution in the Law: Anglo-American Jurisprudence Before John Marshall* p59: "They [juries/jurors] did something more, however. They enhanced the belief that the people themselves knew what the law was for their own community." In fact just the opposite may be true. These jurors were chosen for their ability from groups who had no knowledge of English law. Roeber raises these issues of who holds power: Roeber, "He Read it to Me from a Book of English Law: Germans, Bench and Bar in the Colonial South, 1715-1770" in Bodenhamer and Ely (eds), *Ambivalent Legacy: A Legal History of the South* (University of Mississippi Press, Jackson 1984).

57 For a seventeenth-century examination, see Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth Century England*.

against other county residents, and especially other Pennsylvania "Dutch" through the use of the mixed jury system.

Beyond the confines of the local community, did the use of the mixed jury system in Lancaster County accomplish any other political ends? Although this is difficult to fully ascertain upon the evidence provided, we should raise the following suggestions and possibilities. What did the incorporation of "anglicized" Pennsylvania "Dutch" residents on juries and in other legal positions accomplish in terms of justifying English legitimacy? In order to establish their own English legal identity and authority, English residents of Lancaster had to define not only themselves, but also their "Dutch" neighbours. In a sense, English legal elites defined what was acceptable by defining what was not acceptable in being a juror or a Justice of the Peace. Accepting certain "anglicized" residents in this defining process, English legal elites had to be willing to reinvent the power structure to also include elites beyond themselves. The reinvention of the power structure may not have included greater cultural contact or other social relationships, such as intermarriage, but it may have allowed for the greater dissemination of English legal and political philosophy about the sanctity of juries and English law.

For example, if we explore the major English law treatise in provincial America on the eve of the American Revolution as an initial attempt to understand the Anglo-American attitude toward juries, and ultimately their attitudes toward political theory, we would begin with Sir William Blackstone. In his *Commentaries on the Laws of England*, Blackstone writes that the use of the jury "was always so highly esteemed and valued by the people, that no conquest, no change of government, could ever prevail to abolish it."⁵⁸ In the final volume, Blackstone affirms the grounding of the jury trial in the ancient compact of Magna Carta. It must be maintained because it is characteristic of free nations.⁵⁹ The perception then of the jury trial as a guarantee of liberty may have been the means by which British Pennsylvanians defined the singular "Empire" and not a more pluralistic model, such as would have existed in the Roman imperial structure.

In order to better establish the usage of English law in these multi-ethnic areas, a closer examination of the types of cases and frequency in which certain groups and specific people used the various provincial courts

58 Blackstone, *Commentaries on the Laws of England*, Vol III p350.

59 At Volume IV pp342-44.

would be helpful. This must be done very carefully. The goal should be to study more of the ethnic interaction in order to see how much control English residents relinquished and how adaptive "Dutch" residents became.⁶⁰ This is similar, then, to the question raised by Douglas Hay as to whether eighteenth-century justice served English and bilingual elites, as they became the definers of community values, or whether the use of the mixed jury reflected an aspect of American democratic development.⁶¹

60 Some of these ideas are dealt with in Phillips, Loo & Lewthwaite (eds), *Essays in the History of Canadian Law, Volume V: Crime and Criminal Justice* (University of Toronto Press, Toronto 1994) pp5-6. See especially the Introduction, and the sections entitled "Native Peoples and the Criminal Law" and "Women, Crime and Criminal Justice".

61 In a personal conversation in 1997, Professor Hay raised another aspect that certainly impacted on the operations and procedures of many courts in the Pennsylvania back country. This is the nature, ethnicity and experience of lawyers in those courts. As he speculated, many, such as George Ross, James Wilson, George Clymer and Jasper Yeates, were of Scots-Irish background. Their influence in the development of law in this area of the Empire should not be overlooked.

APPENDIX I: INTRODUCTION

The purpose of this appendix is to present more fully the statistics utilised in determining the similarities and differences between membership of the Grand Jury, Traverse Jury and the Lancaster population at large.⁶² In order for conclusions to be drawn about jurors' economic standing, discerning via the tax lists the amount of property jurors owned was the first step. As was stated earlier, surname identification in Pennsylvania is quite difficult. Anglicized spelling of "Dutch" names or the complete transformation of those names into more familiar English forms, such as Smith, makes definitive conclusions very hazardous. Fortunately, for both years examined, a large percentage of jurors were identifiable.

In order to understand jurors' wealth relative to the general population, once jurors were identified, a two step process was developed of land-holdings comparison. Step one involved comparison of the land-holdings of members of the Grand and Traverse Jury for each of 1771 and 1772. In essence, the taxable acres were entered into the computer and the averages and standard deviation were calculated for each group.

TABLE 1

	COUNT	AVERAGE	ST DEVIATION
G JURY 1771	19	342.89	386.46
T JURY 1771	44	298.48	598.59
G JURY 1772	13	298.00	341.31
T JURY	40	224.63	218.12

62 The statistics were developed by Petros Louca of the Management School, Lancaster University. For establishing the T-statistic and the P-value, we used the Minitab computer program. Other statistical figures were also calculated with the program: the average and standard deviation. These results were then checked with a Macintosh program to be sure that our calculations were correct. This was done once we had established jurors on both the sheriff's return and on the tax list.

We then proceeded to perform a two sample T-test in order to test whether or not these groups were similar. For both years, the T-test provided a number less than one. With the T-test less than one, we established that the groups were quite similar. With similarity proven, we combined the juries then proceeded to step two.

Step two involved comparing the juries with individual townships in Lancaster County. With the Minitab program, we again ran two sample T-tests by comparing townships chosen at random to the combined totals for the juries in each year. Below are the results of ten different townships for each year under study. In order to provide the greatest comparison between jurors and the general population, no township was repeated at this level of the statistics.⁶³ Appendix II are the results for 1771 and Appendix III are the results for 1772.

What these two sample T-tests show is that in each situation there was no similarity between the townships and the jurors in either year. This is shown by the P-value (for example: Rapho: P=0.0088; Manheim: P=0.0053; Elizabeth: P=0.34; etc), the second to last figure of every two sample test.

The only test in which there was not clear difference was the test between jurors for 1771 and residents of Elizabeth Township. This anomaly, however, is explained easily. Elizabeth Township had a singularly large landowner, William Henry Steigle, sometimes called the Baron of Manheim. Steigle, himself a juror on a number of occasions, owned a large manufacturing concern and the acreage that was the town of Manheim, as well as other property in the township. Given the small number of landholders, his thousands of acres raised the overall average of landholdings in the township. Thus, the two sample T-test could not rule out the possibility of the two groups being equal. If Steigle was removed from the group, the P-value would return to a more normal level relative to the comparisons with other townships.

63 It should be noted that Lancaster Borough was not included in the calculation, primarily because these residents lived in the town and their taxable property would not have been in acres, unlike those who owned land in townships surrounding the Borough. As stated earlier, I did examine a relative framework for comparing those jurors who resided in the town compared to the rest of the residents.

Finally, we calculated the averages for all townships in Lancaster County. Then, the averages for each year were graphed against the jurors for that year. These graphs are shown as Appendix IV. There is also a legend preceding the graphs which designate the numbers to townships.

APPENDIX II:

TWO SAMPLE T-TEST FOR 1771

Legend

N= the total number of objects within the group

Mean=the statistical average for the group: total property/N

Stdev=the standard deviation within the group

T=the T-test figure

P=P-value which determines the likelihood of difference; the lower the number the greater degree of dissimilarity (in statistical terms dissimilarity is accepted below 0.05)

DF=the degrees of freedom

TWO SAMPLE T FOR Juries - Rapho Township

	N	MEAN	ST DEV
Juries	63	312	539
Rapho	149	127	105

T-TEST MU Juries = MU Rapho (VS NE): T= 2.70 P=0.0088 DF=64

TWO SAMPLE T FOR Juries - Manheim Township

	N	MEAN	ST DEV
Juries	63	312	539
Manheim	100	113	123

T-TEST MU juries = MU Manheim (VS NE): T= 2.88 P=0.0053 DF=66

TWO SAMPLE T FOR Juries - Elizabeth Township

	N	MEAN	ST DEV
Juries	63	312	539
Elizab	36	187	662

T-TEST MU juries = MU Elizab (VS NE): T= 0.96 P=0.34 DF=61

TWO SAMPLE T FOR Juries - Colerain Township

	N	MEAN	ST DEV
Juries	63	312	539
Colerain	76	67.2	48.1

T-TEST MU Juries = MU Colerain (VS NE): T= 3.59 P=0.0007 DF=62

TWO SAMPLE T FOR Juries - East Hanover Township

	N	MEAN	ST DEV
Juries	63	312	539
E Hanov	144	92.4	47.9

T-TEST MU Juries = MU E Hanover (VS NE): T= 3.23 P=0.0020 DF=62

TWO SAMPLE T FOR Juries - Derry Township

	N	MEAN	ST DEV
Juries	63	312	539
Derry	105	100.7	59.6

T-TEST MU Juries = MU Derry (VS NE): T= 3.10 P=0.0029 DF=62

TWO SAMPLE T FOR Juries - Caernarvon Township

	N	MEAN	ST DEV
Juries	63	312	539
Caernarv	65	127	211

T-TEST MU Juries = MU Caernarv (VS NE): T= 2.53 P=0.013 DF=80

TWO SAMPLE T FOR Juries - Earl Township

	N	MEAN	ST DEV
Juries	63	312	539
Earl	278	113.7	90.1

T-TEST MU Juries = MU Earl (VS NE): T= 2.91 P=0.0050 DF=60

TWO SAMPLE T FOR Juries - Salisbury Township

	N	MEAN	ST DEV
Juries	63	312	539
Salisbury	122	154.0	93.5

T-TEST MU Juries = MU Salisbury (VS NE): T= 2.31 P=0.024 DF=63

TWO SAMPLE T FOR Juries - Heidleberg Township

	N	MEAN	ST DEV
Juries	63	312	539
H'burg	238	56.3	55.7

T-TEST MU Juries = MU H'burg (VS NE): T= 3.76 P=0.0004 DF=62

APPENDIX III:**TWO SAMPLE T-TEST FOR 1772**

TWO SAMPLE T FOR Juries - Leacock Township

	N	MEAN	ST DEV
Juries	53	242	252
Leacock	180	109	137

T-TEST MU Juries = MU Leacock (VS NE): T= 3.68 P=0.0005 DF= 61

TWO SAMPLE T FOR Juries - Warwick Township

	N	MEAN	ST DEV
Juries	53	242	252
Warwick	284	84.9	88.2

T-TEST MU Juries = MU Warwick (VS NE): T= 4.50 P=0.0000 DF=54

TWO SAMPLE T FOR Juries - Little Britain Township

	N	MEAN	ST DEV
Juries	53	242	252
L Brit	127	116.9	78.0

T-TEST MU Juries = MU L Brit (VS NE): T= 3.55 P=0.0008 DF=56

TWO SAMPLE T FOR Juries - Drumore Township

	N	MEAN	ST DEV
Juries	53	242	252
Drumore	101	115.6	78.8

T-TEST MU Juries = MU Drumore (VS NE): T= 3.57 P=0.0007 DF=57

TWO SAMPLE T FOR Juries - Bart Township

	N	MEAN	ST DEV
Juries	53	242	252
Bart	77	109.6	84.2

T-TEST MU Juries = MU Bart (VS NE): T= 3.69 P=0.0005 DF= 60

TWO SAMPLE T FOR Juries - Upper Paxton Township

	N	MEAN	ST DEV
Juries	53	242	252
U Paxt	87	85.4	69.4

T-TEST MU Juries = MU U Paxt (VS NE): T= 4.43 P=0.0000 DF=56

TWO SAMPLE T FOR Juries - Donegal Township

	N	MEAN	ST DEV
Juries	53	242	252
Donegal	169	97.9	90.6

T-TEST MU Juries = MU Donegal (VS NE): T= 4.09 P=0.0001 DF= 56

TWO SAMPLE T FOR JURIES - Strasburg Township

	N	MEAN	ST DEV
Juries	53	242	252
Strasb	164	103	167

T-TEST MU Juries = MU Strasb (VS NE): T= 3.76 P=0.0004 DF=67

TWO SAMPLE T FOR Juries - Manor Township

	N	MEAN	ST DEV
Juries	53	242	252
Manor	175	74.9	77.3

T-TEST MU Juries = MU Manor (VS NE): T= 4.77 P=0.0000 DF=54

TWO SAMPLE T FOR Juries - Lancaster Township

	N	MEAN	ST DEV
Juries	53	242	252
Lancaster	32	135	120

T-TEST MU Juries = MU Lanc (VS NE): T= 2.63 P=0.010 DF=79

APPENDIX IV:

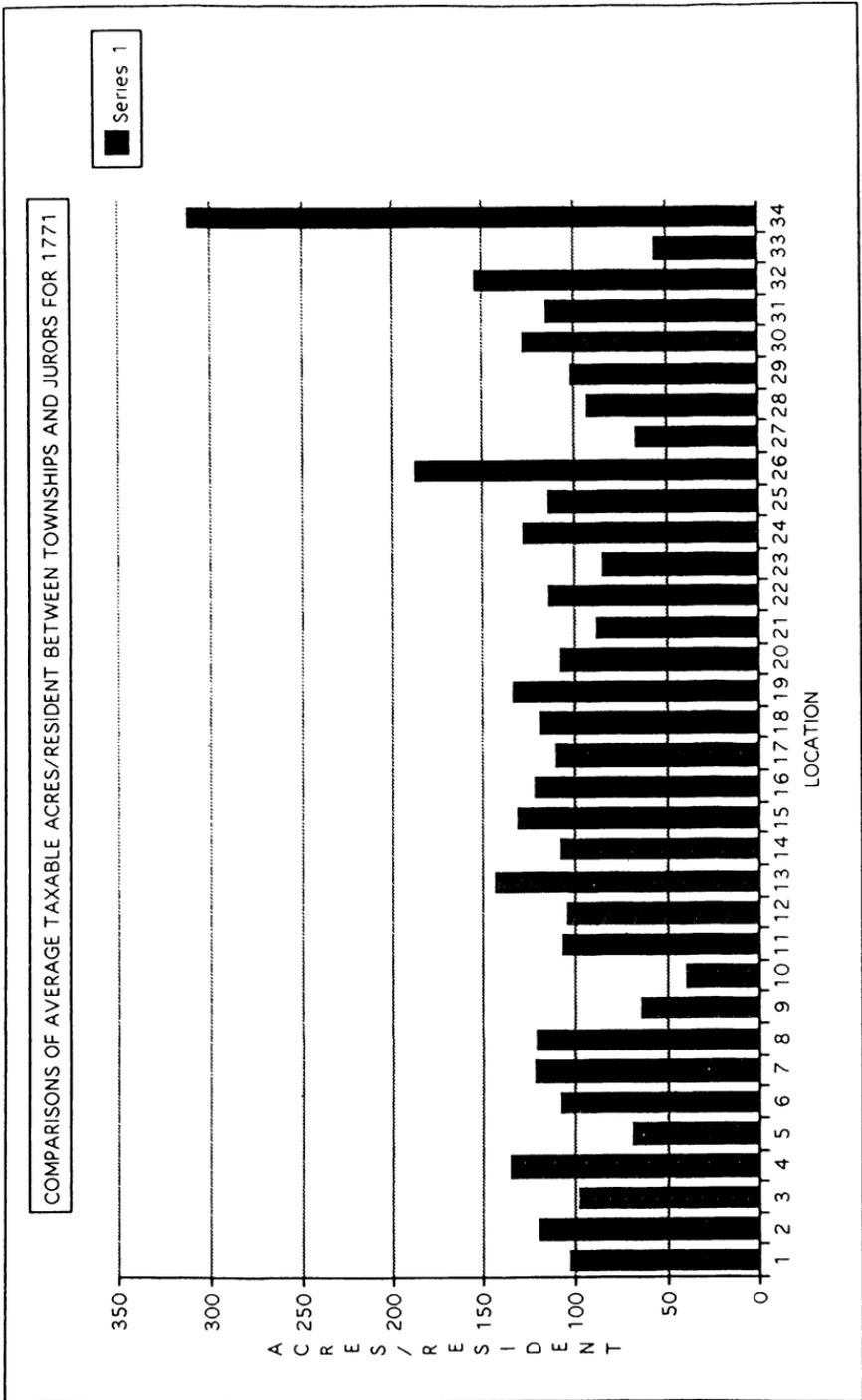
GRAPHS OF AVERAGE TAXABLE ACRES/RESIDENT BETWEEN TOWNSHIPS AND JURORS FOR 1771 & 1772

Legend for 1771

- 1 Paxton
- 2 Brecknock
- 3 Cocalico
- 4 Conestoga
- 5 Upper Paxton
- 6 Bart
- 7 Little Britain
- 8 Drumore
- 9 Martic
- 10 Lancaster
- 11 Sadsbury
- 12 Donegal
- 13 Strasburg
- 14 Leacock
- 15 Lampeter
- 16 Manor
- 17 Hempfield
- 18 Mount Joy
- 19 Warwick
- 20 Lebanon
- 21 West Hanover
- 22 Bethel
- 23 Londonderry
- 24 Rapho
- 25 Manheim
- 26 Elizabeth
- 27 Colerain
- 28 East Hanover
- 29 Derry
- 30 Caernarvon
- 31 Earl
- 32 Salsbury
- 33 Heidelberg
- 34 Jurors

Legend for 1772

- Lancaster
- Manor
- Sadsbury
- Strasburg
- Colerain
- Donegal
- Brecknock
- Upper Paxton
- Bart
- Drumore
- Derry
- Little Britain
- Martic
- Warwick
- Manheim
- Elizabeth
- Leacock
- East Hanover
- Conestoga
- Bethel
- Hempfield
- Lampeter
- Londonderry
- West Hanover
- Rapho
- Cocalico
- Earl
- Lebanon
- Mount Joy
- Caernarvon
- Salsbury
- Heidelberg
- Paxton
- Jurors



COMPARISONS OF AVERAGE TAXABLE ACRES/RESIDENT BETWEEN TOWNSHIPS AND JURORS FOR 1772

