

*Leet Jurors and the Search for Law and Order in Seventeenth-Century England: "Galling Persecution" or Reasonable Justice?**

by Walter J. KING**

At medieval and early modern English courts leet the presentment jury acted, in modern parlance, as prosecutor, defence counsel, and jury. Courts leet were manorial courts held annually or biannually that exercised limited civil and criminal jurisdiction. To modern investigators, nurtured on the philosophy of checks and balances between apprehenders, prosecutors, finders of fact, and dispensers of punishment, courts leet can appear as "possible instruments of the most galling persecution"¹ and "rather oligarchic",² and leet jurors can appear to exercise "a tyranny in the strictest sense of the term".³ According to F. J. C. Hearnshaw, F. A. Bailey, W. S. Weeks, and M. D. Harris, individuals accused by leet authorities of illegal activity did not know of the charges against them, were not present during minimal deliberations of the jurors to hear evidence, and were not allowed to bring in witnesses or plead innocent.⁴ Hearnshaw believed the work of leet jurors so perfunctory that they could begin their work at 8 a.m., adjourn for lunch, and conclude by

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¹ F. J. C. HEARNSHAW, *Leet Jurisdiction in England: Especially as Illustrated by the Records of the Court Leet of Southampton*, Southampton Record Society, Vol. 5 (Southampton, 1908): 133.

² F. A. BAILEY, "The Court Leet of Prescot", *Transactions of the Historic Society of Lancashire and Cheshire*, 84 (Liverpool, 1933): 72.

³ HEARNSHAW, *Leet Jurisdiction*, p. 137.

⁴ *Ibid.*, pp. 79-83, 131-39; BAILEY, "The Court Leet of Prescot", p. 72; William Self WEEKS, "Clitheroe in the Seventeenth Century", *Transactions of the Lancashire and Cheshire Antiquarian Society*, 41 (Manchester, 1924): 72; and Mary Dormer HARRIS, ed., *The Coventry Leet Book: or Manor's Registry, Containing the Records of the City Court Leet or View of Frankpledge, A. D. 1420-1555*, Part 4, Early English Text Society, Vol. 146 (London, 1913): xix. Hearnshaw became the modern authority on courts leet and is often cited by more recent writers. Besides Bailey, Weeks, and Dormer, see John P. DAWSON, *A History of Lay Judges* (Cambridge, Mass., 1960), pp. 187ff.

2 p.m.⁵ This paper will show leet jurors as conscientious, deliberative and merciful, and the leet judicial system as just and reasonable.

Have historians misrepresented Hearnshaw's views? Did Hearnshaw claim that jurors actually did or only could gallingly persecute the innocent and undesirables? Like any court with summary powers, Hearnshaw declared, a court leet was a "possible" instrument of galling persecution. By "possible" he meant the absence of procedural safeguards to ensure that jurors acted responsibly to protect the innocent.⁶ In fact, it was because leets were not required to follow rules of procedure that jurisdiction over criminal cases that could lead to loss of life or limb was transferred to higher courts where there would be "an open and unprejudiced enquiry".⁷ While no one doubts that procedural safeguards enjoyed by residents of modern Western democracies were absent from leet justice, their presence in any judicial system does not automatically prevent galling persecution. One need only recall the injustices that members of minorities experienced in the courts of the United States in the nineteenth and twentieth centuries⁸ and that dissidents experience today in the Soviet Union, despite numerous written protections against galling persecution. On the other hand, modern democracies resemble leets by allowing prosecutors, judges, and juries considerable discretion in assessing guilt and levelling punishment.

To claim that a court system could be oligarchic under certain circumstances only points out the obvious. Hearnshaw was more profound than that. As a good historian, he reported on what happened in the leet system of justice, not what *could* have happened. And what occurred was galling persecution. A few restraints against irresponsible prosecution survived into the early modern period, but they were ineffective.⁹ Hearnshaw did not say that jurors *may*, if they wish, not summon the accused; he said they *did* not summon.¹⁰ Hearnshaw did not claim that, in the absence of procedural safeguards, accusation *may* equal guilt; he wrote that accusation *did* equal guilt.¹¹ He did not contend that jurors' decisions may be difficult to overturn; he labelled their decisions "immutable for ever, ... evangelical".¹² He did not say that the power of leet jurors may be tyrannical; he

⁵ HEARNSHAW, *Leet Jurisdiction*, p. 132. Also see William SHEPPARD, *The Court-Keepers Guide*, 2nd ed. (London, 1650), p. 62.

⁶ "In deliberating and in arriving at their verdict they are trammelled by no rules of procedure, by no laws of evidence." HEARNSHAW, *Leet Jurisdiction*, p. 132.

⁷ *Ibid.*, p. 137.

⁸ For example, Herbert HILL, "Anti-Oriental Agitation and the Rise of Working-Class Racism", in *Annual Editions: Readings in American History '73-'74*, Dushkin Publishing Group, Vol. 2 (Sluice Dock, Guilford, Conn., 1973): 54-64; and John WOMACK, Jr, "The Chicanos": *ibid.*, 184-94.

⁹ HEARNSHAW, *Leet Jurisdiction*, pp. 137-38.

¹⁰ *Ibid.*, p. 132.

¹¹ "A presentment is more than a mere accusation; it is more than adverse evidence; it is testimony regarded as of the nature of proof conclusive which cannot, except 'in some special case, as when it doth concern freehold', be challenged or denied." *Ibid.*, p. 133.

¹² *Ibid.*, p. 132.

pointedly asserted that the power of jurors "is a tyranny in the strictest sense of the term".¹³

Recent investigators have placed jurors in a better light. Thomas Green, for example, has demonstrated that medieval trial jurors altered the facts discovered by coroners' inquest jurors because "the community believed the slaying was justified even though the official rules of self-defence had not been met."¹⁴ And Joel Samaha has shown that trial jurors in Elizabethan Colchester (Essex) sentenced few felons to be hanged, not because of ineptitude and corruption, but because of "a scrupulous adherence to the requirements of legal proof".¹⁵

The trial jury was never introduced into courts leet. Frederick Maitland suggested that increasing loss of jurisdiction over civil and criminal matters was a cause for not introducing the trial jury into the leet system.¹⁶ By the seventeenth century leets had lost adjudication of all serious and many petty offences to courts of quarter sessions and assizes.

The characterization of leet jurors and courts presented here differs from the traditional view for two reasons. First, a good portion of the data for this study came from the original paper books, not from "cleaned-up" parchment books and rolls which are copies of the "dirty" paper books. Hearnshaw analysed the latter. Only in the original paper books does a researcher come across notes on adjournments; marginalia; struck-out orders, presentments, and punishments; interlineations; and different hands and inks.¹⁷ Parchment books and rolls present a static world of presentment and punishment, easily misleading the modern investigator into concluding that leets equated presentment with guilt. In contrast, an analysis of paper books will show officers changing their minds, sometimes several times, reveal questions asked as well as decisions made, and uncover out-of-court settlements. The "night and day" difference between paper and parchment books can best be seen for Prescott in Lancashire where both survive from 1596 and only parchment books before 1596.¹⁸ The paper books contain presentment chits, or notes on

¹³ *Ibid.*, p. 137.

¹⁴ Thomas GREEN, "Societal Concepts of Criminal Liability for Homicide in Mediaeval England", *Speculum*, 47 (October 1972): 682. Also see Thomas GREEN, "The Jury and the English Law of Homicide, 1200-1600", *Michigan Law Review*, 74 (January 1976): 413-99.

¹⁵ Joel B. SAMAHA, "Hanging for Felony: The Rule of Law in Elizabethan Colchester", *The Historical Journal*, 21 (December 1978): 769.

¹⁶ H. A. L. FISHER, ed., *The Constitutional History of England: A Course of Lectures Delivered by F. W. Maitland* (New York, 1908), p. 132.

¹⁷ For a published example of a leet roll containing marginalia, see the leet roll for Norwich, 1288/89, edited by William HUDSON, *Leet Jurisdiction in the City of Norwich During the XIIIth and XIVth Centuries With a Short Notice of Its Later History and Decline*, Selden Society, Vol. 5 (London, 1892): 20-32. Hudson noted that the roll "must have been compiled from at least three returns — those of the Jury, the Affecters, and the Collectors" (p. 20, n. 1). For a published example of the differences between parchment and paper rolls, see Mary BATESON, "The English and the Latin Versions of a Peterborough Court Leet, 1461", *The English Historical Review*, 19 (1904): 526-28.

¹⁸ Lancashire Record Office (Hereafter LRO), DDCs and PC.

which the approximately seventeen officers (constables, clerks of the market, aletasters, and so forth), sworn at the preceding court, wrote out informal accusations. These chits were submitted to jurors, sworn shortly before court met, who also drew up their own presentments. Officers frequently wrote their presentments on scratch paper, as indicated by the unrelated, struck-out writing and computations on the reverse side. A few chits contain rough presentments on one side and the same more neatly written in greater detail on the other. The parchment books and rolls, on the other hand, are the final record of the court handed down to us as the jurors' summary decisions. The historian may play detective with both parchment and paper books, but he will discover "fingerprints" only in the unexpurgated paper books.

The early modern leet records of Southampton (Hants.) and Clitheroe (Lancs.), analysed by Hearnshaw and Weeks respectively, contain presentments mostly by jurors.¹⁹ Undoubtedly other officers forwarded presentments to jurors, who sifted them and then recorded the true accusations as the jurors' presentments. It was necessary to transform the officers' presentments into jury presentments because "Every Indictment and Presentment in Leet shall be by twelve men at least... If it be not by twelve, it is traversable."²⁰ Analyses by Hearnshaw and Weeks, therefore, were based upon "clean" books containing the final decisions of the jurors, not on original chits listing accusations to be deliberated.²¹ Why Bailey, editor of the court leet records of sixteenth-century Prescot, accepted their views on leets is more difficult to explain.²² Perhaps he based his conclusions on Prescot's pre-1596 parchment rolls, which are quite similar to the rolls employed by Hearnshaw and Weeks, and failed to perceive the diligent sifting of accusations revealed in the paper books extant from 1596.

There is another reason why the characterization of leet jurors and courts presented here differs from the traditional. Many of Hearnshaw's views of leets were based upon his reading of court keepers' guides. In the "ideal" leet described in the manuals, jurors, Hearnshaw concluded, decreed immutable, "evangelical verdicts".²³ These early modern writers,

¹⁹ "The Presentments of the Jurors ... fill the bulk of the book." HEARNSHAW, *Leet Jurisdiction*, p. 169.

²⁰ 13 Edw. I, stat. Westm. II, c.13; John WILKINSON, *The Manner and Forme How to Keepe a Courte Leet, or a Law-day* ([London] 1641), p. 162; and John KITCHIN, *Jurisdictions: or, The Lawful Authority of Courts Leet, Courts Baron, Court of Marshalseys, Court of Pypowder, and Ancient Demesne*, 5th ed. (London, 1675), pp. 13 and 91. Also see Edward COKE, *The Second Part of the Institutes of the Laws of England*, 4th ed. (London, 1671), p. 148. On the biblical foundation of the number twelve, see Mary Sturge GRETTON, ed., *Oxfordshire Justices of the Peace in the Seventeenth Century*, Oxfordshire Record Society, Vol. 16 (Oxford, 1934): lxxxviii.

²¹ In fairness to Hearnshaw, he did note that jurors deliberated to some extent (*Leet Jurisdiction*, p. 230), but these deliberations are understated.

²² F. A. BAILEY, ed., *A Selection from the Prescot Court Leet and Other Records, 1447-1600*, Record Society of Lancashire and Cheshire, Vol. 89 (Liverpool, 1937).

²³ "For a Presentment in a Leet duely made by the Grand Jury, is said to be as Gospell." SHEPPARD, *Court-Keepers Guide*, p. 21.

however, were proceduralists concerned with formal, "fixed", visible procedure, not informal, possibly extralegal, smoke-room gamesmanship. For John Wilkinson, writing early in the seventeenth century, procedure entailed jurors submitting their presentments, affeerors "rating" them as the steward read them, and the steward finally discharging the court.²⁴ In other words, presentment equalled guilt. That the writers of leet guides mentioned exceptionally little sifting of weak, false, and true accusations, however, is no reason to conclude that, in practice, leet jurors equated accusation with guilt. One need only contrast the difference between court leet and court baron described by Tudor-Stuart writers and the lack of difference in practice in order to caution against accepting those writers' descriptions of leet procedure as representing reality.²⁵

This paper will demonstrate that courts leet were considerably less autocratic and more flexible and reflective than previous investigators have suggested. The main source materials used are manuscripts of the Lancashire courts leet at Prescott (1615-78), Upholland (1599-1633, 1678-79), Rishton (1600-83), Westby (1611-99), and Walton-le-Dale (1631-60) and the Yorkshire leet at Slaidburn (1651-60).²⁶ For the indicated periods, the leet records are approximately eighty-two percent complete. They contain 11,585 presentments. To these manuscripts have been added published leet records. As we analyse these records several questions will concern us: Whether and to what extent leet jurors investigated the validity of accusations of wrongdoing? Did alleged offenders know they were going to be charged with unlawful activity, and were they allowed to be in court when the charges were read? Finally, once presented, what if any recourse did the accused have?

Sometime before a court leet met, a list of nominated jurors was prepared. It is not always possible to determine who nominated the jurors. Hearnshaw suggested the bailiff; at Coventry the mayor and his council chose the jury.²⁷ At Prescott only resident and nonresident owners of landed property were eligible. Between 1635 and 1660 an average of 22.3 owners were annually nominated and an average of fifteen eventually sworn. Some owners were apparently nominated because of their standing in the community, as indicated by their repeated nomination but failure to serve. Once sworn, the jurors and the steward or his deputy essentially constituted the court.

²⁴ WILKINSON, *How to Keepe a Courte Leet*, pp. 187-209.

²⁵ A court baron was a private court in private hands dealing with relations between lord and manorial residents. A court leet was a royal court in private hands possessing civil and criminal jurisdiction.

²⁶ LRO, DDCs and PC for Prescott, DDPT/22 for Rishton, DDC1/1141 for Westby, DDHo for Walton-le-Dale, C1 for Slaidburn, and DDBa, DDHi, and DDK for Upholland.

²⁷ "Who appointed the jurors in a manorial leet? As to this, the text-writers are singularly reticent. It would seem, however, that as a rule it should *not* be the steward of the court. In the absence of a good custom to the contrary, it should be the bailiff who selects." HEARNSHAW, *Leet Jurisdiction*, p. 90; HARRIS, *Coventry Leet Book*, p. xxii.

More is known about presentment officers. They were annually either selectively appointed by town officials, the lord of a manor, or the "best" inhabitants, or were chosen automatically in rotation by house-row. To be chosen by house-row meant that the owner or renter residing next to a person currently serving the office would be required to serve or hire a substitute for the following year. I have located evidence on seventy-eight townships in seventeenth-century Lancashire. Sixty-eight chose constables, the most important presentment official upholding the law in early modern England, by house-row, nine by appointment by specific individuals, and one township changed from nomination by individuals to nomination by house-row.²⁸ Residents of early modern leets, of course, were not policed by the full-time, salaried, professional police force that would be established in the nineteenth century. Except for a full-time beadle, whose principal function was to apprehend vagrants, and a deputy constable at some of the larger leets, leet officers were amateur, unsalaried, and part-time.²⁹ At Prescot, where presentment officers were chosen selectively, some professionalism was injected into the leet system. There shoemakers tended to be nominated as sealers of leather and butchers as clerks of the market.

Leet authorities at Prescot can be characterized even more. Jurors serving at courts held between 1657 and 1660 had in 1663, 1664, and 1666 an average of 4.0 hearths, and presentment officers 2.7 hearths.³⁰ Furthermore, between 1635 and 1660, 85.1 percent of presentment officers were renters only, while no juror was a renter only. All jurors were owners or owners and renters. And 15.4 percent of presentment officers were yeomen and gentlemen, while 66.0 percent of jurors were yeomen, gentlemen, or esquires. Given the hierarchical attitudes of early modern England, it is not surprising that jurors were the more well-to-do.³¹ Whether well-to-do jurors were oligarchic, however, remains to be demonstrated.

Hearnshaw and other investigators have focused upon leet jurors. According to Sidney and Beatrice Webb, "The Jury presented offenders out of their own knowledge, sometimes aided by the reports of the

²⁸ The constablenesship was not the only office filled democratically by house-row. At Westby, burleymen, whose functions included overseeing the "ringing" of swine and the cleaning of ditches, were also selected by house-row. LRO, DDC1/1141 for 1648.

²⁹ At Manchester, except for the period 1630-33, Richard Hunt was beadle from at least 1614 until 1648. J. P. EARWAKER, ed., *The Constables' Accounts of the Manor of Manchester from the Year 1612 to the Year 1647 and from the Year 1743 to the Year 1776*, Vol. 1 (Manchester, 1891).

³⁰ Since only males served as leet officials, averages are for male residents of Prescot. The years 1657-60 were chosen because paper books for 1661-66 are not extant. Public Record Office, E 179/250/8, pt. 5 (1663), E 179/250/11 (1664), and E 179/250/9 (1666); and LRO, PC 4/112 and PC 4/11.

³¹ Medieval and early seventeenth-century jurors were also among "the most prosperous" and "the wealthier and discreeter sorte". Eleanor SEARLE, *Lordship and Community: Battle Abbey and Its Banlieu, 1066-1538* (Toronto, 1974), p. 432; and W. GODFREY, ed., *The Book of John Rowe, Steward of the Manors of Lord Bergavenny, 1597-1622*, Sussex Record Society, No. 34 (Cambridge, 1928), p. 120.

various officers."³² The importance of jurors has been exaggerated. As already noted, historians have focused upon jurors because historians have used parchment books and rolls which mostly contain the final actions of jurors, not the original accusations by presentment officers. Since presentment officers had enforced the law for a year before court sat, while jurors were sworn only days before court met, and since, the Webbs to the contrary, most illegal acts came to the attention of leet jurors from information supplied by presentment officers and not by fellow jurors, presentment officers had more opportunity to misuse their office than did jurors. Even Hearnshaw recognized that jurors "are the creatures of a day, not the officers of a year".³³ Perhaps the question should not be whether jurors were oligarchs but whether presentment officers were.

We in the Anglo-American tradition believe that democracy exists if political personnel change frequently, and that self-perpetuation in office encourages wrongdoing. The amount of self-perpetuation, of course, will partly depend upon the size of the community and the socio-economic and religious qualifications for serving. It is not clear what constitutes self-perpetuation. On the manorial juries at Bromsgrove and King's Norton in Worcestershire, between 1495 and 1504, "nearly two-thirds of the total list of 96 are named as serving only at either one or two views. The system ... does not seem to have encouraged self-perpetuation on the jury list."³⁴ At Prescott in Lancashire, between 1635 and 1660, jurors served a median of three times and presentment officers twice. Specifically, 21.5 percent of jurors and 39.6 percent of presentment officers served once, and 50.8 percent of jurors and 67.9 percent of presentment officers served three or fewer times. At Prescott there appears to have been less perpetuation among officers than jurors. But the pool from which jurors were chosen was smaller. At Prescott jurors had to be owners of land though renters could serve as presentment officers. This qualification resulted in half-again as many males being eligible for the position of presentment officer. In any case, it is unlikely that either jurors or presentment officers persecuted the innocent, for they would soon have been out of office and themselves vulnerable.

The obvious hypothesis is that self-perpetuation allowed the upper estates to use their position either to persecute the lower estates and undesirables with excessive amercements and harsh corporal punishments or to hound them out of town while concealing wrongdoing by themselves, their relatives, or friends. No court leet was ever more troubled by an offender than Prescott was by Evan Pike. In 1623 he was charged with twenty-five assaults against thirty people, twice charged with drunkenness, and once with breaking all the windows of the courthouse in which he had been incarcerated.³⁵ While the 1622-23 court year was his

³² Sidney and Beatrice WEBB, *English Local Government*, Vol. 2, *The Manor and the Borough*, Vol. 1 (Hamden, Conn., 1963): 24.

³³ HEARNSHAW, *Leet Jurisdiction*, p. 86.

³⁴ A. F. C. BABER, *The Court Rolls of the Manor of Bromsgrove and King's Norton, 1494-1504*, Worcestershire Historical Society, n. s., Vol. 3 (Warwick, 1963): 95.

³⁵ LRO, DDCs for 1623.

most active illegally, Evan was charged with considerable illegal activity before and after. Yet, he was never "exiled" to the house of correction at Preston or to the jail at Lancaster. In 1629 Evan's brother Edward threw a stone at Evan and drew blood. Although the standard amercement for drawing blood was 3s.4d., the court amerced Edward only 12d.³⁶ Was this low amercement the court's way of indirectly persecuting Evan gallingly?

Neither jurors nor presentment officers hounded Evan out of town. In general, until offenders committed felonies or misdemeanours that went beyond the limits of toleration of officials, offenders could go on and on committing offences and never be brought by leet authorities to the attention of justices of the peace. For example, between 1603 and 1623 at Upholland in Lancashire, Ralph Whalley was charged with twenty-five assaults, with being drunk and disorderly four times, and with three miscellaneous offences. During the same period, Nicholas Taylor was accused of twenty-three assaults, gambling eleven times, and two other offences.³⁷ Only Nicholas Taylor was brought before a JP and only once for fighting with a constable, not with numerous other persons. Undoubtedly, the Pikes, Whalleys, and Taylors of the seventeenth century were nuisances and subject to "exile" to a county prison. Yet, they were treated in a "business as usual" fashion by jurors possessing, according to Hearnshaw, the potential to prosecute gallingly.

This paper will show leet officials acting responsibly. That is not to say that those officials never used their positions to hound undesirables in times of great social stress. One might expect leet authorities who sympathized with one side in the Civil War to treat supporters of the other side harshly. In 1646 Prescot jurors ordered John and Ellen Hool and their daughter to leave town. It seems that the Hools, supporters of the king, had allegedly called their neighbours, backers of Parliament, some unflattering names, and that John and four soldiers of the king had taken some property from one of them. Despite the reissuance of removal orders in 1647 and 1648, they remained in town and continued for a time to live in a house owned by Nicholas Marshall, the same Nicholas who, between 1635 and 1647, was a juror seven times and an officer nineteen times in four different positions.

The Hool case and others may be, though not necessarily are, examples of jurors acting as the community's delegated "instruments ... of galling persecution". A definitive answer must await further analysis of jurors and presentment officers. Questions in need of answers are: Did dramatic personnel changes occur which affected the frequency and nature of recorded offences? Did those in power prosecute in statistically significant numbers political foes who were out of office? Or did the same

³⁶ LRO, DDCs for 1629.

³⁷ LRO, DDHi. Court books are extant for only eleven years between 1603 and 1623. How many more references to these two misdemeanants would we have had if the rolls for the other ten years between 1603 and 1623 had survived?

personnel remain in office but implement a more zealous reformist philosophy?

The process of calling an annual or semi-annual court leet began at least a few weeks before court opened.³⁸ At Upholland the steward ordered the bailiff to give notice on two Sabbaths during divine service of an upcoming court so that tenants and undertenants could appear "to do suit and service" or to tender an excuse for absence in order to avoid amercement, and so that those commencing a civil pleading could give that plea to the clerk of the court.³⁹

At Prescott the court leet met in the courthouse above some shops. In 1665 at Rishton the court met in the house of a tenant holding land at the will of the lord.⁴⁰ At Upholland the steward and about thirteen leet jurors met for four days each year to review presentments made by them and other officers. These jurors consumed 144 quarts of ale in 1609, 124 in 1622, and about 120 in 1630.⁴¹ Ale constituted about twenty percent of the average total expense of 53s.7d. for a four-day session. During the four days the court met in 1609, groups of eleven persons met twice, and four, ten, and seventeen persons met once. Prescott's court leet also met annually, but the heavy workload forced jurors to adjourn, an average of three times per year between 1637 and 1660, in order "to perfect their verdict".⁴² Late for our period but still of interest is the court leet at Acomb in Yorkshire. There, between 1799 and 1802, an average of seventeen days elapsed between the opening of court and "verdict day".⁴³ Adjournments were also common at Acomb during the previous two centuries. The number of days courts leet met contrasts sharply with statements by Hearnshaw and Weeks that leet jurors completed their work in less than a day. Leet jurors were clearly more genuinely deliberative than previously claimed.

So the jurors, having been sworn shortly after court opened, received presentments from officers sworn a year earlier, dined at the steward's table, may have walked to a nearby alehouse and ordered a few beers at the expense of ratepayers, sat down, and commenced sifting through presentments. Actually, the lists of alleged offenders facing jurors had already been heavily sifted. Robert Dilley has claimed that the most telling factors affecting the number of offences brought before courts leet were

³⁸ It was generally accepted that Magna Carta (ch. 35) had limited the number of leets to two a year. See Francis HARGRAVE and Charles BUTLER, *Notes on Lord Coke's First Institute or Commentary upon Littleton*, Vol. 3 (London, 1794): 115, n. 10, 11, 12.

³⁹ For example, LRO, DDHi for 1603.

⁴⁰ LRO, DDPt/22 for 1665.

⁴¹ LRO, DDHi for 1609, 1622, and 1630.

⁴² Juries at Acomb (Yorks.) also adjourned several times a year. See Harold RICHARDSON, ed., *Court Rolls of the Manor of Acomb*, Vol. I, Yorkshire Archaeological Society, Record Series, Vol. 131 (Wakefield, 1969): vi. Tudor-Stuart writers of leet manuals, however, were convinced that the Magna Carta (ch. 35) allowed a maximum of two leets a year. See note 39 *supra*.

⁴³ *Ibid.*, Vol. II, Yorkshire Archaeological Society, Record Series, Vol. 137 (Leeds, 1978): 382, 386-87, 389.

“the energy, honesty and ability of the officers responsible”.⁴⁴ Elsewhere I have pointed out the importance of economic factors.⁴⁵ Obviously, for a host of reasons, it was then as it is today impractical to apprehend and prosecute all offenders. Leet officers also sometimes looked the other way when the letter of the law was being violated, and presented alleged offenders to jurors only when threatened with ameracements.⁴⁶ Presentment officers then and at other times would ask that officials at courts leet and quarter sessions show mercy toward certain tusslers who were paupers, persons who had ground their grain on Sunday because a lack of wind had prevented grinding at other times, owners and renters who had failed to repair houses and barns because timber was scarce, and some unlicensed brewers and bakers who were very poor and only temporarily brewed or baked to supplement their low incomes.⁴⁷ In addition, officers frequently issued warnings to individuals to correct undesirable behaviour or risk presentment. It is abundantly clear that officers often forwarded to leet jurors the names of alleged offenders who would never have been presented had they heeded repeated warnings. Issuing warnings initially rather than presenting alleged offenders’ names to the court constituted a form of sifting offences.

In still another way, apparently unrealized by Hearnshaw and others, leet officers sifted their presentments before submitting them to jurors. In rare instances, we are fortunate to have for Prescott a rough copy of, say, the constables’ list of presentments forwarded to the jurors. A comparison of the rough and final copies (not to be confused with the final presentments of the jurors) reveals that constables occasionally dropped names of alleged offenders when preparing their final copy for the court. Presumably either their initial accusation was incorrect or an out-of-court settlement had been reached or it was hoped soon would be. Some civil disputes reached courts only because neighbours, relatives, and officials had failed to resolve them out of court.⁴⁸ In a few cases, resolutions worked out by arbitrators were confirmed by courts leet.⁴⁹ In short, presenting officers withheld presentments until all efforts at out-of-court resolution had been exhausted.

There was, for example, probably little sense of necessity to present a son who had punched his father in the nose or neighbours who had come to

⁴⁴ Robert S. DILLEY, “The Cumberland Court Leet and Use of the Common Fields”, *Transactions of the Cumberland and Westmorland Antiquarian and Archaeological Society*, 67, n. s. (Kendal, 1967): 134.

⁴⁵ See my forthcoming “Vagrancy and Local Law Enforcement: Why Be a Constable in Stuart Lancashire?”, *The Historian*, 42 (1980).

⁴⁶ For example, in 1645 the jury at Prescott ordered the officers known as the “four men” to submit the names of residents who had accepted nonresident lodgers without the permission of the “four men”. In 1646 the jurors, acting on information supplied to them, accused fifteen persons of receiving lodgers and charged many others with converting barns into houses of habitation for lodgers. LRO, PC 4/41.

⁴⁷ LRO, QSP/181/9, Lancaster, Michaelmas 1659; QJI/1/29, Wigan, Epiphany 1654/55; C1 for Slaidburn for the 1650s; and DDHi for 1601.

⁴⁸ For example, LRO, DDC1/1141 for 1623; QSB/1/124/23, Lancaster, Michaelmas 1623; and QSB/1/296/35, Wigan, Michaelmas 1647.

⁴⁹ For example, LRO, DDCs for 1622 and 1624, and DDpt/22 for 1605.

blows over responsibility for an unrepaired fence months before the court was held when those combatants had resumed friendly relations by the time court opened. Indeed, constables were occasionally accused of concealing "bloudes and affrayes" which, if true, could imply anything from accepting bribes to deciding not to present reconciled neighbours for a momentary outburst later regretted by all.

In sum, leet officers presented, in their view, the truest and most serious offences and those unresolvable outside court. This is not to suggest that no officers misused their position. Dishonest constables allegedly seized property illegally from prisoners, took sexual liberties with female prisoners, for a price spared men called to the general muster, and retained food inhabitants paid to cover their taxes.⁵⁰ Leet records are replete with inhabitants charging officers and jurors with dealing "by favour" of their office. A charge does not make a case, however, and courts tended to amerce residents accusing jurors and officers of malfeasance. Railing against the jury was sometimes dealt with quite severely. In 1613 Edward Mollynax of Upholland was accused of "shooting in a breeding peece" and of an assault. Because he criticized the jury which had charged him with illegal activity, he was ordered to pay 20s. or be stocked six hours per day for twenty Sabbaths.⁵¹

To be sure, officers and jurors did conceal wrongdoing. But such actions are balanced by jurors and officers presenting relatives and fellow officers. In some localities fair play even extended to the manorial lord and his wife, although the wording of their presentments was toned down.⁵² In the ideal leet of the writers of court keepers' guides, "It is just Judgment, where not the person but the works are considered."⁵³ There is even evidence of sincere attempts to impanel impartial jurors.⁵⁴ Of course, the data are biased. Officials cannot be expected to declare their intentions not to accuse themselves or their relatives of wrongdoing. Still, the amercing or stocking of persons who had charged leet officials with malfeasance could be evidence for the occasional galling persecution present in any judicial system.

Without a doubt, officers employed considerable discretion in deciding which alleged offenders' names to submit to jurors. But if constables, aletasters, and other officers were not tyrants over their neighbours, perhaps jurors were. Hearnshaw certainly thought so and stated that jurors "call no witnesses, but depend mainly upon their own personal

⁵⁰ LRO, QSR/50, Wigan, Epiphany 1656/57; QSB/1/194/61, Wigan, Epiphany 1637/38; DDHo, Walton-le-Dale, for 1640; and DDC1/1141, Westby, for 1646.

⁵¹ LRO, DDHi for 1614.

⁵² LRO, DDHo for 1634, 1636, 1649, and 1650; and DDB1/48/10 for 1673. Naturally, affeerors did not amerce manorial lords and thereby ask them to pay an amercement to themselves; but they did amerce wives of lords.

⁵³ KITCHIN, *Jurisdictions*, p. 14; WILKINSON, *How to Keepe a Courte Leet*, p. 166.

⁵⁴ BABER, *Bromsgrove and King's Norton*, p. 18; and William LE HARDY and Geoffrey LI. RECKITT, eds, *County of Buckingham, Calendar to the Sessions Records, Vol. 2: 1694 to 1705* (Aylesbury, 1936): 150.

knowledge or suspicions, or upon the general trustworthiness of their informers."⁵⁵ And Bailey claimed that "the Jury were under no obligation to ... prove the guilt of the accused."⁵⁶ In fact, however, jurors, charged with actively seeking truth rather than merely listening to evidence, continued the sifting begun by those who had enforced the law since the last court. Hearnshaw himself noted that jurors were "the duly accredited censors of all taletelling".⁵⁷ Indeed, jurors realized that presenting officers were predominantly part-time, unpaid, annually elected amateurs, working people who kept body and soul together by selling ale or meat or other wares and by tilling the soil. Many of the alleged illegal actions coming to the ears of these officers travelled via rumour or were volunteered by informers (including a male who offered to sell his information for a quart of ale), complainers, victims, and parents who disapproved of their adult children's behaviour. Thus, between rounds of ale, jurors visited the scenes of offences and disputes and, not surprisingly, found some alleged offenders innocent and others guilty.⁵⁸

In addition, jurors called witnesses to give evidence under oath and to repeat under oath what previously they had of their "own accord" provided constables and other officials.⁵⁹ At each leet three calls went out to witnesses, complainers, and informers to give information.⁶⁰ Residents accusing other residents of wrongdoing were amerced when refusing to repeat their allegations under oath.⁶¹ Falsely accusing another of wrongdoing merited a severe punishment such as exile, an amercement of 20s., or being stocked six hours on ten Sabbaths.⁶² Leets were clearly anxious to prevent slanderous statements that might lead to social discord. Finally, it may be noted that the need to seek evidence was occasionally forced upon jurors by officers who mentioned illegal acts in their presentments, "but whom to present for it wee cannot tell but referr it to the Jury".⁶³

After viewing the scenes of offences and listening to witnesses, jurors were sequestered "vnder the Custodie of the Bailiff ... to consider of their said verdict".⁶⁴ At this time some presentments were struck out, thirty-six at Prescot between 1615 and 1678.⁶⁵ Jurors soon discovered, however, that a good number of other allegations of wrongdoing had still

⁵⁵ HEARNSHAW, *Leet Jurisdiction*, p. 132.

⁵⁶ BAILEY, "The Court Leet of Prescot", p. 72.

⁵⁷ HEARNSHAW, *Leet Jurisdiction*, p. 131.

⁵⁸ For example, LRO, DDPT/22 for 1606 and 1672 and DDHi for 1614.

⁵⁹ LRO, DDCs for 1624 and PC 4/112 for 1651; KITCHIN, *Jurisdictions*, p. 41; R. Sharpe FRANCE, ed., "The Order Book of Ormskirk, 1613-1721", *A Lancashire Miscellany*, The Record Society of Lancashire and Cheshire, Vol. 109 (Blackpool, 1965): 37; and William Self WEEKS, *Clitheroe in the Seventeenth Century* (Clitheroe, n.d. [1927]), p. 22.

⁶⁰ SHEPPARD, *Court-Keepers Guide*, pp. 61, 62, and 65.

⁶¹ LRO, DDHo for 1632 and 1641.

⁶² LRO, DDHi for 1614 and 1621, DDC1/1141 for 1615, and PC 4/41 for 1646.

⁶³ LRO, DDHi for 1599, PC 4/41 for 1643, and PC 4/154 for 1672.

⁶⁴ LRO, C1 for 1660.

⁶⁵ Excluded are presentments struck out because they were duplicated by other officers. This duplication further demonstrates that the paper books are the original records.

not been proven beyond a reasonable doubt. At Prescott these still doubtful presentments numbered ninety-two. Next to these doubtful presentments jurors added: "quere" (inquire), "quere for evidence", "respited because doubtful", "respited because not certainly knowne", "respited till further examination", "respited[;] to be viewed", "respited until August 1", or "respited until next Court". The fact that these marginal notes were written in hands and inks different from those in the presentments verifies that they were added later, almost certainly by the jurors. After inquiring further into the ninety-two doubtful presentments, the jurors decided sixty-nine were true, and the affeerors later assessed ameracements. The other twenty-three accused were judged innocent and suffered no ameracement. Thus, during the pre-affearing process, jurors at Prescott found fifty-nine individuals not guilty. Since 5,612 presentments⁶⁶ were judged true and ameracements or corporal punishments decreed, those accusations found untrue represented only one percent of all cases. Jurors at Upholland found a larger percentage of accusations untrue or not provable. They respited judgement on 103, later adding punishments to only seven, and dropped charges against an additional sixty-one. The 157 persons not prosecuted represented 7.2 percent of the 2,184 individuals accused of illegal activity between 1599 and 1633 and 1678 and 1679.

That jurors found few accusations untrue should not be surprising. As already suggested, much sifting had occurred before jurors began deliberating guilt or innocence, thereby ensuring that most presentments would be found true. And, more than likely, jurors personally knew the accused and were familiar with their alleged unlawful behaviour before being sworn to judge guilt or innocence. This personal knowledge ensured that the jurors themselves in their presentments would accuse only offenders whose guilt would not be doubted by their fellow jurors. The law protected the innocent from malicious accusation by requiring, as we have seen, that at least twelve jurors subscribe to each accusation.

Sequestrations of leet jurors may have been lengthy; certainly the deliberations were upsetting to a few. Some jurors refused to give their verdict with their fellow jurors; others departed from sequestrations before verdicts had been reached.⁶⁷ To reveal those delicate deliberations was contrary to the jurors' oath and was treated as a serious offence.⁶⁸ Prohibiting leet jurors from revealing their deliberations may appear to support Hearnshaw's view of leets as tyrannical. But although today stranger judges stranger, in the seventeenth century relative and neighbour passed

⁶⁶ The sum of 5,612 represents 5,559 presentments plus 53 struck out after ameracements had been imposed.

⁶⁷ LRO, C1 for Slaidburn for 1660 and DDpt/22 for 1673 and 1681.

⁶⁸ LRO, DDpt/22 for 1605 and 1655; DDB1/48/6 for 1658; DDC1/1141 for 1665; and J. G. DE T. MANDLEY, ed., *The Portmote or Court Leet Records of the Borough or Town and Royal Manor of Salford from the Year 1597 to the Year 1669 Inclusive*, Vol. 1, Chetham Society, n. s., Vol. 46 (Manchester, 1902): 195, 208, 217.

judgment on relative and neighbour.⁶⁹ The prohibition against revealing who made what critical statements about whom may have served to minimize conflict between jurors and alleged offenders.⁷⁰

After deciding which presentments were true, jurors submitted them to the court, that is, to themselves, the steward or deputy steward, and to the affeerors, "honest and lawful men of the neighborhood" (*Magna Carta*, ch. 14), who usually also served as jurors. The affeerors, numbering up to four at Prescot, Walton-le-Dale, and Coventry and either two jurors or the entire jury at Acomb, then assessed amercements.⁷¹ Lively discussion now passed from the question of verdict to whether the punishment fitted the offence. In some cases offenders acting in consort were amerced different amounts. Undoubtedly the deliberations of the jurors brought out certain factors, such as ability to pay, perceived seriousness of the offence, and value of the damage, encouraging affeerors to assess various amercements. Since this feedback was a continuous process, after court adjourned a good number of amercements were reduced and only a few increased, as demonstrated by the use of different inks.

At Upholland the last of the four days of meetings was set aside for "the affearing of the verdicte". It is these presentments, which have come down to us as the presentments of the jurors, that Hearnshaw used in arriving at his unflattering and incorrect view of leet jurors. Juror presentments appear as tyrannical summary judgements because they fail to mention the lengthy process of sifting which preceded. In his *Court-Keepers Guide*, William Sheppard had the steward calling for the jurors' presentments the afternoon of the first day of court.⁷² Three centuries later Hearnshaw accepted as reality Sheppard's failure to insert passion, diligence, fair play, and time-consuming investigations into the holding of a court leet.

If jurors were less casual and more deliberative than earlier writers have suggested, perhaps they were still oppressive by not informing

⁶⁹ A thirteenth-century fictitious defendant distrusted a jury trial because "I am a stranger in these parts and less known to these good people than I would need to be." See J. M. KAYE, ed., *Placita Corone, or La Corone Pledee devant Justices*, Selden Society, Supplementary Series, Vol. 4 (London, 1966): 18. According to Edward Coke, "the subject hath great benefit ... to have Justice in his place of habitation, as to be judged where he and the matter is best known", George WILSON, ed., *The Reports of Sir Edward Coke, Knt.*, Vol. 7 (Dublin, 1793), Part 13: 7. For seventeenth-century examples of the legal difficulties strangers encountered when accused of an offence, see LRO, QSR/26, Preston, Midsummer 1629; and QSP/151/25, Wigan, Michaelmas 1657.

⁷⁰ For an example of "slandrous words" against the jurors by an offender who had learned of the jury's "secrets", see RICHARDSON, *Manor of Acomb*, I: 79.

⁷¹ LRO, PC, DDCs, and DDHo; HARRIS, *Coventry Leet Book*, p. xx; and RICHARDSON, *Manor of Acomb, passim*. It was not universally accepted that the affearing need be done by officers appointed for that task rather than by the presentment jurors. See SHEPPARD, *Court-Keepers Guide*, p. 22; DAWSON, *Lay Judges*, pp. 261-62; *Reports of Sir Edward Coke*, Vol. 8: 40a, in *The English Reports*, Vol. 77, Max A. ROBERTSON and Geoffrey ELLIS, eds, *King's Bench Division*, Vol. 6 (London, 1907): 535.

⁷² SHEPPARD, *Court-Keepers Guide*, p. 62.

suspects of accusations made against them.⁷³ True, leet decisions were made summarily, not by jury trial, and there is no evidence that alleged offenders were called to speak on their behalf. But this is not to say that those accused were unaware of their impending presentment and were unable to affect the outcome. Courts leet were held once or twice a year. Between court sittings alleged offenders may have been warned several times to correct their behaviour or risk presentment. Indeed, failure to heed repeated warnings was frequently noted as the cause of presentments. Quite often officers warning individuals to alter their behaviour were subject to "evil and reproachful words" and even physical abuse. Those adding abuse of officers to failure to alter their behaviour were certainly aware of their impending presentment. Some of these warnings were written into the court roll as orders. After adjournment, officers investigated whether the court's orders had been obeyed, and added "done" or "not done" in the margin. A few comments of "not done" were later struck out and "performed" added. Alleged offenders may have firmly believed they had done nothing illegal, but they at least knew someone in authority thought they had.

In fact, the court saw to it that the entire community knew who the offenders in its midst were and which persons would be considered offenders if they did not correct their behaviour. The courts leet at Walton-le-Dale and Upholland ordered their bailiffs to read in church after sermon or in the churchyard every bylaw, amercement, and threat of amercement for noncompliance with court orders.⁷⁴ The result must have been that offenders and nonoffenders alike knew to whom courts had issued warnings and who had failed to comply and were likely to be presented at the next court.

In addition, there were some alehousekeepers, tusslers, butchers, and harbourers of inmates (nonresidents unable or unwilling to support themselves) who were presented and amerced year after year.⁷⁵ These persons, too, must have known of their upcoming presentment, as did those who came into court and pleaded guilty. Finally, leets accepted the general principle that a resident complaining against another, in a plea of debt, damages, trespass, breach of covenant, or about some nuisance, must avoid surprising the defendant and must inform him of the complaint he would make in a future court.⁷⁶ At the very least the court itself was

⁷³ The accused "may indeed be entirely ignorant of the fact that he is being accused", claimed HEARNshaw (*Leet Jurisdiction*, p. 132). WEEKS added that the alleged offender "had no notice given him that there was any complaint going to be made against him" ("Clitheroe", p. 72).

⁷⁴ LRO, DDHo for 1626 and 1639, and DDHi, *passim*.

⁷⁵ See my forthcoming "Regulation of Alehouses in Stuart Lancashire: An Example of Discretionary Administration of the Law", *Transactions of the Historic Society of Lancashire and Cheshire*, 129 (1980), where I discuss the presentment of the same alehousekeepers year after year.

⁷⁶ LRO, DDHi for 1612.

obligated to inform people of an approaching court session.⁷⁷ The suggestion that alleged offenders did not know they would be presented or complained against is not compatible with the evidence.

Moreover, a few of those presented were also charged with giving “vndecent woordes” or “vnreuerente speches in open Courte” to the court, jurors, or steward. At Upholland it was an offence to talk “in the Court house [when] the court [is] sitting or our otherplasse of assembly as aforesayd, except he or they shalbe called to give answear to any question or answear to hys name when he or they shalbe called by any offycer”.⁷⁸ What, one may ask, disturbed these people? One source of disturbance was the steward’s instruction to the newly sworn jurors listing the type of illegal activity they should seek out and punish.⁷⁹ As expected, however, much “unruly and uncivill Behaviour [occurred] whilst ... the Presentments [were] in reading”.⁸⁰ At Westby between 1611 and 1699 at least twenty-five persons were charged with “scowling” against officials, talking in court, or leaving court before court had adjourned. In all but seven of these twenty-five cases, those presented for the aforementioned actions were also presented at the same session for another offence.⁸¹ Clearly, alleged offenders both knew of their upcoming presentment and were present during those jury deliberations taking place in open sessions.⁸²

Besides railing against the court, what recourse, if any, did those accused of wrongdoing have? Were Hearnshaw and Weeks correct when they characterized jurors’ presentments as immutable? In 1654 eight residents of Prescott were presented for allegedly refusing to pay an assessment for laying their muck on the lord’s waste. Although they were each amerced 13s.4d., a note in the margin — “quere for evidence” — demonstrated a lingering spark of doubt which eventually led to this presentment being struck out.⁸³ In all, the court leet at Prescott voided fifty-three punishments between 1615 and 1678, and Upholland’s leet voided

⁷⁷ For example, Charles THOMAS-STANFORD, ed., *An Abstract of the Court Rolls of the Manor of Preston (Preston Episcopi)*, Sussex Record Society, Vol. 27 (London, 1921): 11. SHEPPARD (*Court-Keepers Guide*, p. 25) and KITCHIN (*Jurisdictions*, p. 11) recommended a notice of six or more days.

⁷⁸ LRO, DDHi for 1609.

⁷⁹ WILKINSON, *How to Keepe a Courte Leet*, p. 162.

⁸⁰ FRANCE, “Order Book of Ormskirk”, p. 33.

⁸¹ LRO, DDC1/1141, *passim*. Also see LRO, DDPT/22 for 1606, DDHi for 1610 and 1615, DDCs for 1623, and DDC1/1141, Lytham, for 1636.

⁸² Of course, tenants and undertenants were required to do “suit and service” by acknowledging their appearance in court when their names were called from call books. Absentees were either excused or amerced. At Bromsgrove release could be secured by paying 8d. (BABER, *Bromsgrove and King’s Norton*, pp. 22-23). It is difficult to determine whether and when all owing “suit and service” personally appeared in court. If they did they must have staggered their appearances. For obviously, not all residents and nonresident owners and renters of property could fit into one seventeenth-century courthouse at the same time.

⁸³ LRO, PC 4/112 for 1654. In a few cases, presentments were struck out because amerced offenders were later declared innocent. See LRO, DDPT/22 for 1606 and PC 4/112 for 1651.

fourteen between 1599 and 1633. A majority related to breaking the assize of ale (N = 22) and nonpayment of taxes (N = 16). These illegal actions could be relatively easily corrected and jurors thereby encouraged to void presentments, if offenders agreed to obtain licences to sell ale or to pay taxes. The fact that the number of struck-out punishments was so low does not confirm Hearnshaw's thesis that presentments were immutable. For again it must be stressed that the very deliberate sifting of weak and untrue accusations, preceding the formal presentation to the court of the jurors' findings, resulted in few injustices. Presumably, had there been "galling persecution", there would have been more railing in open court than the records show.

In addition to talking the jury into investigating the charges further and eventually cancelling a presentment and punishment, the accused could also react to a jury presentment by entering a traverse or a plea of not guilty. In general, leet presentments, made by at least twelve jurors, were not traversable, that is, not subject to a formal denial of an allegation of fact.⁸⁴ Hearnshaw firmly believed that "the power of giving such an untraversable judgment ... is a tyranny in the strictest sense of the term."⁸⁵ At Clitheroe "the partie greeved & presented [could] ... travise the Jurie at the Court next following after the Court that the partie was presented."⁸⁶ Weeks considered the procedure at Clitheroe "exceptional".⁸⁷ But was it? Though very infrequently, traverses were also entered at Slaidburn and Upholland.⁸⁸ It may be supposed that other "not guilty" pleas were made but not entered into court records as a traverse. For example, at Rishton during the Easter session held on 23 April 1672, John Dewhurst was amerced 30s. for diverting a watercourse. He evidently pleaded not guilty because on 28 May the jury viewed property boundaries, and later the clerk added "not guilty" next to the presentment.⁸⁹ Presentments resulting in an amercement subsequently struck out may, therefore, also represent a form of traverse.

Since affeerors were charged with assessing reasonable amercements, the accused could also react to a presentment and amercement by pleading poverty and getting some or all of the amercement remitted.⁹⁰

⁸⁴ F. W. MAITLAND, ed., *Select Pleas in Manorial and Other Seigniorial Courts*, Vol. 1: *Reigns of Henry III and Edward I*, Selden Society, Vol. 2 (London, 1888): xxviii; Sir Frederick POLLOCK and F. W. MAITLAND, *The History of English Law Before the Time of Edward I*, 2nd ed., Vol. 2 (New York, 1898, reissued 1968): 653, n. 3; SHEPPARD, *Court-Keepers Guide*, pp. 21-22; KITCHIN, *Jurisdictions*, pp. 13 and 91; and WILKINSON, *How to Keepe a Courte Leet*, p. 162. It is appropriate to note here that, because a court leet was a court of record, those amerced could also react by obtaining a writ of error. See DAWSON, *Lay Judges*, p. 257; KITCHIN, *Jurisdictions*, p. 84; and COKE, *Second Part of the Institutes* (1671), p. 143.

⁸⁵ HEARNSHAW, *Leet Jurisdiction*, p. 137.

⁸⁶ LRO, MBC/163 for 1593.

⁸⁷ WEEKS, *Clitheroe* (1927), pp. 16-17; and WEEKS, "Clitheroe" (1924), p. 75.

⁸⁸ LRO, DDHi for 1609 and C1, Slaidburn, for 1660.

⁸⁹ LRO, DDPI/22 for 1672.

⁹⁰ Ralph B. PUGH, ed., *Court Rolls of the Wiltshire Manors of Adam de Stratton*, Wiltshire Record Society, Vol. 24 (Gloucester, 1970): 21. At Slaidburn (LRO, C1) between 1651 and 1660 ten of 215 amercements were remitted because offenders were "paupers".

Whether poor or not, requesting a pardon or reduced amercement was another option. Of course, one of the more obvious reactions to a presentment was simply to ignore it. Some accused must have asked themselves: "Why get disturbed when the chance of my being punished is low?" After decreeing punishments, Upholland jurors appointed a number of persons to assist the churchwardens and constables in executing orders and reporting back to the court whether amercements had been collected and corporal punishments carried out. Their seventeenth-century reports covering 117 assaulters survive and demonstrate that certainty of punishment was not high: 36 of the 117 had not been punished a full year after orders for punishment had been issued.⁹¹ And in 1650 leet authorities at Prescot reduced uncollectible amercements to smaller but collectible amounts.⁹² Certainty of punishment was not higher in earlier centuries. At Norwich about 1300, "The authorities were quite satisfied to get, at the most, from one quarter to one half of the amount as assessed."⁹³ Courts leet, in turn, could and did respond to failure to pay an amercement by distraining animals. And although it was the general opinion in the seventeenth century that leets could not imprison, all possessed stocks and a number had lockups.⁹⁴ Still, it is interesting to contrast Hearnshaw's view of "the galling persecution" of the leet system with those of W. Hudson, W. S. Holdsworth, and M. C. Hill who were "struck with its inefficiency in the way of repression and penalty".⁹⁵

Except for investigating the few remaining doubtful accusations and the "not guilty" pleas, the work of the jurors came to an end with the "affeering of the verdict". Of course, at Acomb, Prescot, Walton-le-Dale and wherever adjournments were customary, jurors continued their in-

⁹¹ My computation is derived from LRO, DDHi.

⁹² LRO, DDCs for 1650.

⁹³ HUDSON, *Leet Jurisdiction in the City of Norwich*, p. xxxix.

⁹⁴ Modern writers cite Edward Coke as denying leets the right to imprison. See, for example, WEEKS, *Clitheroe*, p. 88; and Sidney and Beatrice WEBB, *English Local Government from the Revolution to the Municipal Corporations Act: The Manor and the Borough*, Part I (London, 1908), p. 24. Coke, however, claimed leets could imprison for offences committed in court. See Edward COKE, *The Compleate Copy-Holder* (London, 1641), pp. 39-43. SHEPPARD challenged this view (*Court-Keepers Guide*, p. 9). Courts leet in the Lancashire towns of Manchester, Bolton, Ormskirk, Bury, Wigan, Prescot, and Preston possessed dungeons or lockups. EARWAKER, *Constables' Accounts, passim* for Manchester and Vol. 1: 38, 49, and 62 for Bolton and Ormskirk; for Bury, LRO, QSB/1/259/55, Manchester, Epiphany 1641/42; for Wigan, LRO, QSR/24, Wigan, Michaelmas 1627 and QSR/26, Wigan, Epiphany 1629/30; for Prescot, LRO, DDCs for 1621, PC 4/41 for 1644, and QSB/1/38/59, Ormskirk, Easter 1628; and for Preston, Anthony HEWITSON, ed., *Preston Court Leet Records: Extracts and Notes* (Preston, 1905), pp. 68 and 109. Between 1612 and 1647 authorities in Manchester and Justices of the Peace committed at least 178 offenders to Manchester's two-storey dungeon, 54 of whom were eventually conveyed to the house of correction in Preston or to the jail in Lancaster. The average length of committal was three days. Computations are mine. See EARWAKER, *Constables' Accounts*.

⁹⁵ HUDSON, *Leet Jurisdiction in the City of Norwich*, p. lxxiv; W. S. HOLDSWORTH, *A History of English Law*, 4th ed., Vol. 1 (London, 1927): 136; and Mary C. HILL, "Dowdeswell Court Book, 1577-1673", *Transactions of the Bristol and Gloucestershire Archaeological Society*, 67 (1949): 138. Of course, low certainty of repression is still repression to the innocent and those punished out of proportion to the magnitude of their offence.

quiries of civil complaints and misdemeanours and returned their verdicts at the next court.⁹⁶ Before adjournment, new constables, ale-tasters, and other officers were sworn to enforce old and new bylaws and statutes during the following year.

By way of summary, leet jurors and officers were not tyrants, but were deliberative, reasonable, merciful. Jurors conducted many of their deliberations in open, not closed-door, sessions. Previous writers have labelled jurors' verdicts "evangelical" and immutable because they analysed the end of a very long process that often deviated substantially from the "ideal" procedure described by early modern writers of leet manuals. Modern writers have underestimated the amount and importance of the sifting of untrue, weak, and true presentments that took place before ameracements were affected. Unlike modern jurors who passively listen to evidence before reaching a verdict, leet jurors actively sought the truth. In an age when strangers distrusted strangers, it was appropriate, even necessary for neighbour to judge neighbour. The modern change of venue was unthinkable at the leet level. These differences in the duties of leet and modern jurors should not obscure their basic similarity: reasonable and merciful enforcement of law.

For many seventeenth-century misdemeanants, the justice dispensed by courts leet was not less reasonable than that dispensed at quarter sessions. For example, for swearing, drunkenness, attendance at illegal meetings, and profaning the Sabbath by working, conviction was guaranteed if only one Justice of the Peace had allegedly heard or seen the offence.⁹⁷ In bastardy cases, Justices sometimes summarily assigned maintenance costs to accused fathers even when their innocence seemed certain.⁹⁸ Even today the right to a jury trial is only nominal for many petty offenders, especially motoring violators. Not only is the accusation of a police officer tantamount to conviction, but many plead guilty because it is less expensive to pay a fine than to post bond and hire a lawyer to contest the case in court. Today's high cost of justice has led to the establishment of legal aid societies.⁹⁹ Still, it may be argued that justice dispensed to misdemeanants by courts leet was less summary and more deliberative and balanced than the justice many alleged minor offenders receive today.

⁹⁶ For example, LRO, DDH: "Method of Keeping a Court Leet & Court Baron", (1744), p. 3.

⁹⁷ Lord ASHCOMBE, ed., "Charge Given by Hugh Hare, Esq., J. P., at the General Quarter Sessions for the County of Surrey, Holden at Dorking, 5th April, 1692", *The Surrey Archaeological Society*, 12 (London, 1895): 117, 123-26.

⁹⁸ See my "Punishment for Bastardy in Early Seventeenth-Century England", *Albion*, 10 (Summer 1978): 150.

⁹⁹ Legal aid is not always a blessing. In 1973 an Englishman, acquitted in a jury trial of stealing a music magazine worth 7p., was threatened with imprisonment if he did not contribute £100 toward the cost of his legal aid. See *The Daily Telegraph* (England), 27 and 28 June, and 18 July 1973, p. 2, p. 19, and p. 19.