

## DEBATE AND DISCUSSION

### WHY EVERYTHING WE KNOW ABOUT CRIMINAL JUSTICE HISTORY IS WRONG

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#### **Introduction**

What I want to consider in this piece is the position of the historiographer of the history of crime and punishment and how that position has influenced and may even distort the picture of the past which we draw and then pass on. Few nowadays would suggest that the historical task is simply an objective one, a recovery of the bald facts of the past, unmediated by the researcher's own background, resources and concerns. Even my undergraduate students are happy to debate whether particular accounts of, say, the 'rise of the prison' are Whiggist or Marxist or Foucauldian and to argue the relative merits of those positions. But my purpose here is not to go over these 'theoretical' controversies again but rather to examine the often unstated and unformulated assumptions which affect our analysis of the past, assumptions related to the backgrounds, geographical location, skills and sources which we carry into our work as researchers. I say 'we' advisedly: despite the provocation of my title I have no desire to hurl brickbats at others from a position of smug self-righteousness. It's not like that at all. But my own position is one which, for reasons which will become clear shortly, has left me feeling sometimes a little on the periphery at some of the conferences I have attended, some of the conversations I have been party to. I have had to examine the factors which perhaps lie behind that feeling of distance. So while I do not seek to justify my own position, to advance it as superior, or to convert anyone to it I'd like my readers to consider the unspoken assumptions of their own research. It's as simple as that: an exercise in reflection.<sup>2</sup>

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<sup>2</sup> Even I am beginning to doubt the wisdom of this article and not only because I fear that it will make other writers defensive and lose me some friends. I wrote it originally as a piece of provocative overstatement, tongue lodged in cheek, self-mockery never far from the fore. Its intended audience was the younger scholar, whose presence at the Our Criminal Past meetings was, for me, one of the most gratifying features of those gatherings. It was meant as a cautionary guide, not a comprehensive literature review. The editors and their anonymous reviewer (whom I shall call 'AR' and to whom I will ascribe a masculine identity - it's a guess), though kind and supportive, understandably wanted some changes. So out goes all of the

Here are some things which I think may explain my own position. I am, by training, a lawyer rather than any kind of historian. I live in a village and work in a small town in the countryside. That countryside is in Wales, in an area where Welsh is freely spoken and where the local agricultural show remains one of the key dates of the calendar. My teaching interests include legal anthropology, and medieval (English) law, the subject which occupied much of my earlier research and still remains a passion.<sup>3</sup> Have these factors informed the way that I view events concerning crime and the social response to it? Yes, certainly. My point here is not to establish my credentials as some kind of naive 'outsider' commentator, but simply to point out that some of the questions which I ask of material, and some of the preconceptions I carry into my research, come out of this experience of life. Yet because such a background is not shared by all who will read these words they may tempt those others perhaps to reflect a little on the assumptions and restraints which their own backgrounds might suggest. If you do not know your next-door-neighbour's name, still less where their mother lives, you might wish to contemplate whether this might affect your view of other times and other societies in which such knowledge was commonplace.<sup>4</sup> If you were trained within a particular discipline, rather than came to it from outside, you might want to see whether what you do reflects that training rather than challenges it. 'The man who conquers his father', Freud says somewhere, 'is a hero'. I think that if we make this gender-neutral and substitute 'teacher' for 'father' we may explain something important about academic life.

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humour and in come some defensive qualifications. In a nod to Flann O'Brien's *The Third Policeman* I will deal with some of their points in an exchange in these footnotes.

I can, of course, accept that it is entirely possible to find examples of work which evades any or all of the pitfalls I discuss in this article (AR tends to cite two examples to counter each of those propositions) but I'm still not sure that that possibility invalidates entirely the warnings advanced here, which are, as I explain, based on things I've seen, heard and read. AR thinks I'm setting up straw men. If the reader doesn't recognise these tendencies at all then he or she is free to dismiss them, but s/he might still find it useful to reflect on the possibility of other unconscious bias in their own work. But I won't, always, name names as (the ironically anonymous!) AR urges me to. In cases where the examples come from a PhD thesis I've examined, or the first version of a journal article which I have peer-reviewed, or the paper of an unsure presenter at a conference, I wouldn't want them to carry round early errors for the rest of their careers.

<sup>3</sup> See references at note 4 *inter alia*. My chapter on the law is in the forthcoming *Chaucer in Context* (I. Johnston ed., Cambridge University Press).

<sup>4</sup> AR doubts this, but a survey from 2013 reveals that 70% did not know their neighbours' full names and over a third would not recognise those neighbours <http://www.independent.co.uk/news/uk/this-britain/love-thy-neighbour-most-british-people-dont-even-know-what-their-names-are-8877725.html>. Does this matter? Well I think that it explains a great deal, for example, about the efficacy and subsequent decline of shaming punishment, see R. W. Ireland *Land of White Gloves: A History of Crime and Punishment in Wales* (Routledge, forthcoming 2015) 87-88).

I have gathered here a number of observations which occur to me when I consider the state of writing and discussion on the history of crime and criminal justice history. Not all of these will strike the reader as in the least surprising or controversial; some will be dismissed with an impatient 'of course'! If you're good at what you're doing then my drawing your attention to them will be redundant, and everybody likes to think they are good at what they are doing. But they are points that strike me from conferences I've attended, papers I've read, discussions I've heard. So perhaps they are worth thinking about. I've labelled and numbered them as a series of propositions and I'll suggest how they *can* act in isolation and combination to send research down particular channels.

### **Proposition 1: Digitisation is the Answer**

Actually my discussion of this first proposition is informed by my own experience of the process of digitising archival material, rather than, as my previous details might suggest, by my living in a hut with a sheep. I am a big fan of the democratisation of research which digitisation brings. Although a technophobe myself I was an early convert to the process, my own database of 1,447 records of those remanded for felony in Carmarthenshire (South West Wales) between 1844 and 1871 is now well over 20 years old and, searchable and for free, is available online to all (<http://www.welshlegalhistory.org/carms-felons-register.php>). It was an early experiment and would, no doubt, be rather different if it were done today, but it's not a bad resource, though it remains an underused one. The technical issues relating to the construction of databases are not my concern here, we are much better than we used to be in that respect.<sup>5</sup> The simple digitisation of archives by scanning is helpful in many ways, but chiefly in saving time and travel to their point of origin. But nowadays we want a database: searchable and open to analysis, and that involves a point of 'translation' (I mean this in a sense which comprises not only transcription, but also generally some form of categorisation; of offences, for example, and of standardisation-of spelling, place names etc., - although, again, we're now much better at coping with these). There is absolutely no harm in this, even those of us who prefer to trust our own judgment rather than that of another, know that all of us are fallible. My own database, compiled with the help of a brilliant Research Assistant

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<sup>5</sup> I readily accept that projects like the Digital Panopticon or London Lives are now much more sophisticated, and that the work of people like Hitchcock, Shoemaker and Williams, some of which was discussed at the London Our Criminal Past meeting, has contributed enormously to that process of sophistication.

who has since gone on to a very senior position in the archive world, contains errors.<sup>6</sup> A description of one offender's 'Complexion' by the prison officials obviously defeated us at the time. It still reads 'Allegro' in our database, when common sense, and indeed a second glance, clearly demands 'A Negro'! Nor am I particularly disturbed by that lack of intimacy with original documents which the computer database dictates, although I would miss the feel of the real thing, and the 'non-verbal' information which it provides. Was it written in a hurry? Amended? This latter can be important, one of the Carmarthenshire felons is described as 'Fresh, Good Looking' in appearance, three days before dying in custody. Only the fact that the ink of the two words has faded to a different base-colour shows that the second word was added after the first.<sup>7</sup> What really matters, of course, is the type of records digitised (see Propositions 2 and 3), and the way we use them (see Proposition 5).

I worry about the transmission of criminal process to data, where problems of original reliability are compounded by modern translation. If we accept the concept of 'data' we have to bear in mind the problem of 'dator'. The information on our screens becomes 'harder' than it might be. We become, I think, less sceptical. My own database contains names, occupations, places of birth and last residence of a whole cohort of offenders. Or, rather, it doesn't. It contains the versions of that information which were officially recorded. All of these are details for which the primary source would often be the prisoner's own testimony, all of them would be things about which the prisoner would have good reason to lie. In some cases I know that the prisoner is indeed lying, in some cases the prison authorities suspect it, in others neither I nor they have any idea. *So we tend to accept that they are true.*<sup>8</sup>

A similar, but more disturbing, tendency is that if a database is constructed which contains *only* courtroom material (indictment, conviction/acquittal, punishment imposed), or, the database itself containing more, only that information is used by a searcher, the ensuing research will pick up on the end point of a hugely complex process, implicating a number of people in a number of decisions. Clearly it won't pick up crimes not reported or not prosecuted or settled before trial. We all know that.

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<sup>6</sup> Claire Breay, now a Lead Curator at the British Library.

<sup>7</sup> George Adams, F.R. no.1036. OK, reproduction can overcome such drawbacks if they are used (by both creator *and user* of the database).

<sup>8</sup> See Ireland, 'The felon and the angel copier: criminal identity and the promise of photography in Victorian England and Wales', in L. Knafla (ed.), *Policing and War in Europe* (Westport, 2002), 53-86 for discussion.

But it will also possibly miss such socially crucial material as that with which I am familiar from other sources: the initial remand for rape becoming an indictment for indecent assault by a Grand Jury and a conviction for common assault by the petty jury or, often, an acquittal (which can mean much, much more than 'he didn't do it', see Proposition 5). Many readers will indeed be aware of these problems, they are hardly new. But the computer has a tendency to iron out our suspicions. Data becomes more solid, and then, when subjected to statistical analysis, almost diamond-like in its dazzling qualities. '38.3% of burglars had two or more previous convictions' seems such a simple, uncontroversial statement, so gloriously, seductively, scientific. In one way, it is. But now consider the material it accepts and that which it leaves out. Still happy that it's telling you everything you would really like to know about recidivism?<sup>9</sup>

### **Proposition 2: 'If it bleeds, it leads'**

It's an old tabloid editor's maxim, but it dominates the historiography of crime. We start discussions with the 'Bloody Code', the homicide, the assize case and work down, losing interest often well before we reach the drunken punch, the 'furious riding' of a horse or the adulteration of butter. The atypical is our paradigm, the routine exposure of ordinary people to criminality, as perpetrators, victims or witnesses, remains less explored. Yes, there is material on petty crime out there,<sup>10</sup> and often, in archival deposits, it exists in tedious abundance, so we must investigate the psychology of this dominant standpoint rather than its archival necessity. Let us look in the mirror: are we really, as professionals, so far removed from the popular obsession with 'Jack the Ripper' that we so affect to despise?<sup>11</sup>

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<sup>9</sup> Both the editors and AR are unhappy with this section and it may be that I'm simply out of touch here. But my point is really not about how databases are created or exactly what they contain (I've accepted that this has improved hugely over the years) but how they are *used*: it's the psychology of the user, not the creator, which I'm interested in here. A researcher can immediately turn to a database, undertake statistical analysis from it and produce a series of conclusions about criminality which look unimpeachable. Great: that's democratic. But expertise in handling record evidence is not, I believe, an innate gift. See my review *Controlling Misbehavior in England 1370-1600* by Marjorie Keniston McIntosh' in *Legal Studies*, 19, (1999) 118-123. I did recently peer review an article which was statistically impressive, but showed little real understanding of the world from which those statistics were derived. No, AR, I won't name the author. Tim Hitchcock doesn't need my advice; that author did though.

<sup>10</sup> There's good work, for example, by Shoemaker, King and others.

<sup>11</sup> Not all the stuff on the Ripper is rubbish, but a great deal is, and it continues to pour out. I have a note, but have lost the citation, which reveals that nine books were written on the case between 1888 and 1909, but 39 from 1990-1999 alone.

Does such a lopsided approach matter? Yes, and it should do, even to those who choose deliberately to concentrate on serious crime. Let's take an example (which also incorporates Propositions 3 and 4): the history of imprisonment. If I hear again the proposition that 'before the eighteenth century imprisonment was used for detention before trial or before punishment, but not [or, in more sophisticated versions, 'rarely'] as punishment itself' I shall scream. It is not true, and no amount of repetition, no Foucauldian Panoptical dogma, makes it true. Punitive imprisonment was entirely familiar in England in the middle ages. If you were a salmon poacher then prison was the prescribed penalty in 1285 no less than in 1885. This is not a new finding: I wrote about it 30 years ago, Ralph Pugh rather earlier than that.<sup>12</sup> What is true is that prison was not originally an official (but see Proposition 5) punishment for *felony*. But that is very different, and a rejection of the wider myth allows us to grasp a different, more nuanced archaeology of penal thought.<sup>13</sup>

If we embrace the analysis of petty crime then we might actually find rather more significant theoretical problems than those, such as the 'birth of the prison', which we have been discussing for years. I noticed only recently the conceptual change which appears to take place in the history of the practice of 'binding over to keep the peace'. Once a very common means of social control (certainly in Wales) it seems to shift from being understood as an undertaking to be within the law rather than outside it, i.e. a personal affirmation of acceptance of a normative system, to being one of a range of minor penalties within that system. It's a move from being willing to join a

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<sup>12</sup> See C. Harding, B. Hines, R.W. Ireland and P. Rawlings, *Imprisonment in England and Wales: A Concise History* (London, 1985), Ch1; Ireland, 'Theory and practice within the medieval English prison', *American Journal of Legal History*, 31, (1987) 55-62; R. Pugh, *Imprisonment in Medieval England* (Cambridge, 1968).

<sup>13</sup> AR doubts that anyone really believes that myth now. Well the first two hits on a Google search for 'history of prisons' (The Howard League and Wikipedia) respectively use the formulae 'rarely' and 'very rarely' in their websites. This 'rarely' formula is the fig leaf behind which lack of research seeks to hide its modesty: if it refers to the range of offences for which punitive imprisonment was possible it is demonstrably false, as the list of offences exceeds that of medieval felonies in number, if it refers to absolute numbers imprisoned then I've never seen the figures to support it: but if the total of those imprisoned for misdemeanour, under borough custom, in houses of correction, for felony as a result of jury manipulation, for felony as a result of findings of benefit of clergy (too often seen as exemption from punishment rather than, as originally, a change in its locus and nature) is insignificant then the bar is set very high. Take no comfort from the 'popular' nature of these sources, even our Gods can err. Shoemaker speaks of punitive imprisonment as 'new' in the eighteenth century - *Tales from the Hanging Court* (London, 2006) 43: he may mean 'new' for violence: only true if we discount riot and forcible disseisin. Sharpe in *Judicial Punishment in England* (London, 1990) reports 'early stirrings of an awareness of the potential of imprisonment as a form of punishment' in the eighteenth century (p.45). And Foucault's English subtitle is 'The Birth of the Prison'. If AR has missed the huge number of conference papers applying Foucauldian theory based on this assumption then he's been very lucky!

club in the first place to being sanctioned for breach of club rules which apply to everyone. If I'm right about that then that's a conceptual shift of infinitely more theoretical complexity and importance than the extension of the number of offences for which incarceration is regarded as an appropriate penalty.

### **Proposition 3: Nothing Matters before the Eighteenth Century**

'Outside my period!' We've all said it, and of course there's a point to it. Academic life pushes us towards specialisation, towards knowing more and more about less and less. No-one can know all of criminal justice history. But that history at present does tend to cluster round the eighteenth, and particularly the nineteenth centuries. I suspect that this is a tradition within 'social history' more generally, and there's certainly enough within that period to keep us going for ages. Indeed, that's part of the appeal, I think; the massive quantity of unexamined archival material, so interesting to get to grips with. Of course the criminal still generally appears as an object within the archive rather than a subject: records are *about* criminals rather than *by* them (although the fascinating development of the Victorian prison memoir forms an interesting late and partial exception).<sup>14</sup> But the records are easy to use: they are plentiful, in English and require advanced palaeographical skills only rarely.

Of course the history bit: the pursuit of, selection of, interrogation of, interpretation of, analysis of, construction and presentation of argument concerning those records are tasks demanding the highest possible skill. But the sources for that history are much more accessible than those for, say, the thirteenth century (and don't be fooled, those thirteenth century sources are abundant enough). Does it matter? I think that it does. Walk into any 'prison museum' and see how much of the history on show there is compressed into a period between, say, 1830 and 1880. Read many of our current histories of the eighteenth and nineteenth centuries (see also the effects of Proposition 2 and Proposition 4) and see how unapologetic they are (indeed, how blissfully unconcerned they are) about addressing a system much of whose substantive law, procedure and punishments had already evolved and developed over a substantial period of time for particular reasons and purposes.<sup>15</sup> I don't want to disparage the work being done on the later period, but I would like to see an

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<sup>14</sup> For sources relating to which see, eg, P. Priestley, *Victorian Prison Lives* (Cambridge, 1985).

<sup>15</sup> See what I say about benefit of the clergy, jury equity, penal imprisonment in this paper. Their later uses are not simply modifications of earlier practice to cope with a Bloody Code being questioned after the Enlightenment: they are integral to the foundational history of those practices.

understanding that crime and courts and trials and punishment have a *longer* history, rather than simply a *pre-history*. I'd like to see a greater mix of period specialists at conferences, a deeper conversation taking place across boundaries of periods which we all know in our hearts are largely arbitrary, but which we still cling to anyway.<sup>16</sup>

#### **Proposition 4: Everything Changes**

This may be seen as simply a by-product of Proposition 3, with which it is certainly entangled, but it actually is a separate problem. I was once at a seminar where one of my colleagues began a paper by asserting that 'This was a period of great social economic and industrial change'. 'When wasn't?' asked another colleague, innocently but profoundly. It's worth thinking about. The Industrial Revolution (see Proposition 3) certainly represents such change. But... the eleventh century saw the Norman Conquest, the twelfth the 'medieval renaissance' and the birth of the Common Law, the thirteenth baronial insurrections, the legal construction and deconstruction of feudalism, the fourteenth the Black Death and the Peasants' Revolt etc, etc.

But just as academe pushes us to specialise, it also silently urges us to look for novelty, change, for (positive) response. A thesis or a book which charts changes, even one which looks at 'changes and resistances', looks so much more worthwhile than one which ends up by muttering apologetically that, in essence, things remained pretty much as they were before! And of course few things remain *exactly* the same. But continuity, or what appears at first sight to be continuity, is important. Where's the full, academic history of the use of the fine, let alone the bind-over (which may or may not, as we have seen, be a continuous one)? Where's the engagement with imprisonment for debt ('Not a crime', you object. Does that matter? See Proposition 5)<sup>17</sup> Which sort of lives are touched less and which touched more by significant social change and how do the former as well as the latter react to it. In rural Wales, in small face-to face communities, I have found traditional compensation payments rather than prosecution as the response to murder well into the nineteenth century, the use

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<sup>16</sup> I didn't attend all the papers presented, but none of the papers I attended in the Our Criminal Past sessions or at the September 2014 British Crime Historians Symposium dealt in any depth with material before the eighteenth century. The titles of papers I missed do not suggest that I was simply unlucky in this.

<sup>17</sup> I am of course aware that these matters are discussed in texts as part of a range of dispositions, but I know of no scholarly monograph devoted to these subjects.



of 'rough music' as a shaming punishment in the middle of the twentieth.<sup>18</sup> Some mentalities and practices continue to exist for as long as they are deemed effective. Not everything changes, or changes everywhere, or changes everywhere at the same rate. (Note also the connection here with Propositions 2 and 5).

**Proposition 5: Ignorantia iuris quod quisque scire tenetur non excusat**

I have deliberately used lawyers' language, a legal maxim in fact ('ignorance of the law which everyone is supposed to know is no excuse'). It's exclusive and excluding language and that's the point. I don't just mean the Latin, of course, but the way in which lawyers speak, irrespective of the root language which they use (and English became the only official language of the law as late as 1733: see Proposition 3). What I want to examine here is the position which I see being taken towards the law in histories of crime and punishment. 'Crime' is defined by the content of the criminal law, and if you want to depart from that definition then you must have a better definition or at the very least explain why you feel it important to deviate from it (see my implicit argument from social understanding for including imprisonment for debt as a valuable adjunct to our studies). So, simple defamation is not a crime, though I have read a long account which treated it as if it was.<sup>19</sup> Modes of prosecution, jurisdiction, trial structures and procedures, permissible punishments are all legally, not (subject to what I'm going to say shortly) socially circumscribed. You certainly don't have to be a historian of the law itself to understand them, but you should be at least a little cautious about approaching legal material *if you are unsure of it*. Not certain what a 'common informer' is, don't know the difference between 'burglary' and 'housebreaking'?<sup>20</sup> Well, it might be material, so you might want to check. A legal dictionary will often (but not always) be all you need, you can pick up an *Osborn* for next to nothing in almost any second-hand bookshop.<sup>21</sup> I repeat, I'm not against using a wider or narrower definition of 'crime', 'criminal' and the like if it is a considered and justified definition. If it's simply the result of ignorance, that's another matter. And I'm not (intentionally) patronising a scholarly audience. It's just that I've seen a lot of legal misunderstanding in my time.

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<sup>18</sup> For discussion see Chs 4 and 5 of Ireland *White Gloves? A History of Crime and Punishment in Wales* (forthcoming, 2015).

<sup>19</sup> It was a PhD thesis, so no, AR, I'm not naming names.

<sup>20</sup> The first example here came from a discussion at a conference paper I attended, and no, AR, I won't name names. The second I have invented.

<sup>21</sup> *Osborn's Law Dictionary* has run through many editions. Even an old one serves the historian.

But paradoxically I want to warn against another trait which I have had cause to observe: a too slavish acceptance that what the law and lawyers say represents social reality. It doesn't always. An example will make my readers smile indulgently. A distinguished historian, though not one of crime, once asked me whether the two eighteenth century soldiers he had come across who had claimed benefit of the clergy must have been army chaplains. You will know that such a claim was completely artificial, was recognised by all to be so, and may even know that it had been so recognised since at least the fourteenth century (note Propositions 3 and 4 here). But I think that there is a danger, illustrated here, that we assume that the legal formula, the 'official position', is invariably the dominant position, or at the very least that official records mean what they say. That compensation settlement for homicide I mentioned above? Well, that's technically, officially, a grave offence, 'compounding a felony'. It isn't part of the Victorian legal world-view, but I don't think that any of those involved in it paid any attention to that. If the case had come to trial then the jury might have weighed the evidence presented in court and decided accordingly, but actually the case came from a county (Carmarthenshire) where, throughout the nineteenth century, cases were heard by juries who often did not understand any such evidence, because they did not speak English, despite a statute *insisting* that they did. In any event the jury would probably not have been making a finding based on the narrow criteria of relevance which the law of evidence increasingly demanded. The real question they were answering was not 'Did he do it', but 'What shall we do with him?' We are used to seeing this as an exceptional response, 'jury equity', to mitigate the death penalty (see Proposition 2) when in reality it is a form of reasoning which I think permeates an entire system. If there had been a finding of insanity in the case then the defendant might have been transferred to an asylum. These were made compulsory for every county in 1845.<sup>22</sup> Cardiganshire has still never built one. If he had been imprisoned he would have been subject to the 'silent system' which was the prescribed regime for 'non-separate' prisons. Only, despite what was said to the Inspector, he wouldn't: the Governor lets slip at one point in his diary that he hasn't the staff to enforce it.<sup>23</sup> I must say too that in the courts of the Justices of the Peace with which I am familiar the correspondence between judicial activity and legal authority is (clerks notwithstanding) often a matter of accident, certainly in the nineteenth century, and sometimes in the twentieth.

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<sup>22</sup> See 8 & 9 Vict c.146. A Joint Counties Asylum was built 20 years later, well beyond the statutory time limit. There was a similar lack of response to the Prison Act 1865 in the County.

<sup>23</sup> See Ireland and Ireland (eds.) *The Carmarthen Gaoler's Journal 1845-50* (in two volumes, 2010) entry for 17 November 1845.

This, I confess, may be the Proposition which elicits the most anger in my readers. 'A lawyer tells us not to be too legalistic!' Has not the very rationale of the social historian been to examine substance rather than form? Has not the discipline formulated such important concepts as 'social crime' which urge us to look beyond the bland uniformity of the penal code to find important subdivisions within it? Yes and yes. I'm just saying that I've noticed a tendency to think that lawyers (and others working within the system) say what they mean and mean what they say, that formalities are invariably translated into actualities. Well, I do know lawyers for whom the objective notion of truth is a paramount guiding principle. I know others for whom getting the job done is a more important motor for action.

### **Proposition 6: Living for the City**

The particular examples which I have used above, concerning stasis and 'irregularity' within the legal structure are of course explicable in a number of ways. They are not typical. They are from a distant, undeveloped part of the jurisdiction. Frankly, they're Welsh!

Much of the history of crime and punishment which we read is predominantly metropolitan or at least urban.<sup>24</sup> There are, of course, many exceptions, but I'm willing to stand by the general proposition (if only for the sake of argument).<sup>25</sup> This is the paradigm which drives much of current criminal justice policy and criminological focus. Most people reading these words will live and work in large towns or cities, which is where most universities are still sited. But it was not until 1851 that the Census returns showed that the majority of those recorded lived in towns rather than the countryside.<sup>26</sup> OK, we can debate the crudity of that statement, but not, I think the essence of the transformation which it indicates. So now we have to assess which type of experience is 'typical', what is rule and what is exception. But let's assess it, not assume it (and remember Proposition 4 as we do so).

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<sup>24</sup> 'In eighteenth century England crime was overwhelmingly a London phenomenon' F. McLynn begins his *Crime & Punishment in Eighteenth Century England* (Oxford, 1991) 1.

<sup>25</sup> AR cites King, Cox and Woolnough, and I'll gladly add Davey, Morgan and Rushden, Shakesheff, Chapman and others. But my point remains. We have a number of different analyses of crime and punishments in London, we can read one against another. A single study of Carmarthenshire or anywhere else isn't the same. We no longer accept that there's a single 'correct' interpretation of history. Why do we expect our single study of a particular county or region to be enough? Can we really pretend that we know as much about Stafford Assizes as about the Old Bailey? As much about Haverfordwest Gaol as about Pentonville?

<sup>26</sup> See, eg, J. Long, 'Rural-Urban Migration and Socioeconomic Mobility in Victorian Britain' <http://www.colby.edu/economics/faculty/jmlong/research/ruralurban.pdf>, 1-2.

One of the first sites which I introduce my students to is the wonderful, groundbreaking Old Bailey Online (<http://www.oldbaileyonline.org/>). They love it, and I'm not going to criticise it. But I wonder how many students in London are invited to examine the available sources from Wales: not merely my own Carmarthenshire database mentioned earlier, but the larger, more important one ([http://www.llgc.org.uk/sesiwn\\_fawr/index\\_s.htm](http://www.llgc.org.uk/sesiwn_fawr/index_s.htm)) produced by Glyn Parry and his team at the National Library of Wales which makes available a century of Great Sessions criminal proceedings (note Proposition 1. Don't know what Great Sessions are? See Propositions 3 and 5). But this Welsh stuff is parochial, marginal, different! Is it?<sup>27</sup> How do you know? Until I've seen a lot more work on the criminal justice history of Cumbria, Gloucestershire or Shropshire I won't know how 'different' these Welsh findings really are, whether the very real cultural variables of language and religion outweigh the socio-economic ones of rurality and settlement patterns. I can make arguments about that, but I can't assume it. I'm not here pressing a stupid point. I know that London is the heart of government, the source of law. It's not just another place. I know too that there is some good work in rural crime, and I really don't want to argue that everyone should read about Welsh criminal history. I want us to reflect upon the paradigms which we take into our work. And again, my contention is that this reflection will help to tease out not only neglected bits of a story, but may challenge the familiar ones. Let's go back to the prison history argument I put forward earlier (see Propositions 2, 3 and 4). I don't want to make this an attack on Foucauldian theory (I hugely admire it, it has changed the way I think) but what if instead of the *creation* of a Panoptical society we look at the nineteenth century as an attempt to *reconstruct* in an urban environment, in institutions rather than more pervasively, that which had previously been a familiar feature of life outside it. As Matthew Davenport Hill put it in 1852, 'in small towns there must be a sort of natural police, of a very wholesome kind, operating on the conduct of every individual, who lives, as it were, under the public eye. But in a large town, he lives, as it were, in absolute obscurity.'<sup>28</sup> It's obvious to him, why should it be lost on us?

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<sup>27</sup> The other approach is to assume that it's simply the same: the great Clive Emsley apparently says (in a confusingly ambiguous comment) that the legal system in Wales was 'indistinguishable' from that in England (*Crime and Society in England 1750-1900* (3<sup>rd</sup> ed, Harlow, 2005), 1). That simply isn't the case: it had a different superior criminal court for more than half of the period covered by his book. Work has been done on the Great Sessions database by Woodward and by Walliss.

<sup>28</sup> Quoted in Y. Levin and A. Lindesmith, 'English ecology and criminology of the past century', *Journal of Criminal Law and Criminology*, 801 (1927), 804.

I really enjoyed the *Our Criminal Past* meetings which I attended. They exposed me to people and ideas which challenged the way I thought about the work I do. So I am greatly in the debt of those who organised, gave papers to and otherwise participated in those sessions. I offer these observations in return, as a relative outsider, in the hopes that they might entertain, and gently caution, my new-found friends. I think that some will still feel that I have set up straw men to knock down and I'll happily concede that there's a degree of stuffing in the propositions. My aim throughout is simply to make us challenge our own preconceptions.