

‘Communities policing “criminal” bodies in early modern Wales’

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Introduction

Early modernists will be well aware that the criminal justice system before the nineteenth-century establishment of a professional ‘police force’ depended overwhelmingly on private initiative, the participation of lay people. They *were*, in effect, the ‘police’.¹ Most investigations and prosecutions were begun and sustained by them, often by those most directly affected by a crime, with only the minimum of aid, at a relatively late stage, from legal officers. The focus of my research is the north-eastern county of Denbighshire from the Restoration to about 1730, and my main source the rich deposits of witness examinations for this county to be found in the archives of the Court of Great Sessions in Wales, the principality’s counterpart to the English Assizes for almost three hundred years from the 1540s to 1830.² I’ve chosen to discuss two very different topics within this paper – neonatal infanticides and theft – to point to some of the diverse ways in which ‘the body’ might have significance in the policing of early modern crime, some of which are strange and even disturbing to modern audiences, while others will be more familiar.

‘Shew mee thy breast’: infanticidal bodies

Historians of infanticide have argued that single women had a number of motives for concealing pregnancies: they faced, with the loss of reputation, ‘the prospects of poverty, isolation, vagrancy and perhaps prostitution’.³ The 1624 ‘Act to prevent the destroying and murdering of bastard children’ was at least as concerned to prevent them covering up their sexual transgressions as with the protection of vulnerable infants. Expressing concern that ‘lewd’ women were secretly giving birth and killing their bastards ‘to avoid their shame, and to escape punishment’, it enacted that any woman who secretly gave birth to an illegitimate child and killed it or attempted ‘to conceal the death thereof, as that it may not come to light, whether it were born alive or not’, unless she could produce positive evidence that it *had* been still-born, should ‘suffer death as in case of murder’.⁴ In practice, as elsewhere, the severity of the legislation was mitigated by courts and juries: in Denbighshire

¹ See especially Cynthia B Herrup, *The common peace: participation and the criminal law in seventeenth-century England* (Cambridge, 1987); Peter King, *Crime, justice and discretion 1740-1820* (Oxford, 2000).

² Those interested in the Denbighshire records and my research can now read the fuller discussion in my thesis, completed since this paper was delivered: Sharon Howard, ‘Crime, community and authority in early modern Wales: Denbighshire, c.1660-1730’ (University of Wales PhD thesis, 2003).

³ K Wrightson, ‘Infanticide in European history’, *Criminal Justice History*, 3 (1982), 7; RW Malcolmson, ‘Infanticide in the eighteenth century’, in JS Cockburn (ed), *Crime in England 1550-1800* (), 193-4.

⁴ 21 Jac 1, c27.

between 1660 and 1730, the majority of the women prosecuted were acquitted, and only one woman, Dorothy Thomas, was executed.

Almost every witness spoke about her child's body: 'the child's mouth being open and some parte of yt tounge out of yts mouth, and saw some three strypes or strakes on yts throate beinge also blackyshe, the like signe shee had never seene on any childe', according to one.⁵ These descriptions of the marks on the body of Dorothy's child were exceptional, quite different from any other recorded Denbighshire case in this period. Other historians have pointed to the importance of evidence of serious violence used against a child or, conversely, the lack of such marks.⁶ Witnesses in another case which ended in acquittal in fact emphasised their belief that the child had in fact been premature and still-born: 'she thought that it had not been born alive, for it was so very little & unlike children of full age'.⁷ Readings of the body of an infant, then, could play a significant role in the outcome of a case.

But in other cases, it was the woman's body that received most attention, and mostly from other women. Infanticides were unusual in the prominence of women taking active roles in investigating local suspicions; it was they who had the specialised knowledge of the effects of pregnancy and birth, and the authority to insist on looking for it.⁸ It began with the interrogation, increasingly insistent: are you pregnant? Jane Parry told a magistrate how she had suspected that her servant Gwen Jones was pregnant and 'taxed her with itt, but the said Gwen Jones absolutely denied itt with severall oaths'. Then one day, Gwen for a while became separated from her other servants when returning home from harvesting. That evening, she complained she had a headache, and Jane 'by some token did believe that the said Gwen had either borne a child or miscarried'. She persisted in questioning Gwen, who continued to deny it; but on learning that a child's body had been found nearby, she immediately went in search of Gwen and took her directly to the field where the body had been found.⁹

But Jane's actions were gentle compared to the interventions of some women who suspected an unmarried neighbour of killing her new-born. Jane ferch John David, next-door neighbour to Dorothy Thomas's master and mistress, had on a number of occasions asked Dorothy whether she

⁵ National Library of Wales, Great Sessions files (NLW GS) 4/28/2.97-100

⁶ M Jackson, *New-born child murder : women, illegitimacy and the courts in eighteenth-century England* (Manchester, 1996), 100-01; G Walker, 'Crime, gender and social order in early modern Cheshire' (PhD thesis, University of Liverpool, 1994), 157-60.

⁷ NLW GS 4/41/6, exams of Mary Jones and Dorothy Williams (trial ended in acquittal)

⁸ Although they might also be prominent in cases of theft (usually by women) of household goods; witchcraft accusations, another arena for female participation, are extremely rare in the Denbighshire gaol files.

⁹ NLW GS 4/37/6.21-22

was pregnant and received denials. Then she learned from another neighbour that Dorothy was unwell, at which she went to the house and found her lying in a loft. Jane enquired what was the matter and Dorothy said it was a headache, and asked Jane to leave. But Jane ‘perceived her hands to be bloody and saw on the loft much bloody yssue and some other signes that shee did not like of’. She went briefly home but ‘could not rest’ and returned to Dorothy’s bedside. Then she ordered Dorothy to get up so she could make the bed, and as the younger woman did so, Jane ‘perceived that shee held somethinge in her hand close to her syde’ which proved to be the new-born infant, ‘wrapt up and bound in a greene apron’. Moreover, this confrontation was a collective activity; three other women went with Jane into the loft, and two more deposed to having seen the body in its makeshift wrapping.¹⁰

Given the other evidence – the blood and ‘other signes’, the still-warm body, Dorothy’s own admission that it was her child – it was not necessary to examine her for physical evidence of pregnancy or birth. But in other cases, witnesses’ suspicions justified intimate, intrusive physical searches. The searchers might be professional midwives.¹¹ But – perhaps especially in small villages where professional midwives would be less available – married and widowed laywomen, presumably as mothers themselves, felt qualified to take on this role.

In Morton Wallicorum in 1685, Elizabeth the wife of Robert Rythericke went to Mary ap Richard’s house, following reports that she was pregnant. The first time, Mary shut the door and refused to let her in, but, like Dorothy Thomas’s investigators, Elizabeth refused to take no for an answer. She returned later, this time with a group of women, ‘and the doore beinge still shutt they told her yt she must open the doore & yt they must see her breasts’. Elizabeth, ‘takeinge her breasts in her hands drawed out milk’. Another of the women, Shonnett ap Hugh (a widow), ‘lookinge upon her breasts told her here is the signe where is the child’. Mary fell on her knees and ‘begged [Shonnett’s] favour’, but Shonnet told her ‘she had noe favour for her but yt it was in the hands of greater persons’ and continued to demand the child until Mary fetched the body from its hiding place. Mary also tried, unsuccessfully, to bribe Elizabeth to keep her silence.¹²

That witnesses should emphasise their resistance to pleading and to bribes – bearing in mind that they were speaking to representatives of the law – is in itself a reminder that exposure to the legal process was not neighbours’ only option. Court records only include those cases where

¹⁰ NLW GS 4/28/2.97-100

¹¹ NLW GS 4/43/1, examinations of Mary Davies (25 September) and of Hannah Law and Abigail Green (26 August)

¹² NLW GS 4/33.3.25-27

concealment *failed*. Some women did try to aid a suspect, by helping her to hide herself or the child's body; there may well be unknown cases where such efforts were successful.¹³ Others give an impression of at best reluctant involvement; and they might well include some of those who claimed to have heard nothing, seen nothing, known nothing.¹⁴ Not everyone questioned a woman they believed might be pregnant; Gwen Foulk's master and mistress privately 'suspected her to be with child as seeming something big', but were not sure and so did not ask 'because they thought it would have impair'd her credit'.¹⁵

Even Jane Parry, who had doggedly questioned and pursued her servant Gwen Jones, ultimately forcing her to go to see her child's body, finished her narrative on a note of pathos, suggesting some sympathy: 'shee the said Gwen Jones went strait to the place & took itt up & putt itt in her apron'.¹⁶ Attitudes to this offence, perhaps always mixed, were changing: the most detailed records, the most determined investigations, nearly all belong to the seventeenth century; and, moreover, the last conviction during the period 1660-1730 was in 1701. Nevertheless, the investigations and prosecutions continued throughout the period and beyond; and they revolved around the 'signs' to be read on the living bodies of young women and the dead ones of newborn infants.

'Pretending to doe his bisnesse': the body language of a thief

The bodily 'signs' that could help to generate suspicions of theft were quite different: essentially, what we would call 'body language' rather than marks to be read 'on' a body. Moreover, in contrast to infanticides, they did not rely on specialist knowledge. So, what circumstances might lead to intervention and investigation? Who was a 'suspicious' person? Modern criminologists offer some insights, discussing the 'stereotypical cues' that arouse suspicion.¹⁷ Some of those 'cues' relate to personal history, others to personal demeanour and attitude towards investigating officers. Other factors are 'situational': being observed in certain areas or with certain people, or 'incongruity' in terms of place and behaviour. Significant among the 'cues' that generate suspicion, then, are those

¹³ For attempts to help or hide a woman: NLW GS 4/29/2.54-55; 4/37/5.2-4

¹⁴ Examples of witnesses who claimed to have observed nothing unusual: NLW GS 4/33/6/26-7; 4/33/3.25-26; 4/29/2.59

¹⁵ NLW GS 4/41/6, examination of Robert ap Richard. Sometimes masters or mistresses had their own reasons for wishing to help conceal a servant's pregnancy, where the master or a male relative had fathered the child: see, eg, 4/29/2.54-60.

¹⁶ NLW GS 4/37/6.21-22. See Laura Gowing, 'Secret births and infanticide in seventeenth-century England', *Past and Present*, 156 (1997), for similar elements of sympathy and 'reunions' of mother and child.

¹⁷ M McConville et al, *The case for the prosecution* (London, 1991), 26.

that relate to bodily ‘demeanour’, physical activities, gestures and reactions. A word of caution is needed; they are infrequently recorded, fragments that can only be tentatively reconstructed. But it can be noted that they tend to be recorded in cases that lacked strong direct evidence, for example of stolen goods being in a suspect’s possession, and so had to be constructed from circumstantial evidence – details that would have otherwise been superfluous. Thus, these sparse references may well throw light on more general processes of observation and suspicion.

In August 1660, Elisabeth Jones of Allington was returning home after taking her husband’s breakfast to the field where he was working when she saw a man near her house, ‘whoe when he had spied [Elisabeth] went to ye dich side pretending to doe his bisnesse: and had cast the goods yt he had into the hedge’. ‘[M]isdowpting some thing might be a misse’, she hurried home and found the house had been broken into, and made an outcry so that the man was captured.¹⁸ Edward Jones of Mofoniog told a magistrate that he was near his brother’s house on 25 March 1727, where he could see inside Anne Williams, the maidservant, ‘upon a ladder which lead to a loft that had wheat in it ..., ye said Anne standing on ye ladder & thrusting her body & arms into ye said room & bustling somewhat which rais’d his suspicion’.¹⁹ William Packhill and Robert Ellis were in Wrexham on the day of the March fair when they noticed four women ‘standing & discourseing together in the street’ near a mercer’s shop. As they watched, three of the women went into the shop; as one of them bargained with the shopkeeper, another surreptitiously took some cloth from the window and made off with it.²⁰

During the night of 22 October 1675, malt was stolen from John Meredith’s malting kiln in Wrexham. On learning the news, John’s wife Mary first line of investigation was a visit to a local mill. While she was there Owen Hughes, a Wrexham tailor came in, and on seeing her ‘seemed surprised and afrighted’. This made Mary ask the miller to show her some of his ‘toll’ of the malt he had ground for Owen and subsequently resulted in a search of Owen’s house.²¹ In December 1671, Owen Hughes took lodgings for two nights at the widow Anne ferch Robert’s house in Ruthin. On the second night, she reported, she had heard a disturbance in the hall in the early hours of the morning, and she ‘presently’ made her daughter, Margaret Davies, get up ostensibly to begin work before the house filled with customers for market day. Shortly afterwards, Owen came downstairs and asked Margaret for a candle to find his shoes and stockings and ‘when he had found them he came backe againe to the hall trembling, and said that hee had beene gone long before if any in the

¹⁸ NLW GS 4/25/1.10

¹⁹ Denbighshire Record Office, Quarter Sessions files, QSD SR 75/59

²⁰ NLW GS 4/40/1, joint examination of William Packhill and Robert Ellis.

²¹ NLW GS 4/30.1.51

house had beene up'. He paid Margaret for the lodging and, following orders from her mother to give him some breakfast before he left, she went to a cupboard in the hall, and found 'the doore wrested into the cubbord'. Just over £14 in cash had been stolen from the cupboard.²² Anne and Margaret did not explicitly say that any of their actions were connected to the noise that Anne had heard in the early hours; but it does seem possible that they were being particularly vigilant, and Owen's 'trembling' confirmed as much as alerted their doubts.

'Strangers' and members of local communities alike could come under suspicion of theft, although there were perhaps differing emphases in the 'cues' for its generation for the two groups. By definition, all that was known about strangers was their immediate observed behaviour. In the case of local residents, such observations were more complex and were made in the light of existing knowledge about individuals – personal history, character and 'normal' demeanour, not to mention their income and hence appropriate standard of living, not least how they dressed themselves. Thus, Alice the wife of Henry Smith suspected her maidservant Katherine ferch Lewis of theft in the spring of 1676, after 'shee clothd herselfe, with severall new wearing cloths' that she bought at Wrexham fair, since she had entered the Smith household's service only a few months earlier 'without having of much money then'. It turned out that Katherine had taken some money left with the Smiths by a previous servant (ironically enough) for safe-keeping.²³

If travellers out and about too early in the morning could arouse suspicion, amongst local residents, sleeping during the day might also prompt closer scrutiny, presumably as being suggestive of dubious night-time activities. On the morning of 18 February 1670, Thomas Evans, the high constable of the hundred of Bromfield, paid a visit to the house of Humfrey Davies in Wrexham after being told 'that he was a nightwalker and slept in the day tyme' and that moreover one of his neighbours had 'accidentally' been at Humfrey's house that morning 'and had seene some pieces of mutton and skins in the house'. Humfrey was found asleep on his bed, fully dressed, and on being woken, was unable to give a reason 'for soe sleepeing'. He claimed that he had bought the skins in Wrexham; clearly dissatisfied, Thomas returned a few hours later, to find that Humfrey had made himself scarce.²⁴

²² NLW GS 4/28/3.75-77

²³ NLW GS 4/30/2.19. But note that she was still acquitted (indictment 4/30/2.82)

²⁴ NLW GS 4/28/1.64

‘He cried out for mercy’: rough justice

Attempting to hide or escape were actions that heightened suspicion, if they did not create it in the first place; they also were likely to lead to some violence in the course of an arrest. Humfrey Davies returned home some days later, and his neighbours seem to have gone to some lengths to ensure that he would not evade them this time: the petty constable was called out of his bed at about 1 am and at Humfrey’s house ‘mett foure of his neighbours with clubbs about the said house to secure him’. The neighbourhood also seems to have been mobilised to help. Humfrey managed to get out of his house, ‘a woman that was in the streete [this, remember, in the middle of the night], saw a man upon the field a good way distant from her’, and Humfrey was pursued and finally caught.

Pursuing an apparently unarmed suspect carrying clubs may have been an extreme reaction. Or perhaps not. John Roberts, a servant, had been set to watch his master’s barn overnight in March 1728, following suspected thefts of corn. When some one stealthily entered the barn, he waited until the intruder had filled a bag with corn, when: he ‘surprized him with a blow that reduced the prisoner to the ground upon which he cryed out for mercy’, and ‘when he had thus baffled the prisoner leaving him in blood’ he went to call the family.²⁵ I suspect that such extreme methods of arrest were of dubious legitimacy, more often employed than reported. Robert Parrat pursued a burglar from his family’s house in Wrexham; he found and seized John Jones, hiding behind a nearby wall. When John rather disingenuously asked what was the matter, Robert replied ominously: ‘you shall know what is the matter I will teach you to break houses’. But then, more neutrally, he merely went on to depose that his brother arrived and ‘assisted [him] in secureing’ John.²⁶

Even without the use of violence, just as with infanticide, the suspicion of theft justified close physical interventions. Suspects were chased, wrestled with, seized, sometimes tied up, frequently searched; and none of these coercive activities required the presence of an official representative of authority. Early one morning in September 1665, Roger Lewis ‘h[e]ard his wife crie out after one that went by his house, & had a packe upon his backe, which she suspected to be a theife’. He went in hot pursuit, caught the man and hauled him off to a magistrate.²⁷ When Thomas David was seized in an alehouse on suspicion of housebreaking and stealing money, not only his pockets were searched: money was found ‘in ye wa[i]st-band of his breeches’.²⁸ After attempting an escape, he

²⁵ NLW GS 4/44/2, examination of John Roberts

²⁶ NLW GS 4/42/7, examination of Robert Parrat junior

²⁷ NLW GS 4/26/5.20-21

²⁸ NLW GS 4/42/1

had been 'forct' to returned to the alehouse to be searched, and after the search he was 'prest' to confess, terms that could both be obscuring some rough handling; gentle it certainly was not.

Concluding thoughts

The 'bodily' history and the 'social' history of early modern crime and criminal justice have both tended to focus on the final stages of the process: the formal prosecution, the courtroom, the rituals of punishment. With this paper, I've focused on earlier stages of the process: the generation of suspicion and the co-operative actions that it authorised. I've suggested some ways in which people's bodies were interpreted as 'suspicious', permitting them to be interrogated and pressured to confess, pursued and physically searched, perhaps even violently beaten. And my emphasis has been on the surveillance and regulation of those bodies at the level of the local neighbourhood.

Sometimes past communities are viewed with nostalgia, as harmonious places where supposedly everyone 'watched out' for everyone else; conversely, some historians have presented images of paranoid, oppressive, peeping-and-prying villages and neighbourhoods. I don't think either image is very helpful. Undoubtedly, some people were more subject to surveillance than others in early modern communities: the transient and the unknown, the young and perhaps especially young single women, the poor. But if the 'cues' that generate suspicion are often stereotyped, they are also complex. Criminologists who have studied 'policing by the public' in modern contexts stress that 'watching' is only the starting point. 'People must also notice the event and define it as being an example of disorder. And then they must decide what to do about it and what to say about it to whom'.²⁹ Similar processes can be observed in early modern Denbighshire. I want to suggest that we need histories of 'policing before the police' that go beyond officials and institutions, to explore the dynamics of 'watching' (but also of 'ignoring') within local communities; and that it would be a history in which the languages of 'criminal bodies' would have a key role to play.

²⁹ J Shapland and J Vagg, *Policing by the public* (London, 1988), 66