

## RESTRICTING THE JUROR FRANCHISE IN 1920S ENGLAND AND WALES

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*This article argues that the juror franchise became more restrictive in the years immediately after the Sex Disqualification (Removal) Act 1919 had broadened the jury franchise so as to include some women. It argues that the subsequent restrictions on the jury franchise have not standardly been discussed in the literature on the twentieth century jury because of the lengths taken at the time to present these reforms as merely technical in nature. Only six months after the 1919 Act was passed, a dispute broke out at the Western assize circuit regarding the practice--apparently sanctioned in the Juries Act 1825--of towns which "possessed" their own assizes summoning jurors according to custom, rather than statute. In practice, this meant that the ten "assize boroughs" had not always observed the property qualifications when summoning their jurors. The judiciary eventually prevailed over the Home Office and a series of local officials, ending the assize boroughs' ability to ignore the property qualifications (qualifications which kept a disproportionate number of women off the jury). This reform brought its own problems, however, and brought into focus the expense involved in following the burdensome rules for identifying jurors as set out in the 1825 Act. The solution to this secondary problem--basing juror qualification on electoral registration--excluded from jury service conscientious objectors, foreigners, and women who satisfied the property qualification rules but lived elsewhere with a male relative.*

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In 1919, the Sex Disqualification (Removal) Act ended the ban on women serving on trial juries, and this fact significantly widened the jury franchise.<sup>1</sup> The legislation was, in part, an attempt by the Conservative-led government to win back some political momentum from the Labour opposition, which had styled itself “the women’s party” at the 1918 general election, and had successfully got its own Women’s Emancipation Bill through the House of Commons. It was also an attempt at watering down the proposals contained within the Labour Bill.<sup>2</sup> The Lord Chancellor, Lord Birkenhead, introducing the government Bill in the Lords, argued that if women were to enjoy “emoluments as solicitors or barristers, it is reasonable that they should discharge the obligations which are imposed upon men in respect to jury service”.<sup>3</sup> While he did not use this language, this appears to be a claim that jury service is a duty of citizenship, a duty flowing from the extended voting rights secured by the Representation of the People Act 1918. Two years later, objecting to the idea that there were certain types of trial which were too “revolting” for women jurors, Millicent Garrett Fawcett argued on behalf of the National Union of Societies for Equal Citizenship that such arguments missed the 1919 Act’s “simple and ... great principle--namely, that men and women have equal responsibilities and equal rights as citizens”.<sup>4</sup> Despite the fact that many working within the legal system were opposed to the introduction of women onto juries, the United Kingdom had--in principle at least--taken quite an unusual step in making jury service obligatory for all properly qualified women. In

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<sup>1</sup> The major exception to the earlier ban had been juries of matrons, as discussed in Thomas R. Forbes, “A Jury of Matrons” *Medical History* 32 (1988): 23-33; Gretchen Ritter, “Jury Service and Women’s Citizenship before and after the Nineteenth Amendment” *Law and History Review* 20 (2002): 479-515, 493-494; and James Oldham, *Trial by Jury: the seventh amendment and Anglo-American special juries* (New York: New York UP, 2006) 80-114. This article will not engage directly with the jury of matrons, which would require a separate article. I am currently working on a paper exploring the 1931 abolition of the jury of matrons.

<sup>2</sup> Anne Logan, “In Search of Equal Citizenship: the campaign for women magistrates in England and Wales, 1910-1939” *Women’s History Review* 16 (2007): 501-518, 502-503.

<sup>3</sup> Lord Birkenhead LC, HL Deb 22 Jul 1919, vol 35, col 893.

<sup>4</sup> Millicent Garrett Fawcett, “To the Editor of The Times” *The Times* (London: 1 Feb 1919) 10.

Ireland, for example, the 1919 Act was superseded in 1927 by provisions exempting all women unless they specifically asked to be registered as jurors;<sup>5</sup> and similar provisions accompanied the extension of the jury franchise to women in Queensland in 1923,<sup>6</sup> and in New Zealand in 1942.<sup>7</sup> On paper at least, the jury franchise in the UK was unusually broad, and seemed on its face to confirm the link between voting, citizenship, and jury service.

Nevertheless, the Sex Disqualification (Removal) Act 1919, while clearly significant in ending the blanket ban on women being lawyers, judges, magistrates and jurors, was criticised for not going far enough. Logan, in particular, has noted that the continuing existence of the property qualifications--i.e. the fact a juror had to occupy landed property of a certain value--kept most women off the jury well after 1919; and she has traced the decades of campaigning carried out by women's groups which ultimately culminated in the property qualifications' abolition in the 1970s.<sup>8</sup> Recent empirical analyses of the immediate impact of the 1919 Act have confirmed the general impression that women still had a limited presence on the jury in the interwar period. While juries at the Old Bailey gradually acquired more female members during the first half of the 1920s,<sup>9</sup> provincial assize juries were losing theirs, particularly in the second half of the decade.<sup>10</sup> As a practical matter, then, the consequences for citizenship of allowing women onto juries were regionally variable, and they frequently

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<sup>5</sup> Conor Hanly, "The 1916 Proclamation and Jury Trial in the Irish Free State" *Dublin University Law Journal* 39 (2016) 373-403, 395-399.

<sup>6</sup> Sonia Walker, "Battle-Axes and Sticky Beaks: women and jury service in Western Australia 1898-1957" *Murdoch University Electronic Journal of Law* 11 (2004), [17].

<sup>7</sup> Neil Cameron, Susan Potter and Warren Young, "The New Zealand Jury" *Law and Contemporary Problems* 62 (1999): 103-139, 105.

<sup>8</sup> Anne Logan, "'Building a New and Better Order'? Women and jury service in England and Wales" *Women's History Review* 22 (2013) 701-716.

<sup>9</sup> Shamena Anwar, Patrick Bayer and Randi Hjalmarsson, "A Jury of Her Peers: the impact of the first female jurors on criminal convictions" *University of Gothenburg Working Papers in Economics* (2016).

<sup>10</sup> Kevin Crosby, "Keeping Women off the Jury in 1920s England and Wales" *Legal Studies* 37 (2017) 695-717, 704-707.

diminished with time. This article seeks to bring into focus two reforms which further restricted the jury franchise during this period, taking restrictions on women's status as potential jurors beyond the biases already inherent in a system which was based on property qualifications, and which gave lawyers and judges a relatively free hand in determining the composition of each individual jury.<sup>11</sup>

Both of the reforms explored in this paper were carefully presented at the time as mere administrative matters; but it will be the central contention here that these reforms actually imposed significant new restrictions on the jury franchise. The first post-1919 reform abolished the discretion previously enjoyed by officials in ten towns--the "assize boroughs" of Bristol, Carmarthen, Exeter, Gloucester, Leicester, Lincoln, Newcastle upon Tyne, Nottingham, Norwich and Worcester--to ignore the property qualifications for jury service when summoning their jurors. As these towns had never before been required to put together--and publish--lists of those people who were qualified for jury service, this added a considerable expense for these local authorities, as they had to both compile new information, and find the paper on which to print this information, at a time of severe paper shortages.<sup>12</sup> In order to accommodate these changes, these towns were permitted to continue their practice of drawing on their electoral registers (rather than producing completely new lists), provided they also now observed the property qualifications. And before long, the idea that jury selection would be based on electoral registers rather than on discrete lists of jurors was extended to the rest of the country. This nationwide use of the electoral register as the basis of jury selection (mandated

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<sup>11</sup> Logan, "New and Better Order", 704-705.

<sup>12</sup> On the problems caused for central government by the paper shortage, see Select Committee on Publications and Debates Reports, *Report; together with the proceedings of the Committee* (HC 197-18, 183). The Local Government Board had also written to local authorities, requesting that they send non-essential records to be pulped: "The Paper Shortage: public record for repulping" *Manchester Guardian* (Manchester: 6 Sep 1918) 8.

by legislation passed in 1922) was the second significant reform to the jury franchise in the years immediately after 1919.

This article seeks to bring these reforms into focus, tracing their context, their effects, and the ways they were viewed by civil servants based both in local and in national government. It also aims to show how influential judicial attitudes to the administration of justice could be in identifying problems and framing reforms, even in the face of opposition to any such reforms on the part of government departments. Where the judges were convinced that all the juries in ten specific towns had been illegally summoned for the past century, for example, it was ultimately irrelevant that the Home Office disagreed with the judges' analysis. Finally, in these reforms we can see an abandonment of the idea that the administration of justice is a purely local matter. The discretion which local officials had previously enjoyed was not simply old-fashioned, but rather it was actively illegal. The claim that the assizes, which heard the most serious trials, were a "possession" of the local community was dismissed as fundamentally misguided: assizes belonged to the Crown. In tracing through these issues, it will be argued that these reforms constitute an important, if relatively unknown, chapter in the twentieth century history of the jury system of England and Wales; a chapter which speaks to the changing nature of the administration of justice more generally.

### 1. Jury Service and Citizenship

Writing in his classic essay on the historical development of citizenship in England, the sociologist TH Marshall suggested in the 1950s that citizenship could best be understood as having three components. First, civil citizenship, consisting of equal treatment before the law, the right to buy property and so on. Second, political citizenship, consisting of various rights of political participation. Third, social citizenship, consisting of economic security and an

ability to participate in a community's social heritage.<sup>13</sup> Marshall argued that it was “possible, without doing too much violence to historical accuracy, to assign the formative period in the life of each to a different period--civil rights to the eighteenth, political to the nineteenth, and social to the twentieth”.<sup>14</sup>

Given that Marshall blandly noted in his discussion of “civil” citizenship that “the status of women ... was in some important respects peculiar”,<sup>15</sup> it should not be surprising to find that his chronology does not apply very well beyond his central concern with working-class men. With jury trial it fails even here, however, as the property qualifications were not abolished until the 1970s, denying an important part of his “political citizenship” to anyone who neither owned nor rented landed property of a sufficient value. Nonetheless, his division of citizenship into civil, political, and social aspects can be made to do useful work in the context of jury trial. Organised women's groups argued, for instance, that one reason why more women had to be afforded the political right of jury service was that it would give women and children a more sympathetic jury. This would increase their chances both of equal protection of the laws (civil citizenship) and of a hearing by a tribunal more likely to be sensitive to their material circumstances (social citizenship).<sup>16</sup> But the story of women's citizenship, and its consequences for changes to the jury franchise, cannot be properly understood without setting it within the wider legislative context of the Representation of the People Acts 1918 and 1928, and the Sex Disqualification (Removal) Act 1919. And if we fail to understand this wider context, it will be difficult to properly appreciate what was at stake in discussions about jury service and its role in developing ideas of citizenship at this time.

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<sup>13</sup> T.H. Marshall, “Citizenship and Social Class”, in T.H. Marshall, *Citizenship and Social Class* (Cambridge: CUP, 1950), 10-11.

<sup>14</sup> Marshall, “Citizenship”, 14.

<sup>15</sup> Marshall, “Citizenship”, 18.

<sup>16</sup> See generally Logan, “New and Better Order”.

Before 1918, some women had enjoyed a range of local franchises. In 1869, rate-paying women secured the right to vote in borough elections, although three years later it was held that this change did not apply to married women.<sup>17</sup> From 1870, newly-created systems of local government such as school boards started to include some women not only in the class of people who could vote, but also counted them among the people who could stand for election; and three women were immediately elected as members of London's first school board.<sup>18</sup> By the end of the First World War, almost 2,500 women held elected office in England and Wales, as members of school boards, poor law boards, rural and urban district councils, and town and county councils.<sup>19</sup> As Hollis notes in her book on women in local government before 1918, "in my own county of Norfolk women were a stronger presence in local government in 1900 than in 1975".<sup>20</sup> By the time the parliamentary franchise was extended to women in 1918 and 1928, and by the time some women were counted among those people eligible for jury service in 1919, there was already a significant tradition of women being very active in local government.

This significant presence in local government was widely understood to raise questions about women's political rights more generally. For Lydia Becker, the founder of the *Women's Suffrage Journal*, women had to seize the opportunity to secure elected office at a local level, in order to win the argument that women could be trusted with the parliamentary vote.<sup>21</sup> And by the time Parliament came to debate the Bill which would later become the Representation of the People Act 1884, MPs were sharply divided on the question of whether women's

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<sup>17</sup> Patricia Hollis, *Ladies Elect: women in English local government 1865-1914* (Oxford: Clarendon, 1987) 31-33.

<sup>18</sup> Hollis, *Ladies Elect*, 72.

<sup>19</sup> Hollis, *Ladies Elect*, "Appendix B: Women Elected Members (England and Wales) 1870-1920".

<sup>20</sup> Hollis, *Ladies Elect*, vii.

<sup>21</sup> Hollis, *Ladies Elect*, 30. On citizenship and political activity before the 1918 Act, see generally Francesca Moore, "'A Band of Public-Spirited Women': middle-class female philanthropy and citizenship in Bolton, Lancashire before 1918" *Transactions of the Institute of British Geographers* 41 (2016) 149-162.

experience in local government could be taken as proof of their suitability for the parliamentary franchise. While some denied “that we can argue from the municipality to the State”,<sup>22</sup> others argued that “[t]o vote for municipal councillors, or for members of a school board, is a function of citizenship. To vote for a Member of Parliament is also a function of citizenship, though it may be a function of citizenship of a higher degree.”<sup>23</sup> This is not to suggest that the Representation of the People Acts of 1918 and 1928 were passed solely or even primarily in response to the experience of women in local government, but it does suggest that these kinds of formal political activities, and their implications for conceptions of active citizenship, were an important part of their wider social context. As Moore has noted, work carried out as agents of local government and of large charities “could be used as a ‘springboard’ for transcending the confines of the private sphere and could form the basis of claims for female suffrage and citizenship rights”.<sup>24</sup>

In 1918, the property qualifications for local government elections were abolished for men and for women,<sup>25</sup> and they were also abolished for the parliamentary franchise for men.<sup>26</sup> Married women who were living with their husbands had to have reached the age of thirty before they could vote in local elections, but single women could vote if they had reached the age of twenty-one.<sup>27</sup> In order to vote in parliamentary elections, a woman had to have reached the age of thirty, had to be on the electoral register as a local government elector, and had to occupy property worth at least five pounds per annum.<sup>28</sup> For men, the historic link between various electoral franchises and the occupancy of landed property had been cut, although for

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<sup>22</sup> George Goschen MP, HC Deb 12 Jun 1884, vol 289, cc92-207, col 188.

<sup>23</sup> Baron Henry de Worms MP, HC Deb 12 Jun 1884, vol 289, cc92-207, col 130.

<sup>24</sup> Moore, “Public-Spirited Women”, 152.

<sup>25</sup> 7 & 8 Geo V, c64, s3, s4(3).

<sup>26</sup> 7 & 8 Geo V, c64, s1.

<sup>27</sup> 7 & 8 Geo V, c64, s4(3).

<sup>28</sup> 7 & 8 Geo V, c64, s4(1).

women it was retained in the context of the parliamentary vote. Ten years later, in 1928, the law was amended so as to make men and women eligible for the local government and parliamentary franchises on the same terms as each other, including the final abolition of the property qualifications. Now, a person simply had to be aged twenty-one, not be subject to any specific disqualifications, and occupy any property within the relevant area.<sup>29</sup> In 1919, however, the law which ended the ban on women serving as jurors had done nothing to alter the property qualifications for jury service. Jurors still had to occupy land (and be registered as the occupier by, for example, being the ratepayer for that property) with at least twice the value of that which was still required between 1918 and 1928 before women over thirty could vote in general elections. In fact, while the property qualification for voting was eventually abolished in 1928, it was retained in the context of jury service until the 1970s. This does not mean that the rules concerning juror qualification did not change after 1919, however, and it will be a key contention of this article that, unlike the right to vote, the rules concerning jury service actually got more restrictive.

This article seeks to draw out the significance of two key legislative reforms to the jury franchise in the years immediately after 1919. One of the key aims of these reforms was to prevent the new gendered component of jury service from becoming a contentious issue in local politics. As historians exploring the development of women's citizenship in this period have noted, however, local political activity was very important for the practical development of women's citizenship;<sup>30</sup> and this local component had important consequences for the ways

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<sup>29</sup> 18 & 19 Geo V, c12, ss1-2.

<sup>30</sup> See, e.g., Caitriona Beaumont, "Citizens not Feminists: the boundary negotiated between citizenship and feminism by mainstream women's organisations in England, 1928-39" *Women's History Review* 9 (2000) 411-429; Helen McCarthy, "Parties, Voluntary Associations, and Democratic Politics in Interwar Britain" *The Historical Journal* 50 (2007) 891-912; and Esther Breitenbach and Valerie Wright, "Women as Active Citizens: Glasgow and Edinburgh c1918-1939" *Women's History Review* 23 (2014) 401-420.

in which people thought about the evolving jury franchise. In one fictional account of a “mixed” jury trial published in a national newspaper in 1926, for example, a woman was able to win over her fellow jurors precisely because of her experience with local government work. This juror was able to do this because she was “well known in that world, at once so small and so large which actively concerns itself with various forms of social service and local government”.<sup>31</sup>

It should be recalled at this stage that local contestation around the female jury franchise was particularly possible in ten towns which were not required to follow the ordinary rules (most significantly, of observing the property qualifications) when summoning their jurors. This is important because it meant there was a real possibility that this kind of experience with local political activity could have fed in to the various ways in which the altered jury franchise actually worked on the ground. These discretions were quickly abolished after 1919; but as we shall see the assize boroughs really did seem to operate in different ways, ways which might have led to juror summoning practices being contested at a local level on expressly gendered lines. This was something the senior judiciary were very keen to avoid.

This explicitly political, and often local, dimension of active citizenship was also reflected in discussions about women’s place on the jury more generally. When Margery Corbett Ashby, the former secretary of the National Union of Women’s Suffrage Societies,<sup>32</sup> ran for parliament in the 1918 general election, one of the things she had campaigned for was “women’s complete citizenship”, which for her meant among other things seeing “women as magistrates and on juries and in the police”.<sup>33</sup> And even after the jury franchise had been

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<sup>31</sup> M Belloc Lowndes, *What Really Happened*, *Sunday Post* (Glasgow) 10 October 1926, 8.

<sup>32</sup> “Ashby, Dame Margery Irene Corbett (1882-1981)” *Oxford Dictionary of National Biography* (23 Sep 2004).

<sup>33</sup> Mrs Corbett Ashby, “Why I am a Liberal Candidate: thoughtful points for men and women voters” *Sheffield Independent* (Sheffield: 23 Nov 1918) 4.

extended to some women in 1919, the jury was still conceived of by some people as part of an ongoing project of a developing citizenry. In February 1921, for example, the *Worthing Herald* reported the views of ten senior women politicians within the town. Most of them drew an explicit link between voting, jury service, and citizenship, with one councillor arguing that “women, having obtained the vote, should serve on juries and shoulder their responsibilities as citizens”.<sup>34</sup> Another councillor went further than simply seeing jury service as a duty which must be accepted by people who had a right as citizens to vote in parliamentary elections. More than this, she argued, “[i]f women are to take their rightful place in the administration of justice they must serve an apprenticeship on the juries”.<sup>35</sup> As Tocqueville had argued almost a century earlier, the experience of jury service was an important part of the creation of an active citizenry.<sup>36</sup> Now it was being argued that if women were to be citizens they must seize the opportunity which the 1919 Act gave them to participate in the governance of their local communities, and to learn from the experiences this opportunity gave them.

Concepts of citizenship also come into the analysis when we turn to the decision, taken in 1922, to use electoral registers as the basis of jury service. Taken on its face, this might be seen as an expression of the fact that jurors and electors are overlapping categories, and that the thing which unites them is a concern with recognising the interests of a society’s citizens. In fact, we shall see that the decision was taken for pragmatic reasons, and was largely driven by a desire to make life easier for local administrators. The decision nonetheless had serious consequences for the types of people who could act as jurors, restricting the franchise to those who might be regarded as citizens. In 1918, the parliamentary franchise had been temporarily

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<sup>34</sup> “Solid for Women Jurors: opinions of the leading ladies of the town” *Worthing Herald* (Worthing: 26 Feb 1921) 1.

<sup>35</sup> *Ibid.*

<sup>36</sup> A de Tocqueville, “Democracy in America” in *Democracy in America and Two Essays on America*, GE Bevan (trans), I Kramnick (ed) (London: Penguin, 2003), 320-321.

extended to all servicemen aged at least nineteen.<sup>37</sup> As one MP put it, expressing his support for this principle: “Having ... invaded the ordinary civil rights of the population [through conscription], I think the least we can do is to say, ‘You happen to have been of an age which made you liable to the most exceptional service that has ever been known in this country, and that being so and we having treated you as a citizen on whom the country has had to rely not only for its honour but for its very existence, we intend to give you the vote.’”<sup>38</sup> The Act also temporarily denied the vote to anybody who had registered as a conscientious objector.<sup>39</sup> As one supporter of this provision put it in the parliamentary debates: “I would refuse the vote to every person, whether he has honestly or hypocritically claimed to be excluded as a conscientious objector from the responsibilities of citizenship, and I would give the vote to any such who have purged that claim by fighting for their country in hour of peril.”<sup>40</sup> As we shall see, the idea of using the electoral register as the basis of jury selection--motivated though it was by predominantly administrative concerns--imported into the jury franchise exactly these kinds of conclusions about who is and who is not a citizen: that citizenship is derived from service.

The idea that women were now citizens, and that they must therefore serve as jurors, continued to be contested after 1919, with legislation unsuccessfully introduced in 1921 aiming at making women’s jury service optional (as it would soon be in other parts of the world which ended the ban on women jurors).<sup>41</sup> Organised women’s groups, meanwhile, noted that women

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<sup>37</sup> 7 & 8 Geo V, c 64, s 5.

<sup>38</sup> Ronald McNeill MP, HC Deb 25 Jun 1917, vol 95, col 74. It has been suggested elsewhere that citizenship generally was coming to be understood at this time to be closely allied to ideas of service: Nicoletta F Gullace, “Christabel Pankhurst and the Smethwick Election: right-wing feminism, the Great War and the ideology of consumption” *Women’s History Review* 23 (2014) 330-346; and Moore, “Public-Spirited Women”, 153.

<sup>39</sup> 7 & 8 Geo V, c 64, s 9(2).

<sup>40</sup> Harold Smith MP, HC Deb 26 Jun 1917, vol 95, col 330.

<sup>41</sup> Logan, “New and Better Order”, 707-708. It is this proposal which Millicent Garrett Fawcett and the Worthing politicians were responding to in the passages quoted from above.

were being excluded from juries in cases deemed unsuitable for them to hear;<sup>42</sup> and a recent analysis of contemporaneous court records has found that women were systematically excluded from certain kinds of sexual offence trials in the provincial assizes.<sup>43</sup> Moreover, jury service was still primarily based on the occupancy of landed property, at a time when most women did not own their own homes (and were frequently not registered as the primary occupiers for the purposes of local taxation--an alternative means by which a person could satisfy the property qualifications). This meant that despite the failure of the 1921 Bill far fewer women than men were actually qualified to serve. For fifty years, various women's organisations campaigned for the abolition of these rules, to be replaced by a set of qualifications which would establish a genuinely equal jury franchise.<sup>44</sup>

People concerned with the mid-twentieth century jury, both at the time and in subsequent historical analyses, have understandably followed these political debates, asking how and why various groups tried--and generally failed--to broaden the jury franchise by undermining the legitimacy both of peremptory challenges and of the property qualifications for jury service. This article seeks to uncover an important set of reforms which were made to the jury franchise in the years immediately following the 1919 Act, reforms which narrowed the franchise but did so in ways which were easily missed as technical amendments, rather than as expressions of important points of principle. In tracing through these reforms, this article necessarily takes a more "internal" approach to legal history than much of the work which has previously been done on the twentieth century English jury. The fact that central government was keen to present these reforms as being as non-contentious as possible means there is little

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<sup>42</sup> Anne Logan, *Feminism and Criminal Justice: a historical perspective* (Basingstoke: Palgrave Macmillan, 2008), 86-95.

<sup>43</sup> See generally Crosby, "Keeping Women off the Jury". Things seem to have been a little different at the Old Bailey, however: Anwar, Bayer and Hjalmarsson, "Jury of Her Peers".

<sup>44</sup> See generally Logan, "New and Better Order".

which can be said about the ways in which they were received by political groups, newspapers, and so on. But these reforms entrenched the property qualifications at a time when they were being discarded in the context of local and parliamentary elections, and excluded various classes of people--conscientious objectors, foreigners, and certain women--from jury service. So it is important even here, as we explore what must initially seem to be a fairly technical set of measures, to note that their technical nature was deliberately constructed at the time in order to mask their important consequences for the growing tradition of a concept of "citizenship" in the UK.

## 2. The Pre-War Legislative Framework

In order to understand the reforms which took place after 1919, and their consequences for the connection between jury service and citizenship, it will be important to survey the juror qualification rules which were in force before the 1919-1922 reforms. As we shall see, the nineteenth-century legal framework concerning juror qualification and juror summoning left a large amount of discretion in the hands of local administrators. This will hardly be surprising, however, when it is borne in mind that tensions between local autonomy and central authority were at the heart of many developments in the criminal justice system at this time.<sup>45</sup> One of the ways in which this tension manifested itself was in the rules about quarter sessions and assizes (the two local jurisdictions which involved jury trial). These rules exempted various towns from the property qualifications, and the government had had this brought to its attention on multiple occasions. It is important that this fact is kept in view when we come to consider, later

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<sup>45</sup> Howlin has noted that many of the centralising institutions--notably public prosecutors and centralised constabularies--appeared in Ireland much earlier than in England: Niamh Howlin, *Juries in Ireland: laypersons and law in the long nineteenth century* (Dublin: Four Courts Press, 2017) 7.

in this paper, the fact that these local discretions only came to be challenged once the jury franchise had been broadened so as to include some women.

In 1824, the Home Secretary Robert Peel<sup>46</sup> introduced legislation designed to rationalise the various laws which then existed concerning jury service. But while he explained to the Commons that the “chief amendment” to the existing laws would be “an extension of the qualification of jurors”,<sup>47</sup> the basic qualifications were actually very similar to those established under late-seventeenth and early-eighteenth century legislation.<sup>48</sup> As Peel’s biographer has noted, the Juries Act 1825 seems to have been primarily intended as a way of demonstrating the possibility and desirability of codifying the criminal law more generally.<sup>49</sup> The unsatisfactory state of the criminal law before the various nineteenth century reforms not only made it difficult to understand; it also encouraged prosecutors, judges and jurors to disapply the law<sup>50</sup> and therefore, according to Blackstone at least, it brought the legal system as a whole into disrepute.<sup>51</sup> If Peel’s Juries Bill was going to demonstrate that these were not intractable problems, it would need to focus on producing clarity, not change. And as we shall see below,

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<sup>46</sup> See generally John Prest, “Peel, Sir Robert (1750-1830)”, in *Oxford Dictionary of National Biography: online edition* (Oxford: OUP, 2009).

<sup>47</sup> Robert Peel MP, HC Deb 19 Feb 1824, vol 10, col 248. For the pre-1825 law of juror qualifications generally, see James C. Oldham, “The Origins of the Special Jury” *University of Chicago Law Review* 50 (1983) 137-221, 214-221.

<sup>48</sup> 4 & 5 W & M, c 24, s 15 (£10 annual value in freehold, copyhold or ancient demesne); 3 Geo II, c 25, s 18 (£20 annual value for tenants on a long lease). Douglas Hay, “The Class Composition of the Palladium of Liberty: trial jurors in the eighteenth century”, in J.S. Cockburn and Thomas A. Green, *Twelve Good Men and True: the criminal trial jury in England, 1200-1800* (Princeton: Princeton UP, 1988), 311-313.

<sup>49</sup> Norman Gash, *Mr Secretary Peel: the life of Sir Robert Peel to 1830* (London: Longmans, 1961), 334-335.

<sup>50</sup> See generally Peter King, *Crime, Justice and Discretion in England 1740-1820* (Oxford: OUP, 2000); and Thomas Andrew Green, *Verdict According to Conscience: perspectives on the English criminal trial jury, 1200-1800* (Chicago: University of Chicago Press, 1985), 267-317.

<sup>51</sup> See generally Lindsay Farmer, “Reconstructing the English Codification Debate: the Criminal Law Commissioners, 1833-45” *Law and History Review* 18 (2000): 397-426, 405-406.

the caution with which the 1825 Act handled local, customary rules for the summoning of jurors left open a series of problems, problems which would not be resolved until almost a century later.

In order to be liable for jury service in England, the Juries Act 1825 provided that a person had to be a man aged between twenty-one and sixty; and he had to either own freehold worth £10 per year, own leasehold worth £20 per year (on at least a twenty-one-year lease), be assessed to the poor rate or inhabited house duty to a value of £20 (£30 in Middlesex), or occupy a house with at least fifteen windows.<sup>52</sup> In order to be liable in Wales, a man had to be “qualified to the Extent of Three fifths of any of the foregoing Qualifications”;<sup>53</sup> although the distinction between English and Welsh qualification rules was later abolished by the Juries Act 1870.<sup>54</sup> The 1825 Act also set out in detail the procedures to be followed by local authorities when summoning their jurors, including the form to be taken by the lists of people qualified to serve in a particular area;<sup>55</sup> and it also set out the ways these lists must be circulated.<sup>56</sup>

While the Juries Act 1825 provided a unified national system for the compiling of juror lists, there was also a significant exception for borough courts (as opposed to courts with jurisdiction over the remainder of each county). Section 50 provided that

the Qualification hereinbefore required for Jurors, and the Regulations for procuring Lists of Persons liable to serve on Juries, shall not extend to the Jurors or Juries in any Liberties, Franchises, Cities, Boroughs or Towns Corporate not being Counties, or in any Cities, Boroughs or Towns being Counties of themselves, which shall respectively possess any Jurisdiction, civil or criminal; but that in all such Places, the Sheriffs,

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<sup>52</sup> 6 Geo IV c 50, s 1.

<sup>53</sup> 6 Geo IV c 50, s 1.

<sup>54</sup> 33 & 34 Vict, c 77, s 7.

<sup>55</sup> 6 Geo IV c 50, s 8. See also 6 Geo IV c 50, sch 1. For the creation of the electors' lists, see 2 & 3 Will IV, c 45, s 54.

<sup>56</sup> 6 Geo IV c 50, s 9.

Bailiffs or other Ministers having the Return of Juries, shall prepare their Panels in the manner heretofore accustomed...<sup>57</sup>

It is difficult to know what the precise legislative intent was behind this slightly enigmatic provision, but it was clearly meant to preserve some degree of autonomy for certain communities; something which fits with the jealous defence of local autonomy which others have noted as a feature of local government at this time.<sup>58</sup> This, as we shall see below, is certainly what many local authorities took section fifty to mean until it was repealed in the early 1920s, amidst a judicial panic about these exceptions to the general jury law.

Academic work exploring the selection of jurors before the Juries Act 1825 overhauled the system has noted the degree of freedom local officials had to act in idiosyncratic ways, such as excluding all butchers from jury service,<sup>59</sup> or excusing those who were wealthy enough to pay a bribe.<sup>60</sup> In nineteenth-century Ireland, there is evidence of jurors seeking to be excused owing to bad roads, the inconvenience of serving at market time, or even--without further explanation--because the would-be juror was an engineer.<sup>61</sup> As late as the early twentieth century, there is evidence in England of local officials avoiding empanelling farmers at harvest time, and avoiding empanelling “peripatetic ice cream vendors” in the summer;<sup>62</sup> and it was believed that some boroughs refused to empanel working men under any circumstances.<sup>63</sup> The 1825 Act, seeking to improve perceptions at least of how juries were put together, had

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<sup>57</sup> 6 Geo IV c 50, s 50 (emphasis added).

<sup>58</sup> See, e.g., David Philips, “A ‘Weak’ State? The English state, the magistracy and the reform of policing in the 1830s” *English Historical Review* 119 (2004) 873-891.

<sup>59</sup> P.J.R. King, “‘Illiterate Plebeians, Easily Misled’: jury composition, experience, and behaviour in Essex, 1735-1815”, in Cockburn and Green, *Twelve Good Men and True*, 259.

<sup>60</sup> Hay, “Class Composition”, 319.

<sup>61</sup> Howlin, *Juries in Ireland*, 109.

<sup>62</sup> “East Riding Quarter Sessions: chairman’s criticism of the new Jury Act. Mediæval slave driving” *Hull Daily Mail* (Hull: 3 Jan 1923) 6.

<sup>63</sup> Letter from J St L Leslie (Clerk of Assize to the Western Circuit), 5 Jun 1920 (National Archives: HO 45/11071/383085/30) para 18.

transferred responsibility for identifying persons qualified for jury service from lower status parish constables to higher status overseers of the poor;<sup>64</sup> but overseers were still a part of local rather than central government. The sense that central government had intentionally left some of these local discretions alone is further confirmed by the fact that sheriffs in Ireland had lost their discretion regarding who they should summon as early as 1871, while their English counterparts were not similarly restricted.<sup>65</sup> What all this emphasises is that jury selection was often regarded as a local matter, and not something to be directly managed by central government.

While the 1825 Act sought to rationalise these divergent local practices, placing them under the supervision of regular agents of local government (overseers) rather than slightly old-fashioned volunteers (constables), it also left certain local jurisdictions to carry on with their traditional autonomy. Various attempts to reform the criminal justice system in the nineteenth century--stipendiary magistrates, professional police, public prosecutors, and so on--had been met with objections by those who preferred a localised to a centralised system;<sup>66</sup> and so it should not be surprising to find late Georgian reforms to the jury system leaving some localised structures in place. What this meant in practice was that the property qualifications did not

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<sup>64</sup> Hay, "Class Composition", 322-323. Prest observes that, compared to the statutory bodies created in the early nineteenth century, which reported directly to central agencies, overseers could be regarded as "a byword for ignorance and in adequacy": John Prest, *Liberty and Locality: Parliament, permissive legislation, and ratepayers' democracies in the nineteenth century* (Oxford: Clarendon, 1990), 3. Compared to the parish constables they were replacing, however, the overseers could be considered an upgrade: David Eastwood, *Governing Rural England: tradition and transformation in local government 1780-1840* (Oxford: Clarendon, 1994), 226-229. When in the 1920s the central government proposed taking responsibility for juror lists away from the overseers, the overseers' representatives attempted to establish their professional bona fides by sending the Home Office a copy of one of their entrance exams: The Association of Rate Collectors and Assistant Overseers (Incorporated), "Questions set for the Direct Final Examination in June 1921" (HO 45/11076/406592/32a)

<sup>65</sup> Howlin, *Juries in Ireland*, 12.

<sup>66</sup> Conor Hanly, "The Criminal Jury in Victorian England" (PhD thesis: Yale University, 2013), 22-23.

have to be followed in certain boroughs (something which will be explored in more detail below), and this left undisturbed the various local traditions which existed in these towns regarding the composition of their jury panels. Little is known, however, about juror summoning practices under the 1825 Act, and how much they differed in practice from one place to another.

Ireland has found that Carmarthenshire's county juries in the mid-nineteenth century overwhelmingly consisted of farmers; and Eastwood has also found that fifty-four per cent of jurors summoned at Buckinghamshire in 1826 were farmers.<sup>67</sup> This certainly makes it look like there was a degree of consistency in how local officials discharged their duties, but it does not tell us very much about how this consistency was arrived at. Were Ireland and Eastwood's findings simply the natural product of local demographics, or were conscious decisions taken about the types of people who should serve? As we shall see below, local officials based in towns certainly thought they were free to choose the types of jurors which they considered most appropriate, well into the twentieth century.

One common complaint against the jury in Victorian England was that jurors were often lacking in "quality"; a complaint which probably reflects the tensions in Victorian England regarding citizenship and local government. As Beaven and Griffiths have shown, during the 1850s and 1860s there was widespread optimism about the active citizenship which could be fostered by getting the whole community to engage in matters of local government. But in the final decades of the nineteenth century this optimism was replaced by a concern that "too many urban inhabitants were unable to identify with notions of citizenship due to endemic poverty".<sup>68</sup>

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<sup>67</sup> Richard W. Ireland, "Putting Oneself on Whose Country? Carmarthenshire juries in the mid-nineteenth century", in Thomas Glyn Watkin, *Legal Wales: its past, its future* (Cardiff: Welsh Legal History Society, 2001), 69 n 19. Eastwood, *Governing Rural England*, 215.

<sup>68</sup> Brad Beaven and John Griffiths, "Creating the Exemplary Citizen: the changing notion of citizenship in Britain 1870-1939" *Contemporary British History* 22 (2008) 203-225, 208.

In 1870, this generalised fear was reflected in a Bill which would have more than doubled the value of the landed property required for jury qualification.<sup>69</sup> As the relevant select committee explained, the new rules were meant to “ensure the selection of educated and intelligent men”.<sup>70</sup> This proposal was rejected at the committee stage in the Commons, and in the course of drafting their report the committee interviewed various local officials who were responsible for summoning jurors. The testimony they collected gives us a good idea of how the provisions of the 1825 Act were actually working in practice, particularly in towns.

One of the Committee’s interviewees was Wace Lockett Mendham, the Norwich Town Clerk. As Norwich had its own borough assizes, Mendham was able to explain to the committee how the exemption for the assize boroughs under the 1825 Act actually worked in practice. He estimated that Norwich had a population of approximately 50,000, which translated into 8,000 or 9,000 named on the burgess rolls (i.e. people registered to vote). As the law stood, all of these burgesses would be eligible for jury service, without reference to any further qualifications (subject to the discretion of local officials regarding which of these people should actually be summoned). But if the proposed new qualification of £50 of rateable value was applied to Norwich it would be unlikely that “you would have more than 200 or 300 left”.<sup>71</sup> Nonetheless, the Norwich Clerk thought the general property qualifications (£10 of freehold, £20 of leasehold, or occupation of a house with a rateable value of £20) should be applied to the assize boroughs. He favoured this option in order to exclude unsuitable people, as he felt that his 9,000 or so burgesses (a little under the top twenty per cent of the town’s population) left him with “a class of jurors perfectly incompetent, and scarcely above paupers”.<sup>72</sup>

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<sup>69</sup> Viscount Enfield, HC Deb 6 Apr 1870, vol 200, cc 1414-1415.

<sup>70</sup> *Report from the Select Committee on Special and Common Jurors* (7 Jul 1868, paper 401), v.

<sup>71</sup> *Report from the Select Committee on the Juries Bill; together with the proceedings of the committee, minutes of evidence, and appendix* (1870), 26.

<sup>72</sup> *Ibid*, 25.

Mendham had also written to officials at twenty-nine other boroughs, enquiring how they summoned their jurors. The Committee's report records the practice of the vast majority of these towns as either "arbitrary" or "discretionary", with Boston for example simply reporting "no rule". Of the twenty-nine boroughs that Mendham had written to, only four of the other nine assize boroughs (i.e. boroughs with their own quarter sessions and their own assizes) were included. Bristol declined to respond; Carmarthen's practice was described as arbitrary; at Lincoln the burgess list was consulted, together with local business directories (which would have indicated the social standing of potential jurors); and Nottingham reported using the same method, adding that the local official selected jurors "as he best can".<sup>73</sup> Half a century before the assize boroughs had their discretion abolished, Parliament had notice of how varied summoning officials' practices could be. It is therefore not plausible to suppose that this abolition (in 1920) had nothing to do with the arrival of women into the jury box, women of course being a class of people whose numbers could have been greatly increased by the absence of a mandatory property qualification.

In 1911, Lord Mersey was asked to chair a departmental committee on the law and practice of juries. The Mersey Report, published in 1913,<sup>74</sup> found the situation to be similar to that reported to the Commons committee forty years earlier. The Report noted that, despite the 1825 Act and subsequent legislation, "there remain several matters in connection with the summoning and service of jurors which have never been the subject of formal legislation. Where the Acts of Parliament are silent, it will be found that in most cases procedure is still regulated by custom or practice only."<sup>75</sup> Local custom, therefore, remained a central part of the

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<sup>73</sup> Ibid, 49-50.

<sup>74</sup> Lord Mersey (Chair), *Report of the Departmental Committee Appointed to Inquire into and Report upon the Law and Practice with Regard to the Constitution, Qualifications, Selection, Summoning, &c. of Juries*, vol 1 (Cd 6817, 1913).

<sup>75</sup> Mersey, *Report*, vol 1, 5.

procedure for selecting jurors;<sup>76</sup> and this was not seen as a usurpation by local officials but was, instead, regarded as a natural consequence of incomplete legislation. The only qualifications which the committee thought could safely be considered universal were that a juror must be male, aged between 21 and 60, and either a British subject or an alien who had been resident for at least ten years.<sup>77</sup>

A borough's position, the Committee explained, depended on which courts that particular borough "possessed" (to borrow from the language of the 1825 Act). If a borough had its own quarter sessions (which many did), but no assizes (which most did not), the 1825 Act provided an exemption for borough jurors only as regarded the county quarter sessions. As their burgesses were liable for service in the county via that county's assizes, these quarter sessions boroughs were required to compile juror lists in accordance with the general provisions of the 1825 Act. They had to do so in order to send properly qualified jurors to the county assizes.<sup>78</sup> Those boroughs which had quarter sessions and assizes of their own were in a special position, however. They did not have to send jurors to any of their counties' courts, and so they were still exempted under section fifty of the 1825 Act.<sup>79</sup> The only thing which had changed for such towns since 1825 was that, under the Municipal Corporations Act 1882, the longstanding practice of basing juror lists in these towns on the burgess lists (i.e. local lists of electors) had been formalised.<sup>80</sup> But as the appendix to the Report shows, in the assize boroughs

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<sup>76</sup> This was certainly true in the assize boroughs; but a handful of other towns also refused to send jurors to the county assizes. The latter were generally seen as straightforwardly acting improperly, however, and so can be treated as raising a distinct set of problems to the assize boroughs, which prior to 1920 were considered to be operating within an established statutory framework when they proceeded according to their own customary rules.

<sup>77</sup> Mersey, *Report*, vol 1, 7. On resident aliens, see 33 & 34 Vict, c 77, s 8.

<sup>78</sup> Mersey, *Report*, vol 1, 8. The report does not clearly explain why such boroughs could not operate with two sets of jury qualification: one for the quarter sessions, and one for the assizes. This possibility was presumably discounted on grounds of practicality.

<sup>79</sup> Mersey, *Report*, vol 1, 8.

<sup>80</sup> 45 & 46 Vict, c 50, s 186(1).

being qualified and registered to vote was often only one part of the local qualification rules. In addition, local knowledge and business directories were also frequently used in order to identify suitable jurors.<sup>81</sup> In this way, variable local custom remained an important part of the juror qualification rules at those ten towns which had their own quarter sessions and their own assizes.

None of this was addressed as part of the legal reforms extending the jury franchise to women in 1919; although given the Mersey Committee's lengthy discussion of the issue in 1913 it would be surprising if senior judges and civil servants were unaware of the special position of the assize boroughs. This fact is particularly striking when it is borne in mind that this was a time when Victorian civic citizenship--with its focus on pride being taken in a particular municipality--was being gradually replaced by a much greater focus on the citizen's place within the empire as a whole.<sup>82</sup> Despite this general diminishing of local politics' ideological significance, central government did nothing to object to the series of significant local discretions which the Mersey Committee reported. In fact, when a junior Home Office minister was asked in March 1920 when Parliament should expect the first women to serve on a jury, he noted that: "In boroughs where the panel of jurors is drawn from the burgess list women whose names appear on those lists are now qualified and liable to be summoned to serve on juries in the same way as men. Elsewhere the jury lists which are made this year for every parish will include women and will come into force next year, and women whose names appear on those lists will then be liable to service on juries."<sup>83</sup> Central government was certainly aware of the special status of the assize boroughs, and Parliament was also made aware of the

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<sup>81</sup> Lord Mersey (Chair), *Report of the Departmental Committee Appointed to Inquire into and Report upon the Law and Practice with Regard to the Constitution, Qualifications, Selection, Summoning, &c. of Juries*, vol 2 (Cd 6818, 1913), 182-83. Discussed in more detail below, at nn 119-126.

<sup>82</sup> Beaven and Griffiths, "Creating the Exemplary Citizen", 208-211.

<sup>83</sup> Major Baird, HC Deb 4 Mar 1920, vol 126, c 683W.

issue on several occasions. The idea that local officials had a significant discretion regarding the ways in which jurors were summoned, including the types of people who were summoned, was not controversial until the jury franchise had already been expanded so as to include some women.

### 3. The Property Qualifications and the Assize Boroughs

While there were certainly judges who welcomed the arrival of women onto the jury, it is important to understand that there was also much opposition to their presence. Although there is some evidence of trial judges rebuking female jurors for seeking to be excused from unpleasant trials,<sup>84</sup> many judges took a more negative (or, somewhat generously, a more cautious) approach. Logan, for example, has discussed the fact a judicial power to order a single-sex jury was inserted into the 1919 Act at the insistence of the Lord Chief Justice.<sup>85</sup> Home Office officials, meanwhile, were concerned that this judicial power would only make it more likely that female barristers would seek to make the gender composition of each jury a contentious, justiciable matter.<sup>86</sup> And when a conference of the senior judiciary was convened in 1920 to consider returning to civil juries the whole range of trials which they had presided over before the war, Justice Roche urged caution, noting that “Women are coming in. We had better go slow”.<sup>87</sup> In the typed version of the minutes, Roche observed instead that “it was difficult to estimate the effect of the admission of women to the jury box”.<sup>88</sup> For those working

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<sup>84</sup> Kevin Crosby, “Before the Criminal Justice and Courts Act 2015: juror punishment in nineteenth- and twentieth-century England” *Legal Studies* 36 (2016): 179-208, 205. See also Antony Lentin, *Mr Justice McCardie (1869-1933): rebel, reformer, and rogue judge* (Newcastle upon Tyne: Cambridge Scholars, 2016) 78-79.

<sup>85</sup> Logan, *Feminism and Criminal Justice*, 87.

<sup>86</sup> Crosby, “Keeping Women off the Jury”, 700.

<sup>87</sup> Handwritten minutes of the Assembly of the Council of Judges, 26 Jul 1920 (National Archives: LCO 2/602) 6.

<sup>88</sup> Minutes of the Assembly of the Council of Judges, 26 Jul 1920 (National Archives: LCO 2/602) 4.

within the justice system, the arrival of women jurors was a cause of great concern, threatening to introduce uncertainty into the system by adding perspectives presumed to be at odds with those which the courts were used to dealing. It is in this context that a debate developed, soon after the coming into force of the 1919 Act, about the legality of the ten assize boroughs' discretion to summon jurors in whatever way they pleased. As a result of this debate many women living in these towns were excluded from the jury franchise almost exactly twelve months after they had acquired it.

What we shall see in this section is how two parts of central government--the Law Officers (i.e. the Attorney- and Solicitor-General) and the Home Office--took markedly different views of the legitimacy of these traditional local discretions. More general ideas of local autonomy are clearly significant in understanding this debate, and it is worth noting in this connection that historians of citizenship have seen the years immediately after the First World War as an important moment in developing ideas of citizenship, and their relationship to local and national politics. First, citizenship was coming to be seen as closely connected to service,<sup>89</sup> and as we shall see both sides in the debate here were keen to claim that their preferred option--either maintaining the assize boroughs' autonomy or abolishing it--offered the surest way of ensuring that the citizens created by the 1918 and 1919 Acts would actually be able to serve. Second, citizenship itself was increasingly regarded simply as a question of learning the rules by which a community is governed, with popular manuals aiming to "counteract a growing level of working-class non-engagement with the democratic process".<sup>90</sup> An important part of the problem here was precisely a lack of popular participation in local government, with a former Lord Mayor of Manchester complaining in 1926 that "three

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<sup>89</sup> E.g. Gullace, "Christabel Pankhurst and the Smethwick Election"; Moore, "Public-Spirited Women", 153.

<sup>90</sup> Beaven and Griffiths, "Creating the Exemplary Citizen", 216.

representatives of my ward held a well-advertised public meeting to report on their work. The audience numbered sixteen! ... [I]t is difficult for representatives to realise the importance of their work and to keep up their energy and enthusiasm in the face of such apathy.”<sup>91</sup> If the general problem was apathy regarding local government, and the general solution was to reimagine the constitution in positivist terms, then replacing the arcane mysteries of local traditions with clear national rules for the qualification and selection of jurors could plausibly be regarded both as a corrective to the general problem, and as a part of the general solution.

Returning to the reforms themselves, the events which ultimately led to the abolition of the assize boroughs’ discretion began at the Western circuit assizes. In February 1920 (two months after women first became eligible for jury service), Justice Darling had advised the Hampshire assizes that a new judicial order would soon come into force. This order would provide that people who were qualified to serve at the borough quarter sessions were not thereby exempted from serving at the county assizes, and that people qualified for special jury service were not thereby exempted from serving on common juries. It will perhaps help to explain these observations and much of what subsequently happened to note that the Southwest of England generally seems to have had a problem with local officials not closely following the relevant rules; and that the clerk of assize for the Western circuit was determined to root out this problem.<sup>92</sup> In his remarks at the Hampshire assizes, Justice Darling explained that

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<sup>91</sup> EDA Simon, *A City Council from Within* (London: Longmans, Green & Co 1926) 235, as quoted from in Beaven and Griffiths, “Creating the Exemplary Citizen”, 216-217.

<sup>92</sup> Indeed, even when the clerk of assize secured a Law Officers’ opinion confirming that county officials could fine borough officials for refusing to send jurors to the county assizes, the Devon clerk replied that he had no intention of taking action against those boroughs which did not send him jurors. This problem seems to have been restricted to the southwest of England, however. On this debate, see in particular Tewkesbury’s Chartered Liberties in Danger: are its residents liable to serve on an Assize jury, July 1921 (National Archives: HO 45/11071/383085/62); Note written by HB Simpson, 23 March 1922 (National Archives: HO 45/11071/383085/62); Letter from William Graham-Harrison to Ernley Blackwell, 16 October 1923 (National Archives: HO 45/11071/383085/62); Letter from Brian S. Miller (Devon Clerk of the Peace) to ET Gardom (Gloucester Clerk of the Peace), 4 May 1921

He had chosen this time to make the observations because the jury lists of every county would be very much enlarged by next year. Women would serve on juries, and it was therefore necessary that the proper practice of summoning jurors ... should be thoroughly understood and observed.

Following some observations by Mr JA Foote, KC, leader of the Western Circuit, his Lordship said that the only exception to the rule was the case of county boroughs having their own special commission of Assizes, of which Exeter was an example.<sup>93</sup>

Almost as soon as the legislation was passed adding some women to the lists of people qualified for jury service, then, there is evidence that there were concerns about how this could be squared with the traditional--and not always entirely lawful--series of discretions traditionally enjoyed by local officials. And while Justice Darling was initially capable of being persuaded that the ten assize boroughs had a legitimate claim to administrative autonomy, he would very soon change his view on this matter.

Three months later, Justice Darling advised local officials at Exeter (one of the ten assize boroughs) that their customary rules concerning juror qualification and summoning were improper, and possibly even unlawful. We do not know how these officials responded to the suggestion that their traditional practices may have been illegal, but they do not appear to have made any formal objection. When Justice Darling made similar remarks at Bristol a few days later, however, the Bristolian officials contacted the Home Office seeking clarification on the law, and forwarded a record of the judge's observations. According to their report, Justice Darling had argued that while summoning people without reference to property qualifications

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(National Archives: HO 45/11071/383085/54); and Juries Acts: Preparation of the Jury List in County and Non-County Boroughs, 2 Jun 1921 (National Archives: HO 45/11071/383085/57).

<sup>93</sup> "Jury Service: important decision by the judges of assize" *Nottingham Evening Post* (Nottingham: 12 Feb 1920), 3.

might be acceptable at the Recorder's court and the Tolzey court--two local jurisdictions which derived their authority directly from the borough itself<sup>94</sup>--assize jurors must be summoned according to the general provisions of the 1825 Act, as amended by subsequent Acts of Parliament. To base juror summoning practices at the assizes on local traditions derived from Bristol's medieval charter was unjust, the argument went, and it also created the possibility that the panel of jurors summoned might be formally challenged. One specific problem was that Bristol's charter made no mention of women on the jury. "The result would be ... that a large number of people who ought to be summoned would not be, and there might be a 'Challenge to the Array'."<sup>95</sup> According to this report of the judge's charge, then, local custom could not be trusted to produce juries which were either lawful or representative.

The Home Office, writing to Justice Darling about his remarks, observed that he had overlooked section fifty of the 1825 Act when exploring the legal basis of Bristol's exemption from the general jury law. The Home Office also noted that "to assimilate the practice in Bristol to that enacted for counties would disqualify from jury service a large number of women who under the practice hitherto followed would now automatically be qualified and liable to jury service as Burgesses or the wives of Burgesses: since under the Act of 1825 only those women will be liable who have the property qualification in their own right--a comparatively small number."<sup>96</sup> The Home Office thought Darling was wrong, then, to demand that Bristol's officials comply with the general jury law without considering the practical consequences of making such a change. While the judge thought that local custom was likely to exclude women, for the Home Office it was just the opposite: by extending the property qualifications to Bristol

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<sup>94</sup> On Bristol's historic non-common-law courts, see W.W. Veale, "The Bristol Tolzey Court" *Journal of the Society of Public Teachers of Law* [1936] 20-29.

<sup>95</sup> Darling J's address at Bristol, as recorded by LC Danger (Bristol Clerk of the Peace), 4 May 1920 (National Archives: HO 45/11071/383085/27a).

<sup>96</sup> Letter from Edward Troup to Darling J, 24 May 1920 (National Archives: HO 45/11071/383085/27a).

(and by extension to the other assize boroughs), the proposed change would formally disqualify many women who had only just gained their liability to serve as jurors.

When the Home Office challenged Darling to justify his position, he explained that the clerk of the Western circuit had better explain, as it had actually been his idea to confront the Bristolian authorities (presumably the clerk had also been behind his earlier remarks at the Hampshire assizes).<sup>97</sup> The clerk--a Mr Leslie--explained his intention had not been to exclude women, but rather to eliminate the various prejudices let in by custom. First, borough custom inevitably lowered jurors' "quality" (something which we have already seen was a longstanding feature of debates about jury composition); and this, Leslie argued, had unfortunate consequences:

Probably every Judge who has sat at Bristol Assizes has had experience of the difficulty of securing proper verdicts there in criminal cases. In case after case it happens that these juries will return verdicts of acquittal in the teeth of the evidence and of the summing up ... All these exceptional City and Borough jurisdictions, so limited in area, are prone to this abuse; local prejudices, friendships, sympathies and antipathies have full scope and exercise a very prejudicial influence on the administration of justice.<sup>98</sup>

While the proposal's effect may have been to exclude many women, Leslie insisted, this had not been Justice Darling's intention: he had simply sought to make sure all unsuitable persons were excluded from the jury. If this happened to include most of the newly-enfranchised women, then that was simply an unfortunate side-effect of a general move away from a deeply

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<sup>97</sup> Letter from Darling J to Edward Troup, 24 May 1920 (National Archives: HO 45/11071/383085/30).

<sup>98</sup> Letter from J. St. L. Leslie (5 Jun 1920), 2-3.

engrained culture of jury lawlessness. What was important was that the rules must be tightened up.

Leslie's second objection was that a system based on local custom was a system which could not easily be challenged, as by definition only those officials responsible for summoning jurors could know what procedures were actually followed. The Under-Sheriff of Exeter, for example, had recently informed him that "it is not the custom in Exeter to place working men on the panel".<sup>99</sup> Justice Darling had emphasised in his earlier comments at the assizes that this raised the possibility of a challenge to the array--a legal challenge to the whole panel of jurors.<sup>100</sup> Leslie noted that such a challenge was the only way to ascertain whether the assize borough exemption under the 1825 Act was still in force; and while he thought such a challenge was unlikely, he noted that it would require a decision that might be appealed to the Court of Criminal Appeal.<sup>101</sup> This was something the judges would, no doubt, be keen to avoid.

Leslie did not expand on his claim that assize borough juries routinely engaged in jury nullification or jury equity: a practice which, as a regular feature of the criminal justice system, is generally regarded as a product of earlier times with harsher criminal sanctions. Nonetheless, what was emerging in Leslie's argument was the idea that the series of local discretions which had been acceptable to Georgian and Victorian reformers had lost their legitimacy, and were now to be dismissed as products of a barbaric age governed by medieval charters, rather than by modern principles of legality. But ultimately his argument was a doctrinal one, rather than one solely concerned with local administrative cultures: that by ignoring the property qualifications, the assize boroughs had been acting unlawfully for at least a century, and that

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<sup>99</sup> Letter from J. St. L. Leslie (5 Jun 1920), 9.

<sup>100</sup> On challenges to the array generally, see William Blackstone, *Commentaries on the Laws of England*, volume 3: of private wrongs (Oxford: Clarendon, 1768), 359-361; *O'Connell v R* (1844) 8 ER 1061; and *Archbold Criminal Pleading Evidence and Practice* (2017 Ed), 4-301.

<sup>101</sup> Letter from J. St. L. Leslie (5 Jun 1920), 7.

their juries had therefore never been properly empanelled. As we shall see below, this legal argument seems to have left the senior judiciary in something of a panic.

Leslie concluded with the claim that, by allowing local officials to rely solely on local practice, the customary rules at the assize boroughs were likely as a matter of fact to keep many women off the jury:

I may perhaps be permitted to observe that if the Juries Act 1825 s50 is still in existence, and the returns of jurors must still be made in the manner it provides, viz. “the manner heretofore accustomed”, it may be a grave question whether any woman whatever can be placed on the jury panels in Bristol and the other nine towns to which that enactment is now said to extend. For certainly in and before 1825 it was not the custom to return women on juries, and it may perhaps also be said that the Sex Disqualification Removal Act 1919 has not gone far enough, on this view, for on this view it ought to have added the word “custom” after “sex or marriage” [as no longer constituting a valid reason for preventing a woman from serving, among other things, as a juror] in section 1 of the statute.<sup>102</sup>

The Home Office doubted that this was accurate, noting that the Act provided “any enactment relating to juries shall have effect so as to accord with the provisions of this Act”.<sup>103</sup>

The Home Office, requesting the Law Officers’ opinion, argued that section 31 of the Local Government Act 1888 (which was not very well expressed, but arguably confirmed the scheme as set out in section 50 of the 1825 Act) implicitly provided for borough jurors to be identified separately from county jurors. They also argued that accepting Leslie’s view meant holding that the Mersey Committee had been fundamentally wrong to conclude that the

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<sup>102</sup> Letter from J. St. L. Leslie (5 Jun 1920), 8 (emphases added).

<sup>103</sup> 9 & 10 Geo V, c 71, s4(2). Note written in margin of Letter from J St L Leslie (5 Jun 1920), 8.

administrative independence traditionally enjoyed by the ten assize boroughs was sanctioned by section 50 of the Juries Act 1825.<sup>104</sup> The Law Officers ignored the argument regarding the 1888 Act. They then went on to dismiss the Mersey Committee's reading of section fifty of the 1825 Act as having merely been based on Halsbury's Laws of England, which in turn had not based its discussion of the 1825 Act on any decided cases (the Law Officers were apparently unconcerned that their opinion suffered from the same defect). They concluded that "section 50 of the Juries Act, 1825, applies only to those Boroughs which 'possessed' the jurisdiction referred to. The Commission of Assize is not such a jurisdiction. It is a jurisdiction specially derived from the King's Commission and is outside any local jurisdiction".<sup>105</sup> The Law Officers, then, agreed with Leslie that assizes were a possession of the Crown, not of the borough, and that the assize boroughs had therefore been empanelling juries illegally for almost a century. It was this conclusion which seems to have converted Leslie's complaint into an administrative emergency, and which seems to have greatly animated the senior judiciary. Women jurors had, as Justice Roche would remind his colleagues two weeks later, caused unanticipated problems for the smooth running of the courts; but in seeking to resolve these problems, the senior judiciary ignored the Home Office's objection that they risked excluding many women from the jury. What we can see here, in the crisis at the Western circuit, is a conflict between a view of the jury which sought to keep traditional rules relaxed in order to make it possible to include more women, and one which sought to tighten up the rules at any cost.

The Law Officers' opinion was dated the 6<sup>th</sup> July, and by that December the Lord Chancellor and Lord Chief Justice were still trying to find a solution. The Lord Chief Justice

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<sup>104</sup> Case for the Opinion of the Law Officers, 28 Jun 1920 (National Archives: HO 45/11071/383085/30).

<sup>105</sup> County Juries Act 1825: Summoning of Juries in Cities Having a Separate Commission of Assize, 6 Jul 1920 (National Archives: HO 45/11071/383085/30).

had “proposed that the difficulty should be got over by a device which, as it proved impracticable to carry it out, I need not now describe at length”. On the evening of Friday 17<sup>th</sup> December, the two men agreed that the LCJ’s scheme (whatever it might have been) would not work, and so they arranged to have corrective legislation passed. The judges’ concern about the potential illegality of the assize boroughs’ practice is demonstrated by how quickly they then acted. The Lord Chancellor, having consulted with the Attorney General, introduced a Bill in the Lords that night, and by 13:05 the following afternoon it had passed its third reading. The Bill provided that any verdicts given by juries in the assize boroughs “shall be deemed always to have had, the same force and effect as if the said jury had been duly summoned and impanelled”.<sup>106</sup> Officials in such boroughs would now be required to produce juror lists for 1921 by indicating on their burgess lists which people satisfied the general property qualifications.<sup>107</sup> The Lord Chancellor had explained to the Lords that the Bill was “purely technical”, however, and so he had requested that they pass it without debate.<sup>108</sup> By Monday 20<sup>th</sup>, the Bill had passed all stages in the commons. It was only at that point that the Permanent Secretary to the Lord Chancellor’s Office wrote to the Home Office to let them know what had happened.<sup>109</sup>

All this may help to explain why the Juries (Emergency) Act 1920 has never become part of the story of women being kept off the jury after 1919. The Lord Chancellor specifically set things up in a way which would minimise objections, even from those within government who objected to the abolition of the assize boroughs’ discretion to ignore the property qualifications. The Home Office’s earliest reflections on these developments noted that “This

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<sup>106</sup> 10 & 11 Geo V, c 78, s 1 (emphasis added).

<sup>107</sup> 10 & 11 Geo V, c 78, s 2.

<sup>108</sup> Lord Birkenhead LC, HL Deb 18 Dec 1920, vol 39, cols 583-84.

<sup>109</sup> Letter from Claud Schuster to Edward Troup, 21 December 1920 (National Archives: HO 45/11071/383085/46).

Bill was passed through both Houses of Parliament without either the HO or the Ministry of Health [who had oversight of local government at this time] having any opportunity of offering observations.”<sup>110</sup> This breakdown in communications between the government departments certainly speaks to the urgency with which the senior judges and senior lawyers within the government thought the apparent illegality of the assize boroughs’ historic practices needed to be addressed. As the official charged with contacting the Home Office noted: “my view has always been that section 50 was rightly interpreted before the present fuss arose. But it was no use insisting on this view after the Law Officers had taken the contrary view, especially as the Judges were in a great state of excitement on the subject.”<sup>111</sup>

The speed with which the reforms were pushed through parliament made it impossible for the Home Office to raise any concerns about the disenfranchisement of many of the women at the assize boroughs who would otherwise have been qualified, although local officials were quick to raise a number of objections. The Bristol overseers demanded to see a copy of the Law Officers’ opinion before they would comply;<sup>112</sup> and on learning of the Lord Chancellor’s Emergency Act several boroughs sought to challenge the presumption that their prior practice had been unlawful (a challenge which was of course far too late once primary legislation had already been passed).<sup>113</sup> They also sought to emphasise the extra cost which would be imposed on them if they were soon to be required, like the counties, to prepare separate lists of people qualified for jury service. In their rush to extend the ordinary rules concerning juror

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<sup>110</sup> Note written by H.B. Simpson, 22 December 1922 (National Archives: HO 45/11071/383085/45).

<sup>111</sup> Letter from Claud Schuster to Edward Troup, 23 Dec 1920 (National Archives: HO 45/11071/383085/46) (emphasis added).

<sup>112</sup> Letter from L.C. Danger (Bristol Clerk of the Peace) to Under-Secretary of State at the Home Office, 10 Aug 1920 (National Archives: HO 45/11071/383085/44).

<sup>113</sup> See in particular Letter from Lincoln Town Clerk to Under-Secretary of State at the Home Office, 2 Feb 1921 (National Archives: HO 45/11071/383085/50): “As you are aware Lincoln has a separate Commission of Assize and is a County of a City and it would not appear that the provisions of the Juries Act 1825 are applicable”.

qualification and juror summoning to places which had not previously been bound by them, the Lord Chancellor's Office had inadvertently created a second administrative crisis.

Lincoln's Town Clerk, for example, argued that "If a separate Jury List has to be prepared [once the Emergency Act, which only provided for jurors summoned in 1921, had expired] it will involve a considerable amount of work and expense" and he suggested that "it might be possible to utilise the List of Electors [in combination with the property qualifications] excluding such as are exempt from jury service."<sup>114</sup> Following a Parliamentary question to the same effect (suggesting that the Lord Chancellor's attempts to keep the reforms out of the public eye had not been entirely successful),<sup>115</sup> the Exeter Clerk also contacted the Home Office to support this idea.<sup>116</sup> The Leicester Clerk insisted on arranging a meeting in person (also attended by officials from Bristol and Nottingham) to support this proposal.<sup>117</sup> But using the electors list rather than undertaking a full canvassing exercise in accordance with the 1825 Act did not simply mean reverting to the old customary system, for now the assize boroughs were also required to observe the property qualifications. As Newcastle's undersheriff noted in January 1921, "the proportion of Women to be empanelled [would] be considerably less" if the 1825 Act's property qualifications were permanently extended to the Assize boroughs.<sup>118</sup> And despite this warning, this is exactly what happened.

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<sup>114</sup> Letter from Lincoln Town Clerk (2 Feb 1921).

<sup>115</sup> Lieut-Commander Chilcott, HC Deb 22 Nov 1920, vol 135, col 76W.

<sup>116</sup> Letter from Exeter Town Clerk to Edward Shortt, 21 May 1921 (National Archives: HO 45/11071/383085/54a).

<sup>117</sup> Record of a Meeting between Ernley Blackwell, H.A. Pritchard (Leicester Town Clerk), and Town Clerks of Nottingham and Bristol, 30 Jun 1921 (National Archives: HO 45/11071/383085/60).

<sup>118</sup> Letter from Robert Muckle (Newcastle-upon-Tyne Undersheriff) to Under-Secretary of State at the Home Office, 15 Jan 1921 (National Archives: HO 45/11071/383085/49).

#### 4. Women on the Jury in the Ten Assize Boroughs

We have already seen how both sides in the debate about the propriety of the assize boroughs' administrative independence sought to argue that such independence would either guarantee or frustrate the parliamentary aim of getting women onto juries. But it is not possible to determine which of these positions was actually correct without exploring how local officials were actually using the flexibility which the system had traditionally granted them. The Mersey Committee had recorded in 1913 the various ways that local officials had reported using their discretion; and by comparing this information to newspaper reports, official trial records, and so on, it is possible to get a sense of how varied local practices actually were at the different assize boroughs. In empirically testing the claims made in the debate which was explored in the previous section of this article, we can see how the decision to extend the property qualifications to the assize boroughs had real consequences for the presence of women on these ten towns' juries, and therefore on the viability of the jury as a vehicle for developing citizenship practices. Citizenship was being rebadged at this time as something best expressed through the promulgation of clear, consistent rules; but what we will see here is a concrete example of how the persistence of local discretion had briefly allowed women to enjoy certain citizenship rights more fully in certain midland towns than elsewhere. Ultimately this was also the point of the critique, however: that it was no longer acceptable for citizenship rights to be enjoyed in variable ways. Rather, these rights ought to be clearly expressed via consistent, national rules.

At Exeter, which according to Leslie habitually took steps to exclude working men, the Mersey Report found that the burgess roll (i.e. the electoral register) was used to identify jurors. Care was taken to ensure nobody served more than once a year, and that the same names did

not appear on the quarter sessions and assize juror lists.<sup>119</sup> At Bristol, where the whole crisis would begin only seven years later, the Mersey Committee had found that common jurors had to be “tradesmen in a good way of business under sixty” (special jurors had to be “leading business men under sixty”). They also had to be ratepayers, and they had to have not served in the previous two years.<sup>120</sup> As we shall see below, women jurors always seem to have been very uncommon at the assizes in the southwest of England (although somewhat less so at Exeter than at Bristol). And there is some evidence that the avowed Bristolian focus on the quality of jurors required for grand juries as opposed to trial juries, and so on, may have translated into the circumstances in which women were called upon to serve. While no women served at any southwestern assizes until 1921 (and even after this date few women ever seem to have served), various newspaper reports suggest the picture was very different at the quarter sessions, which dealt with less serious criminal offences. As early as July 1920, a jury of six men and six women convicted a man of theft at the Bristol quarter sessions;<sup>121</sup> and in October that year another jury of six men and six women was empanelled at the Exeter quarter sessions, with one of the women--Esther Parker--serving as “foreman” by virtue of her name having been called first.<sup>122</sup> So while women rarely made it on to assize juries in this part of the country, they appear to have been perfectly welcome at the quarter sessions, which generally conducted much less serious business.

At Leicester, jurors were also selected from the burgess roll, with care being taken to respect the ordinary exemptions enjoyed by certain groups of people. In addition, “[a] practice obtains, which the town clerk thinks incorrect and submits for consideration, of criminal cases

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<sup>119</sup> Mersey, *Report*, vol 2, 182.

<sup>120</sup> Mersey, *Report*, vol 2, 182.

<sup>121</sup> “Ladies of the Jury! Innovation in Bristol trial” *Western Daily Press* (Bristol: 29 Jul 1920), 6.

<sup>122</sup> “Making History: women in jury-box at Exeter” *Western Morning News* (Plymouth: 6 Oct 1920), 8.

being dealt with by a borough jury but civil cases by a ‘jury taken from the county panel’”.<sup>123</sup> In newspaper reporting of early women jurors here, we can see how the institution’s development was closely linked to local politics. In 1921, an all-male jury at the county assizes had convicted a woman of murdering her child, and the ensuing local protests were important in securing legislative change, creating the non-capital crime of infanticide.<sup>124</sup> Three years later, when Justice Greer directed a verdict of not guilty in an infanticide trial at the borough assizes, “[o]ne of the women jurors asked permission to give the woman a pound note. The judge consented and, stimulated by this example most of the jury contributed notes and silver. A woman sitting on the Judge’s bench also gave a sum, so that the Clerk of the Assize handed the accused a substantial sum.”<sup>125</sup> There doesn’t seem to have been much objection to the idea of female jurors at Leicester--even at the assizes, which tried the most serious, and frequently “shocking”, criminal offences--and in fact the city had seen large protests calling for more women on the jury (albeit at the county, rather than the borough, assizes).

At Nottingham, it was reported in 1913 that “[t]he jury is called from the burgess roll, coupled with the local directory and the under-sheriff’s local knowledge.’ ‘A superior class’ is selected for the grand jury, ‘a lower middle class’ for the others, particularly the smaller tradesmen. For special juries ‘men of good standing’ would be selected.”<sup>126</sup> As with the south west of England, this suggests that the social standing of the jurors on a particular jury would depend to a great extent on the cultural status of the type of jury being assembled. This could easily have led to women being excluded from high-status assize juries, as appears to have happened at Bristol and Exeter. And a reliance on local knowledge could also, as Leslie

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<sup>123</sup> Mersey, *Report*, vol 2, 183.

<sup>124</sup> Daniel J.R. Grey, “Women’s Policy Networks and the Infanticide Act 1922” *20<sup>th</sup> Century British History* 21 (2010): 441-463.

<sup>125</sup> “Jury Help Accused Woman” *Dundee Evening Telegraph* (Dundee: 12 Jun 1924), 4.

<sup>126</sup> Mersey, *Report*, vol 2, 183.

complained in his correspondence with the Home Office in the summer of 1920, have led to the entrenching of prejudices against women serving in public roles. But in fact Nottingham had exceptionally high numbers of women assize jurors in the small period of time before the assize boroughs' discretion was abolished.

As we have already seen at Leicester, the specific cultural and political history of a city might have had an impact on the willingness of that city's officials to summon women for jury service. It is perhaps worth noting in this context that Nottingham had

a quite vigorous Edwardian women's suffrage movement, with Christabel Pankhurst travelling to the city in 1912 to attempt to recreate the Reform riots arson attack on Nottingham Castle. The campaign for the vote was passionately fought and the leader of the WSPU in Nottingham, vicar's daughter Helen Watts, was imprisoned and forced for marching on Parliament. This left a "cultural memory" of women's campaigning action on the city. However, the key leaders of the local movement--including Watts--were lost to the capital and this resulted in a lack of 'old' feminist networks in the local area.<sup>127</sup>

But despite this lack of established networks, pioneers such as Caroline Harper, who had already been the first woman on the city council, became the city's first female magistrate, and in 1931 she also became the first women to hold the title of Sheriff of Nottingham.<sup>128</sup> And far from being regarded as a scandalous innovation, Clements notes that the steadily increasing number of women in the city's politics was usually of little interest to the local press.<sup>129</sup> Given this background, it will perhaps not be surprising to find in the analysis that follows that women jurors were common at the Nottingham assizes throughout the interwar period. Once again, the

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<sup>127</sup> Clements, "Feminism, Citizenship and Social Activity", 92.

<sup>128</sup> Clements, "Feminism, Citizenship and Social Activity", 108-109.

<sup>129</sup> Clements, "Feminism, Citizenship and Social Activity", 134-137.

technical, administrative work of the city's courts clearly overlapped with cultural assumptions in the city more generally.

Beyond these general reflections on the relationship between local (political) culture and the emergence of the woman juror in the ten assize boroughs, the specific contention at the heart of the summer 1920 debate between the Home Office and the officials of the western assize circuit--that the assize boroughs' discretion was either good or bad for the prospect of women appearing on the assize juries of the ten assize boroughs--can be tested empirically. This can be done by exploring the names of the jurors recorded in the Crown Minute Books, the administrative records which preserve a brief summary of each trial at the assizes (the relevant records for civil trials do not record juror names during this period). The Minute Books show that there were no women on any assize juries (whether in counties or in independent assize boroughs) during the winter and summer sessions of 1920, and that the autumn assizes only saw female jurors in the assize boroughs. The delay between the passage of the Sex Disqualification (Removal) Act in December 1919 and the first use of women jurors in most assize courts in January 1921 is, however, easily explained. Official guidance on women's jury service was not issued until June 1920, and by the time the next jurors lists were compiled that September (in accordance with the timetable established by the 1825 Act),<sup>130</sup> jury summonses for the autumn assizes would have already been in preparation. The assize boroughs did not, however, need to compile new lists (as they were not required to compile jury lists at all), and so they were able to summon female jurors for the autumn 1920 assizes. By the time of the winter 1921 assizes, however, the Lord Chancellor's Emergency Act had abolished this discretion and required the assize boroughs to fall in line with the ordinary law of juror qualifications. This makes the autumn 1920 assizes the only opportunity to see how the old

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<sup>130</sup> 6 Geo IV c 50, s4.

autonomy was used in the context of the new, broader, jury franchise, and to test the claims made both by the Home Office and by the Western circuit's clerk of assize.

It has not been possible to gather data on several of the assize boroughs. The clerk of assize for the North Eastern circuit did not, during the relevant period, record the names of any of the jurors serving, making it impossible to tell how well represented women were on Newcastle's assize juries in the autumn of 1920.<sup>131</sup> It is also difficult to reconstruct the numbers of men and women on the relevant Carmarthen juries, owing to the fact that assize business for the borough, as opposed to the county, was only very rarely minuted in the relevant records.<sup>132</sup> Full lists do survive, however, for those serving on criminal assize juries in the Midland,<sup>133</sup> Oxford,<sup>134</sup> South Eastern<sup>135</sup> and Western<sup>136</sup> circuits in autumn 1920; and the differences between the various circuits are striking.

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<sup>131</sup> In fact, there is a break in the extant records between 1889 and 1921, meaning that even if these details were recorded they still would not exist for the relevant Newcastle session.

<sup>132</sup> Crown Minute Book: North and South Wales Circuit 1918-1929 (National Archives: ASSI 61/29).

<sup>133</sup> Crown Minute Book: Midland Circuit 1919-1921 (National Archives: ASSI 11/42).

<sup>134</sup> Crown Minute Book: Oxford Circuit 1914-1920 (National Archives: ASSI 2/50).

<sup>135</sup> Crown Minute Book: South Eastern Circuit 1919-1922 (National Archives: ASSI 31/54).

<sup>136</sup> Crown Minute Book: Western Circuit 1920-1922 (National Archives: ASSI 21/85).

Table 1. Women serving on assize juries at assize boroughs, Autumn 1920

Assize borough	Number of jury trials	Number of female jurors	Female jurors (%)
Leicester	1	6	50
Lincoln	1	6	50
Nottingham	5	30	50
<b>Midland total</b>	<b>7</b>	<b>42</b>	<b>50</b>
Gloucester	1	6	50
Worcester	2	8	33
<b>Oxford total</b>	<b>3</b>	<b>14</b>	<b>39</b>
Norwich	3	0	0
<b>South Eastern total</b>	<b>3</b>	<b>0</b>	<b>0</b>
Bristol	3	0	0
Exeter	4	0	0
<b>Western total</b>	<b>7</b>	<b>0</b>	<b>0</b>

Source: Crown minute books for the Midland, Oxford, South Eastern and Western Circuits, 1920

NB: these numbers count each juror at each jury trial as a separate individual, in order to accurately capture the average number of women jurors per trial. It should be noted, however, that it was common for multiple jurors to serve on various juries in the same session.

In the Midland circuit, each of the juries at Leicester, Lincoln and Nottingham contained six male and six female jurors, with the clerk of assize going so far as to record the names of the jurors in a male and a female column. While the neighbouring Oxford circuit did not achieve quite this level of diversity on its juries, the average overall for Gloucester and Worcester juries was nonetheless sixty-one per cent men, thirty-nine per cent women. Digging a little deeper, Gloucester's only jury matched the figures at the Midland circuit, with six female jurors. The officials at Worcester took a more clearly gendered approach to jury service, with all eight of their women jurors serving together, in a case concerning a concealed birth. In the other Worcester trial, a case concerning gross indecency among males, the trial judge ordered a single-sex jury. This mirrors the gendered approach to jury selection which has been found elsewhere during this period,<sup>137</sup> and illustrates once again how the arrival of women onto the jury was closely linked to the assumptions made by local officials, lawyers, and judges

<sup>137</sup> Crosby, "Keeping Women off the Jury", 711-716.

about women's suitability for jury service, either in general terms or in particular types of trial. By tracing these practices in detail, it is possible to learn more of the social context in which various women's groups experienced--and fought against--a common prejudice against female jurors.

In the assize boroughs of the South Eastern and Western circuits--Norwich, Bristol and Exeter--no women served on any of the autumn 1920 assize juries. But it should be remembered here that the officials at the Bristol assizes had been told during the summer of 1920 that their discretion was unlawful. This may have made southern officials more cautious than their colleagues in the midlands about extending the juror franchise beyond those who were expressly qualified under the 1825 Act (as amended by the 1919 Act ending sex-based disqualification). We do know, however, that at least six women were summoned to the quarter sessions both of Bristol and of Exeter that year, and we have already seen above that Exeter and Bristol were, like other places, interested in maintaining status differences for different types of jury. It may, therefore, be that women were deemed suitable for the less serious business at quarter sessions, but not for the potentially more shocking work of the assizes. Local attitudes to women's participation more generally may have had a significant impact on the ways the assize boroughs' discretions were being used.

Table 2. Average number of women per jury at assize boroughs, 1921-1939

	Leicester	Lincoln	Nottingham	Gloucester	Worcester	Norwich	Bristol	Exeter
1921	3.6	6	3.4	2.2	4	2.5	1.3	3
1922	4.8	4	1.7	4	4.3	1	1.2	2.3
1923	5	4	1	1.5	0	1	1.8	-
1924	5.7	-	1	0	2	1.5	1.5	-
1925	2	0	1.4	1.5	-	2.7	2	-
1926	1	2	1	0	1	2		
1927	1.5	3	2	2	1	1		
1928	-	-	-	2.5	2	1		
1929	3	-	1.7	3.5	4	2		
1930	3	-	-	1	4	1.6		
1931	-	-	1.3	1	-	0		
1932	2.5	-	2.5	-	0	-		
1933	2	2	1	1.5	2	3.5		
1934	0	1.5	0.7	-	-	2		
1935	-	0.3	2.7	3	0	2		
1936	3	2.8	0.5	2.5	1	1		
1937				4	-	2		
1938				-	-	0		
1939				3	-	1.5		

Source: Crown minute books for the Midland, Oxford, South Eastern and Western Circuits, 1921-39

NB: a dash indicates no jury trials that year, while a blank space indicates data is not available.

When the Lord Chancellor passed his Emergency Act abolishing the discretion of the assize boroughs, it is clear that this discretion really did exist in practical terms, and that it was often seen as an important part of a series of local administrative traditions. Those in the two midlands circuits with a power to do so had extended the jury franchise at assizes to their female citizens. Those in the south had not done so (whether out of conservatism, a hierarchical approach to the various types of jury which then existed, or a fear that they would be criticised by government for a second time). Once their discretion had been expressly abolished, however, the differences between the various assize boroughs became much less pronounced,

as Table 2 shows. Data for the Western circuit assize boroughs (Bristol and Exeter) only exists until 1925, and during this limited range of years Exeter only had jury trials at its assizes in 1921 and 1922. Data is available, however, for the assize boroughs in the Midland (Leicester, Lincoln and Nottingham), Oxford (Gloucester and Worcester), and South Eastern (Norwich) circuits for most of the interwar period. And while juries in the midlands retained a higher proportion of female jurors than those in the south during much of the first half of the 1920s, from about 1925 the average number of women on each assize borough jury, regardless of location, has little obvious pattern. By the second half of the 1920s, the attempted abolition of the assize boroughs' discretion seems to have worked, with Leicester, Lincoln, Nottingham, Gloucester and Worcester no longer having consistently greater numbers of women jurors per jury than the southern assize boroughs.

The divergent approaches of local administrators were, of course, important even beyond the assize boroughs. At the county of Gloucestershire, for example, local officials actively sought to address the problem of women who were qualified for jury service seeking medical evidence certifying that they were unfit to sit as jurors, and they did so by spending time on doorsteps attempting to persuade them to serve.<sup>138</sup> This kind of independent initiative is, however, clearly different from the idea that the rules themselves might be different in different places. What was unique about the assize boroughs before 1921 was precisely this: that their officials had a formal power to select jurors who failed to satisfy the property qualifications. This was clearly problematic from a perspective which regarded citizenship as something rooted in clear, consistent rules. But by extending the property qualifications to these ten towns, this source of discretion was abolished, and thousands of women lost their qualification to serve.

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<sup>138</sup> "Women Jurors. Before the ordeal" *Gloucestershire Chronicle* (Gloucester: 5 Mar 1921), 4.

This does not mean that there were not restrictive aspects of the assize boroughs' practices, however. By ultimately basing juror selection on electoral registers (as was already strictly required for borough quarter sessions by the Municipal Corporations Act 1882) rather than on landed property,<sup>139</sup> these towns systematically excluded anyone who, while otherwise qualified for jury service, either was not qualified or was not registered to vote in the locality covered by a particular court. And as we shall see below, these restrictions were soon to be extended to jury service generally, meaning that the juror franchise was simultaneously narrowed from two directions.

#### 5. Lists of Electors and Lists of Jurors

The second half of the restriction of the juror franchise which took place in the early 1920s consisted of the addition of a voting qualification, particularly in the counties. In other words, people who satisfied the property qualifications but were not registered to vote could no longer be summoned for jury service. This meant that anyone who had registered as a conscientious objector during the war, or who satisfied the property qualifications but could not register to vote in that place (either because they were not a British subject or because they owned property somewhere other than the place where they were registered to vote) were excluded from jury service. This, as we shall see, was likely to have consequences for those women who owned property but lived elsewhere with a male relative. In short, certain groups of people were being excluded from what was starting to be seen as an important incident of citizenship. And this exclusion largely matched the growing sense that citizenship was a reward for service. Foreigners and conscientious objectors could be presumed to lack the requisite qualifications for citizenship if these qualifications were largely concerned with service to the nation, and by extension they could safely be presumed to lack the stake in the community required before a

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<sup>139</sup> 45 & 46 Vict, c 50, s 186(1).

person could become a juror. The major anomaly here was the group of women who would no longer be qualified under rules which required electoral registration, but as we shall see this concern was shrugged off by central government, rather than being addressed in any meaningful way.

While the electoral registers were universally adopted as the basis of juror selection soon after the 1920 Emergency Act abolishing the assize boroughs' discretion had expired, the origins of this reform lay in nineteenth century regulations and in wartime experiments in local government efficiencies. The Municipal Corporations Act 1882 had strictly required borough quarter sessions to base their quarter sessions juror lists on their burgess rolls (i.e. their electoral registers).<sup>140</sup> But we have already seen that the 1913 Mersey Committee thought this provision was only fully effective in the assize boroughs: where a borough had to send jurors to the county assizes, it had to compile lists of qualified jurors in accordance with the 1825 Act, and the 1825 Act contained no reference to electoral registers. Boroughs which did not have their own assizes, therefore, had in practice to compile their juror lists in accordance with the 1825 Act, and not the 1882 Act, unless they were willing either to refuse to send jurors to the county assizes or to compile two wholly separate lists of jurors.

What seems to have happened in practice is that juror lists, compiled in accordance with the 1825 Act, were put together at the same time as the electoral registers, but that they remained distinct documents, compiled according to their own separate legislative requirements. In 1916, for example, The Ipswich overseer wrote to the Local Government Board to complain that the temporary wartime suspension of (centrally funded) voter

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<sup>140</sup> This was not a new idea. Howlin notes that there were proposals in Ireland as early as 1871 that jury service should be dependent on a person's presence in the electoral registers. This proposal was ultimately not enacted, however, owing to concerns that this would make it too easy for people to dodge jury service by failing to pay the local taxation of the rates, and thereby ensuring they were not registered as voters: Howlin, *Juries in Ireland*, 14-15.

registration meant a separate, costly process was required in order to compile the town's juror lists, a task which would ordinarily have been compiled at the same time as voter registration.<sup>141</sup> The Local Government Board wrote to the Home Office, suggesting the neatest solution might be to also suspend the production of new juror lists,<sup>142</sup> but the Home Office initially refused to countenance this suggestion.<sup>143</sup> This administrative difficulty would not have arisen if the Ipswich overseer had, as per the 1882 Act, been basing his juror lists on the electoral register: rather, he would simply have been able to rely on the old lists which were, for the time being, being used beyond their usual lifespan. What we can see at Ipswich is how the complex relationships between borough quarter sessions and county assizes made the 1882 Act's requirement for borough quarter sessions jurors to be selected using the electoral register impractical, as the Mersey Committee had reported in 1913.

The problems raised by the Ipswich official continued to impact upon the work of local officials around the country. If they could not collect information on jury eligibility at the same time that they collected information for their electoral registers because the registers were not being updated during the war, where was the money going to come from to collect this information? By 1918, the town clerk of Fulham doubted whether it would even be possible, given the ongoing paper shortage, to secure sufficient paper to print the multiple copies of the juror lists required by the 1825 Act.<sup>144</sup> One civil servant suggested an ambitious programme of reform, arguing that the upper age limit for jury service should be raised, the property qualifications should be abolished, and the jury franchise should be extended to "the women to

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<sup>141</sup> Letter from Ipswich Overseer to Local Government Board, 7 Apr 1916 (National Archives: HO 45/10810/312306/1).

<sup>142</sup> Letter from Assistant Secretary of the Local Government Board to Under-Secretary of State at the Home Office, 8 May 1916 (National Archives: HO 45/10810/312306/1).

<sup>143</sup> Letter from Under-Secretary of State at the Home Office to Assistant Secretary of the Local Government Board, 15 May 1916 (National Archives: HO 45/10810/312306/1).

<sup>144</sup> Letter from J. Percy Shuter (Fulham Town Clerk) to George Cave, 21 Feb 1918 (National Archives: HO 45/10810/312306/41).

whom the Parliamentary franchise is to be given”.<sup>145</sup> Twelve months later, the same civil servant also suggested that “a clause might be inserted in the Lord Chancellor’s Juries Bill [for limiting the use of juries in civil trials] to allow of the registers of voters now in course of preparation being adapted for use as jury lists”.<sup>146</sup>

While several of these proposals were adopted (in 1918, the maximum age for jury service was temporarily raised,<sup>147</sup> and of course after 1919 women were no longer disqualified from jury service simply by virtue of their sex), the suggestion that electoral registers might--combined with the property qualifications--be used as the basis of juror lists was dismissed by the Local Government Board and doubted by officials at the Home Office. The Board had five main reasons for opposing the proposed combination of jurors and electors lists. First, the electors list, containing both women and other people not qualified for service in 1918, when these proposals were being considered, would be “much too cumbrous to be used as a Jury List”.<sup>148</sup> Second, extra questions would have to be asked by those compiling the lists in order that those who were specifically disqualified might be effectively excluded. Third, under the Representation of the People Act 1918 the question of rate-paying was unimportant, and yet it still formed part of a juror’s qualifications. The rate book would therefore also have to be consulted, making this a relatively complex administrative task. Fourth, requiring overseers to record this extra information would be expensive. Fifth, electoral districts and juror catchment areas did not necessarily overlap.<sup>149</sup> At the Home Office, meanwhile, it was simply noted that

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<sup>145</sup> Note written by H.B. Simpson, 28 May 1917 (National Archives: HO 45/10810/312306/32).

<sup>146</sup> Note written by H.B. Simpson, 11 May 1918 (National Archives: HO 45/10810/312306/45).

<sup>147</sup> Albeit only to sixty-five, rather than all the way to seventy, as Simpson had suggested: 8 & 9 Geo V, c 23, s 5.

<sup>148</sup> Letter from Assistant Secretary of the Local Government Board to Under-Secretary of State at the Home Office, 27 May 1918 (National Archives: HO 45/10810/312306/49).

<sup>149</sup> *Ibid.*

it would be impossible to merge the lists without serious legislative intervention, but that nonetheless “some economy might be effected” if some way could be found to combine them.<sup>150</sup> And while the Home Office saw merging the two lists as the best long-term solution, correspondence from local administrators shows that they simply wanted to have the juror lists suspended for as long as the electoral registers were suspended.<sup>151</sup> This simpler solution is, in the short term at least, what happened.

The Juries Act 1918 permitted Orders in Council to be issued overriding the procedures for identifying and summoning jurors which were specified in the 1825 Act.<sup>152</sup> The Act expired six months after the end of the war,<sup>153</sup> which gave enough time for three Orders in Council between 1918 and 1920.<sup>154</sup> The Orders provided, among other things, that local officials could either continue to use the 1825 Act or, alternatively, that they could update their 1917 lists by striking out unqualified persons and creating a supplemental list of newly-qualified persons according to the procedure set out in the 1825 Act. The Order had to be updated in 1919 owing to the erroneous statement in the 1918 Order that only “natural-born British subjects” may be summoned; and this casual restriction of the franchise--overlooking both naturalised subjects

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<sup>150</sup> Note written by Ernley Blackwell, 14 May 1918 (National Archives: HO 45/10810/312306/45) (emphasis in original).

<sup>151</sup> Letter to W. Marcus Wilkins (Battersea Town Clerk), 10 May 1917 (National Archives: HO 45/10810/312306/29); Letter from W Marcus Wilkins (Battersea Town Clerk) to Under-Secretary of State at the Home Office, 11 May 1917 (National Archives: HO 45/10810/312306/30); Letter to W. Marcus Wilkins (Battersea Town Clerk), 15 Jun 1917 (National Archives: HO 45/10810/312306/33); Letter from J. Percy Shuter (Fulham Town Clerk) to Lord Finlay, 17 May 1918 (National Archives: HO 45/10810/312306/46); Letter from Ernley Blackwell to Claud Schuster, 23 May 1918 (National Archives: HO 45/10810/312306/46). See also the somewhat disorganised bundle of LCO files on the Bill: Juries Bill 1918 Papers, Apr-May 1918 (National Archives: LCO 2/347).

<sup>152</sup> 8 & 9 Geo V, c 23, s 6.

<sup>153</sup> 8 & 9 Geo V, c 23, s 8(3).

<sup>154</sup> Jury List Order 1918, 2 Aug 1918 (National Archives: HO 45/11071/383085/1); Jury List Order 1919, 25 Jun 1919 (National Archives: HO 45/10972/406646/1); Jury List Order 1920, 28 Jun 1920 (National Archives: HO 45/10972/406646/3).

and resident aliens--neatly foreshadowed the casual disenfranchisement which would soon come with the merging of the jurors and electors lists.

By the end of 1918, then, local officials were no longer required to comply with the technicalities of the 1825 Act (although newly-qualified jurors still had to be recorded in the manner specified by the Act). This was always understood as a temporary measure, however, and soon after the first of the Orders came into force the Home Office started to express concerns about the costs which would suddenly be re-imposed on local officials six months after the end of the war.<sup>155</sup> This was part of the problem facing the Home Office in the months leading up to the passage of the Juries Act 1922, which finally integrated the jurors and electors lists everywhere, and not only in the assize boroughs. In principle at least, the elector lists and juror lists had been integrated in all boroughs which had their own quarter sessions since 1882. But as we have seen above, this was an impractical requirement for as long as the counties had a procedure which ignored electoral registration, and as a result it seems to have been routinely ignored.

When change did finally come, it was largely driven by the cost implications of compiling the larger lists of qualified jurors created by recent changes to the juror franchise, together with the costs involved in returning after the war to the old system of canvassing would-be jurors. Home Office minutes written in early 1920, only three months after the passage of the Sex Disqualification (Removal) Act 1919, expressed concern at the fact “the addition of women to the existing jury lists will largely increase their bulk & involve a wholesale revision”.<sup>156</sup> Some local officials were also starting to become unhappy about the number of people now qualified for jury service. In September 1921, for example, Newport’s

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<sup>155</sup> Note written by H.B. Simpson, 5 May 1921 (National Archives: HO 45//11071/383085/53).

<sup>156</sup> Note written by H.B. Simpson, 12 Mar 1920 (National Archives: HO 45/11076/406592/1).

borough treasurer expressed concern at the rent rises authorised by the Rent and Mortgage Interest Act 1920,<sup>157</sup> noting that “a very large number of persons whom it was never contemplated should become Jurors, are now qualified” (as the property they occupied was now worth more money). The temporary extension of the juror franchise in 1918 (in particular the raising of the upper age limit) was intended to address the shortage of potential jurors during the war; but the borough treasurer now reported the opposite problem, claiming that in the past three years Newport’s jurors list had risen from 2,347 to “approximately 5,500” names.<sup>158</sup>

But it was not only the problem of compiling such large lists which had to be borne in mind when considering long-term reform: there was also the problem of paying for the lists to be printed. Given the growing number of persons qualified to serve, as the Home Office civil servant HB Simpson noted in 1920, “it is very desirable that immediate steps should be taken so that those concerned in preparing the lists should have early notice before entering into contracts for printing, &c.”<sup>159</sup> This note was written two months before Justice Darling’s intervention at the Bristol assizes, and the implication of the Emergency Act of 1920 (which was temporarily extended for a year while government searched for a long-term solution)<sup>160</sup> was that, if the Act expired without a permanent reform having been set out in statute, the assize boroughs would each be liable for this major new expense. And despite the temporary 1918 reforms, producing the juror lists was still a significant local expense in those places which were required to compile them: the lists cost an estimated £11,400 to produce in 1916-17, £13,000 in 1917-18, and £10,000 in 1918-19.<sup>161</sup> Given drives to reduce public spending

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<sup>157</sup> 10 & 11 Geo V, c 17.

<sup>158</sup> Letter from Norman T.J. Moses (Newport Borough Treasurer, Controller and Supervising Assistant Overseer), 28 Sep 1921 (National Archives: HO 45/11076/406592/55).

<sup>159</sup> Note written by HB Simpson (12 Mar 1920).

<sup>160</sup> 11 & 12 Geo V, c 36.

<sup>161</sup> Home Office Memorandum: jury list and registers, November 1920 (National Archives: HO 45/11076/406592/10).

generally at this time (Lloyd George's coalition government had commissioned the pro-austerity Geddes Report in mid-1921),<sup>162</sup> it is unsurprising that calls to save money by scrapping the jurors lists, and replacing them with an annotated version of the electoral registers, rapidly met with success.

The Juries Act 1922, passed in May of that year, completely abolished the procedure for summoning jurors under the Juries Act 1825 and the Municipal Corporations Act 1882.<sup>163</sup> Instead, overseers were to provide registration officers with the details of those people who satisfied the property qualification, and registration officers were then required to mark on the electoral registers those people who were qualified to serve.<sup>164</sup> In practice this meant that everyone qualified as a common juror would have a 'J' by their name, while those qualified as special jurors would be marked out by an 'SJ'. In this way, jurors everywhere would be selected through a combination of electoral registration (which had previously been the case at the assize boroughs), and property qualifications (which had previously been the case elsewhere).

We have already seen that, when he gave evidence to the Commons in 1870, the Norwich town clerk had expressed concerns about the number of potential jurors he would be left to work with if the property qualifications (albeit at a proposed higher value of £50) were applied to his borough. Earlier work has supported this, finding that by the spring of 1925 the property qualification rules had reduced the pool of available jurors at Norwich to 2,714, from a total of 63,573 registered voters.<sup>165</sup> What the Norwich clerk had failed to observe was the various ways in which a reliance on the electoral register could, in itself, lower the number of people eligible to serve. This fact is clearly significant if, as Lord Birkenhead had suggested in

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<sup>162</sup> On the drive to reduce *central* government spending at this time, see generally Andrew McDonald, "The Geddes Committee and the Formulation of Public Expenditure Policy, 1921-1922" *The Historical Journal* 32 (1989): 643-674.

<sup>163</sup> 12 & 13 Geo V, c 11, ss 1(1), 4(1).

<sup>164</sup> 12 & 13 Geo V, c 11, s 1(2-3).

<sup>165</sup> Crosby, "Keeping Women off the Jury", 707.

the Lords in 1919, and as various women's groups had also been arguing,<sup>166</sup> jury service was an important incident of citizenship.

To the extent that jury service was starting to be conceived of in this way, any narrowing of the juror franchise necessarily meant drawing lines of exclusion, with citizens on one side and non-citizens on the other. The people who were thereby relieved of their obligation to serve as jurors were generally people who were in one way or another being deliberately excluded from civic participation. Conscientious objectors, for example, were disqualified not only from voting but also from registering to vote (and thereby appearing in the electoral registers) until five years after the end of the war.<sup>167</sup> Given that roughly 16,500 people were registered as conscientious objectors,<sup>168</sup> this was a significant, albeit temporary, restriction on the juror franchise. "Aliens having been domiciled in England or Wales for ten years or upwards, if otherwise properly qualified,"<sup>169</sup> had also been entitled to serve on juries since 1870; but the Representation of the People Act 1918 had subsequently clarified that "[a] person shall not be entitled to be registered or to vote as a parliamentary or local government elector if he is not a British subject".<sup>170</sup> By basing juror selection on electoral registers, therefore, such people were necessarily excluded. While it is very difficult to trace the number of people that this part of the reform disqualified, there were certainly people being summoned who were not qualified to vote owing to their nationality.<sup>171</sup> And as with conscientious objectors, this change in legal

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<sup>166</sup> Logan, "New and Better Order".

<sup>167</sup> 7 & 8 Geo V, c 64, s 9(2).

<sup>168</sup> John Rae, *Conscience and Politics: the British government and the conscientious objector to military service 1916-1919* (Oxford: OUP, 1970), 71.

<sup>169</sup> 33 & 34 Vict, c 77, s 8. Howlin has pointed out that this provision was brought in in the same year that the old juries *de medietate linguae* were abolished: Niamh Howlin, "Multiculturalism, representation and integration: citizenship requirements for jury service" *Dublin University Law Journal* (2012): 148-172, 169-170. It may be that the creation of the "alien" juror was intended as a compromise regarding this issue.

<sup>170</sup> 7 & 8 Geo V, c 64, s 9(3).

<sup>171</sup> Crosby, "Before the Criminal Justice and Courts Act", 204-205.

status formed part of a more general restriction on this particular group's civic participation. Soon after the outbreak of the war, Justice Darling had advised the chief clerk of the Royal Courts of Justice that "it was advisable that jurors of German or Austrian origin had better not be summoned", even if "they were naturalised, and had lived in this Country for many years".<sup>172</sup> In 1919, a person's nationality had been made a specific ground for challenging them off a jury.<sup>173</sup> Furthermore, the 1922 Act expressly repealed the words in the 1870 Act which had allowed aliens resident for ten years to serve on juries (although not the provision which allowed them to serve on coroners' juries).<sup>174</sup> In the case both of conscientious objectors and of foreigners, the exclusion of certain groups of people from jury service was only one part of a larger effort to deny them rights of civic participation.

In the case of those women who were disqualified from jury service through the use of the electoral registers, the disenfranchisement was far more casual. As early as March 1921, Claud Schuster, the Permanent Secretary to the Lord Chancellor's Office, had asked the parliamentary counsel William Graham-Harrison for the following clarification:

I have never been quite clear whether the Sex Disqualification (Removal) Act in effect imposes a minimum age limit of 30 [i.e. the minimum age under the Representation of the People Act 1918 at which a woman could vote in parliamentary elections]. If it did not, I suppose that the provision of the present Bill, whereby no person will be eligible unless registered as an elector, will be to impose such a minimum age limit. I have no opinion on the merit of the question, but what would happen if necessity arose

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<sup>172</sup> Letter from James Kenyon to T Burchell, 8 Dec 1916 (National Archives: HO 45/10810/312306/23).

<sup>173</sup> 9 & 10 Geo V, c 92, s 8.

<sup>174</sup> 12 & 13 Geo V, c 11, sch 1.

for a tales [i.e. an emergency summoning of people in the vicinity of the court, where not enough people have reported for jury duty]?<sup>175</sup>

Graham-Harrison correctly noted that women under thirty could register as local electors, and that local and parliamentary electors were recorded in a single list, meaning that propertied women under thirty would not be disqualified for jury service provided they were registered as local electors.<sup>176</sup> He went on to note, however, that the reform would disqualify women who owned property, but did not occupy it:

In the case, therefore, of (e.g.) a daughter who resides with her father in a house occupied by him and owns a small estate somewhere in the country, the position is that she is at present qualified as a juror, but in future she will not be. There are not, however, I should suppose, very many such cases, and I should think such as there are can safely be disregarded.<sup>177</sup>

As with the abolition of the assize boroughs' discretion, which ended both the total exclusion of women in southern assize boroughs and the nascent scheme of egalitarian juror selection in the Midlands, these reforms were couched in terms of technical amendments. Even where it was either suspected or confirmed that the juror franchise for women would be restricted as a result of the reforms, such issues were treated as something which "can safely be disregarded". This is very different from the much more deliberate exclusion of foreigners and conscientious objectors as part of a more general attempt to exclude them from civic participation.

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<sup>175</sup> Letter from Claud Schuster to William Graham-Harrison, 9 Mar 1921 (National Archives: LCO 2/466).

<sup>176</sup> Letter from William Graham-Harrison to HB Simpson, 11 Mar 1921 (National Archives: HO 45/11076/406592/12).

<sup>177</sup> Letter from William Graham-Harrison to HB Simpson (11 Mar 1921).

## 6. Conclusion

In the three years after the juror franchise was expanded so as to include all properly qualified women, it was also restricted from two directions. The ten assize boroughs were required for the first time to observe the property qualifications, qualifications which were responsible elsewhere for severely limiting the number of people--and, disproportionately, the number of women specifically--who were qualified to serve. Two years later, the electoral registers--combined with the property qualifications--became the basis of juror qualification throughout England and Wales, thereby removing what was starting to be seen as an important incident of citizenship from conscientious objectors, from foreigners, and from otherwise qualified women who lived with male relatives. From a perspective which saw citizenship as something based on the promulgation of clear, unambiguous rules, which were the same in all parts of the country, and which grounded citizenship in ideas of service, these reforms could have been defended as a way of securing this particular vision of citizenship. But in fact they were barely defended at all, because they were barely discussed outside of government.

That these restrictions of the juror franchise have not generally been noted in discussions of the twentieth century jury may well be a product of the way these restrictions were described in public. While there was a lengthy internal debate on the assize boroughs for example, taking in the Home Office, the Lord Chancellor's Office, the Law Officers, various senior judges and a range of local officials, the Lord Chancellor ensured that there could be no meaningful public debate by introducing legislation on a Friday evening and explaining that the Bill had been drafted in response to an administrative emergency. As an emergency, it had to be passed quickly, and as a mere administrative matter, it was unlikely to attract very much political comment. And the introduction of the electoral registers as the basis of juror selection followed a similar pattern: literally years of debate taking in the views of various government departments and a wide range of local administrative perspectives, but with limited engagement

with the press or with political groups. Government was, however, well aware that these issues could easily be politicised: in 1921, the Lord Chancellor's Office wrote to the Home Office to warn them of the political dangers of not acting swiftly to resolve the problems thrown up by the abolition of the assize boroughs' discretion. The LCO noted that "Inskip<sup>178</sup> has been to me upon the subject, and no doubt he could unite the members of all the places affected. They would have much reason on their side and popular support, for ... the construction of section 50 which produced this trouble is novel, and ... to act upon it involves considerable and ... quite unjustifiable expense."<sup>179</sup> In the end, the legislation which solved these problems was also able to be presented as a response to an administrative concern, rather than as part of a contentious political problem. But clearly senior civil servants were aware of--and wary of--the possibility that this might still become a debatable issue.

By focusing on these restrictions, we can see how the adoption of the electoral register as the basis of juror selection formed part of a wider legislative campaign to exclude conscientious objectors and people who were not British subjects from civic participation or, in Marshall's terms, from political citizenship. We have also seen that central government departments were aware that this decision could remove liability for jury service from certain groups of women, even where they actually satisfied the property qualifications by owning land elsewhere. We have also seen how variable local traditions at the assize boroughs were undone by legislation which sought not only to abolish these variations, but also to condemn them as an illegal abuse. But in articulating their arguments, both sides sought to emphasise that they were motivated by a desire to secure the rights of newly-enfranchised female jurors. For those opposed to the customary system, there was no guarantee that any women would

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<sup>178</sup> MP for Bristol Central, who would later become Lord Chief Justice.

<sup>179</sup> Letter from Claud Schuster to Edward Troup, 28 Apr 1921 (National Archives: HO 45/11071/383085/53).

actually be summoned; while those arguing in its favour pointed to the inevitable consequences for women's qualification to serve as jurors if the ordinary rules based on property qualifications were extended to the assize boroughs. In this way, we can see how the advent of women jurors had administrative consequences for the entire system of summoning jurors, and shaped the arguments even of those officials who were otherwise nervous about admitting women to the law.