

Were Penn's Jury "Starved"?

A STATEMENT which has been made by many writers (including myself) in connection with the 1670 trial of William Penn and William Meade for "unlawful assembly" is that the jury were starved, kept locked up without food and drink for two nights.¹ This statement has allowed imaginative historians to depict movingly the presumed condition of the jury at the end of the trial, John William Graham, for example, saying: "Some were in high fever, some wandered in their minds, from overstrain, lack of sleep and raging thirst".²

But is the statement correct? Recently I have had occasion to look at the evidence again and this is, I feel, not quite so conclusive as has been supposed.

It will be remembered that the jury's original verdict was that Penn was "guilty of speaking or preaching to an assembly met together in Gracechurch Street"; but that the assembly was an "unlawful" one they could not be induced to say. The verdict was therefore not in accordance with the indictment on which Penn had been charged, and the Bench were probably entitled to decline to accept it.³

As the jury would not agree to bring in any other verdict, it was probably also in accordance with usage that they should be kept locked up, in some degree of privation, until they did agree. In former times a jury in this position was often ordered to be carried round the town in a cart, to the derision of the populace, and Penn's jury was in fact

¹ The dates concerned are Saturday 2 to Monday 4, September 1670. W. Beck and T. F. Ball, *London Friends' meetings*, 1869, p. 153, may serve as an example of the accepted version: "The character and incidents of this trial are too well known by those interested in the history of the Englishmen's struggle for liberty of conscience, to require further note here, save to observe that an English jury were on this occasion kept for two days without meat, drink, or fire, were fined and imprisoned, all because the verdict of their conscience did not accord with the wishes of a prejudiced and persecuting court".

² J. W. Graham, *William Penn*, 1917, p. 56.

³ William Meade was found Not Guilty on the indictment, and it was only on the pretext that the verdict against two "conspirators" had to be the same that this was not accepted. The important thing now, however, was to secure a verdict of Guilty against Penn.

threatened, perhaps not very seriously, with this. This procedure had fallen into disuse, but the punishment of being locked up and "starved" remained. In another Quaker case, at Reading, where the jury disagreed, "they were ordered to be kept all night without fire or candle, &c., and that no person should come at them till they were agreed".¹

There is no reason to doubt, therefore, that the Recorder ordered the similar incarceration of Penn's jury, and the statement to this effect in the famous pamphlet relating the trial² is corroborated in the counter-pamphlet issued over the initials of the Lord Mayor.³ The Recorder's actual words were:

"Gentlemen, you shall not be dismissed till we have a verdict that the Court will accept; & you shall be locked up, without meat, drink, fire and tobacco; you shall not think thus to abuse the Court; we will have a verdict, by the help of God, or you shall starve for it."

Similarly, when they returned next day, with the same unacceptable verdict as before, they were again sent off, and "the Court swore several persons, to keep the jury all night without meat, drink, fire, or any other accommodation."

But was this complied with throughout? A passage in the Appendix to *The Second Part of the People's Ancient & Just Liberties Asserted* seems to imply that it was: one of the parties to the dialogue forming this Appendix, when complaining of the hardships involved in serving on a jury, laments: "But to be kept without meat and drink two days and nights together . . . is hard service."

The counter-pamphlet already referred to, however, denies it contemptuously, saying, in a *Nota*:

"These men were very like to be starved, when they had roast beef, capons, wine & strong drink sent them (as is ready to be proved) during the time they were considering of their verdict."

This counter-pamphlet was itself replied to by Penn, in

¹ Besse, *Sufferings*, I, p. 26.

² *The People's Ancient and Just Liberties Asserted in the Trial of William Penn and William Mead*, 1670.

³ *An Answer to the Seditious and Scandalous Pamphlet, entitled The Trial of W. Penn and W. Mead*, 1670.

a masterly piece of polemical writing¹ that demolishes it completely, except in this one particular. His reply here is curiously lame:

"Answer to *Nota*. This is but a vain surmize, and how positively soever asserted, the proof remains behind, *which had there been any*, it is not to be thought this libeller would have omitted it;² besides, the officers of the Court were sworn to keep them from all sort of refreshment. But had it been so, I see no evil in the thing, unless it be an evil to prevent men from starving, especially since they were not there encloistered for not agreeing in their verdict, but for agreeing in a verdict some persons' humours would not allow for one".

We must remember that the jury, like Penn, were sent to Newgate at the end of the trial, and that he had plenty of opportunity for speaking to them there, and would presumably have acquainted himself with the exact nature of their privations. It is true that in a letter written to his father from Newgate, Penn says:

"The jury was about six times rejected in their verdict; and besides vain, fruitless, illegal menaces, were kept two days and two nights without bed, tobacco, provisions, &c."³

But this was written immediately after the end of the trial, and might well therefore have been before Penn had had time to converse with the jury, and only knew what had been said in Court.

One guess as to what may have happened is this. At a certain point on the second day (the day between the two nights) the jury decided, if their first verdict continued to be rejected, to take this back and bring Penn in Not Guilty

¹ *Truth Rescued from Imposture* in Penn, *Works*, 1726, I, 486 sq. The "Answer to *Nota*" is on p. 509.

² What Penn is referring to here is the practice, common in 17th century pamphlets, of inserting affidavits by the persons concerned, as proof of their statements. It will be noticed that Penn does not offer to produce any evidence on his side. Nor, perhaps, is there reason to expect that he should in any case do so. It would be no part of Penn's programme to go into unnecessary detail, giving disproportionate attention to matters in which servants of the court might have failed in their duty or could have connived at some irregularity in discharging it, particularly when the irregularity (if it occurred) would have comforted and kept up the spirits of the jury which had already clearly delivered a verdict favourable to the defendants.

³ Quoted in S. M. Janney, *Life of William Penn*, 1852, p. 72.

instead. Having decided this, they could clearly claim to be agreed on a verdict that would have to be accepted, and they might then have persuaded those in charge of them that they were now entitled to be fed, even though they could not bring in their new verdict until the next morning.

This is only conjecture, but it does seem to reconcile most of the inconsistencies in the evidence. Whatever actually happened does not in any way lessen our admiration for the fortitude and constancy of the jury. Nor do I suggest that the tablet¹ commemorating them in the entrance-hall of the Old Bailey (which refers to two nights without food) should be altered.

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HISTORICAL RESEARCH

Historical research for university degrees in the United Kingdom. List no. 33. Part II. Theses in progress 1972. University of London, Institute of Historical Research. May 1972.

Included are the following:

Quakers and the development of Kendal. Sheila J. MacPherson. (Dr. J. D. Marshall.) Lancaster M.Litt.	1426
Historical study of the discipline of the Society of Friends 1738-1861. D. J. Hall. (Professor W. R. Ward.) Durham M.A.	1427
William Cookworthy (1705-80) and his circle. A. D. Selleck. London Ph.D.(Ext.).	1428
The history of the chocolate industry, with special reference to Frys of Bristol. D. A. Williams. (Prof. Pollard.) Sheffield Ph.D.	1780
The Society of Friends in Birmingham, 1815-1918. J. D. Hunter. (Mrs. Dorothy K. G. Thompson.) Birmingham Ph.D.	1891

¹ For an illustration of the tablet see J. W. Graham, *William Penn*, 1917, plate facing p. 50. See also a note in *Journal FHS*, vol. 5 (1908), p. 162.