

people. Some were affected directly because they were workers and leaders during the movement. Others paid with their lives for the cause of civil rights. Men and women both contributed to the movement. More men had positions of leadership; however, this in no way means that women did not play critical roles in the success of the Civil Rights Movement. The question of why women did not have more leadership roles resounds in recent studies of the movement. Many historians have speculated that because women, before the fight for women's rights, did not have positions of leadership in society, they did not have these positions in the Civil Rights Movement. Furthermore, they present the latter Women's Rights Movement as the reason women, such as Fannie Lou Hamer, were able to attain success nationally. This conclusion is too narrow. It cannot be denied that the women's liberation had a role in the position of women in the Civil Rights Movement; however, that role has been exaggerated. The personalities and accomplishments of the civil rights workers, and their ethos, played a role more important to their success in gaining national attention than the movement for women's rights did. More important to determining a woman's national attention was her personality and extraordinary accomplishments.

Moll Flanders and the "Bloody Code's" Moral

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The early eighteenth century marked a period of remarkable evolution in English criminal law. While the "bloody code" and other similar pieces of legislation created more felonies, fewer people in fact were executed. There was a greater concern about the pervasiveness of crime, especially in London. The literature of the time reflects a fascination in crime and punishment in works such as *Moll Flanders* and *The Newgate Calendar*. Historians have argued over the causes and affects crimes have on many periods, but the debate centered on the early eighteenth-century is particularly interesting, precisely because these were watershed years in English law.

E.P. Thompson and his followers, such as John Beattie, analyzed efforts to curb crime in the 1700's employing a Marxist view of class struggle. During the 1960's and early 1970's these historians classified nearly everything in terms of a proletariat struggle against a small elite upper class. They failed to explain the "bloody code" completely because they ignored the eighteenth-century moral view of crime. Most people, not just the elite, viewed crime as resulting from poverty and moral failure. The eighteenth-century English legislative efforts to curb crime

¹John Beattie, "London Crime and the Making of the 'Bloody Code,' 1689-1718," *Stilling the Crumbling Hive: The Response to Social and Economic Problems in England, 1689-1750*, eds. Lee Davison, (New York, 1992), 49.

were concerned with more than ideas to control the lower classes.² A purely economic social class analysis of the criminal legislative efforts of the eighteenth century required Thompson and others to explain the “bloody code’s” operation. The “bloody code” listed more felonious crimes, yet paradoxically fewer people were executed. Thompson and like-minded historians explain this dichotomy in terms of control. The legislators realized they were giving more control to the magistrate’s members of their own class. These magistrates now had life and death decisions over the lower classes. Either decision enhanced the magistrate’s power: if he granted mercy, the accused owed him his life, and he could always have him killed. The upper class aimed at establishing more control over the lower classes, or re-establishing control that was waning.³

Historians subsequent to Thompson and Beattie have recognized their contributions, but have criticized their single focus on class struggle. Some historians have asserted that the evolution of the judicial legislation actually capped the upper classes’ spheres of influence in many ways.⁴ These historians try to pinpoint the causes and influences that made Parliament pass these measures and have focused on motivations, and possible influences upon the legislators.

One group of authors has focused on the context of war and peace, asserting that crime received more emphasis during peacetime.⁵ During war, these historians assert, many young men left the country and the government concerned itself with the waging of war, while legislative efforts to curb crime were placed on the back burner. Other historians have focused on the influence of London and the city’s merchants upon parliament. Shopkeepers in London who faced shoplifters and the business of pawnbro-

² Joanna Innes and John Styles, “The crime wave: Recent Writing On Crime and Criminal Justice in Eighteenth-Century England,” *Rethinking Social History: English Society 1570-1920*, (Manchester, 1993), 202-3.

³ *Ibid.*, 204.

⁴ *Ibid.*

⁵ Beattie, “London Crime and the Making of the ‘Bloody Code,’ 1689-1718,” 50.

kers and fencers clamored for changes in the law.⁶ Some historians point to the lawyers at bar whose influence in Parliament was felt. The attorneys and magistrates realized the privilege of clergy was not a deterrent and intermediate punishments were needed. There are several views of what motivated Parliament members to pass the “bloody codes.” None of these views, however, discuss the moral aspect of crime completely.⁷

There were several reasons for the criminal legislative efforts of eighteenth-century England which culminated in the “bloody code.” Popular literature, such as *Moll Flanders*, reveals the fascination eighteenth-century readers had with crime. The novel is written from a career criminal’s point of view. Defoe’s portrayals in *Moll Flanders* illustrate his own views of criminals’ motivations, not just for the lead character, but other criminals characters in the novel. This novel and other such popular literature of the time portrayed crime as resulting not just from poverty, but moral failure as well. Understanding how eighteenth-century people viewed criminals through popular literature can aid in understanding their efforts to curb crime.⁸

Defoe’s *Moll Flanders* reflects many of the realities of eighteenth-century London. The work, written in 1722, is supposedly set thirty too fifty years before its publication. The city London, as presented in *Moll Flanders*, is more closely akin to that of the eighteenth-century. It gives the reader an insight into how people viewed crime. The title character of Moll Flanders fell into a life of crime because of poverty, but recognized it as a moral failing. When Moll is struggling to find a bite to eat she says that she used to recite, “the wise man’s prayer, ‘Give me not poverty, lest I steal.’” This quote sums up nicely the view of criminality: when poverty affects a person, temptation comes. The relationship between temptation and moral failure is reinforced

⁶ Lawrence Stone, *The Past and the Present Rewritten*, (London, 1987), 230.

⁷ Beattie, “London Crime and the Making of the ‘Bloody Code,’ 1689-1718,” 55.

⁸ Douglas Hay, “Property, Authority and the Criminal Law,” *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England*, eds. Douglas Hay and others (New York, 1989), 22.

by the quote being in a prayer.⁹

Defoe's Moll does fall to the temptations of crime, but again this is couched in moral terms. The poverty brought Moll to the point of temptation, but the Devil took her over the edge: "This was the bait; and the devil,... [said]... 'Take the bundle; be quick; do it this moment.'¹⁰ Poverty delivered Moll to this point, but moral failings caused her to maintain crime as a way of life: "as poverty brought me in, so avarice kept me in, till there was no going back."¹¹ Only later, when Moll has been condemned to death, does she turn back and confess all her crimes to a priest. When she does this she is delivered from a life of crime, and her life is saved. Crime, although motivated by money, is an issue of morality for Defoe.

The Newgate Calendar in many ways mirrors the presentation of *Moll Flanders*. Both works are presented as examples of what not to do, and the consequences of moral failure in criminals. The content of both written works describe crime thoroughly, but offer only cursory attention to the moral issues. The works call upon the moral example argument to insulate themselves and their readers from admitting that they are fascinated by stories of moral failure and crime. The moral used in the story recognizes both the public's fascination with crime and the view that crime can only occur as a result of moral failure. The main distinction between the works is that the confessions in *The Newgate Calendar* come from prisoners condemned to die, whereas *Moll Flanders* is fiction.

The authors of *The Newgate Calendar* often commented on the confessors' moral failings and the magnitude of their temptations. They commented about a determined criminal's restraint saying, "To religion more than to the terrors of the law do we owe our safety."¹² Crime appears as a tool of the Devil, a tempta-

⁹ Daniel Defoe, *Moll Flanders* (London, 1722; New York, 1989), 9.

¹⁰ *Ibid.*, 142.

¹¹ *Ibid.*

¹² Andrew Knapp and William Baldwin, *The Newgate Calendar: Comprising Interesting Memoirs of the Most Notorious Characters Who Have Been Convicted of Outrages on the Laws of England Since the Commencement of the Eighteenth Century*. (London, 1824), 25.

tion to sin for those who are most vulnerable. The comments of a woman named Mary Adams indicates that her master was blamed for leading her down the road of sin by seducing her.¹³ Many of the confessions involving women blame others for tempting the women, because women, the authors' suggest, are vulnerable to seduction. The lesson the authors draw from most of the confessions is that one must avoid situations that will lead to great temptation. Friends and spouses must be chosen carefully, church attended regularly, and the body kept busy with industry and work.

The London Gazette generally did not concern itself with crime, except occasionally to report new legislation passed in Parliament. The second page advertisements of these papers give some insight into London crime. Several assumptions can be made about an advertisement placed in a paper such as *The London Gazette*. First, the person placing the advertisement must have had some money to place an advertisement in the paper. Second, the person placing the advertisement expected it to be read by middle or upper class people. Only those of a higher class could afford the education to read and money for a newspaper.

Many advertisements in a 1716 issue of *The London Gazette* concerning crime or lost items, were dominated by soldiers who had deserted and stolen horses.¹⁴ By the year 1719, a majority of the advertisements were concerned with servants who had stolen from their masters and fled.¹⁵ While this seems to lend support to the theory of action against crime in peacetime, in fact the advertisements are very similar. When the nation was at war, the officers were naturally drawn from the gentry. They viewed their soldiers much as an artisan viewed his apprentice – from a patriarchal view. Some of the advertisements had an angry tone. Others, however, read like pleas for lost sheep to come home. All of the advertisements are concerned with disobedience of those of lower station. Most seem concerned with punishment of those individuals rather than return or recovery of the stolen goods.

¹³ *Ibid.*, 28.

¹⁴ *The London Gazette*, 1716.

¹⁵ *The London Gazette*, 1719.

The *London Gazette* advertisements were written chiefly by and for the upper class. These advertisements reflect the elites' frustration with the disobedience of the lower class. This reinforces the validity of Thompson's analysis of crime legislation of the period in terms of class struggle. The upper class is attempting to keep the lower class in line. The angry tone of advertisements found in newspapers reflect the moral outrage directed at criminals. Those advertisements that call for the servant to come home portray the servant as merely misguided. These ads reflect the upper class's desire for all men and women to follow proper moral behavior. When the law failed to punish those who did not, *The London Gazette* provided another avenue for remedy.

The Criminal Code

The eighteenth-century English criminal code culminated in the Bloody Code. The factors bringing about certain changes have been debated, and a definitive answer is perhaps beyond us at this late date. Thompson's view that criminal law was an attempt to protect the property and lives of the elite by the use of selective terror prompted Lawrence Stone to respond: "What else has the criminal law ever done?"¹⁶ Both Thompson's statement and Stone's criticism, however, are too narrow. Beattie asserts a scenario that a small group of Londoners on the Parliament bench instigated the "bloody code" legislation.¹⁷ Moll Flanders for instance commits her crimes in the city of London. The first victim of her stealing is a shopkeeper.¹⁸ Middle class shop owners, lawyers, and magistrates all played a role in passing these measures. Poverty stricken people were naturally faced with the temptation to commit crime, and it was this temptation that must be addressed. The authors of *The Newgate Calendar* make this very point at the end of several of the memoirs, that one must avoid temptations. This lesson is presented in the memoir of Thomas Estrich who was executed for housebreaking. *The Newgate*

¹⁶ Stone, *The First and the Present Revisited*, 247.

¹⁷ Beattie, "London Crime and the Making of the 'Bloody Code,' 1689-1718," 64.

¹⁸ Defoe, *Moll Flanders*, 142.

Calendar author's argue that Mr. Estrich was essentially a good man, but placed himself in bad company, and therefore, in temptation. They conclude his memoir thus: "avoid every appearance of evil, and to remember ... [the]... scripture if sinners entice thee, consent thou not."¹⁹

Parliament members suggested in legislative debates that the rising number of incidents of shoplifting in London were attributed to the numerous fences willing to accept stolen goods. The Parliament members wanted to pass legislation making the receiving of stolen goods a felony. The underlying logic of this was not just to protect the London shopkeepers, but to remove or lessen the potential thief's temptation.²⁰

Criminal reform was a priority of eighteenth-century Parliament members and providing a path to moral reform was an important consideration. Many attorneys and magistrates asserted that the practice of granting the benefit of clergy to first time offenders did not provide a sufficient deterrent to prevent crime. An offender merely had to recite a few words and was branded on the thumb. A measure was passed to have the brand placed upon the cheek, instead of the thumb. Many who were branded on the cheek could not get work and were forced back into a life of crime. Eventually, recognizing this, parliament reverted to the branding of the thumb.²¹ The policy had been implemented to deter crime and to reform the criminal, but produced the opposite result. Parliament returned to the former practice to change the criminal's mindset, to provide a real opportunity to reform.

The criminal code of England in the eighteenth century, at most, attempted to provide deter crime. Punishment was offered as a counter to the temptations of crime. More than this, the code sought to reduce the temptations of crime. Parliament was guided not only by its interest in protecting property, but by its view of contemporary criminals and their motives. Reduction of temptation aided in protecting property, but also protected the moral

¹⁹ Knapp and Baldwin, *The Newgate Calendar*, 37.

²⁰ Beattie, "London Crime and the Making of the 'Bloody Code,' 1689-1718," 64. This is the pattern much of the crime legislation was introduced under according to Beattie.

²¹ *Ibid.*

welfare of those tempted by crime. Forcing, or helping, the potential criminal to do the right thing was a factor. Defoe's *Moll Flanders* is faced with execution, but the intervention of a priest on her behalf saves her. The priest is upset, however, when Moll asks to be transported, "The good minister,... mourned sincerely. I should have ended my days under the influence of [his] good instruction, [and not] turned loose again among such a wretched crew as are thus sent aboard."²² The upper class was motivated by self-interest in their property, but the formation of a more virtuous society also concerned them.

Historians who ignore or give cursory examination to the moral motivations of parliament cannot understand why these men enacted more and more of this legislation. Douglas Hay for instance states: "Eighteenth-century lawyers were well aware that never before had the legislature passed such a mass of new capital statutes so quickly. They floundered, however, when seeking for explanations. Many men, including learned ones, blame the ever increasing depravity of the people."²³ Douglas Hay as so many other historians have missed the point. These men did not flounder as to explain why more felonies were needed. They felt that society's morals were in decline. The great number of new felony crimes introduced under the "bloody code" was an attempt in many of these men's minds to set the country back on the correct moral path.

Criminal Sentencing Procedure

The magistrate of a criminal court had enormous power in sentencing an offender. While juries often refused to convict persons of felonies, once they did the criminal's life was in the hands of the magistrate. Most first offense criminals were afforded the benefit of clergy, but as laws were reformed this practice became less available. The magistrate could still grant conditional mercy, usually under the condition that the accused either be transported to the colonies or join the armed forces in

times of war. This practice was eventually encoded by parliament, and transportation became a major form of punishment. Thompson and others have maintained that this discretion was used to empower the elite. The practice of most magistrates during this time does not support this claim. Magistrates often dismissed cases for the slightest technical flaw in procedure. Further, the addition of more punishments gave the magistrate a choice to sentence the offender upon a course of reform.²⁴

The criminal procedure of eighteenth-century England clearly reflected the societal relationships of the time. Society was viewed in terms of patronage, the elite directing and caring for the lower classes. Perhaps all governments may be reduced to a view of a father caring for children. It is too narrow, however, to view eighteenth-century England purely in terms of people fighting for economic interests. There was also a concern for the moral welfare of the people as well. Whereas benefit of clergy was viewed as an insufficient deterrent and death as the ultimate deterrent, a magistrate sentencing a prisoner to transportation to the colonies, has given both a deterrent and a chance for reform.²⁵

Conclusion

The "bloody codes" of eighteenth-century England came to be for a number of reasons. Thompson's analysis of the criminal code and procedure in terms of class struggle does shed some light on certain underlying motives behind the "bloody code." Popular literature, such as *Moll Flanders* and the *Newgate Calendar* can help in understanding criminals and their motivations. All crime portrayed in these fictional sources involved a moral failure on the part of the criminal [or society]. Poverty and class struggle are insufficient to fully explain the eighteenth-century efforts to halt crime. Failure to consider the moral implications of eighteenth-century English criminal codes is to ignore at least, an important aspect of the "bloody code."

²² Defoe, *Moll Flanders*, 150.

²³ Hay, "Property, Authority and the Criminal Law," 19-20

²⁴ Stone, *The Part and the Present Revisited*, 247.

²⁵ Hay, "Property, Authority and the Criminal Law," 25.