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Popular Culture and Punishment: The History of Non-Violent Theft

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Capitalistic societies often lead to the establishment of two distinct segments of the social order, namely the haves and the have-nots. This inherent inequality in both material and monetary assets often leads to thievery amongst the lower echelons of a given society. There should be no surprise that theft without violence was ubiquitous throughout the early modern period in England. Theft can take a variety of forms including burglary, simple grand larceny, and shoplifting to name a few. These three common typologies of theft will be the main focus of this paper. The Old Bailey was the central criminal court in London (from 1674-1834) where those who were indicted for crimes such as theft got processed. In just under two centuries, the criminal justice system in England experienced a great deal of change. This survey paper will establish that a diverse array of generalizations regarding the criminal justice system in England can be made by studying a variety of Old Bailey case logs and newspaper articles from the *London Times*. The essay will examine how the punishments for the crime of theft evolved over time, the journalist's view of theft within English society, and the attitudes of the court as well as members of society toward the crime and the offender. Lastly, what the roles of empathy, mercy, and chivalry played in handling cases will be discussed.

Theft in all of its forms has remained a consistent criminal behavior in England since the formation of the country itself. The method of punishment for perpetrators of this crime however has undergone enormous change throughout the centuries. It can be stated that the most significant alterations to the punishments given occurred in the early modern period. A thorough examination of fourteen randomly selected cases between 1674 and 1834 (from the Old Bailey) shows a clear trend regarding the severity of punishments. That is, as time progressed, the punishment for similar crimes involving theft without violence gradually became more merciful or forgiving toward the offender. It appears as though during the first twenty years that the Old Bailey was operational, death sentences were handed out quite liberally. This observation could of course be attributable to the fact that the cases selected were not chosen in a proper sampling process. However, the first three cases out of the total fourteen cases chosen from the Old Bailey were marked by death sentences for crimes that were not particularly serious even by nineteenth century standards. George Wormington (the first case) was convicted in 1674 for burglary as was Peter Richardson (the second case) who was later sentenced in 1680.¹ It became quite clear that the latter part of the seventeenth century represents a time in England where harsh punishments were commonplace.

The third case selected was that of Anne Henderson who was sentenced in October of 1690. Henderson was "tried for stealing a silver tankard from Mr. Jeremy Dod."² Due to the fact that the value of what she stole was worth one shilling or more, she was found guilty of simple grand larceny and promptly sentenced to death.³ Years later however, in 1730's, Ralph Mitchell, Henry Whitesides, and Thomas Marshall were convicted of similar crimes but were instead branded.⁴ This more lenient trend continues into 1750 when William Haynes was indicted for stealing the goods of one William Cooper. The circumstances of this case were quite comparable to the aforementioned Henderson case.⁵ Cooper however, received corporal rather than capital punishment in the form of branding. Just over a decade later (in 1761) another man, Thomas Williams was also found guilty of simple grand larceny.⁶ The punishment changed yet again due to the period in question.

It can also be concluded that physical punishments that are permanent are no longer utilized in any of the succeeding cases. The government clearly believed that physically affecting the body was not a strong enough deterrent.⁷ Due to England's acquisition of foreign colonies (i.e. Canada, America and Australia) and the implementation of the *Transportation Act* introduced in late 1717 (by William Thomson) the government was at this point able to send convicted felons (such as Thomas Williams) to the colonies.⁸ Sir William Thomson commented on the new act, stating: "the intent of the law being to prevent their doing further mischiefs which they generally do if in their power by being at large...those who merit transportation are bad subjects, and if allowed scope, might easily injure society."⁹ The implementation of the *Transportation Act* was held in high esteem as hardened criminals were going to be "out of sight and out of mind." Between 1718 and 1775 well over thirty thousand convicts were transported to the colonies.¹⁰ Men were not the only ones that were

transported to the colonies. For example, women such as Ann Booth, who was indicted for shoplifting in 1771 was sentenced to be taken overseas.¹¹

By the late eighteenth century, the punishments for crimes which involved theft without violence shifted once more. One contributing factor for this change was the declaration of independence of the American colonies in 1776.¹² Penal facilities across England were being enhanced on account of reformers such as Elizabeth Fry, Cesare Beccaria, Jeremy Bentham, and John Howard. Their fundamental ideas were present in an Act of Parliament passed in 1778 which is known to have "laid the very roots of the modern prison system."¹³ Prisons soon acted as the central avenue for convicts. For example, in 1780 Issac Torrez was convicted of simple grand larceny and was sentenced to be imprisoned and endure hard labor.¹⁴ The transfer of criminals to prisons was also seen in the case of Robert Oakins who committed simple grand larceny and was sentenced to whipping and imprisonment in 1812.¹⁵ The last few years in which the Old Bailey was operational also demonstrated leniency in comparison to the earlier years. George Hunt and John Hulbock were found guilty of simple grand larceny in 1830 and were imprisoned with no physical punishment at all.¹⁶ The last of the cases selected occurred in 1834 when Edward Leadenham was indicted with theft and was again sentenced to prison.¹⁷

Media has and will likely always be a powerful source of information. This can of course have either positive or negative implications on the citizenry of a given society. Journalists can have a reassuring affect on a people or do the exact opposite and cause widespread panic. "Sensationalized journalism" has existed since the advent of the profession itself. Journalists of today as well as in the early modern period in England share one fundamental job with their predecessors; that is to sell their product. At times this involved exaggeration or embellishing on important current issues. It can easily be concluded that crime was widespread throughout England during the early modern period. However, it was almost certainly not as prevalent as many newspapers reported in their descriptions of the crime rate as an epidemic. Ekirch elucidates that there were many people in the higher classes who were convinced that thefts and other property crimes had expanded over time in their country. However, according to Ekirch this perception was derived from "the greater publicity accorded to crime by the country's expanding newspaper trade and because the propertied grew anxious about threats to their wealth."¹⁸

Out of the six newspaper articles selected from the *London Times* archive, two pieces in particular exhibited sensationalized depictions of the state of crime in the country. The first untitled piece states: "a man of tender feelings dreads a newspaper as much as he does a highwayman, and is equally terrified for his property yet I am of opinion, that of all casualties of the above nature are to be recorded, all the newspapers in England would not be sufficient to contain them."¹⁹ The article continues: "yet I think it is a duty incumbent that writers explain everything which may tend to preserve readers from danger, be they ever so unconscious of it."²⁰ The writer then goes on to explain all of the horrific crimes (theft, murder, rape) and gangs that the reader could "potentially" be affected by in the near future. The article was clearly self-serving in nature with no real purpose other than to breed hysteria and paranoia and to insinuate that the audience is in imminent and unpreventable danger. It is common knowledge that the job of the journalist is to report the news in a fair and unbiased manner. This was clearly not done in the aforementioned article or in the next piece in question. The second article which is also untitled begins to report "a most daring and impudent theft" by essentially describing the essentials of the event.²¹ However, the latter part of the article is again not concerned with the news but rather striking fear into the hearts of the citizenry. The article states: "the public cannot be too cautious in keeping entrances to the house from the area fastened, as there are a number of persons continually on alert to avail themselves of any opportunity that may prevent itself." Some may perceive this to be a simple warning to the public, however it does not have any relevance in fleshing out the criminal occurrence.

One means of discovering the attitude of the court towards the crime (of theft) and the offender is analyzing the various punishments given to defendants across an historical timeline. It can be concluded that the most severe punishments are reserved for perpetrators of the most brutal of crimes. As was seen in the first section of this essay, punishments for theft without violence (i.e. burglary and simple grand larceny) were gradually amended from the opening of the Old Bailey in 1674 to its eventual closing in 1834. As time passed, people who were convicted for any form of theft without violence were given more lenient sentences. To illustrate, in 1674, the death sentence was a common punishment for people who committed crimes such as burglary and simple grand larceny. Sentences for these crimes later shifted to corporal punishment (i.e. branding) and transportation with the final step of punishment for this crime type being imprisonment. Therefore, it can be said that the attitude of the court toward the crime and offender is largely based on the time period as the punishment and the law surrounding the crime evolved throughout time.

Another noticeable change evident in the court system (from 1674 to 1834) was the addition of character and eye witness testimonies. This change may have materialized due to the particular cases selected or the Old Bailey may have begun to record the testimonies at a set date. The first four out of the fourteen cases (which spanned from 1674 to 1712) in the sample only record the basic facts of the case and act more or less like a summary of the events. Subsequent to the fifth case (which occurred in 1730) however, eye witness and character testimony were meticulously documented and became a focal point in the proceedings. This could indicate that in the later years of the Old Bailey, the court system may have begun to rely more on relevant eye witness and character testimonies to come to a final decision of what to deal with the offender.

It is understandable that honest citizens in any society share an ill-favored attitude towards criminals and the crimes which they commit. Theft especially makes people feel insecure and cheated. The police force in early modern England was not as advanced as it later became when Sir Robert Peel brought about sweeping reforms and established the "bobbies." There was no real authority (besides contract thief-takers) to investigate or do something about the thievery that was incessantly occurring throughout the country. The regular citizenry however in many cases utilized "community policing" or "citizen's arrest" in order to compensate for the lackluster police force. It is evident from the cases and newspaper articles of the time that when a theft occurred, nearby people commonly assisted the victim and often pursued the assailant. In one occurrence for example, a citizen named Joseph Wilson chased after a boy who stole a parcel. The article stated: "he suddenly seized the parcel in question, and ran off. The witness, however pursued him, and before he got many yards from the door, he secured him."²² There is also a plethora of eye witness testimonies throughout the sample which demonstrates that the English populace did not hesitate to incriminate someone who took advantage of others. The entire notion of "community policing" or "citizen's arrest" is exemplified in the following testimony by a witness of a theft: "I saw the prisoner stand just against the window, and presently I heard the window break; I catch'd him in my arms, and in struggling

to get from me, he fell down, and threw the silk from him.”²³ There are many other examples present in the survey that are very much akin to examples provided.

Important early modern thinkers such as Jeremy Bentham, Cesare Beccaria, Elizabeth Fry, and John Howard introduced new ways of looking at crime and the criminal to the public. At this point, social and economic factors were being taken into consideration as two of the fundamental roots of crime.²⁴ Evidence of a somewhat changed perception of the public towards the criminal can be found in a variety of the *London Times* articles. “*Destitution and Theft*” for example is an editorial in which a school teacher pleads to the London court to be compassionate to a young man who has recently been convicted of theft. The teacher stated: “the lad is poor; he has neither friends, food, nor money; hunger sets in; begging has proved useless; he must now die or steal; he prefers the latter...I ask what the best of us would do if we were placed in like circumstances?”²⁵ Another article from the *London Times* entitled “*Thief Trap*” gives details of a group of men setting up a trap for potential oncoming thieves. The plan works and the men catch the thief red handed. However, “a respectable and resolute gentleman, who saw the whole transaction, interfered, and told the captors that if they took the prisoner before a magistrate to prosecute him capitally for the offence into which they had purposely entrapped him, he should certainly accompany them and give evidence to their conspiracy: upon which they surrendered their prisoner.”²⁶ The gentleman noted in this account clearly believed that an injustice was being committed towards the thief. Not only was he being entrapped but he was also committing a crime for his livelihood. The thief is clearly like the man described in the above article “*Destitution and Theft*.” He would rather not have committed such crimes to survive but found he really has no other choice but to steal in order to live. The upper class gentleman understood his predicament.

After going through the fourteen cases from the Old Bailey as well as a variety of *London Times* articles it became evident that empathy, mercy, and most significantly chivalry played an important part in the handling of cases during the early modern period in England. Chivalry is essentially a code of behavior that imbues thoughtful and courteous deeds, especially shown by a man to a woman. Its origins draw from the medieval European era and survived well into the early modern period ultimately entrenching its ideals into the English criminal justice system. This is not to say that women were not given any severe sentences such as death or torture, but rather there are a number of instances recorded that demonstrate that they were treated more leniently than men. One particular case present in the survey involves a woman named Elizabeth White (alias Wells and Dyer) who was charged with burglary in 1712. Burglary during this time was a capital offence and often resulted in death. In fact, the first two trials in the survey of cases had two men sentenced to death for burglary in 1674 and 1680 respectively. It is stated that the case against Elizabeth White was easily proven by the prosecutor resulting in a guilty sentence which customarily meant certain death. However, although “the felony was very plainly prov’d the jury thought fit to acquit her of the burglary.”²⁷ She was instead given the much lesser punishment of branding. In 1790, an analogous case presents itself. Martha Jones was also indicted for burglary and it was proven beyond a reasonable doubt that she committed the criminal act “in the dwelling house of Thomas Smith.”²⁸ However, “the jury acquitted the prisoner of the capital part of the indictment, and only found her guilty of the simple felony.”²⁹ These two cases plainly demonstrate that women were at times discharged easier than men, especially when the death penalty was at the forefront. Chivalrous behavior which propagates the philosophy that men should never harm women is present especially since the jury during the early modern period in England consisted of only men.

In conclusion, when researching and analyzing trials throughout the early modern period in England, a variety of generalizations can be formed regarding the country’s criminal justice system. This essay first explored the idea that punishments for similar crimes involving theft received more lenient sentences as time passed and the legal system developed. This was established by numerous theft cases cited that illustrated a gradual transformation from the death penalty to corporal punishment then transportation and finally to imprisonment which on occasion incorporated labor. The second part of the essay investigated the influence and role journalism had in reporting crime during this time period. The tendency of journalists to sensationalize a story or issue was reflected on and illustrated using *London Times* articles. The third part of the essay looked at the attitudes of the court as well as members of society toward the crime and the offender. It was hypothesized that the courts view of the crime and the offender was dependent on the severity of the punishment for a crime as more harsh punishments were for the most serious of offences. Since the punishment for theft was consistently in flux, the court’s attitude was largely dependent on the time period. The attitude of society was also explored and found to have changed with the passage of time. Two articles in particular demonstrated that people may have begun to more or less understand the underlying reasons why the criminal commits crime such as theft. Finally, the roles of empathy, mercy, and chivalry played in handling cases. Chivalry towards women who committed serious offences was found to be present in several cases.

Endnotes

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27. Old Bailey Proceedings Online (www.oldbaileyonline.org, 8 November 2007), December 1712, trial of Elizabeth White (t17121210-1).
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