6. Crime & Punishment in the 18th & 19th Centuries

Introduction

Stories of daring criminality were widely reported in the 18th century, generating high levels of public interest. Tales of highway robbery were often the stuff of folklore. When street robber Jack Sheppard was hanged in 1724, after four escapes from prison, 200,000 people attended his execution. Apart from morbid curiosity, tinged with excitement, these were special events with an almost carnival atmosphere. When highwayman John Rann was acquitted of theft in 1774, he was mobbed by admirers as he left court in London.

Rewards were introduced for apprehending and convicting offenders, especially serious crimes such as highway robbery. Victims also offered their own rewards for returning stolen goods. Thief-takers used their knowledge of the criminal underworld to profit, negotiating a fee for the return of items purloined. If crime proceeds were considerable they might even blackmail a criminal, organise protection money or inform on the offender. Jonathan Wild, 'Thief-taker General of England and Ireland' dominated London's criminal underworld in the early 1720s. Eventually caught, tried and convicted at the Old Bailey of receiving stolen goods, Wild was hanged in 1725. He will have known his likely fate in carrying out such unlawful actions.

Law enforcement

Law enforcement remained largely in the hands of victims, left to organise their own criminal investigations. Every parish selected one or two unpaid constables who performed policing duties in their spare time, generally serving one year in office. Paid watchmen, usually elderly, operated across London parishes. Known as 'charlies', they had various duties besides the detection and arrest of suspected criminals, such as escorting drunkards home and 'crying out' the time. They patrolled the streets from 9 or 10 pm until sunrise. Thefts remained high and many questioned the effectiveness of methods to investigate and arrest wrongdoers.

In encouraging victims to report crimes, magistrates in the City of London and in Middlesex established 'rotation offices' in the 1730s so victims and thief takers could be certain of finding a magistrate at fixed hours. An office was set up in Bow Street, near Covent Garden, by Sir Thomas de Veil in 1739. On his death in 1748 this was taken over by magistrates Henry and John Fielding who hired thief-takers on a retainer. When a crime was reported their task was to locate and apprehend the culprit(s). Known as 'Bow Street Runners' they preferred their official title of Principal Officer. They made a comfortable living out of fees charged for their services, rewards received from victims and fees from a successful prosecution. The Fieldings also recorded criminal activity and operated what became a form of criminal intelligence.

More rotation offices were set up and in 1792 the Middlesex Justices Act created seven police offices in the metropolis, each with three stipendiary magistrates and six constables. In 1800 a police office was set up at Wapping, later expanded to the employment of 100 constables to patrol dockside parishes and the river itself.

Court System

Most criminal cases during the 1700s were brought before local magistrates who dealt with crimes without the benefit of a jury. Unpaid magistrates, drawn from wealthier classes, were expected to define and defend English law. Many were easily corrupted. In London, Horace

Walpole believed that 'the greatest criminals of this town are the officers of justice'. Though immensely powerful, many magistrates found their duties both burdensome and irksome.

For more serious crimes, such as rape or murder, cases were referred to Crown courts that sat at quarterly assizes in large towns and in London at the Old Bailey. For ordinary citizens, trials at higher courts were intimidating experiences. Courtrooms were sprinkled with herbs and scented flowers to prevent spread of disease and mask the smell of unwashed prisoners.

Much of the courts' daily business was conducted in Latin. Most felony cases did not involve defence barristers until the end of the century. Witnesses were usually examined directly by the judge and even by members of the jury. The vast majority of cases lasted for a matter of minutes and it was not uncommon for dozens of cases to be heard in a single day. There was every incentive for juries to agree. Until 1858 they were kept without warmth, food or drink until a verdict was reached. Juries rarely failed to come to a conclusion.

Early Prison Reform

In 1777 John Howard published *The State of Prisons in England and Wales*. It made for grim reading. Prisoners were not separated by gender, or type of crime, many died of untreated illness and disease, jailers were often corrupt, too few were employed to make prisons safe and many prisoners languished beyond the end of their sentence, unable to afford the fee for release. At the Bridewell, Abingdon, there were: "two dirty day-rooms; and three offensive night-rooms: that for men eight feet square: one of the women's, nine by eight; the other four and a half feet square: the straw, worn to dust, swarmed with vermin: no court: no water accessible to prisoners. The petty offenders were in irons: at my last visit, eight were women." This prison was by no means an exception.

Howard recommended that all prisoners be kept in solitary confinement to prevent negative influences and to reflect on their wrongdoings. In that sense he saw prison as a reforming institution with rehabilitation self-directed but conditions remained dire. George Onesiphorous Paul designed a new prison based on security, separation, health and reform with separate male and female areas, a workroom, chapel and exercise yard. In 1784 he also published a book, *Thoughts on the Alarming Progress of Jail Fevers.*

In 1817 Elizabeth Fry and 11 other Quakers campaigned for better and humane conditions for female prisoners at Newgate and taught inmates there. Being married to Joseph Fry, son of a successful tea, coffee and spice merchant, she used influence. Brother-in-law, Thomas Fowell Buxton, was MP for Weymouth. In the same year he published the tract: *Inquiry into Prison Discipline*, based on his observations at Newgate.

The 1823 Gaols Act required prisons to be more secure, jailers to be paid, formal separation of male and female wings, visits from prison doctors and chaplains and, not least, an intent to reform. The Act did not apply to debtor prisons.

Crime Prevention & Detection

In the early decades of the 19th century, attempts to combat crime focused on prevention of crime, rather than detection of criminals. New horse and foot patrols were introduced, both at night and during the day, referred to as "police." Robert Peel's Metropolitan Police Act of 1829 set up a centralised police force of 3,000 men under the Home Secretary, with responsibility for policing the entire metropolitan area, except the City of London. Uniformed and carrying

only wooden batons, the new "Bobbies" patrolled streets on prescribed beats. Frequency of patrols was thought to reduce the incidence of crime; their very presence being a deterrent.

The new arrangements placed much greater emphasis on crime prevention with detection left to constables who continued to be employed by stipendiary magistrates. Trials coming to court did not diminish and patrols in some areas were less than those of watchman patrolling before 1829. The role of the victim remained central in the identification and prosecution of offenders. Only very gradually did police assume full responsibility for prosecuting offenders.

The authorities placed great faith in the new system. In 1839 a second Metropolitan Police Act extended jurisdiction from ten to fifteen miles from Charing Cross and increased police numbers to 4,300. The Act abolished the post of constable employed by the old magistrates' offices. Another Act created a similar police organisation for the square mile of the City of London. Preventive policies reduced minor public offences such as drunkenness and street fighting – offences heard before magistrates rather than at the Old Bailey. But it soon became apparent a detective force was needed to work in conjunction with the uniformed beat patrol officers for more serious crimes, habitual offenders and criminal gangs.

In 1842 a metropolitan detective force was created but in 1877 it acquired the unenviable distinction of two police inspectors appearing as the accused in what was called the Turf Squad Scandal. It was the longest trial heard at the Central Criminal Court. For four years the inspectors were in the pay of two villains, tipping them off about crime investigations. This resulted in a complete reorganisation of the Metropolitan Police Detectives and formation of the Criminal Investigation Department (CID), initially about 250 men.

In 1883 the Met employed the first female police officer in Britain and within six years there were 14. Tasked mainly with guarding women and children, they were usually the wives or relatives of officers. Only slowly did recruitment extend nationally, helped by the campaigning of Edith Tancred and Dorothy Peto who, with three others, started unofficial patrols in Bristol in 1911, with volunteers in Bath a year later. Only in the 1920s and 1930s did recruitment of female police officers take place on a national scale.

Criminal Classes

Across the nineteenth century broad shifts can be identified in the way that 'criminals' were perceived. Commentators such as Edwin Chadwick tended to equate criminal offenders with individuals in the lowest reaches of the working class. These were deemed reluctant to do an honest day's work for an honest day's wage, preferring idleness, drink, 'luxury' and an easy life. In great need of moral redemption, reforming their ways required hard, repetitive work. Bible in hand and left alone with their thoughts was cathartic, soothed by occasional visits by the chaplain to reinforce moral fibre and honesty.

Towards the end of the 19th century, developments in psychiatry and the popularity of Social Darwinism led to the criminal being identified as an individual suffering from some form of behavioural abnormality, either inherited or nurtured by dissolute and feckless parents. All such perceptions informed the way that criminals were treated by the criminal justice system.

By the end of the century, as the understanding of the criminal changed, the doctor and the psychiatrist had become at least as important as the chaplain. In addition, Victorian liberal ideas of improvement and philanthropy began to feed into penal policy. 1895 was a significant year for change in this respect. Sir Edmund Du Cane, a former officer of the Royal Engineers,

who had stamped his domineering personality on prison management as Chairman of the Prison Commissioners for nearly 20 years, resigned. It heralded a fresh approach.

The Gladstone Committee report confirmed the shift to a new, more liberal penal policy yet an interesting paradox arose. Britain had lower murder rates in comparison with much of Europe, especially southern Europe. Whilst many European governments were removing the death penalty, the abolition movement in Britain remained small and lacked influence. Unlike many of their continental European neighbours, Britain also clung to corporal punishment as a penal sanction until well into the twentieth century.

Punishment Methods

Whilst corporal punishment was used for violent offences, capital punishment remained the ultimate deterrent, but other methods were employed too for less serious offences.

In the Georgian era the stocks or pillory were still routinely used. Stocks confined prisoners by their ankles whilst the pillory had a larger hole for the neck and a smaller one either side to secure each wrist. The *Public Advertiser* for 16 August 1790 gives a flavour. "Saturday, two footmen for an unnatural crime underwent their sentence by standing in the pillory at Hay-Hill, Mayfair, for one hour, between one and two. Their reception was extremely warm, by a very numerous, but we cannot add a brilliant spectatory; the women especially treated them with an abundance of eggs, apples and turnips." The pillory was not abolished until 1837.

Until 1783 London executions took place at Tyburn eight times a year. As many as 20 felons might be hanged at the same time. Prisoners were transported to the gallows by cart, often followed by a huge, jeering crowd. Prisoners were executed in front of these noisy, riotous audiences. Most punishments were held in public. Executions were elaborate and designed to deter. Other hangings, by contrast, were sombre affairs, accompanied by deep mourning and widespread commiseration for the condemned. White doves might be released by spectators as a symbol of their sorrow, with executions accompanied by hushed silence as the fearful moment of death arrived.

Public executions enabled the whole community to take revenge on a criminal and to witness the agony, pain and humiliation; a stark reminder not to err along a similar path. The Royal Commission of 1864 concluded that crowds saw executions as a form of public entertainment. Deterrence was a minor factor as some criminals had almost heroic status. The Prisons Act 1868 made it mandatory for all executions to take place within prison walls, out of sight of a public eager to gawp at the macabre proceedings.

The 18th-century criminal justice system relied heavily on existence of the 'bloody code,' a list of crimes punishable by death. By 1815 the 225 capital offences included sheep stealing and poaching. Partial verdicts were common with juries fearful of the consequences of a full guilty verdict. Often a defendant would be found guilty of a lesser offence, such as theft of goods of a lower value, with juries mindful of the ecclesiastical 'benefit of clergy,' abolished in 1827.

In 1823 Sir Robert Peel reduced capital offences by more than half. Until 1827, when the threshold was raised to 100 shillings, defendants found guilty of stealing goods worth 40 shillings or more from a dwelling house were subject to a mandatory death sentence. By reducing the value of goods below 40 shillings, juries avoided this statutory penalty. Lord John Russell abolished the death sentence for horse-stealing and burglary in 1830 and by 1861 just five crimes were deemed capital offences: murder, treason, piracy with violence,

espionage and burning down a weapons store or naval dockyard. Of those found guilty, the death sentence for about 60% was commuted to transportation or imprisonment.

Between 1800 and 1900, of 3,524 people sentenced to hang, only 1,353 were for murder; about 40%. Between 1787 and 1868 some 160,000 convicts were transported to Australia with sentences of 7 years, 14 years or life. Rather than increase the prison population, such criminals were exported. Unlike the Tolpuddle Martyrs, many did not return.

The Prison Population

In 1830 there were about 300 mostly small prisons that reduced to 62 under the Prisons Act of 1877. Prison had became the core of the punishment system that involved use of disused warships. Only in 1857 were these decommissioned hulks no longer used. Between 1840 and 1870, in an enormous building programme, a total of 90 prisons were built and in 1877 the Home Office took over control, marking a major change. Jail was now the remedy.

Two types of regime were used: Separate and Silent. The former was based on Cherry Hill Prison in Pennsylvania where prisoners were kept in solitary confinement to reflect on their criminality and to mend their ways. A typical sentence might be one year solitary and three years hard labour. Pentonville, which opened in 1842, used this system. The silent system, was also based on a USA prison, Auburn near New York.

In the 1880s a typical day started with a warning bell at 06:30, followed by a rising bell 10 minutes later. After chapel and breakfast, prisoners were set to work. Those sentenced to hard labour had to walk a treadmill, revolving at twice a minute. A bell sounded after the 30th revolution. This was to announce the end of the treadmill session. After a break of 5 minutes the pattern was repeated with the expectation of 15 sessions daily, a climb of 18,000 ft.

Another form of futile punishment was turning a crank handle thousands of times a day for no purpose, other than to humiliate and degrade. If seemingly too easy, a prison officer would tighten the mechanism, thus coining the slang term 'screw.' Another device was the Oxford capstan, to pump millstream water to an upper floor. The capstan wheel had eight spokes, each with two men strapped. In 1895 there were 39 treadmills and 29 cranks in use but by 1901 this had reduced to 13 and 5 respectively. Oxford prison, by no means alone, used the shot drill. A prisoner had to pick up a cannonball, lift it to the chest and carry it to the far end of the prison yard, a pointless and mind-numbing exercise to be repeated ad nauseum.

Work was hard and deliberately degrading, as were living conditions with wooden plank beds. Diet, purposely monotonous to dull the senses, was sufficient to be capable of hard labour. A variation of gruel was stirabout. Disliked and unpalatable, it was made from cornmeal, salt and oatmeal. An article on Walton Jail in Liverpool talks of a better diet for those doing hard labour for longer than three months. Beef suet pudding, soup and cocoa supplemented the more usual gruel, bread and potatoes. Energy levels had to be maintained.

Strangeways in Manchester, designed by Alfred Waterhouse using the Panopticon (radial) concept, opened in 1868. By 1850 around 60 prisons were rebuilt or adapted to conform to the separate system. The Prisons Act of 1864 ensured prisoners suffered a 'hard labour, hard fare and hard board' life with monotonous work and food. The regime was explicitly punitive.

As the 19th century drew to a close, whilst there was some understanding of the causation of criminality and influencing environment, a harsh and at times brutal regime was considered a deterrent and the prime means of rehabilitation, if only through the fear of re-offending.

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