

Gender Roles in the Criminal System

“In Early Modern England, both gender hierarchy, with the man at the top, and the husband's patriarchal role as governor of his family and household — wife, children, wards, and servants — were assumed to have been instituted by God and nature”.¹ Gender roles in history vary from country to country, but the focus here will be England. First off, women were always classified based on their relation to a male: wife, daughter, mother, etc. Secondly, there were no options for careers for women; they were always supposed to be spinning. Men worked in the fields and did the tough work like plowing, while the women worked close to the home. Men would be a part of guilds and other job related groups, while the groups that women were a part of were always relevant to the daily duties and work of the home. These groups were centered on spinning, children/childbirth, church, and the household. The idea of women was for them not to be seen or heard. They were passive and men were aggressive. Men were supposed to be the stronger gender, both physically and mentally. Women were more emotional and concerned with compassion. They were considered to be mentally inferior. Men were a part of the public sphere and were prominent in society as women were more closely linked with the private sphere of the home. Gender roles were clearly a factor in daily jobs and duties, but were also a factor when it came to issues of money, law, and crime. Today, I will focus primarily on gender roles in crime. There are fairly large differences between the crimes committed, the trials that took place, and the punishments issued when comparing men and women in eighteenth century England.

Crime has no doubt been a part of history, more specifically, “Crime has always been a part of London life. London has always had its thieves, robbers, and gangs of criminals”.²

¹“The Early Seventeenth Century: Gender, Family, and Household-17th Century Norms and Controversies” http://www.wvnorton.com/college/english/nael/17century/topic_1/welcome.html

² Mark Herber, *Criminal London* (Chichester, West Sussex: Phillimore & Co., 2002.), xiii

It should come as no surprise that crime was tightly linked to the mentalities of society and therefore gives modern day historians the chance to look at history from the criminal side, while still learning a great deal about people young and old, rich and poor, and male and female. Looking at history from the focus of criminals and the criminal system offers further surprising evidence about gender roles in England during this time. In his book *Crime and Mentalities in Early Modern England*, Malcolm Gaskill explains the importance of crime in history, “Crime is also useful because it has left many records which facilitate the thick description of social contexts” and continues with the importance of criminal documents, “The most valuable administrative documents are assize depositions- the informations and examinations of plaintiffs, witnesses and defendants-which provide a more detailed background for the offences recorded in indictments and recognizances”.³

One of, if not, the largest sources of information regarding this particular topic: gender roles in seventeenth and eighteenth century England, comes from the Old Bailey Proceedings. These records provide ample accounts of the lives of England’s criminals. This is a valuable source because as Gaskill noted above, it not only offers great detail into the world of crime as a whole, but also includes thorough descriptions and accounts of individual criminals and their journey through the criminal system. The proceedings provide explanations of the crimes committed and the punishment that would stem from that crime. The Old Bailey records included not only witness testimony, but also exchanges between lawyers, the jury’s decision, and the judge’s sentencing. They give us the story and case of each criminal in its entirety from beginning to end and include the accounts of the key plays, places, and people involved that shaped the outcome of the case. Basically, these proceedings are a written glimpse back to the

³ Gaskill Malcolm, *Crime and mentalities in early modern England* (Cambridge, UK: Cambridge University Press, 2000), 21.

English courtroom centuries ago. Although the proceedings were originally published as a source of entertainment, they also provided a warning of sorts as to what not to do. The Old Bailey records present the vast amounts of evidence that show how gender roles shaped the criminal system in England, from the detailed description of the accused to the extreme punishment, or in the case of women, lack thereof.

The differences between males and females were shown by the crimes they committed, the court proceedings that took place, and the punishments issued. “The almost universal conclusion has been that women were a very small proportion of the accused in court, that women’s crimes were less serious than men’s and caused less concern, and that the courts tended to treat women more leniently”.⁴ That statement by historian Karen Jones does a terrific job summing up the clear relationship between gender roles and the criminal system in England. It has been argued that the fact that women were accused of less crimes is because female disruptions to society were the result of sexual immortality and in turn were not worthy of being called crimes. However, when women were accused of crimes it was usually the most common crime: property offenses or theft crimes. “Although these offenses are not sex-specific, traditionally women have been charged much more often with these types of offenses and less often with violent offenses”.⁵ Thievery was obviously a crime not committed solely by women. However, it was their crime of choice, while men were linked to more serious and violent crimes. The differences in the crimes committed are quite large.

First off, as already established previously, women were rarely accused of crimes, the reasoning behind this is still being debated, but nonetheless they weren’t completely exempt

⁴ Karen Jones, *Gender and petty crime in late medieval England: the local courts in Kent, 1460-1560*. (Woodbridge: Boydell Press, 2006), 7.

⁵ Malcolm M. Feeley and Deborah L. Little, "The Vanishing Female: The Decline of Women in the Criminal Process, 1687-1912." *Law and Society Review* 25, no. 4 (1991): 736

from committing crimes. Women were mostly accused of varying theft crimes, including, pick pocketing, shop lifting, and receiving stolen goods. For example, Daniel Defoe's famous or infamous Moll Flanders embodied the female thief. She would start off small stealing bundles and then after a series of close encounters would finally get sent to Newgate prison for stealing fabric. It was at this point that her growing success as a thief earned her the name Moll Flanders.⁶ In a similar case Ann Bushel was tried for stealing ten yards of Bengaul silk. Ann went into the shop of her master, where she gave the impression that she would be buying something. However, while there she shoved the silk fabric under her jacket and clothes. As she was leaving she was questioned about it and during this interrogation the silk began to fall and it was made clear that she was indeed in the process of stealing. Later she confessed and was found guilty of a felony.⁷ Pick pocketing was also common among women and the case of Jane King proves this while also including prostitution. King was described as practicing "the trade of Night Walking" also known as prostitution. She was accused of leading Mr. Church into a tavern, where after opening a bottle of wine and drinking some they began "to grow familiar". During this point Jane reached into his pocket and grabbed his bag full of gold. Mr. Church pursued her, but she managed to escape, soon after though she was taken and accused. At her trial she denied having ever seen Mr. Church and even being at the tavern that night. She argued that until that day in court she had never seen him. Mr. Church swore the opposite.⁸ King tried to deny her thievery, but was found guilty. Women did commit crimes other than theft, but it was the one they were most accused of.

Other crimes that women committed included: owning or keeping a brothel, kidnapping,

⁶ Daniel Defoe, *The fortunes & misfortunes of the famous Moll Flanders* (Champaign: Project Gutenberg, 1999), 247

⁷ Old Bailey Proceedings Ann Bushel, Theft > shoplifting, 6th April 1687.

⁸ Old Bailey Records Jane King, Theft > pocketpicking, 5th December 1688.

and other crimes closely linked with childbirth or children. It was in extremely rare cases that women would be accused of infanticide, abortion, or hiding a birth. An example of women committing crimes dealing with children is that of Elizabeth Chivers. Elizabeth was a servant girl for the Ward family, who after having been impregnated by Mr. Ward and exposed as shameful by Mrs. Ward, Elizabeth threw her three month old baby in the pond where it drowned.⁹ Also in other extremely rare cases were women accused of violence or murder, but there were instances, like Elizabeth Brownrigg for example. Brownrigg was executed for torturing her female apprentice to death. She would beat her servant girls using whips while her son flogged them. At one point Mary, the servant girl, called out for help, and Brownrigg cut her tongue with a pair of scissors.¹⁰ For the most part the cases of Elizabeth Chivers and Elizabeth Brownrigg were highly uncommon amongst women until the nineteenth century when they increased greatly. Ultimately though, thievery was the crime of choice when women did decide to break the law.

Men, on the other hand, committed numerous different crimes, crimes that were much more serious. Men were more likely to commit violent crimes using a weapon of sorts. Burglary, highway robbery, and murder were the usual crimes committed by men during this time. Some crimes, like rape and sodomy were strictly male crimes; however, they were also complicated to the extent that it was hard to really accuse. Gentleman Harry, like Moll Flanders, gained his nickname through his crimes. He was a highwayman which was a popular “profession” of sorts for male criminals. Gentleman Harry’s story was almost identical to that of other highwaymen. After eating, Harry began to search for his next victims; needless to say he found them about a mile up the road. He stopped the coach, and at this point he pulled out his pistol and demanded money from the man and woman. They resisted at first, until Harry swore he would shoot

⁹ Herber-8

¹⁰ Herber-10

them both if he didn't get exactly what he asked for. This is when the lady screamed for her husband to just do what the highwayman was asking. The man agreed that he would give Harry what he wanted as long as he removed the pistol. Gentleman Harry pulled the pistol away and successfully gained money from these two unfortunate travelers along with a gold watch and some silver.¹¹ Murder, still the most horrific crime today, was sadly one of the most popular crimes men were accused of committing. In one case there were two men drinking in a tavern and they got in an argument about a Spanish word and how it was expressed, after a while the argument escalated and the two men found themselves outside. Early on during the fighting onlookers stopped them and attempted to reconcile the two men which they seemingly did, until an hour or so later when they began fighting again. It was during this second fighting session that one man pulled out a rapier or knife of sorts and stabbed the other. The wound was fatal and the man holding the knife was accused of murder, but was not sentenced because the jury considered it to be an act of self defense.¹² This case in particular, proves that men's role was in the public sphere. Additionally, their advocacy of aggression through violence made their crimes more of a threat to society than that of women.

When looking at the different crimes that both men and women committed one must ask the question "Why are they so different?" The main explanation behind why they committed different crimes was the fact that men and women lead different lives. For example, women were connected to the home, and therefore they had no need to carry any sort of weapon. The lifestyles they had didn't require them to have a weapon, and therefore they were much less inclined than men to be involved in violent attacks. As already noted, men were more aggressive and violent, so in turn their crimes were much more threatening. Women were passive, and

¹¹ Belton Cobb, *Criminals Confess* (London: Faber and Faber, 1999), 133.

¹² Old Bailey Records Killing > murder, 17th January 1676.

therefore, the crimes they committed were far less threatening, if threatening at all, and often went unpunished. Thievery was likely so popular among women because it was the most accessible form of crime they could commit. This was especially the case when in the sphere of servants and masters, along with brothels and trading. A newspaper account of Charlotte Brudenel details her theft crime. Charlotte Brudenel was responsible for robbing the quarters at which she stayed. She was considered to be a “Person of Quality”, and in turn was allowed to stay at this particular lodging. However, while there she stole from the owner Richard Branlin. Charlotte stole mainly silver items including: silver salt and silver spoons and teaspoons. She also stole a petticoat and a silk gown.¹³ The comparatively low amount of women criminals was undoubtedly due to the fact that they were excluded for the most part from the public sphere. Thievery was a crime committed by men as well. However, they usually stole from the places they worked. Men who were thieves stole livestock in rural areas and from ships, warehouses, and places of manufacture in urban areas.

Theft is a unique case in the sense that both men and women stole. The overall question is why? There was obviously increasing poverty at this time and many people, especially the lower classes, which is where criminals usually resided, were struggling to survive. Daniel Defoe represents this in Moll Flanders’ reflection, “Let ‘em remember that a time of distress is a time of dreadful Temptation, and all the Strength to resist is taken away; Poverty presses, the Soul is made Desperate by Distress, and what can be done?” Moll continues, “Give me not poverty lest I steal”.¹⁴ Desperate times call for desperate measures and that is exactly what Defoe was attempting to express. In a sense it’s as though poverty could have been one of the primary

¹³ *"Crime and Punishment, 1718-1719."* Early Eighteenth-Century Newspaper Reports. <http://grubstreet.rictornorton.co.uk/17181719.htm> (accessed December 9, 2010).

¹⁴ Defoe-254

reasons behind stealing, at least that's what it seems in the case of Moll Flanders.

The fact that theft was easily accessible for women is what made it so popular was probably the same in the case of men, especially those that were thief-takers or modern day bounty hunters paid by the government to arrest or convict criminals. At this time many officers of the criminal system and the government as a whole were corrupt, so it should come as no surprise that these government paid thief-takers were corrupt and as law breaking as the criminals they arrested. This was the case with Jonathan Wild, who was considered to be not only London's most famous thief-taker, but also London's most famous criminal of the time. A brief description of him follows, "He was known as (and advertised himself) as the Thief-taker General of Great Britain and Ireland. He controlled gangs of thieves and burglars from his house in Old Bailey, whilst pocketing rewards for capturing some criminals and for returning some of the loot that his gang stole".¹⁵ Some consider him to be the 'Prince of Thieves' because of his assistance in receiving stolen goods, pick pocketing, and the fact that he was the ring leader for a gang of thieves and burglars. The reasons behind the popularity of theft as a crime could be any number of things, but the fact of the matter is that it was appealing to both genders, differing from a great deal of other crimes.

Gender was not only an important factor in understanding the crimes that were committed, but also a key element in the courtroom. To begin it is important to understand that trials during the seventeenth and eighteenth centuries were very different from today. Lawyers were hardly there, judges and juries exercised vast powers in interpreting the law, and these trials were very quick.¹⁶ Trials in England were shaped differently depending on whether the criminal was male or female. For women, trials were more intimidating. This was mainly due to

¹⁵ Herber-25

¹⁶ Old Bailey Records

the fact that both the judge and the twelve person jury were both male. The only other women that were present during court were spectators and witnesses. These female witnesses along with the evidence they presented in court were often overlooked and at times even omitted from the proceedings. The opposite was true when it came to males. Theirs was highly valued and taken with much greater seriousness. Males aside from the judge and jury also played a role when it came to the outcome of trials. It is key to stress the importance of narrative and demeanor in the court because both did indeed affect outcomes. An example of how these two things affected trials can be seen with many of the cases regarding women and infanticide. There was always a clear distinction between docile mothers and rebellious mothers who committed infanticide, “the docile mother was silent, the rebellious infanticidal mother often conducted her own defense, even cross-examining the prosecution's witnesses. Because the rebellious infanticidal mother was apparently (although perhaps not truly) more violent, more vocal, and more psychologically suspect, she was demonized, and she was hanged”.¹⁷ Those women that acted in a way that women should: quiet and obedient were often set free of blame, while those who made scenes and stepped outside the typical role of women were often found guilty. Men’s demeanor in court is considered to be fairly normal with the exception of an occasional drunk or lunatic. The code of *feme covert*, or the idea that women could not be charged or held accountable for crimes committed before their husbands, was not usually used in court, but in some cases it let married women get off without sentencing. As mentioned above, the court systems were dominated by male figures, and because of this women were very reluctant to bring a case before the court on their own. In fact the Old Bailey records mention how, “only about a seventh of the victims

¹⁷ Marilyn Francus, "Monstrous Mothers, Monstrous Societies: Infanticide and the Rule of Law in Restoration and Eighteenth-Century England ." *Eighteenth-Century Life* 21, no. 2 (1997): 134

or prosecutors of crime at the Old Bailey were women”.¹⁸ Overall the courtroom was rarely a place for women and when women were there they were hardly convicted because as already mentioned their crimes were less threatening.

When it came to punishments that criminals were sentenced to gender had a place as well. According to Old Bailey records, judges had an enormous range of possible punishments that they could sentence criminals to, and this variety can be seen especially when comparing men and women and their punishments. For example, women who committed treason were burned at the stake, while men who committed the same crime were drawn and quartered. Men who committed crimes relevant to transportation were sentenced to working on the river. Women on the other hand were imprisoned and put to hard labor. Men were the only ones that could be sentenced to naval or military duty and this was usually a conditional punishment until they were pardoned. The death penalty was one of the most common forms of punishment, but a large portion of the time it was not carried out because of intervention by clergy and pardons. Women were at a particular advantage, if they were pregnant they could escape the death penalty. It was simply a matter of “pleading their belly” and it being proved that they were indeed pregnant. Often it was the case that the punishment would be prolonged until after the birth of the child, but at that point there was sympathy for the newborn baby and its need for a mother, and therefore the woman was pardoned. This was the case with Emma Pleasance who was accused of murder and found guilty, but the accusation was dismissed because after a series of examinations by jurors of matrons she was found to be pregnant.¹⁹ Overall, decisions were influenced by the idea that female criminals were less threatening than male criminals. Female crimes were also less frequent than that of males.

¹⁸ Old Bailey Records

¹⁹ Old Bailey Records EMMA PLEASANCE, Killing > murder, 3rd August 1880.

Gender roles were a dynamic of everyday life and in turn they affected the criminal system in eighteenth century England from the crimes that were committed, the trials that took place, and the punishments that were set. A large portion of what is known about gender roles and crime during this time period comes from the Old Bailey Proceedings which offers overwhelmingly large detailed accounts of criminals and their crimes along with their punishments. Women were accused of far less crimes than men and many argue this is because they women were less of a threat and therefore, their crimes were less threatening. Theft was common among both men and women, but was one of few crimes that would cross the line between the two genders. There were very few cases of women committing violent crimes, whereas the opposite was true with men. The reasons for such great differences in the crimes of men and women are still being debated today, but the common assumption is that it was because of the differences between the public and private spheres. The courtrooms and trials were dominated by males and this created an intimidation factor for females. As much as it seemed like women had no chance in courts, they did have some advantages when it came to punishment decisions, particularly because they were less threatening to society as a whole and because they had the ability to be pregnant. The differences in not only the crimes committed and punishments issued, but also men and women's stance in the courtroom was directly linked to who, what, and where men and women were supposed to be in society.

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