

#### IV. Eighteenth-Century Fiction and Criminal Law.

In spite of recent work on criminal biography, little attention has been paid to the rôle of criminal law in relation to fictional narrative.<sup>i</sup> And yet eighteenth-century readers were clearly fascinated by criminal law and those who infringed its code. To the eighteenth-century mind, the law was not simply a powerful institution but a form of entertainment, which found its most grisly expression in public spectacles such as the mutilation and stoning of offenders in the pillory and of course the ever popular hanging and disembowelling of felons.

Criminal trials attracted audiences from a wide social spectrum. Hay describes 'the cream of county society, attending the assize ball and county meetings, which were often held in the same week', noting that 'Tradesmen and labourers journeyed in to enjoy the spectacle, meet friends, attend the court and watch executions'.<sup>ii</sup>

Readership of criminal literature appears to have been equally diverse. Rawlings comments, 'it is typically assumed that the bulk of the readers of popular [crime] literature came from the labouring classes'(p.3) but he argues that many criminal biographies may have been too sophisticated, not to mention expensive, for such readers. He notes, 'people clubbed together to buy newspapers which were then read to the group by literate members, and there may have been similar arrangements for other literature, including criminal biographies' but argues for a much wider readership, noting 'the gentry's fascination with crime and its literature'. He concludes, 'the core of the readership for crime literature came from the same broad social group as those who published it': 'the middling classes', noting that 'The biographies themselves typically suggest this readership', with advice on crime prevention, often for tradespeople, and frequent portrayals of 'crime as originating in the lack of self-discipline and idleness of the labouring people'(p.4).

The early eighteenth century saw growing concern about crime and therefore an increase in publications concerning crime and criminals, from journals and pamphlets to sessions papers.<sup>iii</sup> Novelists capitalised on public interest in crime and the laws which sought to deal with it, producing narratives rich in roguish exploits, through which serious questions are posed concerning the law and its processes, from the perennial charge that the law is inadequate to protect innocent citizens, to humanitarian concerns regarding the treatment of criminals.

#### Defoe: *Moll Flanders* (1722)

Backscheider argues usefully, 'Always alert to what his contemporaries were interested in and eager to analyze, explain, and point out the implications of social change, Defoe began to publish extensively on crime and criminals'(p.477). His popularity was such that he came to compete 'with the Newgate Ordinary as the most productive and popular crime writer'; there were three editions of *Moll Flanders* and it 'was serialized in the *London Post* between 14 May 1722 and 20 March 1723'(p.492).

In the course of his writing and editorial work for Applebee's *Journal* in the 1720s, Defoe had ample opportunity to observe legal procedure and to develop an understanding of the public appetite for crime. This goes some way to explaining the use of legal detail in *Moll Flanders*, which capitalises on public interest in crime and court procedure, while addressing issues of contemporary concern such as imprisonment and transportation.

James notes that Defoe 'not only brings his protagonist to life as an exceptionally gifted felon, but also convinces us of the absolute plausibility of her crimes'. Yet he fails to recognise that it is the attention to legal detail and the use of legal vocabulary which help to create this 'verisimilitude'.<sup>iv</sup> Zimmerman recognises that 'The institution that Moll knows best is the law' but he too fails to address her specific legal knowledge, arguing simply that 'Her experiences with it reflect and reinforce her sense that everything is a manipulable surface'.<sup>v</sup> Steeves articulates a still popular conception of *Moll Flanders* as 'almost pure rogue-romance'.<sup>vi</sup>

*Moll Flanders* clearly owes much to the tradition of criminal biography and romanticised folk-heroes, as described by Faller and Richetti.<sup>vii</sup> Yet consideration of the law reveals Moll to be

more than a colourful descendant from 'rogue romance'; the novel sites itself clearly within a legal context, presenting Moll's fight for survival in the legal arena and her attempts to subvert the laws which threaten her.

Moll's various discourses are well documented but commentators have tended to address her economic and her religious discourse to the exclusion of her clear legal discourse. When Moll faces trial for stealing brocaded silk, her discussion of the relevant laws reads almost like a legal text book. The relation between felons and lawyers was less distinct in the eighteenth century than twentieth-century readers might expect in that felons were required to defend themselves in court. Blackstone explains: 'no counsel shall be allowed a prisoner...in any capital crime, unless some point of law shall arise proper to be debated'. Sheehan notes that 'Law books were...popular reading [in Newgate] and prisoners pored over these volumes in order to prepare their defences, often with the assistance of law students preparing for the bar'.<sup>viii</sup> Baker argues that during the century it became more common 'for counsel to be permitted to conduct the case or to prompt the accused'.<sup>ix</sup> However, this right was by no means universal and was, as Blackstone complained, 'left to the good pleasure of [the] judge'.<sup>x</sup> Felons did not have the right to a defence lawyer until 1836.

Moll's language testifies to Defoe's concern for legal accuracy, for example, when she explains the indictment to the reader, she reflects accurately the language used in real indictments: 'I was indicted for...feloniously stealing two Pieces of Brocaded Silk, value 46*l*. the Goods of *Anthony Johnson*'.<sup>xi</sup> The indictment for Mary Squires, accused in 1753 of assault and theft, reads similarly: 'one pair of stays, value 10*s*, the property of the said Elizabeth [Canning]...[Squires] did steal, take, and carry away'.<sup>xiii</sup> Blackstone explains that 'In all indictments for felonies, the adverb "feloniously"...must be used...in larcinies also, the words "...feloniously took and carried away," are necessary...Lastly, in indictments the value of the thing...must sometimes be expressed...that it may appear whether it be grand or petit larciny; and whether entitled or not to the benefit of clergy'(IV,pp.302-3). Hence Moll refers to the theft as 'feloniously stealing'(p.361) and notes the value of the silk.

Moll is indicted on two counts: larceny and burglary. She insists, 'I had neither broken any thing to get in, nor carried any thing out'(p.348), echoing the legal definition of larceny: Blackstone notes that 'There must not only be a taking, but a *carrying away*'. However, he explains, 'A bare removal from the place in which he found the goods, tho' the thief does not quite make off with them'(IV,p.231), is sufficient to convict, which provides a useful legal context for Moll's activities. Moll recounts, 'The Witnesses...swore...that I was quite out of the House in the Street with the Goods before they took hold of me'. She argues disingenuously, 'they stop'd me before I had set my Foot clear of the Threshold'(p.361), admitting to the reader, 'certain it was, that I had taken the Goods, and that I was bringing them away'(p.362).

Moll is clearly guilty but in order to convict someone of larceny, felonious intent had to be proved. Blackstone defines felonious intent broadly as 'where the party doth it clandestinely; or, being charged with the fact, denies it'(IV,p.232). The example he provides a useful comment on Moll: 'a thief, intending to steal plate, [who] takes it out of a chest in which it was, and lays it down upon the floor, but is surprised before he can make his escape'(pp.231-2). Moll endeavours to establish doubt concerning the carrying away of the goods and felonious intent. She argues that she went 'with Design to buy' the silks and simply wanted to look at them in daylight before buying them, which the court regards as 'a kind of Jest'(p.362).

Larceny was divided into two categories: simple larceny, which was sub-divided into petit larceny for goods worth twelve pence or less and grand larceny for goods worth more; and compound larceny, which involved theft from a house or a person. Moll is clearly guilty of compound larceny but she is also accused of burglary. Blackstone quotes Sir Edward Coke's definition of a burglar as 'he that by night breaketh and entereth into a mansion-house, with intent to commit a felony'. Moll is acquitted from burglary, presumably because the crime took place in the daytime and theft was only deemed burglary if it occurred at night: as Blackstone explains, 'in the day time there is no burglary'(IV,p.224).

Burglary also presupposed breaking and entering, although this was not necessarily violent:

as Blackstone explains, it could simply involve 'lifting up the latch of a door'. Moll relates, 'At the Arraignment', when a prisoner was called to the bar to answer the indictment, 'I pleaded not Guilty'. Her plea is calculated according to precise knowledge of law, her language reflecting the legal definition of burglary: 'I knew very well they could not pretend to prove I had broken up the Doors, or so much as lifted up a Latch'(p.361). Blackstone explains, 'if a person leaves his doors or windows open, it is his own folly and negligence; and if a man enters therein, it is no burglary'(IV,p.226).

During her defence, Moll also draws attention to the nature of the building. This seemingly unimportant detail carries more weight than twentieth-century readers may assume: if the building were inhabited, it could be regarded as a 'dwelling-house' and so the theft could constitute burglary; however, theft from a shop building which was not inhabited was not burglary. Moll admits to the reader that the building 'was not a Mercers Shop nor a Warehouse...but look'd like a private Dwelling-House'(p.347), assuming that we understand the bearing this has on her case. The witnesses stress that 'it was no Shop for the Selling of any thing'(p.362).

Moll's case rests in the hands of the jury; Blackstone explains that 'it is the same, whether [felonious] intention be actually carried into execution, or only demonstrated by some attempt...the jury is to judge'(IV,p.227). The jury finds Moll 'Guilty of Felony, but' she is 'acquitted of the Burglary'; she recognises that the distinction is in one sense meaningless because the first carries 'a Sentence of Death, and the last would have done no more'(p.362).

Moll is understandably shocked when she is brought before the Judges to hear her sentence and 'stood mute a while'. However, she relates, 'some Body that stood behind me, prompted me aloud to speak to the Judges'. This anonymous voice, presumably that of a clerk of the court, provides a brief but significant example of the humanitarian face of the judicial system, prompting Moll to plead with the Judges, who have the power to 'represent things favourably', that is, to recommend a reprieve or a pardon. Moll is asked, 'What I had to say, why Sentence should not pass'(p.362), referring to what was known as the *allocutus*. The accused was given the opportunity to speak not to argue in mitigation but to present anything which would prevent the court from pronouncing judgement, for example, presentation of a pardon already granted, a plea for benefit of clergy or a plea of pregnancy, which entitled a woman to a respite from judgement until the birth of her baby, by which time she could hope to be pardoned.

Female prisoners openly solicited in prison in the hope of becoming pregnant; it is perhaps appropriate that Moll may owe her very existence to this method of avoiding punishment: her mother 'pleaded her Belly, and being found quick with Child...was respited for about seven months'(p.44), after which her sentence was softened to transportation. Misson noted in 1719 that women 'condemn'd to death, never fail to plead that they are with child...in order to stop execution till they are deliver'd'. Male prisoners were quick to inform female prisoners that if they were not pregnant, 'they must go to work immediately to be so'.<sup>xiii</sup> Gay exploits the potential sexual humour of the situation in *The Beggar's Opera* (1728). Filch explains that 'the favourite child-getter' was 'disabled by a mishap' and so he has 'picked up a little money by helping the ladies to a pregnancy against their being called down to sentence'; his services appear to be required frequently: 'tis what I can't undertake for another session'. Lockit jokes, 'The vigour and prowess of a Knight-errant never saved half the ladies in distress' that a 'child-getter' has(III,sc.iii).

Moll knows that she is on tenuous ground, 'I had nothing to say to stop the Sentence'; she cannot plead benefit of clergy because, as Blackstone explains, it was denied 'in all larcinies to the value of forty shillings from a dwellinghouse' even 'without breaking in'(IV,p.241). However, as a graduate of the Newgate school of law, Moll recognises that she has other options: the death sentence did not necessarily mean death. She comments, 'I had much to say, to bespeak the Mercy of the Court'(p.362) in the form of a reprieve or a pardon.

Hay notes, 'The grounds for mercy were ostensibly that the offence was minor, or that the convict was of good character, or that the crime...was not common enough...to require an exemplary hanging'(p.43). For this reason Moll stresses 'the Circumstances' of the case: 'I had broken no Doors, and carried nothing off'(p.362) and 'the Person whose Goods they were...desir'd Mercy

might be shown'. She presents the offence as minor and as a 'first Offence'(p.363). Moll endeavours consistently to present herself to the Judges as a minor criminal, seeking to exploit the irony of the law which determined that, despite the 'prevailing...fatal Report of being an old Offender...I was not in the Sense of the Law an old Offender' because 'I had never been before [the Judges] in a judicial way before'(p.371).

Moll is proud of her 'performance' as lawyer: 'I spoke with more Courage than I thought I cou'd have done, and in such a moving Tone...that I cou'd see it mov'd others to Tears'. The Judges give her 'an easy Hearing, and time to say all that [she] would' but, seemingly omnipotent, they sit 'Grave and Mute'(p.363) and pronounce the death sentence. Up until this point Moll appears to have regarded the trial as part of her long running 'cat and mouse' game with the law, an ultimate attempt to subvert the law. When she hears the death sentence, she and the reader suddenly become conscious of the terrifying reality of her situation.

Zimmerman argues that Moll's guilt and the fact that she is 'an old offender...have little to do with what happens to her. The law is at best a technicality, at worst a means for legal extortion or private vengeance'(p.103), apparently falling victim to the assumption that because the eighteenth-century criminal law system was 'one of the bloodiest criminal codes in Europe',<sup>xiv</sup> it was always inequitable. Yet Moll's trial is not an instance of the system victimising a powerless individual: she is given every opportunity to defend herself. The undeniable malice of the witnesses, cited by Zimmerman as an instance of the inequity of the judicial procedure, is irrelevant: Moll is guilty and it is the evidence which convicts, not private malice. Moll dissects law as a lawyer but she is judged as a criminal.

Watt does not account for this, arguing: 'most of [the felons] are vicious reprobates who richly deserve their fate' but Moll is 'essentially virtuous and deserving'. Watt appears to base his interpretation of Moll's character on her own self-analysis, which must be unwise: Moll appropriates rôles on the basis of expediency; she appears to be equally at home playing a penitent sinner as she is at playing a cunning lawyer or skillful thief. Moll pleads 'necessity', a common and often genuine excuse for crime but one which was also used frequently in court to present the accused as a person of fundamentally good character and deserving of a pardon; it is part of Moll's argument for clemency. She admits, 'as I was not at a loss to handle my Needle, it was very probable...I might have got my Bread honestly enough'(p.267). Watt criticises Defoe for 'inattention to detail' and yet his own inattention to the legal detail of Moll's trial results in an oversimplification of Moll's character and of the novel's thematic concerns.<sup>xv</sup>

While in Newgate, where Defoe himself had suffered,<sup>xvi</sup> Moll experiences what Bender refers to as 'A redemptive hell for the wayward soul, a reformatory regime for the felonious mind'. I am not convinced by Bender's assertion that Moll's 'secular rehabilitation is complete'; whether or not she internalises the corrective values of the penal system remains ultimately debatable.<sup>xvii</sup> However, her apparent penitence makes her an appropriate candidate for clemency and is thus essential to Defoe's argument.

Moll's penitent tone may seem incongruous with her character, but it makes sense within the context of the early tradition of crime pamphlets and particularly the Ordinaries' accounts in showing the progress of the felon to a recognition of sin and repentance.<sup>xviii</sup> The Ordinary,<sup>xix</sup> impressed with Moll's penitence, 'obtain[s] a favourable Report from the Recorder', one of the chief Judges of the Old Bailey, 'to the Secretary of State'(p.368) and gains her a reprieve. Moll puts in 'an humble Petition for Transportation' commenting, 'we shall all choose any thing rather than Death'(p.371).

Transportation was a form of pardon, when the sentence was commuted to a period of exile in the colonies. Baker notes that it 'was in regular use by 1615' and was so common in the eighteenth century 'that trial judges automatically prepared and returned to the secretary of state calendars of those convicted...marking those recommended for transportation, or for free pardons'(p.44). Hay notes that 'Roughly half of those condemned to death during the eighteenth century did not go to the gallows, but were transported to the colonies or imprisoned'(p.43).

Backscheider argues pertinently, 'Defoe's depiction...included powerful propaganda for the'

Transportation Act (1718). Prior to the Act, as Blackstone explains, petit larceny was 'punished by whipping' but the punishment for grand larceny was 'regularly death'(IV,p.238). Convicted felons could not be sentenced to exile, although they could be pardoned on condition that they transport themselves voluntarily. The Transportation Act enabled courts to transport felons if they believed the death penalty to be too harsh and whipping too lenient. Moll's experience reflects Defoe's belief in transportation as a means of allowing felons the opportunity to break the pattern of crime and make a new life for themselves within society as opposed to in conflict with it.<sup>xx</sup>

Moll is sold to a planter on arrival in Virginia but, according to 'the Custom, in...disposing the convict Prisoners', she buys her freedom: 'the Planter gave us a Certificate of Discharge, and an Acknowledgement of having serv'd him faithfully'(p.402). Moll's good fortune here is not implausible: Beattie notes that women convicts were often regarded as poor workers;<sup>xxi</sup> the planter may feel that Moll's money will provide a better return on his investment than her labour. Moll ultimately gains an inheritance and she and her husband return to England in a very comfortable financial position.

Defoe is able to explore and comment on the legal system through Moll in a way that he could not with a more conventional character: she articulates the views of felons, a social group who may not be deemed appropriate mouthpieces for legal reform but who are in one sense uniquely qualified to discuss it. Moll is both a commentator on the law and a participant in its system, as 'lawyer' and as convicted felon. She describes Newgate in disturbing detail: 'the hellish Noise, the Roaring, Swearing, and Clamour, the Stench and Nastiness'(p.349). This is of course on one level a personalised account of her experiences, and presumably to some extent Defoe's own, but it also approximates to the discourse of social reformers such as John Howard and Sir Frederic Morton Eden.<sup>xxii</sup>

On a lighter note, Moll's outrageousness and dubious moral practices enable Defoe to treat serious subjects like the law with humour and even scandal, thus entertaining the reader. Yet the comedy of Moll's escapades must not blind us to the accuracy of the novel's legal comment. Moll plays a variety of rôles, from repenting sinner to social commentator but she also has a legal rôle, one which would have been of great interest to contemporary readers but which has been overlooked by twentieth-century commentators. *Moll Flanders* is not simply a narrative of roguish exploits; in so far as it treats Moll's criminal career it represents the predicaments and attitudes of an individual seeking cunningly to negotiate a path through the complex byways of eighteenth-century legal practice.

### ***Roxana* (1724)**

Defoe returns to the law in *Roxana* but from a different angle, moving from the exuberant criminality of *Moll Flanders* to the darker politico-economics which govern Roxana's world and its legal processes. Zomchick takes issue with the critical emphasis on economics in scenes such as the Jew recognising the dead landlord/jeweller's jewels when Roxana tries to sell them. The landlord, with whom Roxana had cohabited, had given her jewels and other valuables in case he should die: 'if any thing happens to me, 'tis all your own'.<sup>xxiii</sup> This testifies to his desire to treat her as a wife but it is a legal irrelevance: they are not married and so any property belongs to his heirs and Roxana knows it.

Zomchick argues that this scene is 'an indication of the further ineluctable emplotment of the juridical subject within social structures'. Zomchick's discussion of the development of what he defines as 'the juridical subject' is interesting but seems to place Roxana rather closer to social and legal 'norms' than is really appropriate. He argues that the incident with the Jew teaches her that the social 'structure is essentially competitive', something she seems to have learnt some time ago, and that 'Accumulation must not only be rationalized by the contract', presumably marriage, 'but it must also be legitimized according to social norms', or laws. He explains: 'The Landlord/Jeweler's equitable treatment of Roxana is liable to be interpreted by interested others as a grand fraud'.<sup>xxiv</sup> Yet what concerns Roxana is not accommodating social norms but appearing to do so in order to retain

the jewels: she is only perturbed by the illegality of her claim in so far as it endangers her and 'her' jewels.

Roxana presents herself as the landlord's wife, claiming that she was unaware that he was already married. A lawyer advises her 'to make a Process in Dower upon the Estate'(p.92), which she does. Peterson claims that 'Defoe has left his reader with a legal enigma...the process in dower would doubtless have required court settlement'. He is raising a problem which the text does not pose: Roxana is not intending to go to court. Peterson refers to her 'marriage' as 'void', a legal term denoting marriages in contravention of the statutes, and yet it is non-existent: the contract has always been one of cohabitation; both partners are fully aware that they cannot marry.<sup>xxv</sup>

Peterson has a tendency to take legal situations at face value, without reference to rather obvious sub-texts such as Roxana's knowledge that her dower claim is spurious. One needs to be very careful when interpreting Moll and Roxana's language: they are at their most devious when appropriating legal discourse. Peterson seems to interpret their behaviour and their comments literally, failing to allow for irony which would have been evident to eighteenth-century readers, aware that Roxana could not be considering going to court.

Zomchick concentrates on the contractual element and pays only cursory attention to the main legal issue: murder. The jewels, despite their financial value, are actually only important as evidence of Roxana's dealings with the jeweller. Roxana herself, not usually loath to employ financial vocabulary, considers her 'case' in specifically legal terms. Zomchick is right to note the financial issues involved: economics provide Roxana's motivation much of the time. Yet even she is more concerned by the threat of 'a Process against me for the Murther'(p.153). As soon as she recognises the Jew she fears being 'put to Death in as cruel a Manner as possible' for murder. She is so afraid that she actually resolves on leaving her money: 'flying for my Life, and leaving the Jewels and Money too...without any Bills, or any thing else'. If this does not convince us of the legal context, her use of legal vocabulary as she explains 'the Case'(p.150) to the reader, should do so.

When the merchant translates the Jew's accusations, the language again reveals the situation to be legal, not economic: 'he says, you ought to be charg'd with the Robbery and Murther, and put to the Question, to discover who were the Persons that did it, that they might be brought to Justice'(p.151). The Jew's motives may be financial, although he does seem to show some genuine 'Horroure'(p.150) at Roxana's possible guilt, but the language he is using is legal.

Roxana is of course innocent of conspiracy to rob and murder but she knows the law well enough to realise that this alone is insufficient because she has kept the jewels unlawfully and this suggests guilt. Like Moll, she proves adept at blending truth with well chosen lies: 'I am the unhappy Widow of Mr-...he was not robb'd of those jewels, but of others...having left those behind him, with me, lest he should be robb'd'(p.152). Her case seems plausible but she realises that in court, or 'upon Examination, I cou'd not have prov'd myself to be the Wife of the Jeweler' and so the case against her would have been strengthened: 'the Suspicion might have been carried on with the better Face'(p.153).

The tone of the scene is reminiscent of the court; when the merchant and the Jew 'withdraw' to discuss the case, we have the impression of a Judge and prosecution lawyer in chambers. The Jew threatens not only Roxana's property but her life: '[the jewels] shall either be seiz'd by us...in the King's Name', as a court seized the property of felons on behalf of the crown, 'or she shall be glad to give them up to us, to prevent her being put to the Torture'(pp.154-5).

The threat of torture is very real: the merchant admits that if the Jew swears that Roxana murdered her husband, 'I do not see what cou'd save you'(pp.155-6). He explains that the Jew intends to have her taken to Châtelet, 'that the Suspicion may appear just' and to agree 'to drop the Prosecution, on [her] consenting to quit the Jewels to him'(p.156). Roxana, frightened that she may be forced into making a false confession, actually defends English law in relation to proving guilt: 'In *England*...they must prove the Fact, or give just Reason for their Suspicions'(p.155). She is of course appropriating the language of law in order to align herself with respectable wives; it is the discourse of outraged innocence: surprise that 'Innocence may be oppress'd by such an impudent Fellow'(p.156), to cover the fact that she has kept some of her late lover's jewels, designed to add

credence to her pretence that she is his widow.

However, there is also genuine fear: she realises on a very personal level that 'he that does not value a Perjury, has any Man's Life at his Mercy'(p.156). At this point her personal discourse develops into a more general consideration of the injustices of the system. There are clear implications for English law: torture may be very rare in England but innocent people can be imprisoned at the behest of those unafraid of perjury.

Zomchick fails to account for the apparently genuine element of legal criticism in Roxana's comments. Her financial concerns must not blind us to the clear focus of this scene: her legal predicament. Her question 'is the Justice such here, that while I may be in the Hands of the Publick, and under Prosecution, he may get hold of my Effects...[?]'(p.156) appears to be born of genuine and justified outrage.

Roxana's focus on the jewels is perhaps not as materialistic as it appears: they represent a potentially great injustice. The jewels are not Roxana's but the text seems, to some extent at least, to underwrite her belief in her moral right to them. The point becomes universal when we realise that the situation would be no better if they were hers, unless she could prove the marriage. This could be difficult if they really were 'Married in Private'(p.155) and nothing offers protection from perjury.

The merchant warns her of potential problems from another quarter: 'if the Court of Justice shou'd get hold of [the jewels]...it may cost...half as much as they are worth' to retrieve them. He advises her 'to prevent their coming at them at-all'. The tone of her reply indicates that she is really afraid: 'If they get me into their Hands, they will oblige me to produce them, or perhaps, sentence me to Prison till I do'. The merchant's tone is even more dramatic as he warns that the frighteningly anonymous 'they' might 'put you to the Question, that is, to the Torture, on Pretence of making you confess who were the Murtherers of your Husband'(p.156). The word 'pretence' hardly instils confidence in the system and adds to the almost Gothic feel of this scene, replete with the horrors of a foreign judicial system. What the merchant is describing is rather similar to the accounts of the Inquisition at the end of the century, for example in *The Italian* (1797).

Defoe presents us with what is effectively a mock trial, with the merchant acting as Moll's legal adviser. Moll expostulates with an air of genuine concern, 'Confess!...how can I confess what I know nothing of?' He provides sinister comment: 'If they come to have you to the Rack...they will make you confess you did it yourself, whether you did it or no, and then you are cast'. The merchant reflects popular English assumptions about the legendary Inquisition, which tended to colour their vision of contemporary French courts and make English law look reassuringly just in comparison. Roxana responds as if she were on trial in a Gothic novel: 'The very word Rack frighted me to Death almost, and I had no Spirit left in me: Did it myself! said I; that's impossible!'(p.156). The merchant reminds her, 'the most innocent People in the World have been forc'd to confess themselves Guilty of what they never heard of, much less had any Hand in'(pp.156-7).

The merchant's dire warnings owe much to the tradition of fear towards the continental judicial system, a tradition which spans the century and finds perhaps its most compelling form in Gothic novels such as Radcliffe's. We need to remember, however, that these fears did have some real basis and both Defoe and Radcliffe question our own legal system through commenting on a reassuringly remote one. The rack was no longer used in eighteenth-century England but practices such as 'pressing to death with iron weights' did occur, albeit rarely.

Roxana asks in desperation, 'What then must I do?'(p.157) and the merchant advises her to leave the country, taking her jewels. He determines to slow down the joint 'Process' he is supposed to be taking out against her with the jeweller. Much relieved, Roxana reverts to her usual financial discourse, calculating interest, and cataloguing their transactions concerning 'Bills and Money; a Copy of an Assignment<sup>xxvi</sup> on the Town-House of Paris...Interest, attested; and a Procuracy<sup>xxvii</sup> for receiving the Interest half-yearly'. She has even recovered sufficiently to make sure that 'the Original [document] I kept myself'(p.158). This is the sort of language we have become accustomed to when dealing with Roxana but we must not forget that she is a complex figure and that her discourse changes according to her fictional predicament. She may use the language of bankers with

ease in this scene, as she used the language of the court in the previous one but shortly afterwards, frightened for her life on a ship, she uses the language of prayer and repentance with apparent new found piety that would not be out of place in Aubin.

She uses the language of repentance, 'I was very Penitent too, for my former Sins', promising, 'if it should please God but to spare my Life...I would live a single and a virtuous Life'(p.165). However, her repentance is conditional and when the storm abates, she reverts to her usual pragmatism: 'Repentance which is brought about by the meer Apprehensions of Death, wears off as those Apprehensions wear off'(p.166). This is of course Roxana and however convincing certain passages of repentance may be, she is not destined to be a religious exemplar. Her chameleon appropriation of different discourses, along with different costumes, is perhaps a product of the discrepancy between her character and the constraints of the narrative genre and its relation to the tradition of repenting rogues in earlier criminal narratives.

When threatened by the Jew Roxana has, temporarily at least, a kind of innocence and vulnerability, expressed in her reliance on a seemingly more mature version of what was later to become the Gothic hero: the Dutch merchant. Her position is ironic in that her usual worldliness precludes her from being cast in the rôle of innocent victim but she is in genuine danger. Despite being astute in her business affairs and downright corrupt in her sexual ones, Roxana seems genuinely vulnerable before the law in a way that Moll Flanders, well versed in criminal law, is not.

Given that Roxana is not a virtuous heroine, she cannot necessarily affront the system armed only with innocence and win, a notion that was current in romances of the 1720s as well as in their offspring the Gothic novels later in the century. Defoe is not writing within the world of romance and divine justice, although parts of *Roxana*, such as the repentance scenes, may be related to such writing. Roxana is a pragmatic heroine in a 'realistic' world and so she has to take the realistic but less heroine-like option of leaving the country. Romantic absolutes and conventions concerning innocence overcoming injustice simply do not apply to Roxana's world: she is clearly not fitted to be a precursor of the virtuous Gothic heroine but she is perhaps Defoe's equivalent, complete with irony in terms of worldly character but facing 'real' powers of potential injustice which are too great for her to oppose.

### **Swift: *Gulliver's Travels* (1726)**

*Gulliver's Travels* is a complex piece which works on a number of levels, being related to travel and adventure narratives but clearly also being intended as political and legal satire. Gulliver comments on the legal process and the power structure which underpinned it from a different point of view to Defoe's characters in that he is not a law-breaker. Indeed he takes on a tone of some authority as a self-styled political envoy, explaining English law to a variety of 'foreigners', many of whom behave in suspiciously similar ways to well known English political figures. Swift discusses English law through Gulliver's discussions with characters who ask questions appropriate to the criticisms Swift wishes to make.

Gulliver, an apparently reluctant legal critic, naïvely tells the reader how corrupt the judicial system is while ostensibly describing it as positively as any patriotic Englishman can. He admits, 'I would hide the frailties and deformities of my political mother' and comments later that during his discussions with his Houyhnhnm master, he 'gave as *favourable* a turn as the matter would bear'.<sup>xxviii</sup>

Gulliver considers the very foundations of English justice: 'Although we usually call reward and punishment the two hinges upon which all government turns, yet I could never observe this maxim to be put in practice by any nation except that of Lilliput'. He states that the Lilliputians 'thought it a prodigious defect of policy...that our laws were enforced only by penalties without any mention of reward'. Their 'image of Justice' has 'a bag of gold open in her right hand, and a sword sheathed in her left, to show she is more disposed to reward than to punish'(p.95). The implicit criticism of the foundations of English law, designed primarily to punish, is evident.

Gulliver describes the laws in Brobdingnag as: 'confined...within very *narrow bounds*; to common sense and reason, to justice and lenity, to the speedy determination of civil and criminal

causes'(p.176), all of which, by damning implication, are absent from English law. Later, under the guise of explaining 'the English Constitution'(p.290) to the Houyhnhnms, Swift uses Gulliver to make a stinging attack on English legal practice. Gulliver first defines lawyers: men skilled 'in the art of proving by words multiplied for the purpose, that white is black, and black is white, according as they are paid'(p.295). Lawyers were popular butts of satiric wit throughout the century. Richardson's Lovelace describes a lawyer as a man 'who for the sake of a paltry fee undertakes to whiten a black cause'.<sup>xxix</sup> Sterne presented the judicial system in a similarly unflattering light in *The Life and Opinions of Tristram Shandy* (1759-67), describing 'a coalition of the gown, from all the bars of it, driving a damn'd, dirty, vexatious cause before them, with all their might and main, the wrong way'.<sup>xxx</sup>

Gulliver argues that all other men are their 'slaves' because an individual cannot defend himself without a lawyer, 'it being against all rules of law that any man should be allowed to speak for himself'. He gives an amusing example: 'if my neighbour hath a mind to my cow, he hires a lawyer to prove that he ought to have my cow...I must then hire another to defend my right'(p.295).

Inverting generally accepted definitions, he argues that the lawyer's rôle is 'defending falsehood' and that defending just causes is 'an office unnatural', thus attempted 'with great awkwardness, if not with ill-will'. The only way to win a trial, according to Gulliver, is to bribe the opponent's attorney or to make one's cause appear unjust in order to 'bespeak the favour of the Bench'(p.296). The irony may be outrageous but it expresses frustration which still occurs concerning seemingly outrageous judgements.

Swift's comments on Justices and Judges are no more flattering than Fielding's later in the century. Gulliver claims that Judges in Brobdingnag are 'venerable sages and interpreters of the law', concerned with the 'protection of innocence'(p.168). In case the reader has not recognised the comparative deficiencies of English Judges, he later explains that the latter are 'picked out from the most dexterous lawyers who are grown old or lazy, and having been biassed all their lives against truth and equity, lie under...a fatal necessity of favouring fraud, perjury, and oppression'(pp.295-6). Even allowing for the bitterness of Swift's satire, the image presented here is disturbing but not wholly inaccurate, as contemporary readers would presumably have realised. Even Blackstone admits that 'few care to undertake, and fewer understand, the office' of Justice, commenting, 'the country is greatly obliged to any worthy magistrate, that without sinister views of his own will engage in this troublesome service'(I,p.354), implying that some magistrates at least had 'sinister views of [their] own'.

Gulliver gives an equally cynical interpretation of legal precedent: 'It is a maxim among these lawyers, that whatever hath been done before, may legally be done again'. The humour depends on the reader understanding the nature of precedents; Swift's definition is close to the truth but twists it: 'they take special care to record all the decisions formerly made against common justice and the general reason of mankind,' implying that it is a record of successful deceptions rather than a means of directing judgement concerning legal issues a Judge may have little experience in. He continues, 'These, under the name of *precedents*, they produce as authorities', as if the name somehow dignifies them in a manner they have no right to. He argues that these 'spurious' authorities are used 'to justify the most iniquitous opinions; and the Judges never fail of directing accordingly'(p.296).

Gulliver articulates popular eighteenth-century criticisms of lawyers, for example the nature of the questions asked: 'they studiously avoid entering into the *merits* of the cause; but are...tedious in dwelling upon all *circumstances* which are not to the purpose'(p.296). Gulliver argues: 'in the case already mentioned; they never desire to know what claim or title my adversary hath to my cow, but whether the said cow were red or black...whether the field I graze her in be round or square, whether she were milked at home or abroad'(pp.296-7). The use of the legal terms 'merits', 'circumstances', 'claim' and 'title', is clearly quite deliberate.

Gulliver's comments seem outrageous to the twentieth-century mind but eighteenth-century legal 'circumstances' could be equally outrageous. Hearing lawyers ask those accused of trespassing whether or not the field they were in was a warren, would seem irrelevant but according to the

Black Act, it could mean the difference between life and death. Blackstone explains that determining whether or not a tree was a cherry tree could also decide one's fate: 'to cut down a cherry tree in an orchard' was a capital crime but other trees were not so well protected. Eighteenth-century law is full of such seemingly impossible distinctions. Blackstone sounds oddly like Fielding when he argues that if 'learned judges' had been consulted in the making of these laws, 'it is impossible that in the eighteenth century it could ever have been made a capital crime, to break down (however maliciously) the mound of a fishpond, whereby any fish shall escape'(IV,p.4). The ludicrous nature of Gulliver's examples reflects the absurdity of such laws and is, despite first impressions, more accurate than farcical.

Gulliver seems to become a spokesperson for popular eighteenth-century criticisms of the judicial system, for example legal 'jargon': 'this society hath a peculiar cant and jargon of their own, that no other mortal can understand, and wherein all their laws are written...whereby they have wholly confounded the very essence of truth and falsehood'(p.297). Swift humorously presents a much simpler system in Brobdingnag: 'No law of that country must exceed in words the number of letters in their alphabet, which consists only of two and twenty...They are expressed in the most plain and simple terms, wherein those people are not mercurial enough to discover above one interpretation'. He is presumably not advocating such a reductive approach to law but his frustration with unnecessary legal jargon is evident.

Gulliver also criticises the duration of cases: Judges 'consult *precedents*, adjourn the cause from time to time, and in ten, twenty, or thirty years come to an issue'(p.297). This was an unfortunate reality for some eighteenth-century legal disputes. Even Blackstone admits the problem, particularly in relation to Chancery, 'It very seldom happens that the first decree can be final...if any matter of fact is strongly controverted...this court is so sensible of the deficiency of trial by written depositions, that it...usually directs the matter to be tried by jury'(III,p.452) at the King's Bench. Even preliminary Chancery 'examinations frequently last for years'(p.453) before the case reaches King's Bench and the possibility of a decision.

Gulliver argues ironically that in England 'In the trial of persons accused for crimes against the state', the 'method is...short and commendable': 'the Judge first sends to sound the disposition of those in power, after which he can easily hang or save the criminal, strictly preserving all the forms of law'(p.297). Gulliver's comments are acidic but not entirely without foundation: the law was not applied in the same way to the upper and lower classes. Gulliver explains that in England, 'no law can be enacted, repealed, or altered,' without the 'illustrious body'(p.304) of noblemen in the House of Lords. It is not surprising that they should legislate to protect each other. Blackstone explains, for example, that 'A peer, or peeress...cannot be arrested in civil cases'(I,p.402).

Treatment of Swift's presentation of law tends to be subsumed into comment on his political satire. Political satire is clearly an important facet of *Gulliver's Travels* but Swift debates specific laws and practices which have no relation to politics and so can find no explanation in an account which does not set out to deal specifically with law. Swift humorously declares that in Brobdingnag 'to write a comment upon any law is a capital crime'(p.176); in *Gulliver's Travels* he is doing just that.

### **Fielding: *Joseph Andrews* (1742)**

There would appear to be no lack of critical comment on the law in Fielding's work: it demands recognition by its rather obvious presence in terms of arrests, trials and discourses on a variety of crimes. Fielding's characters often show an awareness of the law, which we may assume derives from his experience as a Justice and ultimately as principal Westminster magistrate but it also reflects public interest and knowledge of law.

Bell notes that 'The issues of order and disorder, of regulation and anarchy...of crime and punishment...form the fabric of Fielding's fictions, and his novels become sustained interrogations of the prevailing and emergent ideologies of law' and that 'even in [their] most comic forms [they are] interrogative and investigative'(p.197). He argues that 'Fielding replaces the transparently fallible legal structure...with the superior discipline of comic fiction, where the magisterial author

may...administer punishment and reward, as he thinks fit'(p.209).

We must be careful not to underestimate the strength and sincerity of Fielding's critical approach to the law by reducing specific legal comment to essentially comic devices. Fielding's comic muse may demand that certain characters are rewarded and others punished but this does not negate the serious legal criticism made *en route*. The fact that 'the magisterial author' has to intervene is in itself a criticism of the law, which should dispense justice itself. Bell argues that 'Reform becomes a matter for the reader's conscience to decide, rather than for Fielding to direct'(p.208). I would suggest that the reader's conscience is directed by Fielding's satiric onslaught against the law, including specific legal reference to ensure that we read the situation correctly.

It is perhaps difficult to do justice both to Fielding's humour and to his legal concerns, but we need not see them as incompatible: Fielding uses humour to gain the reader's sympathy for his ideas, to sustain interest, to surprise and of course to entertain. Fielding seems to see the humorous potential in most situations; it is a measure of his success as a comic writer that many readers are so busy enjoying the comedy that they fail to recognise the deeply uncomfortable reality beneath it. Yet we must face this reality in order to understand fully the work of a man who may have revelled in comic irony but who also wrestled with the most serious legal problems of his day, not only as a magistrate but as a writer.

Steeves argues that 'the vehicle of interest' in *Joseph Andrews* is 'road-side meetings, hours in stagecoaches, on horseback, or tramping the roads, incipient crimes overtaken by petty and blundering justice, and above all, noisy and bloody fights'(p.107), seemingly relegating the law to the status of stagecoach journeys and chance meetings, somewhat below pub brawls in terms of thematic usefulness.

Yet Fielding mounts a sustained attack on the judicial system and its members in *Joseph Andrews*. When Joseph is beaten and stripped by robbers, we are presented with an amusing dramatic debate on the laws of evidence and theft. One of the robbers is caught and searched by the mob. They find Joseph's precious 'Piece of Gold' but they 'find nothing...likely to prove any Evidence'. The clothes he stole from Joseph are found in a ditch and 'the Mob were very well satisfied with that Proof' but the law regards it as insufficient.<sup>xxxii</sup>

The surgeon explains to the frustrated crowd that the clothes 'could not convict him, because they were not found in his Custody'(p.57). Barnabas comments that they are '*Bona Waviata*'(p.58). Blackstone explains *Bona Waviata* as: 'goods stolen, and...thrown away by the thief in his flight, for fear of being apprehended. These are given to the King', or the Lord of the Manor, 'as a punishment upon the owner, for not himself pursuing the felon'(I,p.296). However, 'if the party robbed can seize them first...the King shall never have them'(p.297). Barnabas and the surgeon reflect popular interest in the law; Fielding comments amusedly, 'The Surgeon drew his Knowledge from those inestimable Fountains, called the *Attorney's Pocket-Companion*, and *Mr Jacob's Law-Tables*' and '*Barnabas* trusted entirely to *Wood's Institutes*'(p.61), all of which were popular legal handbooks.

Mrs Tow-ouse articulates a rather more common attitude: 'I hope the Villain...will be hanged'(p.59). Interestingly, the two characters who know most about the law want to set the robber free, believing 'there was no Evidence against him'. Ironically, it is the ignorant Betty's common sense which triumphs over the musings of the pseudo-lawyers. She reminds them 'they had overlooked a little Piece of Gold' and 'every one now concluded him guilty'(p.58). The scene is undoubtedly comic but we must not allow this to blind us to the serious underlying consideration of law. Fielding enjoys exposing ludicrous legal situations but this does not lessen his concern.

However absurd it may seem, Joseph's possessions belong to the Lord of the Manor because 'Goods that are both stolen and found are *Waviata*'. The doctor laughs at the incongruity of 'the Lord of the Manor [being] the Receiver of stolen Goods'(p.58), recognising the ironic similarity to this crime but he and the others accept the *status quo*. Fortunately for Joseph, according to Blackstone, if the victim 'apprehend[s] the thief...or procure[s] evidence to convict him, he shall have his goods again'(I,pp.296-7).

Lawyers and Justices proved popular butts for criticism throughout the century and Fielding comments on them with the same comic satiric zeal and profound misgivings that Swift and later

Sterne do. In *Joseph Andrews* Scout is presented rather bitterly as 'one of those Fellows, who without any Knowledge of the Law, or being bred to it, take upon them, in defiance of an Act of Parliament, to act as Lawyers...They are the Pests of Society, and a Scandal to a Profession, to which indeed they do not belong'(pp.255-6). The act referred to is 2 Geo.II.c.23, which decreed that after December 1st 1730, would-be lawyers would have to serve five years as clerk to a lawyer. The penalty for not doing so was a fine of £50 and an inability to practice. Fielding was deeply concerned by the lack of professionalism among so-called lawyers; this concern finds expression in comic form in his fiction.

Fielding writes that even 'in the Hall of *Westminster*', the chief English court until the late nineteenth century, 'all becomes one Scene of Confusion in the tortured Minds of the Hearers' because 'all Things are so enveloped by the careful Serjeants in Doubt and Obscurity' that 'neither Judge nor Jury can possibly make any thing of the Matter'(p.40). He, like Swift and Sterne, presents his targets with close attention to legal detail, attention which is not reflected in commentators' analyses.

Fielding was acutely aware of the power of individuals within the legal system and the abuses it led to. One Justice who brings irony to his title 'Justice', regards the 'Examination' of Adams and Fanny for supposed robbery as 'good Sport'(p.130) and clearly behaves contrary to law. He exceeds his authority when he accuses Adams of 'robbing in the Dress of a Clergyman' telling him, 'your Habit will not entitle you to the *Benefit of the Clergy*'. The 'witty Spark[s]' challenge to Adams 'to cap Verses'(p.131) is a satirical presentation of early trials where clergy had to prove that they knew Latin in order to gain benefit of clergy. The absurdity of this exploitation of a law originally designed to protect the clergy but now available to fops like 'the witty Spark' is clear in this travesty of a court scene.

The Justice is reminded by his clerk 'that it would be proper to take the Deposition of the Witnesses'. Fielding is presumably lampooning Justices who, due to ignorance of the law, had to rely on their clerks, who had at least some legal training. The clerk writes down the depositions while the Justice 'crack[s] Jests on Poor Fanny'(p.130), which is indicative of his irresponsible attitude towards his legal powers. The Justice pays lip service to legal procedure and swears in the witnesses but does not listen to the evidence or read the depositions, presumably providing a comment on those Justices who were so inept that the evidence might as well have remained unread.

He intends to imprison them without hearing their case, commenting 'you will be asked what you have to say for your self, when you come on your Trial'(p.132). This may seem reasonable enough but Fielding assumes that we are familiar with the rôle of Justices. He is in flagrant breach of his responsibilities: Blackstone explains that a Justice 'is bound immediately to examine the circumstances of the crime alleged: and to this end...he is to take in writing the examination of such prisoner, and the information of those who bring him'. If a Justice decided after interviewing the accused 'that the suspicion...was wholly groundless', it was 'lawful totally to discharge him'(IV,p.293). It is also worth remembering that it was possible to die in prison before the case came to trial.

The Justice tells Adams, 'I shall only commit you to Goal', that is, the county jail, as opposed to Newgate. He continues, 'if you can prove your Innocence at *Size*', or the Assizes, 'you will be found *Ignoramus*', or after 1732, 'not found': the term written on the back of indictments by juries finding insufficient evidence for prosecution. He concludes fatuously, 'and so no Harm done'. Adams expostulates, 'Is it no punishment, Sir, for an innocent Man to lie several Months in Goal?'(p.132), a situation Godwin deplors at the end of the century in *Caleb Williams* (1794). Fielding's disgust is equally evident but he exposes the system satirically, encouraging us to condemn the Justice in a trial by humour, where his own absurdity and ineptitude condemn him. The Justice is a caricature based on faults Fielding must have witnessed in Justices he met: 'I have writ little more than I have seen'(p.168). Hay notes that 'Many justices convicted on flimsy evidence, particularly when they were subservient to a local magnate'(p.34).

Fielding's presentation here is clearly comic, for example when a man tells Fanny that 'if she

[has] not provided herself a great Belly, he [is] at her service'(p.130). However, we must not allow the sexual humour to blind us to the serious threat of execution. The comment is in fact no less harsh than telling Adams he may 'be exalted above the Heads of the People'(p.131), not in his usual position of cleric but on the scaffold.

Adams and Fanny are ultimately freed due to the intervention of the Squire. Bell objects, 'The magistrate simply waives the proceedings against Adams as soon as he is assured of his gentlemanly status'(p.207). The Justice is clearly influenced by rank but what actually secures Adams's release is the Squire frightening him by telling him that Adams is indeed a clergyman and of known good character. The Justice is clearly not sufficiently inept to be unaware of Adams's right to benefit of clergy at least.

The Squire uses his influence to request that he 'enquire a little farther...for [he is] convinced of [Adams's] Innocence'(p.133). The Justice immediately becomes more conciliatory on hearing of Adams's rank but he does not simply drop the charges immediately; he gives him a fair hearing, exactly in line with the procedure he flouted earlier, listening to Adams 'uninterrupted', only asking him to 'repeat those Parts which seemed to him most material.' This new found adherence to legal procedure is of course undercut by Fielding's explanation that he 'believed every Syllable of his Story on his bare Affirmation', despite 'Depositions on Oath to the contrary', replacing one bias by another. He closes this preposterous trial with a flurry of judicial action, threatening to 'bind [his men]...over to their good behaviour', that is, to keep the peace, if they do not find the perjurer and bring him to justice. The incident is clearly a comic device but we must not forget that a Justice would not want wrongly to imprison someone who would have no difficulty in claiming benefit of clergy.

Joseph and Fanny are later put 'on trial' for so-called larceny. We may be tempted to assume that the Justice's knowledge of law is as impressive as his spelling: he writes that he is 'on of his Magesty's Justasses of the Piece'. Yet it is the law which is absurd rather than the Justice: Joseph's crime is that he 'with a Nife cut one Hassel-Twig, of the value...of 3 half pence'. Fielding presents us with specific discussion of the law: the Squire asks, 'would you commit two Persons to *Bridewell* for a Twig?' and the lawyer replies, 'Yes...with great Lenity too; for if we had called it a young Tree they would have been both hanged'(p.259). This outrageous comment is not simply comic but darkly satirical as a specific reflection of the outrageousness of law.

Blackstone explains that 'to steal, damage, or destroy underwood or hedges, and the like...are punishable criminally, by whipping, small fines, imprisonment, and satisfaction to the party wronged'(IV,p.233). A subsequent act determined that 'the stealing of any timber trees therein specified, and of any root, shrub, or plant'(pp.233-4) is punishable by fines for the first two offences and transportation for seven years for the third. Damaging certain trees, for example the cherry tree, was punishable by death.

The comedy proves to be rather dark when the Justice declares, 'I believe I must order them a little Correction too, a little Stripping and Whipping'(p.258). Eighteenth-century readers would have known the barbarity of such punishments. Fielding is writing a fictional exposé of laws he expects his readers to recognise and thus has no need to explain; indeed he is exploiting public awareness of such injustices.

Bell's emphasis on the comic element leads him to neglect the serious side of Fielding's legal criticism. He argues that the 'inefficiency of the institutions of law' which could 'create...great injustices' is subordinate to Fielding's 'comic project'(p.205). Yet the serious undertones of scenes of wrongful arrest do not fit with Bell's argument that they are simply a 'conventional comic device' used by 'the magisterial author' as a foil to 'the superior discipline of comic fiction'; rather they reveal themselves to be 'satiric onslaught[s] on the flawed institutions of legality'(p.209).

### ***Jonathan Wild (1743)***

Wild was of course notorious in reality and his hanging in 1725 was part of living memory. Part of the novel rests on parallels between Wild and Walpole in a similar vein to *The Beggar's*

*Opera* earlier in the century. Steeves describes *Jonathan Wild* as 'a kind of running commentary upon the corruptions of the long-lived Walpole government'(p.109). Wild's function is partly political and partly fictional, as a rogue hero. Fielding's account perhaps reflects this ambiguity: the basic underlying 'history' is broadly factual, with a specific legal and political context, but he also accommodates elements of myth, with Wild as an embodiment of evil.

Wild was notorious not only as a thief but as a thief-taker. The novel shows him using the legal system consistently for his own ends, for example, by persuading his enemies to impeach each other. He tells Sly that Fierce might impeach him and 'advise[s] him to be beforehand, to surrender himself to a justice of the peace and offer himself as an evidence'. Sly is imprisoned and Fierce, 'whom [Wild] resolved to hang' for refusing him his stipulated 'share of the booty' is executed.<sup>xxxii</sup>

Wild inevitably also uses perjury to protect himself. Fireblood testifies for Wild with 'becoming zeal', amusingly 'forced to collect his evidence from the hints given him by Wild in the presence of the justice'(p.152). It is all the more outrageous that their methods work and Wild is acquitted, allowing Fielding to make acerbic, albeit implicit, criticism of a system where this is possible. The situation may be exaggerated but clearly has some bearing on reality: Wild and other felons did profit from perjury.

Wild seems born to be hanged: 'Fortune at his birth had resolutely ordained'(p.212) it. It is perhaps fitting that his wife is also hanged: Laetitia tells Wild, parodying the traditional motif of inseparable lovers, 'I am committed for the *filing-lay*', that is, picking pockets; 'we shall be both *nubbed* [hanged] together'(pp.170-1). It also reminds us of the irony that she, a pick-pocket, should be facing the same fate as Wild, who has caused many deaths and an assortment of crimes.

While hanging is mentioned in novels, it is rarely given much attention. This is presumably because it was not ideally suited to a sentimental context and it did not really fit the Gothic framework, which generally concentrated on mystery and imprisonment, rather than on crime *per se*. The genre that seems to make most use of hanging is that which is most suited to it: the criminal biography, *Moll Flanders* and *Jonathan Wild* being two of the most notable works of this kind.

Fielding's description of the hanging is, in keeping with the novel as a whole, steeped in irony. Yet the comedy he derives from it and the attention to details such as the removal of the fetters and the progress of the cart towards the scaffold, suggest that he is exploiting the great public interest in executions and the general awareness of the system on the part of eighteenth-century readers.

Fielding ironically refers to Wild's hanging as 'the consummation of our hero's GREATNESS'(p.212). The scaffold is referred to as 'the tree of glory' and the progress towards it is described in a manner more appropriate to a Roman triumph than to a convict being taken to execution. It is presented in a manner consistent with the popular view of executions as entertainment. The crowd is portrayed rather like an audience watching a play: 'he received the acclamations of the multitude'(p.213).

Fielding echoes the language used in *Jonathan Wild* in *An Enquiry* (1751), commenting that the felon's 'procession to Tyburn, and his last moments there, all are triumphant; attended with the compassion of the meek and tender-hearted, and with the applause, admiration, and envy, of all the bold and hardened'.<sup>xxxiii</sup> Fielding argued that public hangings should be abolished, since they were often seen as entertainment and could glorify the criminal. People paid to watch hangings and there were permanent wooden grandstands around Tyburn tree. Porter notes that when Earl Ferrers was hanged in 1760, £500 was collected;<sup>xxxiv</sup> Fielding implicitly criticises this popular attitude in *Jonathan Wild*.

Fielding even presents the moment of Wild's death in a humorous way: 'Wild, in the midst of the shower of stones...applied his hands to the parson's pocket, and emptied it of his bottle-screw, which he carried out of the world'(p.214). The juxtaposition of solemn vocabulary with biblical overtones, for example 'tree of glory', 'multitude' and 'carried out of the world', with the banality of a cork-screw, renders the reader incapable of taking the execution seriously and thus of having any sympathy with Wild.

If one compares this account of Wild's death with that of Earl Ferrers in the *State Trials*, the

satire becomes even more clear. Ferrers is presented as noble and dignified. Public respect for him was such that 'not the least affront or indignity was offered to him' and 'many persons saluted him with their prayers for his salvation'(XIX,p.976). We read, 'his countenance did not change, nor his tongue falter:- The prospect of death did not at all shake the composure of his mind'(p.979).

Fielding's humour is uncomfortably dark at times, for example when he jokes that Wild fails in his suicide attempt and that 'the fruit of hemp-seed, and not the spirit of poppy-seed,<sup>xxxv</sup> was to overcome'(p.212) him. The amusing ironic presentation of Wild's hanging is tempered by the serious comment which ends the chapter: 'he must be a fool who is ashamed of being hanged, who is not weak enough to be ashamed of having deserved it'(p.214). This reflects Fielding's serious concerns regarding hanging but he refuses to take a didactic tone here.

Eighteenth-century readers would not have been particularly sensitive about hanging, since hangings were not uncommon: they were held approximately every six weeks at Tyburn, the last one taking place in 1783. Even children could be hanged. Blackstone explains, 'In criminal cases, an infant of the age of *fourteen* years may be capitally punished for any capital offence...but under the age of *seven* he cannot'(I,p.464). Tyburn, where common criminals were executed, became part of folklore. State prisoners, who were generally of higher social status, were usually beheaded, not hanged, and were executed at Tower Hill. Fielding recognised the absurdity of class-consciousness in such a situation: 'where is the essential difference if the one ends on Tower Hill and the other at Tyburn? Hath the block any preference to the gallows...[?]'(p.52).

Despite its title, *Jonathan Wild* does not simply trace the fortunes of its master criminal; it also presents the legal misfortunes of a good man, Heartfree. Heartfree is one of many innocent characters in eighteenth-century fiction who fall foul of the debt laws. Wild, whilst not qualified to discourse on mercy, justly criticises 'the severity of creditors, who...without mercy inflicted confinement on the debtor, whose body the law, with very unjustifiable rigour, delivered into their power'(p.136). His hypocrisy in inveighing against the very laws he intends to use against Heartfree is glaring, but the humour does not detract from Fielding's criticism of the legal system which determines 'that whoever owes another £10, or indeed £2, may be, on the oath of that person, immediately taken up...and kept abroad till he is made to owe £50', for which he can be imprisoned 'and all these without any trial'. Furthermore, the only evidence needed was 'the abovesaid oath, which if untrue, as it often happens, you have no remedy against the perjurer'(p.48).

Wild clearly exemplifies this problem in the way he orchestrates Heartfree's downfall, persuading him to obtain jewels and give them to the Count, Wild's confederate, in return for a small downpayment. Heartfree falls into debt because Wild arranges for him to be robbed and because his creditors, including the Count, refuse to pay him what they owe him. Wild, hoping to gain possession of Heartfree's property and his wife, advises Mrs Heartfree 'instantly to remove with the most valuable jewels she had...before any statute of bankruptcy issued to prevent her'(p.112). Wild's skills in deception and circumventing the law make us aware of the illegality of the action but Mrs Heartfree seems to have no choice; he capitalises on her desperation but she is unwittingly providing evidence which will be used against her husband.

Not content with this attempt to ruin Heartfree, Wild and Fireblood 'framed an evidence' against him, which they gave to one of his creditors to show a magistrate. This false evidence of embezzlement, 'attested by the oath of Fireblood'(p.155), leads to a warrant for Heartfree's arrest. Heartfree is found guilty of felony because Wild's skilful manipulation ensures that 'the circumstances of the fact corroborat[e] the evidence of Fireblood'(p.167).

Wild, like so many characters in eighteenth-century fiction, shows surprising knowledge of the law and organises his trap for Heartfree in accordance with the way in which the law interprets evidence. He gets Fireblood to testify that Heartfree 'had...employed [him] to carry the orders of embezzling to Wild, in order to be delivered to his wife' and that Mrs Heartfree had 'shewed him the casket of jewels, and desired him to tell her husband that she had fully executed his command'. In order to make it appear that Heartfree had done this 'after [he] had notice of the commission'(p.156) of bankruptcy against him, Fireblood and Wild testify falsely 'that Mrs Heartfree lay several days concealed at Wild's house before her departure for Holland'(p.157). We must not underestimate

Heartfree's danger: he is 'convicted on a statute the infringers of which could hope no pardon'(p.167), that is, one which cannot be commuted; Wild has in effect produced a death warrant for him.

Despite his innocence, Heartfree is imprisoned in Newgate, which should remind us that he is condemned to death. He encounters more prejudice against the poorer classes: 'the turnkey would have confined Heartfree (he having no money) amongst the common felons' and so Friendly pays 'every shilling he had in his pocket, to procure a room in the press-yard'(p.157). However, comedy asserts itself over potential tragedy because Heartfree is rescued by the very system which wrongly imprisoned him. Fielding generally exposes the injustices of the judicial system but here he shows that the system can work. He presents a magistrate 'who did indeed no small honour to the commission he bore'(p.181) and criticises less diligent magistrates by implicit contrast: he is good simply because he examines the evidence carefully and seeks justice. When he realises that the evidence concerning Heartfree's supposed felony was given by a man now in Newgate and another guilty of robbery, he reappraises the situation and, believing Heartfree to be innocent, 'obtain[s] his pardon and enlargement' by 'represent[ing the case] to the sovereign, who immediately granted him that gracious reprieve'(p.182).

Fielding was naturally aware of the responsibilities of a magistrate, 'entrusted with decisions affecting the lives, liberties, and properties of his countrymen'(p.181). Mrs Heartfree meets a magistrate abroad and later explains to her companions, 'He was chosen (as is the custom there) for his superior bravery and wisdom', implying that English magistrates were not selected according to such criteria. English magistrates generally owed their positions to rank, influence and money. Mrs Heartfree continues, 'on the first deviation from equity and justice, he is liable to be deposed and punished by the people', whose elders 'examine into his conduct'(p.201) every year. Contemporary readers would have realised with amusement that their magistrates would not remain long in power under such a system but Fielding would clearly endorse such strict controls.

McKeon argues that *Jonathan Wild* is 'first of all a critique of the idealizing, 'romancing' method of traditional biographies' and of the criminal biography. He recognises that 'Wild's main weapon against his enemies is not brute force but the law, which he is able to turn to his own ends because it depends so fully on procedures of witness, testimony, and evidence that enjoin an earnest empiricist belief and are highly subject to falsification'. It is unfortunate that McKeon's emphasis on narrative technique excludes consideration of Fielding's use of the law as a subject in its own right, presenting law simply as part 'of the analogy between sociopolitical and epistemological imposition'.<sup>xxxvi</sup> Fielding's work demands to be interpreted both in terms of literary and legal concerns. If we do not take this into account, we will fail to understand the work of a man whose professional engagement in the practice of the law was as close and preoccupying as his literary interests as a gentleman author, and in whose imagination the two worlds were intimately entwined.

### ***Tom Jones (1749)***

*Tom Jones* is not a legal commentary: it is a brilliantly comic novel. However, there is a strong legal context: *Tom Jones* presents a catalogue of crimes, from petty theft to duelling and creates a variety of 'criminals' or, more often, ordinary people whose misdemeanours, albeit illegal, are punished with unfair severity.

Black George's 'crimes' fall into this category. He poaches a hare because he and his family are starving. Fielding's ironic treatment of the issue suggests sympathy for George and mockery of the lack of perspective in the laws: 'This hare he had basely and barbarously knocked on the head, against the laws of the land'.<sup>xxxvii</sup> The Game Laws and particularly the Black Act (1722), were manifestly unfair and unduly harsh. The Black Act was so called because some deer-stalkers blackened their faces and were known as Blacks but it was also associated with outlaws of the romanticised Robin Hood school. It is amusingly appropriate that George is known as Black George but if we fail to see this in its legal context, we will fail to understand a joke which would have been

apparent to most eighteenth-century readers. Blackstone explains that the Black Act, which covered crimes from arson, flooding land or felling trees to destroying turnpikes or private property, decreed that 'to appear armed in any open place by day, or night, with faces blacked or otherwise disguised...to hunt, wound, kill, or steal any deer'(IV,p.144) rabbits or fish should be punishable by death.

The Game Laws, particularly those of 1671 and 1691, declared that no one who had property worth less than one hundred pounds a year could kill game, even on his own land. Holdsworth quotes Sir James Stephen, a legal expert, who noted that 'It was theoretically doubtful whether from 1604 to 1832 anyone could lawfully shoot a pheasant, partridge, or hare whatever qualification he possessed'.<sup>xxxviii</sup> The game laws were particularly unjust because conviction rested largely in the hands of Justices: until 1671, two Justices and two witnesses were required for conviction but the Game Act halved both requirements and so Justices could easily convict men for poaching on their land.

Mary Hamilton criticised these laws in *Munster Village* (1778): Lady Frances 'did not restrain farmers, or the sons of farmers from shooting, as none are better entitled to game than those whose property is the support of it'.<sup>xxxix</sup> Wollstonecraft observed, 'what is to secure the property of the poor farmer when his noble landlord chooses to plant a decoy field near his little property?'. She realised that if 'Game devour the fruit of his labour' he can do nothing, for 'fines and imprisonment await him if he dare to kill any'.<sup>xl</sup>

Black George is part of the debate on justice presented throughout *Tom Jones*, inviting readers to draw their own conclusions with regard to national laws. Blifil fell short of Tom in mercy but 'as greatly exceeded him...in justice'. Blifil follows Square, believing that mercy is 'inconsistent with the rule of right' and Thwackum, who 'was for doing justice, and leaving mercy to Heaven'. Fielding's irony is amusing but trenchant, commenting that if they could rule according to their principles, 'Thwackum would probably have destroyed one half of mankind, and Square the other half'(p.147). Fielding comments in the voice of legal experience, 'there is no zeal blinder than that which is inspired with the love of justice against offenders'(p.148). It is one measure of the ways in which Allworthy fails to live up to his name completely that he later criticises Tom with the words: 'Such mistaken mercy is not only weakness, but borders on injustice, and is very pernicious to society, as it encourages vice'(p.862). This was one of the rationales behind eighteenth-century law, at least in relation to the lower classes. While being fully aware of the necessity of punishing crime, one feels that Fielding, like Godwin later in the century, believed that English law was deficient in consistency and mercy.

Allworthy is a well-intentioned but fallible magistrate, tending to give moral lectures rather than considering evidence effectively. He may be intended as a comment on the moral discourses of Judges after trials.<sup>xli</sup> When Allworthy harshly decides to send Molly to Bridewell, Fielding notes that he might have 'exceeded his authority a little in this instance' but that 'his intention was truly upright'. Fielding reminds us that 'many arbitrary acts are daily committed by magistrates, who have not this excuse to plead'(p.184). Notably, Allworthy ultimately surrenders his judicial role to Tom when judging Blifil.

Twentieth-century readers may underestimate the power of eighteenth-century Justices. They controlled the parish and its officials and were almost entirely autonomous. Holdsworth notes that the common law enabled them 'under cover of putting down nuisances, to suppress any kind of conduct of which they disapproved'. Parliament embodied their orders in many legal acts and 'they were not only the law makers, but the tribunal which adjudicated on the breach of their laws'(X,p.152). Fielding explains, 'in executing the laws...many justices of peace suppose they have a large discretionary power' and consequently 'often commit trespasses', or minor crimes 'and sometimes felony', capital crimes, 'at their pleasure'(p.327). Theoretically, they were controlled by the courts of common law but this was only relevant if a person was rich enough to take them to court. If we do not bear such facts in mind, we may not understand why writers present Justices as having almost uncontested power over people's lives.

The King's Bench could theoretically prevent Justices from exceeding their authority, by

issuing writs of prohibition. Squire Western wants to send Honour to Bridewell simply because she has 'abused his sister'(p.326), indicating that he believes he has the power to do whatever he pleases. The threat of Bridewell is potentially tragic but comic justice intervenes in the unlikely figure of the clerk, who warns, 'you cannot legally commit anyone to Bridewell only for ill-breeding'. Western's blustering is comic but there is an underlying critique of the all too frequent lack of legal knowledge displayed by Justices. Fielding mischievously comments with his tongue firmly in his cheek that 'luckily the clerk had a qualification, which no clerk to a justice of peace ought ever to be without, namely, some understanding of the law'(p.327). The comic irony of a clerk knowing more of the law than a Justice reflects reality: clerks are employed to advise Justices on legal matters. Few Justices had the legal training that Fielding had when he became a Justice.

The clerk tells Western that 'there had been no attempt to break the peace' but Fielding tells us that Western 'was not always attentive to these admonitions of his clerk'. It is the possibility of the King's Bench intervening that deters him for he has already 'had two informations exhibited against him in the King's-Bench' and has 'no curiosity to try a third'(p.327). An information was an alternative to the form of indictment: an indictment was an accusation recorded before a court and made by twelve or more laymen who were sworn to enquire on behalf of the King, whereas an information was an accusation brought by an individual. It was only acceptable as a form of accusation in non-capital cases. The King's Bench may not have been totally successful in controlling Justices but Fielding shows that it could be effective.

Western puts on an appropriately 'wise and significant countenance' and pronounces judgement in a ludicrous jumble of legal terminology which he seems to think impressive. He repeats the clerk's judgement, 'there was no breaking up of the peace', amusingly interpreting 'breaking' literally, 'such as the law...calls breaking open a door, or breaking a hedge, or breaking a head; or any such sort of breaking'. Yet the clerk's directions work and he declares, 'the matter did not amount to a felonious kind of a thing, nor trespasses nor damages, and, therefore, there was no punishment in the law'. Western's sister argues 'she knew the law much better...a certain justice...in London...would commit a servant to Bridewell, at any time when a master or mistress desired it'. Rather than presenting the legal position as he ought, he argues ludicrously, 'it may be so in London; but the law is different in the country'(p.327). Fielding refers wryly to their conversation as 'a very learned dispute'(pp.327-8).

*Tom Jones* is full of minor incidents which form part of the legal panorama of English life. We have representatives from the judiciary but also a number of minor criminals. Together, their stories form a disturbing commentary on the injustice of English law. When a young man is hanged for stealing a horse which he claims to have found, the reader is unsure as to the truth but Partridge finds the legal process amusing, 'It is indeed charming sport to hear trials upon life and death'. He admits 'I thought [it] a little hard, that the prisoner's counsel was not suffered to speak for him' but does not question the law's rigour, 'the fellow was hanged...it could be no otherwise'(p.411). Partridge's outrageous and thoughtless comment reflects appropriately the inhumanity of law. His matter-of-fact tone is horrifying but reminds the reader of the tragic lack of perspective in English law, which could hang a man for taking a horse. We are reminded that the legal system is ultimately organised to punish guilt, not to prove innocence, particularly in the case of the poor, who did not have the benefit of expensive lawyers.

Another man is driven to highway robbery by poverty. Tom sees that he is 'a novice in the trade'(p.604) and that the gun is not loaded and so he gives him 'a couple of guineas for the immediate support of his wife and his family'. Fielding realises that some readers may see this 'as an act of extraordinary humanity' but others 'as a want of regard to that justice which every man owes his country'. Partridge presumably voices popular opinion, 'I should not care to have the blood of any of them on my own hands; but it is very proper for the law to hang them all'(p.605). This reluctant highwayman is a further example in the debate on law and justice, a debate akin to twentieth-century consideration of the causes of crime and how to rehabilitate offenders. Tom's humanitarian yet responsible action is actually rather progressive even by today's standards. It would seem that the debate is set to continue.

## *Amelia* (1751)

Steeves comments that '*Amelia* is a brave arraignment of political and social vices', especially 'abuses in...the judicial system, the prison system'. Yet he argues that 'as important as [Fielding's] bold charges were for the overhauling of the political and social sense of his time, they furnished only the setting of the story'(p.124). Such a comment is representative of criticism which notes briefly the presence of law but fails to see its significance not only as an element of plot but as an integral part of the novel's argument. Jones argues usefully that 'by bringing before his readers the deplorable condition of the prisons' Fielding, who had inspected prisons personally, 'in some measure, paved the way for the success of Howard and other reformers in the last quarter of the century'.<sup>xlii</sup> Yet concern regarding prison conditions was not new: Defoe's presentation of Moll Flanders's suffering in Newgate in 1722 is an earlier part of the tradition which Fielding appropriates and Goldsmith's *Vicar of Wakefield* (1766) is surely also part of this tradition, a forerunner of the reformist novels of the 1790s such as *Caleb Williams* and also of non-fictional treatments of the same issue, notably John Howard's *The State of the Prisons* (1777) and *The State of the Poor* (1797) and William Smith's *State of the Gaols in London, Westminster, and the Borough of Southwark* (1776).

The very atmosphere of *Amelia* makes us uncomfortably conscious of the penal system because much of the novel is set in prison. It is appropriate that our first glimpse of Booth is when he is wrongly arrested for 'beating the watchman'. He is 'offered his liberty at the price of half a crown' by the watchmen. Having no money, he is taken to a Justice but the men who were genuinely guilty of fighting, apparently 'men of fortune, found means to make up the matter, and were discharged'.<sup>xliii</sup> The bribery and the wrongful arrest set the tone for the novel both in terms of plot and thematic concerns. Fielding often presents false arrests in an ironic, even darkly comic manner, for example in *Joseph Andrews* when Adams and Fanny are absurdly arrested for robbery by young men who want 'better Sport'(p.127) than 'Bird-baiting'(p.126) but this must not blind the reader to the legal criticism. The reality of false arrests and the difficulties of innocent parties without money form a serious background which Fielding assumes we recognise.

In theory, there were a number of safeguards against wrongful imprisonment. Blackstone explains that 'no freeman shall be imprisoned or detained without cause shewn'. Fielding exposes potential flaws in the system: watchmen could legally take anyone to a Justice and corrupt watchmen could invent evidence. Thrasher refuses to allow Booth to call witnesses to the affray, to 'make answer according to law'(I,p.135) and does not cross-examine the watchmen. Hence Booth is imprisoned 'without cause shewn' but can do nothing because it appears that the legal forms have been obeyed in that he was taken to a Justice.

The main safeguard was *Habeas Corpus* (1758). In reality, magistrates could even work around *Habeas Corpus*, by inventing a suitable charge. Blackstone seems content to rest in theories and, unlike Fielding, Defoe and other novelists, as a professor of law he shows confidence in it. If one is to accept that the work of writers such as Fielding and Defoe has some value as sociological data, one may assume that magistrates were not as restricted by such laws as Blackstone claims and therefore that the general public was less protected.

Booth is offered the possibility of release by the keeper: 'if you will impeach any to me...I am sure I have interest enough with [Justice Thrasher] to get you admitted an evidence'(p.90). Ultimately Booth is saved not by justice asserting itself but by Miss Mathews buying his discharge. Fielding does not allow us to dwell on this dubious transaction for Amelia arrives to claim Booth.

Booth is later imprisoned because Dr Harrison allows him to be arrested for debts to him, believing his imprudent behaviour deserves punishment. Booth's movements are almost constantly curtailed by fears of arrest. He determines to meet Miss Mathews on 'Sunday, the only day he could venture without the verge'(p.165). One could be arrested on Sundays but only in cases of treason, felony or breach of the peace, not debt. Booth is 'violently, and yet lawfully torn away from'(p.315) his family, suggesting that the law is unnatural and harsh.

Mrs Bennet reminds us of a barbaric debt law: when her husband died leaving her in debt, she claims 'a set of ruffians...seized his dear, dear corpse'(p.237). The body was not in fact taken and her tone is rather hysterical but it reflects the natural horror this law generated and should not blind us to Fielding's serious concern regarding unnecessarily harsh laws. Blackstone explains that a plaintiff could 'bring an action of debt upon' an earlier judgement against a debtor and, by virtue 'of a writ of *capias*', could 'take the defendant's body in execution for those damages'(III,p.159). In *Castle Rackrent* (1800) Sir Patrick's 'body was seized for debt' after his death. Thady comments that the 'villains acted under the disguise of the law', describing it in terms of crime, not lawful practice.<sup>xliv</sup> Thady's bias in favour of the family and his rather personal and cynical view of the law do not invalidate his criticism of it. Neither Fielding nor Edgeworth, writing broadly within the context of comedy, dwell on this barbarous law but both expect the reader to recognise its unwarranted severity and both are perhaps capitalising on the feelings it inevitably evokes in the reader; even by eighteenth-century standards, it has a certain novelty value in terms of horror.

Booth's imprisonment allows Fielding to present the inequities of the debt laws but also to comment on bailiffs. Bailiffs were most unpopular, working under sheriffs, the King's representatives in the shires, executing writs and processes, seizing goods and arresting people. Their houses, called 'sponging houses', were used to imprison debtors before they were sent to jail. Booth is confined for debt in the appropriately named Bondum's house. Fielding comments with characteristic irony that Bondum 'had no more malice against the bodies in his custody, than a butcher hath to those in his'. The criticism becomes more trenchant, 'As to the life of the animal, or the liberty of the man, they are thoughts which never obtrude themselves on either'(p.317).

Bondum seems to regard his character as being at odds with his legal rôle, 'I am for liberty, for my part' but Fielding's irony undercuts this by Bondum's comment, 'that's all according to law, and in the way of business'(p.318). Fielding is not criticising the bailiffs' legitimate rôle but abuses such as demanding 'civility money' before treating prisoners well; a practice later exposed in almost every eighteenth-century novel containing prison scenes, notably Godwin's *Caleb Williams* (1794). Dr Harrison articulates Fielding's view when he argues that bailiffs ought to be subject to 'a law...to punish them severely'(p.361) for ill-treating prisoners. Blackstone admits that gaolers 'are frequently a merciless race of men, and, by being conversant in scenes of misery, steeled against any tender sensation'(IV,p.297).

The jailer tells Miss Mathews, jailed for apparent manslaughter, 'if you take the proper measures, you may be bailed to-morrow'. Blackstone defines bail as 'security for [a prisoner's] appearance'(III,p.290) in court. Manslaughter was not aailable offence 'if the prisoner be clearly the slayer, and not barely suspected'; Miss Mathews presumably obtains bail because she is 'of good fame, charged with a bare suspicion of manslaughter'(IV,pp.295-6).

However, Booth, imprisoned for debt, cannot leave jail because 'Money to be sure must be parted with'(p.88). Dr Harrison stands bail for Booth later but is 'obliged to get another person to be bound with him'(p.522), since the law required two sureties, each capable of paying the bond. It would be easy for wealthy prisoners to find two such people but practically impossible for poor ones.

This inevitably led to one judicial system for the rich and another for the poor. 'A well-drest man' is imprisoned 'for a most horrid perjury' but is expected to be bailed the same day. Booth exclaims at 'such villains find[ing] bail', when 'no person [is] charitable enough to bail' a poor man and his daughter. She is imprisoned for stealing bread for her father and he is imprisoned 'for receiving it knowing it to be stolen'. The injustice seems glaring but Robinson explains calmly, 'the offence of the daughter, being felony, is held not to beailable'. Yet 'perjury is a misdemeanour only'(p.25), so that even if a person is indicted for it, he can be bailed.

It is worth noting that, as Blackstone explains, bail was often left to 'the discretion of the justices': 'Persons of good fame' or reputation, a term which would automatically have been applied to at least the majority of the upper classes, could be bailed for offences which did not normally allow bail. The girl's offence and that of her father, presumably being 'accessory to [a] felony', seem to come within Blackstone's definition ofailable offences for those of 'good fame'(IV,p.296). The

poor were, almost by definition, devoid of good reputation and so imprisoned rather than being trusted with bail.

It is no accident that Fielding's Justices comment so frequently on the beggarly appearance of offenders: such an appearance is hardly consistent with being 'of good fame'. Earlier in the novel Booth faces imprisonment for assault because 'The Justice, perceiving the criminal to be but shabbily drest, was going to commit him without asking any further questions'(pp.18-9). Had he been well dressed and thus apparently 'of good fame', the situation would have been very different. He is denied bail but Miss Mathews, no doubt considered to be 'of good fame', bribes the necessary officers and frees him. The distinctions were somewhat arbitrary but allowed Justices to give bail to influential friends when it would otherwise be impossible. In addition to Justices' discretionary powers, King's Bench could give bail for any offence and so rich defendants could use their influence to obtain bail.

Robinson explains that the man's perjury was particularly serious because 'it was with an intention of taking away the life of an innocent person by form of law'. The relatively matter-of-fact tone emphasises the absurd inequity of the possibility of using the law to kill someone. Robinson comments that civil perjuries are nothing 'compared to taking away [a man's] life, and his reputation, and ruining his family' and believes the punishment should be appropriate to the crime. Booth agrees but feels that any kind of perjury deserves severe punishment. Robinson explains 'the punishment of all perjury is only pillory, and transportation for seven years'. The pillory may not sound very serious but Blackstone explains that this could mean an offender 'standing in the pillory, and having both his ears cut off, and his nostrils slit, and seared'(IV,p.246). However, since forgery is a 'traversable' offence, that is, one that can be denied at law and bailed, 'methods are often found to escape any punishment at all'(p.26).

Fielding was naturally fully aware that the law itself could enable the guilty to escape. He presents forgery in an understated manner but with clear irony, commenting that Trent, a lawyer, made 'a mistake pretty common at this day, of writing another man's name to a deed instead of his own...what the law calls forgery and was just then made capital by an Act of Parliament'(p.474). Blackstone defines forgery broadly as 'the fraudulent making or alteration of a writing to the prejudice of another man's right' and explains that according to common law 'the offender may suffer fine, imprisonment, and pillory'. Yet forgery 'was punished by the civil law with deportation or banishment, and sometimes with death'(IV,p.245). Forgery was a capital crime from 1724 to 1832.

The law of evidence determines that Trent cannot be examined because he would not be impartial: it will not admit 'the proof of the party who was to avoid his own deed, by his evidence'. Trent has paid a thousand pounds 'to remove out of the way a witness, against whom there was no legal exception' and because there are no other witnesses, he is acquitted. Fielding declares amusingly that this is 'a law very excellently calculated for the preservation of the lives of his majesty's roguish subjects, and most notably used for that purpose'(p.474).

Even when the evidence was fairly presented, without perjury or disqualification because of legal conditions, justice was not inevitable. The governor of the prison in *Amelia* confidently asserts, 'I have known [Murphy] often succeed against the most positive evidence'(p.52). Justice is not even considered; characters expect lawyers to manipulate truth and thus justice, in accordance with the wishes of those who pay them.

In the appropriately named Justice Thrasher, Fielding criticises Justices who were 'never indifferent in a cause, but when [they] could get nothing on either side'. Fielding comments ironically, 'I have been sometimes inclined to think, that this office of a Justice of Peace requires some knowledge of the law'. Thrasher 'never read one syllable of the matter'(p.16) and acts according to his own precepts.

Fielding consistently exposed the problems incurred by having Justices whose qualifications lie in land and not legal knowledge. Blackstone notes that the statute 13 Ric.II c.7 stipulated that Justices had 'to be of the most sufficient knights, esquires, and gentlemen of the law'(I,p.352). Yet the Act 5 Geo.II determined that practising lawyers were not eligible. Blackstone explains that

Justices were locally resident minor magistrates, usually lay people, 'appointed by the king's special commission' to keep the peace. They were chosen, at least theoretically, from 'good men and lawful'(p.351), who had land to the value of at least one hundred pounds a year.

We are given a variety of darkly humorous examples of judicial ineptitude, for example, 'as bloody a spectre as ever the imagination of a murderer or a tragic poet conceived' is 'charged with a battery by a much stouter man than himself'. We learn that 'The accuser had not the least mark or appearance of any wound' and the accused can 'produce several witnesses against this improbable accusation'. The accused pleads, 'this man hath brake my head, and my head did brake his stick'. The Justice condemns him, 'You are an Irishman, and that is always sufficient evidence with me'(p.17). This outrageous ruling is presumably designed to reflect equally outrageous decisions by Justices who were more concerned with a plaintiff's wealth and status than with his possible innocence.

In a similar vein, a young girl is accused by her father-in-law of endangering his life. He swears, somewhat improbably, that 'he [is] afraid of his life, or of some bodily harm'. Since 'she could get no sureties for keeping the peace', Justice Thrasher 'committed her to prison'(p.25). Ironically, Bondum later comments about a prisoner, 'he hath very good cloaths, and money enough. He is not here for debt, but upon a judge's warrant for an assault and battery'(p.319), as if the assault were a minor offence, to be disregarded because of his status.

One would expect the law regarding murder to be less problematic. Blackstone quotes Sir Edward Coke's definition of it as 'when a person of sound memory and discretion, unlawfully killeth any reasonable creature...with malice aforethought'(IV,p.195). Something of the complexity the matter could assume before the courts is indicated in Fielding's sardonic account of the murder which Miss Mathews believes she has committed. She rants dramatically, 'Murder!...my glory, my delight, my reparation!'. She continues, 'is the killing a villain to be called murder? Perhaps the law calls it so'. Yet we cannot take her seriously when, Andromache-like, she states, 'I am undone, am revenged, and have now no more business for life; let them take it from me when they will'(p.34).

Murphy explains, with some degree of bathos, 'a bit of manslaughter and cold iron, I hope, will be the worst: or perhaps we may come off better...a *se defendendo*'(p.52), that is, a plea of self-defence. He analyses the situation in its legal context: 'carrying the penknife drawn into the room with you...seems to imply malice prepensive'. If 'malice prepensive' or 'aforethought' could be proved, the charge would be one of murder. Booth interjects, 'I have heard in case of stabbing, a man may be indicted upon the statute; and it is capital, though no malice appears'. During the reign of James I, murder by stabbing, even without malice aforethought, was made a felony without benefit of clergy because, as Murphy explains, 'the form of the statute makes malice'(p.54). First offenders could claim benefit of clergy in manslaughter cases which, when granted, meant that the accused was branded on the left thumb, often nominally, with a cold iron, instead of being hanged; hence Murphy's reference to 'cold iron'. We do not see whether or not a plea of manslaughter would work because Fielding avoids possible tragedy by allowing Hebbers to recover.

*Amelia* also discusses theft laws when Betty, the Booths' servant, steals two of Amelia's shifts and pawns them. Booth calls pawn shops 'the fountains of theft' because they reward and encourage thieves. He tells the Justice that he hopes 'there is some punishment' for the pawnbroker, 'who so plainly appears to have known that these goods were stolen'. The pawnbroker has been 'receiving stolen goods for many years with impunity' because he knows the law well enough to avoid punishment by leaving 'a little boy to do the business' and retiring into a back room when he suspects stolen goods are being brought in. Thus he has 'been twice acquitted at the Old Bailey' despite the fact that 'the juggle appeared upon the most manifest evidence'(p.492).

Fielding comments amusingly that the Justice 'by very great accident...understood the law'(pp.492-3) and realises that Betty 'cannot be guilty of felony' because the law 'requires the goods taken to be of the value of forty shillings'(p.493). Blackstone explains, 'if any servant embezzles his master's goods to the value of forty shillings, it is made felony'(IV,p.231). Fielding echoes the exact language of the statute when the magistrate explains to Booth that 'if the goods are

not stolen' in the eyes of the law because they were in her care and are not worth forty shillings, the pawnbroker 'cannot be guilty of receiving them, knowing them to be stolen'. Blackstone explains that 'Receiving of stolen goods, *knowing them to be stolen*...makes the offender accessory to the theft and felony'. He notes that 'because the accessory cannot in general be tried, unless with the principal, or after the principal is convicted, the receivers, by that means, frequently elud[e] justice'(p.132). The magistrate argues, 'one would almost think our laws were rather made for the protection of rogues, than for the punishment of them'(p.493) but admits he is powerless to change it.

Zomchick argues that in trying to use the law against Betty, Booth learns 'to subject his impulses to a newly acquired public conscience'(p.xvi). He claims that Booth's reform is established in prison but 'brought to an end by a crucial event that signals [his] readiness to reform': his pursuit of Betty and emergence as 'a juridical agent who uses the law to protect his family'; in other words, he 'brings his passions into accord with the law'(p.149). Booth seems rather to try to bring the law into accord with his passions: 'in his rage [he] had sworn he would hang her'. He does show some 'public conscience', arguing that 'Such persons as these it is really a charity to the public to put out of the society'(p.486) but his main concern seems to be personal, 'you have robbed the best and kindest mistress in the world'(p.492).

This incident may indeed be part of Booth's progress towards greater maturity but the text seems to underwrite Amelia's attitude rather than Booth's; she consistently holds the moral highground. Amelia is aware of the law but tempers it with mercy: 'I tremble to think of taking away her life'(p.486). Booth ultimately agrees not to prosecute not because he chooses to submit to law but because he has no choice; he consistently asks the Justice to punish both Betty and the pawnbroker but the Justice explains that it is not practicable. Zomchick's comments are useful but he, like many other commentators, miscalculates the importance of specific details of law which Fielding expects us to take into account.

### **Goldsmith: *The Vicar of Wakefield* (1766)**

The nature of justice and punishment clearly concerned both novelists and legal authorities. In *The Vicar of Wakefield* Goldsmith intersperses his narrative with serious polemical discussion on law, usually led by Dr Primrose, who appears to act as Goldsmith's mouthpiece concerning legal reform. Primrose 'question[s] the validity of that right which social combinations have assumed of capitally punishing offences of a slight nature', stating categorically that 'Natural law gives me no right to take away [the] life' of a man who steals from him.<sup>xlv</sup>

This attitude reflects debates led by legal commentators such as Blackstone, who admits that 'whenever any *laws* direct [execution] for light and trivial causes'(I,p.133), for example 'to cut down a cherry tree'(IV,p.4), 'such laws are likewise tyrannical, though in an inferior degree'(I,p.133) because people are aware of the laws and so can avoid punishment. Goldsmith argued against capital punishment for minor offences but believed it to be justified according to 'Natural law', 'to cut off that man who has shewn a disregard for the life of another'(p.149) by murder. English law was less well defined and judgements could vary according to the rank, wealth and gender of the accused.

Primrose argues, 'It were to be wished' that the law was made 'the protector, but not the tyrant of the people'(p.150). Like Swift and later Fielding, Goldsmith argues that the punishment should fit the crime and that there should be more mercy to ensure justice. This may seem natural to twentieth-century readers but it would have been regarded by contemporary readers as idealistic. Primrose argues, 'it were highly to be wished, that legislative power would thus direct the law rather to reformation than severity'. He comments that punishments should not be 'familiar, but formidable'(p.148) to be effective and argues that prisons can be, as Godwin phrases it in *Political Justice* (1793), 'seminaries of vice'.<sup>xlvi</sup>

Primrose argues that the laws themselves can lead people to greater crimes: 'When by indiscriminate penal laws' with 'the same punishment affixed to dissimilar degrees of guilt...the

people are led to lose all sense of distinction in the crime'(p.150). Blackstone, like Goldsmith and later Godwin, argued that 'Where men see no distinction' in 'gradations of punishment, the generality will...conclude there is no distinction in the guilt'(IV,p.18).

Twentieth-century readers may be surprised to see the extent to which eighteenth-century novelists entered into debates concerning law but Goldsmith's language, surprisingly similar to Blackstone's, reveals clearly that aspects of his narrative are to be interpreted within this context. Goldsmith's writing is part of a tradition in evidence throughout the century which uses fiction as an alternative forum for legal discussion.

One of the many issues which Goldsmith considers is that of aristocratic influence on the law. Thornhill exploits the debt laws to have Primrose imprisoned for debts owed to him, appropriating the language of law to make his actions appear reasonable: 'If he has contracted debts and is unwilling or even unable to pay...I see no hardship or injustice in pursuing the most legal means of redress'(pp.173-4).

Novelists throughout the century present characters exploiting the debt laws. Fielding's Booby has his rival Williams arrested for debt owed to him in *Shamela* (1741). Richardson's Mrs Sinclair has Clarissa arrested for debt despite Lovelace's undertaking to pay. In *Caleb Williams* (1794), Tyrrel has his cousin Emily arrested 'for a debt contracted for board and necessaries' while living in his house because she refuses an arranged marriage. Emily dies in jail and Tyrrel excuses himself, 'I did nothing but what the law allows'.<sup>xlvii</sup>

Thornhill offers to cancel Primrose's debt and save him from prison provided he does not tell anyone about Thornhill's seduction of his daughter. Steeves appears to view Primrose's imprisonment as the direct result of Thornhill's power: '[Thornhill] finally determines to punish [Primrose's] interference by eviction and imprisonment - so powerful then were the advantages of status'(p.194). Yet if we look at the legal context we see that Primrose is imprisoned because of his debt; Thornhill's status is an advantage but he needs a legal charge or rather expedient.

Goldsmith does not simply criticise aristocratic influence: Sir William uses his power as a Justice to find the man who abducted Primrose's daughter. His voice is one of calm and benevolent legal authority, 'I am in the commission of the peace, I undertake to secure you'(172). If he had not intervened, it is unlikely that legal redress would have been sought so earnestly because Primrose is poor.

Primrose becomes a prison reformer when imprisoned for debt, enabling Goldsmith to unite the demands of plot suspense and his underlying argument. Primrose's argument is passionate and profoundly humanitarian: 'their faces are like ours, their hearts are so too' and simply need 'the hand of a refiner'(p.150). Yet his ideas are based on realistic and practical ethics, not romantic idealism. He introduces the possibility of work into the prison, 'cutting pegs for tobacconists and shoemakers', from wood bought by the group and sold 'so that each earned something every day: a trifle indeed, but sufficient to maintain him'. He rewards hard work and imposes fines for immoral behaviour, viewing his experiment as an unqualified success: 'in less than a fortnight I had formed them into something social and humane', seeing himself 'as a legislator, who had brought men from their native ferocity into friendship and obedience'(p.148). We are unlikely to understand the measure of the reforms Goldsmith is advocating if we do not regard the degrading picture of unreformed prison life as realistic. Primrose does not regard his work as a Utopian dream but a potential reality; a reality perhaps taken for granted in the twentieth century.

Steeves argues, '*The Vicar*...is short, simple, and good-humoured' but this seems to imply that it is rather more light-weight than it is. He continues, 'It has moral weight without somberness'(p.193). We must not allow the 'good humour' to obscure the serious and sometimes disturbing debates on law. Potentially tragic situations are resolved in accordance with the laws of comedy but not before Goldsmith has made the reader consider the darker implications. We are presented with fictional presentations of issues which were serious problems in reality: felons in prison, poor people who angered local Squires and young women deceived by marriage promises. He paints moving pictures of prison life which cannot be dismissed simply as 'melodrama...sentimentality' or 'pietism'(p.197) and uses fiction to discuss the foundations of the

penal system. It is inadequate simply to place the novel in the context of good-humoured sentimentalism, as Steeves does, and not account for this polemic concerning law.

### Burney: *Evelina* (1778)

In *Evelina* Burney uses law as an underlying context to situations which may appear to be governed entirely by comedy, for example when Captain Mirvan pretends to be a highwayman in order to harass Mme Duval. Mme Duval tries to prosecute Mirvan for assault. This may seem strange but if we refer to Blackstone we will realise that his behaviour clearly constitutes assault in eighteenth-century terms. Blackstone defines assault as 'The least touching of another's person wilfully, or in anger' because 'the law cannot draw the line between different degrees of violence'(III,p.120). Mme Duval was physically shaken and had her feet tied together. She assumed that the rope was 'o' purpose to hang' her and so vows to 'enquire what punishment she might lawfully inflict upon the Captain for his assault'.<sup>xlviii</sup>

Since Mme Duval is a widow and thus legally independent, she could sue Mirvan herself; however, there were no witnesses and so she has to accept that 'the law-suit [would] not only be expensive, but tedious and hazardous'(p.171). Mrs Mirvan explains to Mme Duval 'the inutility of applying to justice, unless she were more able to describe the offenders', aware that she 'cannot possibly swear to their persons'(p.154). The other characters tell her that 'the ill usage the Captain had given her was *actionable*'. Mr Branghton, displaying characteristic cupidity, advises 'she might recover what damages she pleased, since she had been put in fear of her life'(p.169). This sounds reasonable but Blackstone declared that 'A fear of battery, or being beaten, though ever so well grounded, is no duress'(I,p.131). Mme Duval is not actually beaten and, although being tied up and physically shaken presumably comes within Blackstone's definition of battery, being in fear of her life is not, as Branghton claims, actionable in terms of assault.

However, Blackstone notes that 'putting in fear is the criterion that distinguishes robbery from other larcinies', making 'the violation of the person more atrocious than privately stealing'(IV,p.242). He explains, 'Open and violent larciny from the *person*, or *robbery*...is the...forcible taking, from the person of another, of goods or money...by putting him in fear'(p.241). He continues, 'It is immaterial of what value the thing taken is' and explains, 'putting in fear does not imply...any great degree of terror or affright in the party robbed...it is sufficient that so much force, or threatening by word or gesture, be used, as might create an apprehension of danger'(p.242). This provides an interesting comment on Mme Duval's situation and highlights a point twentieth-century readers are unlikely to recognise. We need to approach this scene both in terms of assault and robbery. However, the potential seriousness of the offence is undermined by her comic ranting, 'I've been robbed!' and the admission, 'the villain would have robbed me...only I'd secured all my money'(p.166).

Mme Duval's fear is that 'if such villains as these are let to have their own way...they'll make no more ado...of tying people in ditches, and such things'(p.154). The situation may be comic but the underlying legal realities are not. Her hysterical language adds to the comedy but is also reminiscent of crime pamphlets earlier in the century, warning equally hysterically about possible increases in crime.<sup>xlix</sup> Such fears were common throughout the century and led to acceptance of laws which were known to be imperfect, even unjust, but which provided some protection. Burney is perhaps reflecting such fears in Mme Duval, exposing the ridiculousness of such outbursts but recognising the problem. Mme Duval may be a comic figure and Mirvan is not a serious villain but the law would afford no more protection if it were a serious attack.

*Evelina* also presents a comic treatment of the most serious crime according to English law: high treason. Monsieur Du Bois is supposedly arrested on 'suspicion of treasonable practices against the government'. Sir Clement tells Mme Duval that Du Bois has been taken by the mob and comments, 'I am afraid he was but roughly handled'. Captain Mirvan, articulating popular dislike of Frenchmen, asks enthusiastically, 'did they duck him?'. Clement replies, 'Something of that sort' and Mirvan responds delightedly, 'So much the better!...I only wish all his countrymen were served the

same'(p.137).

Evelina defuses the situation by common sense and awareness of the law, recognising the improbability of 'a foreigner [being] taken before a *country* justice of peace, for a crime of so dangerous a nature'(p.141) and it is ultimately shown to be a prank. By using a Frenchman, Burney can exploit popular nationalistic feeling; if she had used an Englishman, the possibility of treason would have been less readily assimilated into the world of comedy. We need to recognise contemporary feeling against France but, more importantly, the legal context on which this and other situations in the novel depend; if we do not, we will fail not only to see reflections of popular interest in law but also to understand the comedy.

### **Godwin: *The Adventures of Caleb Williams* (1794)**

Punter argues that 'the object of *Caleb Williams*' is 'to *investigate* the extremes of terror'. He describes it as 'political Gothic' but believes that Godwin's 'interest in the psychological interplay of his two principals undermines the putative political argument'.<sup>1</sup> He accounts for the Gothic background but fails to engage with its legal elements. Godwin argued in *Political Justice* that the 'spirit and history' of the law 'will probably be found, not, as some men have fondly imagined, in a desire to secure the happiness of mankind, but in the venal compact, by which superior tyrants have purchased the countenance and alliance of the inferior'(II,p.369). *Caleb Williams* is a fictional embodiment of this argument.

Godwin organises *Caleb Williams* around trial scenes and the novel self-consciously presents the reader with evidence and counter-evidence throughout. When Caleb finds out that Falkland has murdered Tyrrel, Falkland accuses him of stealing plate and he is imprisoned. Caleb tries to defend himself with the truth concerning Tyrrel's murder but the magistrate refuses to listen to him because of his lowly status. Falkland's rank means his word is accepted as evidence.

We must not underestimate Caleb's danger: Falkland is a magistrate and there is little Caleb can do to save himself. Punter argues that Caleb's fears may not be justified, noting that his 'interest in romance' makes him an 'unreliable witness'(p.137). He notes rightly that Falkland's power over Caleb is partly psychological and recognises that it is 'sustained by the authorities' at times, but he argues that it is not 'political power', which he seems to regard as synonymous with legal power. He does not allow for the possibility that Falkland's power may derive both from Gothic traditions and law. If we do not recognise the legal basis for Falkland's power, we will fail to understand some of Godwin's fundamental thematic concerns.

Falkland may be reminiscent of Gothic villains but he is also recognisable as a Justice. Hence the threat of death is very real: Falkland can have Caleb hanged for theft to keep him from divulging the truth in the unlikely event of someone listening. Steeves recognises that 'The terror of the situation would be scarcely possible for Godwin to exaggerate'(p.302).

The nature of justice is called into question as Falkland, a fundamentally honest man, lies in court to protect his honour from the stain of Tyrrel's murder, which is almost regarded as 'natural justice'. Yet Falkland proves to be an equitable Justice and ironically, ultimately achieves heroic status: 'A nobler spirit lived not among the sons of men'(p.377). Godwin is more explicit in his criticism of the trial system in *Political Justice*. He asks rhetorically, 'How few are the trials which an humane and just man can read, terminating in a verdict of guilty, without feeling an uncontrollable repugnance against the verdict?'(II,p.354-5).

The earlier unpublished version of *Caleb Williams* was rather more cynical about the legal system and Falkland is not found guilty. Perhaps appropriately, he dies undramatically 'off-stage', with the focus on Caleb, crushed by the injustice of the system, arguing 'It is wisest to be quiet, it seems', as if men like Falkland cannot be reached by the law.<sup>ii</sup>

Godwin also exposes the ludicrous severity of the Black Act: Tyrrel, a landlord, blocks off the Hawkins's farm but Hawkins's son takes down the padlocks. Tyrrel prosecutes Hawkins under the Black Act. Godwin assumes that we will understand the importance of the details he gives: Hawkins had hidden his face when he realised he was being observed, he had 'a wrenching-iron for

the purpose of breaking the padlocks' and to compound his guilt, 'the field in question was a warren'(p.85).

The Black Act prohibited 'appearing in any warren', having an 'offensive weapon'(p.85) and being disguised. Hawkins is imprisoned but escapes; the reader's sympathy is clearly directed towards him and against the partial legal system. Twentieth-century readers may not understand fully the inequity of the Black Act but Hawkins is in danger of being executed. The game laws and the Black Act in particular are perhaps the most obvious instance of what Hay refers to in *Albion's Fatal Tree* as 'a ruling-class conspiracy'(p.52): 'as MPs [gentlemen]...passed a mass of legislation that allowed them, as JPs, to convict offenders without the trouble of legalistic indictments or tender-minded juries'(p.59).

Steeves notes that *Caleb Williams* is a 'graphic argument in favor of the prison reform movement'(p.302). Caleb criticises the 'squalidness and filth' of prisons and the 'bread, mouldy and black' and 'dirty and stinking water...the law having providently directed in certain cases, that the water' shall be taken from 'the next sink or puddle'(p.231), as part of the *peine forte et dure*, invoked when prisoners refused to speak. Godwin clearly expects the reader to know the nature of the *peine forte et dure*. Punter argues that 'The prisons [in *Caleb Williams*] are those peculiarly intolerable prisons of the Inquisition'(p.140), as if Godwin's comments were simply products of a fevered Gothic imagination, as opposed to criticism of real prison conditions. Yet contemporary accounts validate such presentation of prisons.<sup>iii</sup>

Punter argues that Caleb's position is not that of 'conscious innocence' because he has spied on Falkland and this 'causes Falkland's actions'(p.139) but this is surely to misinterpret the nature of the legal issue: Falkland is a murderer who uses his powers as a Justice to persecute Caleb and accuse him of a theft of which he is innocent. Falkland sees himself as strangely innocent but we must not be drawn into accepting this self-judgement. Steeves also believes that Falkland is a victim 'of the legal system' and, more reasonably, 'of false standards of aristocratic honor'(p.305). Falkland is not a victim of the legal system but a representative of it. At first he represents justice within the system as an equitable Justice but through his crime, he becomes associated with abuse of legal powers: the corrupt 'other' side of the same system. When he confesses to the murder his honour is reasserted to some extent but here he is the accused; he never regains his status as Justice. What both Punter and Steeves seem to forget is that, despite his notions of honour, Falkland is a murderer and thus when arraigned, he stands guilty.

### **Radcliffe: *The Italian* (1797)**

Radcliffe's novels are generally dismissed as little more than travel narratives with a love motif. Yet at the heart of *The Italian* lies a consideration of eighteenth-century ideals of justice and the contemporary judicial system. Despite writing some years ago, Tompkins typifies critical attitudes throughout the twentieth century concerning Radcliffe, commenting that one can 'classify all the ingredients of Mrs Radcliffe's romances under the two headings of Beauty and Terror'. There is an over-emphasis here, which leads to dismissal of important elements of plot. She argues that 'The *raison-d'être* of [Radcliffe's] books is not a story, not a character, nor a moral truth, but a mood, the mood of a sensitive dreamer before Gothic buildings and picturesque scenery', denying the possibility of serious underlying thematic concerns regarding law.<sup>iiii</sup> Discussion of Radcliffe as a writer of romance is important but can be limiting: literary and non-literary concerns are not necessarily mutually exclusive; rather, the one can be a vehicle for the other.

If Radcliffe's concern had been purely 'mood', as Tompkins suggests, one would expect her evocative descriptions of the prison and of Vivaldi's state of mind, but no discussions of law beyond a few generalised heroic outbursts concerning injustice. The sheer length and detail of Vivaldi's denunciation of such practices as torture, indicates that she is prompting us at least to think about the question of justice and how trials should be conducted.

Radcliffe was clearly aware that romance may be far more powerful than an overtly polemical essay. Rather than presenting a specific argument for reform, she manipulates the reader's

emotions in order to provoke a reconsideration of the system: we are encouraged to align ourselves with its humanitarian aspects rather than the severity of its penal code. As Lady Morgan commented in her Preface to *O'Donnel* (1835), 'A novel is specially adapted to enable the advocate of any cause to steal upon the public, through the by-ways of the imagination, and to win from its sympathies what its reason so often refuses to yield to undeniable demonstration'.<sup>liv</sup>

Punter argues usefully 'that Gothic...because of its historical and geographical distancing...does not appear to represent a 'real' world' but 'may in fact be delivering that world in an inverted form'(pp.17-18). He notes, 'Within the Gothic we can find a very intense, if displaced, engagement with political and social problems'(p.62) but he does not consider what these issues might be, or engage with the Gothic as a critique of legally based issues.

In *The Italian* the law makes its presence felt in the darkest possible manner, manifesting itself in the seemingly omnipotent powers of the Inquisition. The Inquisition was feared throughout the eighteenth century as an embodiment of systematised cruelty and not without some justification. Ryley Ryley Scott recounts the case of an Englishwoman living in Madeira in 1704 who was charged with heresy, the crime for which Radcliffe's Vivaldi is arrested. She was imprisoned for nine months, with nothing but bread and water to sustain her, during which period she insisted that she was innocent. Scott writes: 'In attempts to extort confession she was whipped...with knotted cords; her breast was burnt with a red-hot iron...and an iron slipper, which had been put in the fire until it was red-hot, was fixed on her naked foot, where it remained until the flesh was burnt to the bone...She was then flogged so fiendishly that her back from the shoulders to the waist was one mass of torn flesh'.<sup>lv</sup> Not surprisingly, she signed the confession.

Radcliffe exploits this image of the Inquisition in *The Italian*. In fact, as Grosley, visiting Italy in 1758, the period in which *The Italian* is set, observed, the Inquisition was not torturing prisoners at that time.<sup>lvi</sup> Nevertheless, the Inquisition was still a powerful force. Scott notes that in 1752 Francisco Moyon 'was seized by the Inquisition' in Lima, found guilty of heresy and 'sentenced to 200 lashes and ten years imprisonment'. The account of his being 'shackled for the whole of these ten interminable years', suffering 'malignant ulcers'(p.84) on his ankle, is horrific, as one would expect of the mythical cruelty of the Inquisition.

However, it is closer to English practice than one might expect. William Smith wrote a disturbing account of English prisons in 1776, describing prisoners as 'crammed together in one ward in the day, and at night [lying] on dirty boards in filthy holes, almost unfit for swine'. John Howard's account of English gaols in 1789 paints a similarly sordid scene: in Warwick county gaol 'In two rooms (seven feet and a half by six and a half) with apertures only in the doors, there lay fourteen women, almost suffocated'; in Hereford county gaol 'most of the women felons were in heavy irons'; in Dartford Bridewell there was 'only one room for women whether sick or well: no coverlets'; in Oxford Bridewell 'prisoners [were] never let out but for a few minutes...No employment: no coals: no bedding'.<sup>lviii</sup>

*The Italian* does not present the Inquisition as a replica of the English legal system, but Radcliffe's presentation of it is not simply an image of an alarming, foreign and Catholic iniquity. The Inquisition finds an interesting imaginative parallel in the workings of English courts and prisons and so provides a useful metaphor for a powerful institution whose inner workings were feared and not fully understood. While recognising that English law was more equitable than the Inquisition with all its horrors, eighteenth-century readers would inevitably have seen certain parallels: individuals feeling that they are pitted against a seemingly merciless system; imprisonment and sometimes death before trial; fear of the prosecution's skills in manipulating evidence. Prisoners could be shackled in English prisons if they had attempted to escape, and torture, whilst apparently no longer used by the Inquisition, was still legal in England in the form of the *peine forte et dure*, or pressing to death.

Pressing to death with iron weights was used not as a punishment but as a means of extracting testimony or confession from prisoners who refused to speak in court. Blackstone explains: 'the prisoner shall be...laid on his back, on the bare floor, naked, unless where decency forbids' and 'as great a weight of iron as he can bear, and more' will 'be placed upon his body'. In

addition, 'he shall have no sustenance, save...on the first day, three morsels of the worst bread; and, on the second day, three draughts of standing water...this shall be alternately his daily diet, *till he dies*'(IV,p.322).<sup>lviii</sup> Although torture was no longer in use in the French revolutionary and romantic periods in England, the frequent anxious allusions to Inquisitorial tribunals and extortive practices in English writers of the time do not derive entirely from horror at what happened abroad.

Tompkins regards Radcliffe's presentation of the Inquisition as a 'small but delightful act of defiance'(p.279) against Grosley's work. Yet she fails to consider the possibility of Radcliffe using the Inquisition not simply as a well-known suitably Gothic institution but as a means of denouncing torture and of questioning legal procedure. The Inquisition may not have been torturing prisoners when Radcliffe was writing but it had done so in the recent past and accounts of its cruelty gave it the status of popular myth and provided a rich and powerful symbol.

Vivaldi is arrested dramatically at the altar, on the point of a secret marriage with Ellena. He, Ellena and the reader assume that the armed men, 'singularly habited', are from the Inquisition but in fact Schedoni has hired them to deliver Vivaldi to the Inquisition and abduct Ellena. One of the seeming 'terrible messengers of evil...summon[s] [them] to surrender' in a voice 'like bursting thunder' but Vivaldi insists, in accordance with English law, 'Produce your form of summons'.<sup>lix</sup>

The warrant is described in appropriately dramatic terms as 'a black scroll', imposingly official due to 'The kind of parchment, the impression of the seal'. Yet there is a clear parallel with the *mittimus* of English law, that is, the warrant by which a Justice could have someone arrested and imprisoned. Blackstone explains that English procedure determined that there should be a 'warrant under [the Justice's] hand and seal, containing the cause of [the prisoner's] commitment'(IV,p.297). Some of the terms used to assess the validity of the warrant are reminiscent of the criteria of English law: 'the particular form of words...understood only by the initiated - all announced this to be a true instrument of arrestation'(p.187). Legal terminology was criticised throughout the century because it was designed to be 'understood only by the initiated'.

The Inquisition prison receives appropriate Gothic treatment, described from a distance as 'an extent of lofty walls and towers, that...bounded the horizon'(p.195), the image suggesting a vast prison imposing itself on the natural environment, almost imprisoning it. Yet it also reflects the reality of Inquisition prisons, which were often magnificent buildings such as palaces. When Vivaldi arrives, there is 'a death-like silence' and he believes that he is walking through 'one of the burial vaults of the victims'(p.196). He hears 'half-stifled groans, as of a person in agony'(p.186) and sees Inquisition officials in 'long black robes'(p.196), their faces 'stamped with the characters of demons'(p.197).

Vivaldi's prison is at once real and the objective correlative of his fears. The intricate and puzzling structure of the buildings, with long dark corridors and unexplained doors, functions as an image for the Inquisition and its procedures, but it also replicates the plight of anyone caught up in the toils of an elaborate and mysterious system. Scott explains that the 'torture chamber was well designed to afflict' the prisoner 'with horror, dread and despair. It was usually an underground apartment, devoid of windows'(p.66), lit only by candles. He describes the torturer as 'an extraordinary, awesome apparition. Clothed from head to foot in a black garment, with his head and face covered, except for two eye-holes, with a black cowl, he presented a most diabolical and satanic appearance'(p.67).

It is interesting that Scott, an historian, should describe these figures using apparently 'Gothic' vocabulary. Inquisition officials were masters of dramatic effect; many of the 'Gothic' elements in *The Italian* owe more to real Inquisition practice than to Radcliffe's imagination. If anything, her account of the Inquisition is less frightening than those found in history books aspiring to objectivity.

We read that Vivaldi's soul 'thrilled with horror' at the thought of prisoners tortured by Inquisitors from whom he hides, 'as if their very looks possessed some supernatural power, and could have struck death'(p.197). This example of Vivaldi's much cited 'ardent imagination'(p.397) leads on to his impassioned plea against ill treatment of prisoners, expressing 'astonishment and indignation [at] the sufferings, which the frenzied wickedness of man prepares for man, who, even

at the moment of infliction, insults his victim with assertions of the justice and necessity of such procedure'(p.198).

Lest we, like the original arresting officer, tell Vivaldi, 'When you have wearied yourself with these heroics...our patience is wearied already'(p.187), it is worth noting Blackstone's comment on torture in English law: 'the constitution is an utter stranger to any arbitrary power of killing or maiming the subject without the express warrant of law', which 'include[s]...*torturing* (to which our laws are strangers)'(I,p.133); he admits the possibility of torture by a 'legal authority', for example, pressing to death. As Caleb Williams comments bitterly, 'This is society. This is the object, the distribution of justice, which is the end of human reason. For this sages have toiled and the midnight oil has been wasted'(p.210).

Radcliffe is not simply presenting the dark horrors of fantasy. In considering issues such as the imprisonment and possible torture of innocent people and criticising appalling prison conditions, she reflects the discourse of social reformers such as John Howard and William Smith, arguing for penal reform in England. Radcliffe is clearly commenting on the penal system through Vivaldi when he expostulates, 'Can man, who calls himself endowed with reason...argue himself into the commission of such horrible folly', arguing 'Brutes do not deliberately slaughter their species'(p.198).

Vivaldi's comments would not be out of place in Wollstonecraft or Godwin: these words could easily have been written for Caleb Williams. He, like Vivaldi, argues from personal experience but with indignation at general injustices. Vivaldi's arguments cannot simply be interpreted as heroic defiance of a foreign Gothic institution, although there is an element of this; the tone fits the genre but also the issues presented: the Gothic is peculiarly suited to exposing cruel penal systems. This is familiar in Godwin's work but Radcliffe's tone indicates that she too has similar concerns.

Torture has traditionally been associated with the Inquisition. Vivaldi is aware that 'torture was inflicted upon the accused person, till he made confession of the crime' and believes the Inquisitors are 'preparing...the instruments'(p.200) for him. Ironically, they are not preparing to torture him but eighteenth-century readers would have realised that if he were in an English jail, they might be, if they decided to press him to death. The novel dates itself at 1764, when pressing to death, although rare, was still legal; it was not abolished until 1772. The implicit criticism of the recent horrors of the English system could not have escaped contemporary readers.

Radcliffe exploits the familiar Gothic trappings of the Inquisition with its crosses, dark curtains and black hoods, providing a pervasive atmosphere of evil. Yet despite the 'props' to what is effectively a dramatisation of Vivaldi's trial, the procedure is very close to that of English courts. The beginning of the trial savours more of English tradition than Inquisition horrors: Vivaldi has to 'swear to reveal the truth'(p.201) while holding a book, presumably the Bible and, 'as is usual' in both Inquisition and English courts, he is required to state his name, family and address, while the 'attendant', presumably an equivalent to the English clerk of the court, 'noted it in his book'(p.202); the matter of fact tone reflects an approximation to equitable aspects of English procedure.

Blackstone explains that according to English law, 'indictments must set forth the christian name, surname, and addition of the state and degree...town, or place, and the county of the offender' in order 'to identify his *person*'(IV,p.301). Vivaldi is then asked 'whether he understood the nature of the accusation'(p.202), a protective clause developed in English law to ascertain mental capacity to ensure that the victim understood what he was being accused of. Blackstone explains that a prisoner must first acknowledge 'himself to be of that name by which he is called'. After this, the 'indictment is...read to him distinctly' in English, as opposed to Latin, 'that he may fully understand his charge'(p.318).

Radcliffe exploits the drama inherent in the oath required of a prisoner of the Inquisition to 'keep for ever secret whatever he might see or hear'(p.201), reminding us that we are not in an English court of law but the text blends Italian excesses with apparently English practice. Radcliffe criticises Inquisitorial procedure but the parallels with English law are uncomfortable and cannot be accidental. These parallels form an implicit underlying critique of certain English practices; the very

fact that there are similarities with the Inquisition is disturbing, for example in terms of imprisonment before trial and the threat of torture to force confession.

The Inquisitor tells Vivaldi that the court 'never applies the torture but in cases of necessity' because of 'the obstinate silence of the prisoner'(p.205), as was the case with pressing to death. Blackstone explains that pressing to death 'was probably introduced, in order to extort a plea; without which it was held that no judgment of death could be given'(IV,p.324). Once more, the drama of Vivaldi's personal fears combines with rational denunciation of legal practice: 'the innocent were certain of suffering longer than the guilty; for, as they had nothing to confess, the Inquisitor, mistaking innocence for obstinacy, persevered in his inflictions'(p.200). The Inquisitor comments, 'we are in possession of facts' but 'though we have sufficient proof of your guilt, we require you to confess'(p.205), just as English law sought to obtain confessions.

Vivaldi objects to being 'tried and condemned without being confronted with either his Prosecutor, or the Witnesses'. The Inquisitor explains that, unlike in English law, 'the name of the Informer [and witnesses] is always kept sacred from the knowledge of the Accused'(p.205). The 'Holy Office' is 'the Prosecutor, and the dispenser of justice; its Public Accuser lays the circumstances, and the testimonies of the Witnesses, before the Court'(p.206).

The process sounds rather like that of English ecclesiastical courts, which were based on Roman civil and canon law. Holdsworth notes that in English ecclesiastical courts, 'the Judge was the accuser...As a rule the...officers supplied the information; and they used their powers in many cases in the most corrupt manner'(I,p.619). They could 'proceed on the accusation of some individual' or by 'denunciation', in which case 'the person who gave the information was not the accuser, nor subject to the conditions attaching to this position'(p.620), a procedure approximating to that used by Schedoni. Court proceedings depended upon written documents and private interrogation of witnesses by professional examiners.

We learn that the charge of heresy brought against Vivaldi has been fabricated by Schedoni. Blackstone admits that in the past ecclesiastical Judges had 'a most arbitrary latitude'(IV,p.45) in defining heresy, 'the Romish ecclesiastics determining, without appeal, whatever they pleased to be heresy, and shifting off to the secular arm', the common law courts, 'the odium and drudgery of executions'. He explains, 'they pretended to intercede and pray, on behalf of the convicted heretic...well knowing...that they were delivering the unhappy victim to certain death'(pp.45-6). However, in 1677 the statute 29 Car.II.c.9 abolished the death penalty for heresy in ecclesiastical courts.

In Vivaldi's case, heresy is judged to be insulting a church minister, Schedoni, 'while he was performing an act of holy penance'. When Vivaldi is asked, 'Did you ever express...a contempt for the Catholic faith?', he replies honestly, 'Never'(p.313). However, 'he began to perceive the real nature of the charge'(pp.313-4), recognising Schedoni's malicious machinations and realising that the charge was only 'too plausible'(p.314).

Schedoni believes that 'if the Informer forbore to appear against the Accused...the latter would of course be liberated'(p.243). Radcliffe gives a detailed account of Schedoni's machinations: 'it had been only necessary to send a written accusation, without a name, to the Holy Office, with a mention of the place where the accused person might be seized', the word 'only', suggesting that the procedure is too easy and reminding us that English law did not accept anonymous accusations. Radcliffe denounces the practice quite clearly as 'the unjust and cruel rule...which permitted anonymous Informers'. She explains that 'if the Informer failed to discover himself to the Inquisitors, the prisoner, after many examinations, was released, unless he happened unwarily to criminate himself'(p.244) during torture, a practice which had also been current in England until the latter half of the seventeenth century.

Vivaldi's 'examiners cautiously [avoid] informing him of the subject of the accusation'(p.305), which he believes to be abducting a nun. Inquisition courts did not allow the accused to know either the nature of the evidence or the identity of the witnesses. This is in obvious contrast to English law, based on specific accusation, brought by a named individual. To add to the atmosphere of foreign horrors, Vivaldi hears sounds of torture and is threatened with 'the

Question'(p.308). He is taken before 'the vicar general, or grand inquisitor, the advocate of the exchequer, and an ordinary inquisitor', shrouded in 'A portentous obscurity'(p.311) in a suitably dark 'lofty' Gothic chamber, with a 'large iron frame, which Vivaldi conjectured to be the rack'(p.310). They 'ma[ke] ready the instrument of torture' and he is bound and covered with 'the customary black garment'(p.313) so that he cannot see.

Throughout Vivaldi's trial, he is repeatedly told 'he must not ask questions'(p.313) and he has no defence counsel. English ecclesiastical law allowed the accused to have legal counsel, although Holdsworth notes that when the inquisitorial procedure was adopted by the state, that is, common law, the accused's liberty in defending himself was 'gradually restricted, more especially in cases of heresy'(V,p.171).

We read, 'Vivaldi almost believed himself in the infernal regions'(p.311); indeed the Inquisition was legendary for its dramatic settings, designed to make the prisoner believe that escape was impossible and to remind him of the Hell they claimed he would enter if he did not confess. Radcliffe mingles terrifying Gothic spectacle with denunciation of the inequity of a system which allows ill treatment, let alone torture, of prisoners. The Gothic setting heightens the reader's emotional response to Vivaldi's impressions and encourages empathy for Radcliffe's humanitarian point: 'That any human being should willingly afflict a fellow being who had never injured, or even offended him...should deliberately become the means of torturing him, appeared to Vivaldi nearly incredible'(pp.311-2). Radcliffe's words move beyond Gothic tension and drama, providing a profound comment on her society.

Unexpectedly, Vivaldi is taken back to his cell and Nicola visits him, telling him to ask the court to summon Schedoni and Ansaldo. On agreeing to this, the chief examiner tells Vivaldi with a note of surprising kindness, 'sleep this night without fear'(p.333). As Vivaldi's trial merges into that of Schedoni, he becomes increasingly surprised by the justice of the tribunal and we move closer to ideals of English justice, discovering unexpectedly that the system, with all its defects and absurdities, is ultimately shown to work.

The theatricality continues, however, with Schedoni telling Vivaldi that 'almost every cell' has 'a concealed entrance, by which the ministers of death may pass unnoticed to their victims'(p.401). Schedoni wishes to discredit Nicola in Vivaldi's eyes and has shown skill in manipulating his fears but there does seem to be some essence of truth. It is in keeping with the dramatic building of suspense, culminating in Schedoni murdering Nicola and committing suicide.

Schedoni admits that he accused Vivaldi wrongly but Vivaldi is 're-conducted to his prison...where he was to remain till the decision of the holy office respecting his innocence, as asserted by the deposition of Schedoni'(p.404). Not only does Radcliffe use legal terminology such as 'deposition' but, rather than allowing Vivaldi to be released immediately, as we might expect if we view Radcliffe's work as governed purely by 'fantasy', she reflects legal procedure and Vivaldi is not released until the Judge has made his decision 'a few days'(p.405) later.

Speculation concerning Radcliffe's legal knowledge is difficult but justifiable in view of the accuracy of legal detail in her work. It is perhaps worth noting that her husband was a lawyer and so she presumably had access to legal information through him if from no other source. It is time that we revised our opinion of this writer, largely ignored by recent commentators and presented by earlier critics such as Steeves and Tompkins as a purveyor of fanciful travel narratives but not engaging with 'serious' 'masculine' areas such as law: so-called 'Gothic' situations can mediate actuality.

Tompkins refers to Radcliffe as charming, with a child-like vision, arguing that 'her child's fancy...her enthusiastic romance and demure satire...charm [the] attention'(p.250) of the reader. Had Tompkins taken account of Radcliffe's legal knowledge and the use she makes of it, she would have realised that we are not dealing with a child's fancy or with a 'demure' and thus non-threatening writer; Radcliffe does not simply charm: she challenges.

Tompkins argues, 'It is not life, but it is coherent fantasy'(p.256). A sustained consideration of the law helps to create this coherency. In this instance, and many others, romance, equated by Tompkins here with 'fantasy', mirrors certain aspects of life and perhaps, through encouraging the

reader's imaginative involvement, is able to present elements of reality more clearly than we might see them in life; narrative constructions are both 'life' and fantasy.

Richetti places Radcliffe's villains within an exclusively romantic context, referring to them as 'satanic hero-villains' who 'inhabit a world so...palpably unreal that their stories can only be understood as opportunities for erotic and sadistic fantasy'(p.76). Yet the world Radcliffe depicts is 'palpably real' in its treatment of law: her characters' power is legally based, not 'sadistic fantasy', which is in any case a questionable term in relation to Radcliffe.

Spencer argues that Radcliffe's novels are 'novels of escape, criticizing the status quo of male authority but not ultimately challenging it. Her solution is retreat into an idealised pastoral world, where womanly virtue and patriarchal authority are no longer in conflict'. There are several problems with this analysis. Firstly, it seems to dismiss Radcliffe's work as escapist. Although Spencer accepts that Wollstonecraft's 'allusions to Gothic romance give imaginative force to her feminist analysis of the realities of women's condition', in Radcliffe's hands, she denies it any serious function other than as a 'fantasy of female power' which is in danger of remaining a mere fantasy.<sup>lx</sup> Yet close study of the law in relation to the use of Gothic motifs reveals serious consideration of the penal system.

Spencer notes rightly the issue of patriarchal power, although she does not locate it within its legal context. The most serious flaw in her argument is the assumption that Radcliffe did not challenge masculine authority or the institutions in which it manifested itself, notably the law. Vivaldi clearly speaks for Radcliffe when he expostulates angrily: 'If, to escape the horrors of these moments, I could be weak enough to declare myself guilty, not all your racks could alter truth'. Had Caleb Williams uttered these words, they would not have been dismissed simply as heroic posturing but recognised as a challenge to inequitable legal practices. Radcliffe consistently makes humanitarian points through the medium of Vivaldi's thoughts and feelings, for example, his 'astonishment and indignation' when 'he considered that [the Inquisitors] had not only voluntarily undertaken the cruel office they fulfilled, but had probably long regarded it as the summit of their ambition'(p.312). We must be wary of underestimating the power of romance as socio-legal critique, not simply in the work of well known radicals but in the work of 'minor' and 'conservative' writers.

Radcliffe exemplifies the tension between conservative and radical ideology, a tension found in the work of well known writers such as Richardson but also in lesser known women writers such as Frances Sheridan and Mary Hamilton. Radcliffe's 'solution' to the problems posed by the patriarchal legal system is reminiscent of the arguments of earlier writers: enlightened, virtuous use of the existing system, abolishing only those practices which are clearly inhumane. Yet we must not underestimate the challenge Radcliffe's work presents: it promotes a profound questioning of the legal system and its ethics.

As 'a sort of master of the revels', Paulo articulates the happiness of those around him: 'we had to go through purgatory before we could reach paradise'. His comments often have an element of truth, but this is undercut by the comedy of his effusions as he dances around crying '*O! giorno felice!*'(p.413). His voice is at best hardly authoritative and we need to be wary of accepting without qualification his analysis of their experiences: Radcliffe reminds us that he is 'merry enough to speak before [he] think[s]'. Yet even when apparently enthusing about the idyll Spencer identifies as the conclusion and 'solution' to the problems posed by the text, Paulo reminds the other characters and perhaps the reader, 'none of you...ever saw the roof of a prison...it's quite beyond what you can understand'(p.415). His joy derives not from the prospect of a pastoral idyll but from having escaped 'that diabolical place, the Inquisition', from the knowledge that he is 'All at liberty'(p.414).

Radcliffe combines the concerns of romance with those of legal realism, providing a powerful image of the perennial problem of reconciling the demands of law with ideals of justice. Her solution is built on the understanding that social change begins with the individual consciousness. Her challenge, articulated by Vivaldi, remains pertinent today: 'The consequence of your tortures, therefore, be upon your own heads!'(pp.312-3).

Radcliffe's work is part of a long tradition of fictional narrative as legal critique. An

argument for change in the law and its practice and administration is implicit in the work of writers throughout the century. Sometimes this argument is to be inferred by the reader from aspects of the narrative, as when Fielding shows incompetent or corrupt magistrates, but it can involve explicit proposals for change, as when Dr Primrose describes his successful practical innovations in prison life. If we read eighteenth-century fiction with twentieth-century criminal law in mind, we will fail to recognise implications of situations which would have been evident to eighteenth-century readers.

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- xiv D.Hay, *Albion's Fatal Tree*, p.19.
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- xvi Defoe was imprisoned in Newgate, although he was able to pay to be in the Press Yard, where conditions were better than those experienced by poor felons. For a useful account of Defoe and civil proceedings against him for debt and criminal proceedings for seditious libel, see P.Backscheider, *Daniel Defoe*.
- xvii J.Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England*, London: University of Chicago Press, 1987, pp.150, 47.
- xviii See J.Richetti, *Popular Fiction Before Richardson*, pp.25-35. Biographical accounts of criminals written by Ordinaries were very popular but there were also autobiographical criminal pamphlets, written by prisoners and sold at Tyburn. See Sheehan, 'Finding Solace in Eighteenth-Century Newgate', *Crime in England*, p.238.
- xix Ordinary: a chaplain who attended condemned prisoners, particularly associated with Newgate.
- xx As a merchant, Defoe himself profited from transporting people. See P.Backscheider, *Daniel Defoe*, pp.485-7.
- xxi See J.Beattie, *Crime and the Courts in England 1660-1800*, Oxford: Clarendon Press, 1986, pp.479, 481-3.
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