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Moll Flanders: the Felon as Lawyer

Moll Flanders (1722) draws the reader into the narrative of Moll's criminal life by way of her language, the discourse of her mind, and her characteristic discourse is special pleading. Such a discourse is clearly appropriate to her attempts as narrator at self-vindication but it derives more meaning from her status as convicted felon. Moll is a narrator but she is also a woman with a 'record', inscribed in the annals of the Old Bailey and Newgate prison, a purely juridical text she cannot overlay with her own. *Moll Flanders* is Moll's personal text, a counter-text to contest the public record, an example of special pleading, not only after the fact (the crime) but after the conviction and the sentence. It is a plea in mitigation made to the court of her readership.

It is difficult for twentieth-century readers fully to access Moll's discourse, to identify and appreciate its rhetoric, because it functions as part of an intricate juridical context. James acknowledges that Defoe 'convinces us of the absolute plausibility of [Moll's] crimes', but fails to recognise the rôle of legal detail in creating this 'verisimilitude'.¹ Faller also recognises Moll's encounters with the law as realistic elements of plot, but does not account for their ideological function, declaring that *Moll Flanders* is 'about God's providence - if actually it is 'about' anything at all besides its protagonist'.² This paper aims to reconstruct the contemporary legal context by detailing aspects of early eighteenth-century law and judicial procedure, and to identify the rôle of juridical discourse within the ideological framework of the novel.

Defoe draws on the popularity of trial pamphlets and criminal biographies to support his consideration of one of the most important issues of his time: crime and the way in which society deals with it.³ Backscheider notes briefly the parallels between Defoe's novels and 'popular ephemera' such as the 'criminal life...of Mary Raby; Who was Executed at *Tyburn* on *Wednesday* the 3rd of November 1703...her several pretended Marriages...her many *Cheats, Robberies, Shop-*

1 E. James, *Daniel Defoe's Many Voices: A Rhetorical Study of Prose Style and Literary Method*, Amsterdam: Rodopi, 1972, p.221.

2 Lincoln B. Faller, *Crime and Defoe: A New Kind of Writing* (Cambridge: Cambridge University Press, 1993), p. 165.

3 Stone makes the important distinction between transcripts written for lawyers and unashamedly salacious versions of court events. L. Stone, *Road to Divorce: England 1530-1987*, Oxford: Clarendon Press, 1990, pp.248-253. For discussions of crime literature, see Faller, *Crime and Defoe*, pp.4-31, *Turned to Account*, Cambridge: Cambridge University Press, 1987, pp.203-8; M. Foucault, *Discipline and Punish*, translated by A. Sheridan, London: Penguin, 1977, pp.65-9; P. Rawlings, *Drunks, Whores and Idle Apprentices: Criminal Biographies of the Eighteenth Century*, London: Routledge, 1992, pp.1-27; J.J. Richetti, *Popular Fiction Before Richardson: Narrative patterns, 1700-1739*, Oxford: Clarendon, 1992, pp.23-59.

liftings, Clipping, Coyning, Receiving Stolen goods'.¹

McLynn notes, 'Breaking and entering private property with felonious intent was the most commonly encountered capital crime of the eighteenth century'.² Moll thus embodies common public fears; the narrative of her crimes, apprehension and punishment would inevitably have been of great interest to Defoe's readers. Readership of crime literature was diverse but Rawlings argues that 'the core of the readership...came from the same broad social group as those who published it': 'the middle classes'(pp.3-4) often tradesmen, particularly at risk from thieves such as Moll.

With this in mind, it is perhaps not surprising that Defoe should present the tradesman from whom Moll steals sympathetically. The tradesman embodies a juridical ideal: he is socially responsible, ensuring that Moll answers for her behaviour, but he is also equitable in that he will not weight the case against her, even to the extent of requesting that the court show mercy. His prosecution of Moll is clearly not motivated by a personal desire for revenge. Defoe removes the onus of the prosecution from him by having one of the servants call the constable; the tradesman realises that as soon as a legal representative is involved, the law must take its course: judgement is no longer a private but a public matter and as such, he submits to proper legal procedure. He realises that if he does not prosecute, he himself will have to answer for hindering the law. Crime, particularly in eighteenth-century terms, is not simply an offence against the individual but society as a whole and although he may forgive Moll as an individual, he has no right to do so as a member of society: on a pragmatic level, if he frees Moll, she may well go on to rob someone else. Moll must answer not simply to the individual she injured but to a public representative of law, who will consider the facts of the case and make an appropriate judgement, for the good of society.

Moll is accused of stealing brocaded silk. She protests her innocence to the constable and the Justice but one of the servants testifies to her guilt. The Justice has no option but to commit her to Newgate pending trial.³ Her account stresses the personal element, viewing the 'hard Hearted' servant's insistence on testifying as an expression of personal malice. Her interpretation is inevitably somewhat idiosyncratic: she is, even by her own admission, clearly guilty. Faller describes the witnesses as 'the most moral people in the whole book'⁴ because they refuse generous bribes and insist on testifying. However, without the testimony of the 'sawcy Jade' the case against

1 Paula R. Backscheider, *Daniel Defoe: His Life* (Baltimore and London: Johns Hopkins University Press, 1989), p. 482.

2 F.McLynn, *Crime and Punishment in Eighteenth-Century England*, London: Routledge, 1989, p.87.

3If a felony appeared to have been committed, a Justice had no authority to release the accused. Justices simply recorded the evidence and then bound the complainant to testify, before committing the accused to prison.

4 Faller, *Crime and Defoe*, p.165.

Moll would be weakened, since the other witness 'seem'd inclin'd to be merciful'.¹ It is therefore understandable that Moll should personalise the issue; the servant is acting knowingly as the instrument of Moll's probable death, the 'one positive witness'² necessary to convict in cases of felony.

Moll's 'governess' attempts to bribe the servants but they 'threaten'd to have her up for Tampering with the Evidence'. She tries to persuade the owner of the silk to drop the prosecution but he 'alleg'd he was bound by the Justice that committed [Moll], to Prosecute'. He is afraid that he will 'forfeit his Recognizance' or bond if he does not testify.³ She 'offer'd to find Friends that should get his Recognizances off of the File'(p.352) but he remains unconvinced. Her 'friends' are presumably clerks of the court, who recorded the names of those bound to testify and who prepared the trial calendar. Since the magistrate has decided that there is a case to answer, he is now bound to go to court.

Due to the efforts of her 'governess', presumably through bribing the clerks, Moll 'had no Bill prefer'd against [her] the first Session'(p.354), that is, no bill of indictment, or written accusation, was brought for her to answer immediately in court. This buys her time until the next court session, when she is due to be tried at the Old Bailey, the Justice Hall situated next to Newgate. Moll's 'governess' leaves 'no Stone unturn'd to prevent the Grand Jury finding the Bill',⁴ trying to influence members of the jury 'with favourable Dispositions' or evidence but 'the two Wenches swore home to the Fact, and the Jury found the Bill against [Moll] for Robbery and Housebreaking, that is for Felony and Burglary'(p.358). Defoe assumes that the reader will be familiar with such terminology;⁵ legal detail forms part of the intricacies of the drama of Moll's struggle for life, a process which would have been apparent to contemporary readers.

1 Daniel Defoe, *Moll Flanders* (1722), ed. David Blewett (London: Penguin, 1989), p. 352. References are to this edition.

2 Sir W.Blackstone, *Commentaries On The Laws Of England* (1753), sixth edition, 4 vols, Dublin, 1775, IV,p.351. Blackstone provides a comprehensive account of eighteenth-century law and its origins and remains the most respected and widely used legal commentator of his age. See also Thomas Wood's *Institute of the Laws of England*, 4 vols, second edition, London, 1722, which provides a valuable account of contemporary law.

3 Blackstone defines "recognizance" as "an obligation of record, which a man enters into before some court of record or magistrate ... with condition to do some particular act; as to appear at the assizes" to give evidence (2:341).

4 The Grand Jury, which Blackstone defines as 'twenty-four good and lawful men...usually gentlemen of the best figure in the county'(IV,p.299), examined indictments and determined whether or not they should be submitted to court for a trial by jury.

5For contemporary definitions of specific terms such as "burglary," see Dr Cowel, *A Law Dictionmy* (London, 1708). Peter Linebaugh discusses housebreaking in *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London: Allen Lane, Penguin Press, 1991), pp. 336-37. See also McLynn, pp. 87-90.

Twentieth-century readers tend to seriously underestimate the legal awareness and knowledge of eighteenth-century people. The juridical aspects of Moll's narrative, which pass almost unnoticed by twentieth-century readers, would have been of considerable interest to contemporary readers. Court proceedings, whether at the county assizes or Westminster itself, attracted a great deal of interest. Jones notes: 'old prints show us fashionably dressed ladies and gentlemen scattered about [Westminster] Hall...having looked in there apparently as part of the social round', while their servants 'spen[t] their time at the inferior Courts'.¹ Hay explains that 'Tradesmen and labourers journeyed in to enjoy the spectacle, meet friends, attend the court and watch executions'.² Entertainment was not derived simply from the spectacle of justice but from consideration of its workings: spectators would debate trials amongst themselves both at the Sessions and subsequently in coffee houses and taverns, 'produc[ing] a counter 'hearing and determining' of their own' to the real 'drama of oyer and terminer'.³

Those accused of felony were often particularly knowledgeable in law as it related to them. Twentieth-century readers tend to assume that felons and lawyers were as polarised in the eighteenth century as they are in our own. Yet to eighteenth-century readers, the relationship was much less distinct because felons usually defended 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'(IV,pp.349-50).⁴ Newgate itself indirectly provided legal education to prisoners awaiting trial, a context which may prove useful in understanding Moll's familiarity with legal terminology. Prisoners were able to watch the proceedings at the Sessions House from where they stood fettered. This general awareness of legal procedure, particularly as it related to common crimes such as larceny, was often supplemented by studying legal books, sometimes with the help of law students.⁵

1 B.Jones, *Henry Fielding: Novelist and Magistrate*, London: Allen and Unwin, 1933, pp.32-3.

2 Douglas Hay, "Property, Authority and the Criminal Law," in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, ed. Douglas Hay and Peter Linebaugh (London, 1975), p.27. See also J. Baker, "Criminal Courts and Procedure at Common Law 1550-1800," in *Crime in England, 1550-1800*, ed. J.S. Cockburn (London: Methuen, 1977), pp. 27-28.

3 Linebaugh, *London Hanged*, pp.86-8 (p.86).

4 Thomas Wood argues that the accused "shall have no Counsel ... because the Evidence must be so plain that it cannot be denied, and because the Court ought to be of Counsel for the Prisoner, and to Allow Him all Things that make for His Advantage." *An Institute of the Laws of England*, 4 vols (London, 1728),4:645. References are to this edition. See also Baker, p. 38, and I. Langbein, "The Criminal Trial before the Lawyers," *University of Chicago Law Review* 45 (1978), 263-316. Felons did not have the right to a defence lawyer until 1836.

5 See Linebaugh, *London Hanged*, pp.75-7; W.J.Sheehan, 'Finding Solace in Eighteenth-Century Newgate', *Crime in England*, p.237.

In the course of his editorial work for Applebee's *Journal* in the 1720s, Defoe would have seen numerous examples of 'the felon as lawyer'. This experience informs much of the writing of *Moll Flanders*: Defoe presents every step of the judicial process, expecting the reader to enter imaginatively into its various stages and to recognise which pieces of evidence are likely to convict Moll. Part of the reader's entertainment lies in the reinterpreting of evidence; as Zomchick notes of contemporary collections of trial narratives, 'readers become...unofficial magistrates'.¹

Moll's appropriation of legal discourse sites her narrative clearly within the context of contemporary legal process. Her language during the trial inevitably lacks the comic edge of her earlier narrative concerning 'the hot-brain'd Mercer'(p.317) and journeyman. When manipulating the law, she is supremely confident; her comic asides and rather conversational tone reflect this, giving the impression that her activities are part of a complex game. However, when facing prosecution herself, she knows that she has to accommodate her language to that of the stronger 'player': the 'game' is no longer on her terms.

The language Moll uses to explain the indictment to the reader reflects accurately the language used in real indictments: 'I was indicted for...feloniously stealing two Pieces of Brocaded Silk, value 4*l.* the Goods of *Anthony Johnson*'(p.361).² Elizabeth Miller's indictment in 1721 reads similarly: 'feloniously stealing 1 Ell of Silk value 6*s.* and 5 Yards of Cambrick value £3 in the Dwelling-House of John Davenport'.³

Blackstone explains that 'particular words...must be used, which are so appropriated by the law to express the precise idea which it entertains of the offence, that no other words, however synonymous they may seem, are capable of doing it...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

1 John P. Zomchick, "'A Penetration Which Nothing Can Deceive': Gender and Juridical Discourse in Some Eighteenth-Century Narratives," *Studies in English Literature* 29 (1989), 540.

2 For a brief contemporary account of similar crimes, see *Justice in Eighteenth-Century Hackney: the Justicing Notebook of Henry Norris*, edited by Ruth Paley, London Record Society, 1991, especially nos.99,248,298. See also the case of Joseph Blake, alias Blueskin who was 'indicted for breaking and entering the dwelling-house of William Kneebone, and stealing 108 yards of woollen cloth, value 3*l.* and other goods.' In spite of ingeniously cutting Jonathan Wild's throat to prevent him from testifying, he was found guilty and was executed on November 11th, 1724. However, unlike Moll, he 'did not shew a concern proportioned to his calamitous situation' and turned not to religion but to alcohol, 'observed to be intoxicated even while he was under the gallows'. See G.T.Wilkinson, *The Newgate Calendar*, London: Sphere Books, 1991, pp.134-5.

3 Cited in Linebaugh, *London Hanged*, p. 269.

clergy'(IV,pp.302-3). Hence Moll refers to the theft as 'feloniously stealing'(p.361) and notes the value of the silk.¹

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 an interesting comment on Moll.

Moll is clearly guilty of taking and carrying away the goods: she admits to the reader, 'certain it was, that I had taken the Goods, and that I was bringing them away'(p.362). However, to convict someone of larceny, felonious intent also 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 gives is useful in relation to 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 tries 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 that 'if seeing no Body in the House, I had taken any of them up...it could not be concluded that I intended to steal them', claiming that she simply wanted to look at them in daylight before buying them, which the court regards as 'a kind of Jest'(p.362).

Blackstone explains that 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(IV,pp.229-243). 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'(p.224). Moll is presumably acquitted from burglary because the incident took place in the daytime and theft was only deemed burglary if it occurred at night: Wood explains, 'If the like Offence is Committed by Day, It is call'd *House-breaking*'(III,p.376).

Breaking and entering also had to be established in order to convict someone of burglary. Moll's account echoes directly the legal definition of burglary: Wood notes, 'there must be an *Entry*'(III,p.377), such as 'Draw[ing] the Latch'(p.376) or 'Setting the Foot over the Theshold after the Door is Broke open'(p.377). Moll recounts: 'The Witnesses...swore...that I had one Foot over the Threshold when they discovered themselves, and then I put tother over, so that I was quite out of

¹ Linebaugh discusses the relation between the value of goods stolen and the punishment for larceny in *London Hanged*, pp.65,79-82.

the House in the Street with the Goods before they took hold of me', insisting in full cognisance of the legal implications, 'they stop'd me before I had set my Foot clear of the Threshold'(p.361).

Moll clearly entered the building but she did not break in. Blackstone explains that breaking in did not have to be violent but could simply involve 'lifting up the latch of a door'(IV,p.226). 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 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'(p.226).

The nature of the building was also important in a prosecution for burglary. If the shopkeeper lived in the shop building, the theft could constitute burglary because it could be regarded as a 'dwelling-house' but theft from a shop building which was not lived in was not burglary. Moll tells us 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).

Finally, as with larceny, felonious intent had to be proved in order to convict of burglary. Blackstone explains that 'it is the same, whether such intention be actually carried into execution, or only demonstrated by some attempt...the jury is to judge'(IV,p.227).¹ The jury finds Moll 'Guilty of Felony, but' she is 'acquitted of the Burglary'; she realises 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 seems understandably to be temporarily dumbfounded when she is brought before the Judges to hear her sentence, 'I stood mute a while' but she explains, '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, is a brief example of the humanitarian face of the legal 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', 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 of pregnancy, which entitled women to a respite from judgement until the birth of the baby, or a plea for benefit of clergy.²

1 Wood explains: "*Burglary* ... is where a Person in the Night Breaketh and Entereth into the Mansion House of Another to the Intent to Commit some Felony there, whether the Felonious Intent be Executed or not" (3:376).

2 Benefit of clergy originated when the civil law gave clergy exemption from punishment for a wide range of crimes and

Moll knows that she is on tenuous ground, 'I had nothing to say to stop the Sentence'(p.362); 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). Yet as a graduate of the Newgate school of law, Moll recognises that she has other options: the death sentence did not necessarily mean death.

Moll speaks of herself as one well versed in criminal lore, in the behaviour and knowledge of felons, referring for example to 'my long Conversation with Crime and with Criminals'(p.408). It is interesting to note that one of the familiar names for Newgate was 'the College'(p.350), a term which is appropriate in both its meanings, as a 'society...of persons having common functions' and as 'a seminary of learning'.¹ It is, as Godwin was to comment later in the century, one of the 'seminaries of vice' where one can reasonably assume that criminals learnt a great deal about crime in both its practical and its theoretical aspects in terms of the law, for example, possible means of defence in court or ways of avoiding the death penalty.²

The prisoners and keepers in *Moll Flanders* discuss such issues quite knowledgeably. Moll discusses one of the most popular pleas, that of pregnancy, with one of the inmates (pp.350-1) and alludes to another common practice: impeaching. When her husband is brought to Newgate, she learns that the authorities, seeking evidence against him and his gang, have decreed that 'any one that had been robb'd by them might...see them.' She pretends that she has been robbed in order to see him and says 'publickly that I knew them very well...Immediately it was Rumour'd all over the Prison that *Moll Flanders* would turn Evidence' and 'come off by it from the Sentence of Transportation'(p.374).

Prison gossip, not surprisingly, seems to focus on prisoners' crimes and their probable chances in court: 'they told me, he was the Captain of the Gang...that he would surely be hang'd'(p.357). When the jury brings in its verdict on the indictment to determine whether or not Moll should go to trial, 'twas the Discourse all over the House, that I should die for it'. One of the keepers assesses her case and comments before the trial, 'your Case is very plain, and...the Witnesses swear so home against you, there will be no standing it'. He recommends that she 'send for a Minister', who may be able to influence a Judge to lessen her sentence, warning, 'unless you

was ultimately extended to anyone who could read and write. In 1692 it was extended to women and in 1706 the reading qualification was abolished. See Baker, 'Criminal Courts and Procedure', pp.41-2; Blackstone, *Commentaries*, IV,pp.358-67.

1 See the *Oxford Dictionary of Word Origins*, ed. T. Road (London: Oxford University Press, 1986) and the *OED*.

2 W.Godwin, *Enquiry Concerning Political Justice and Its Influence On Morals and Happiness* (1793), edited by F.E.L.Priestley, third edition, 2 vols, London: Oxford University Press, 1962, II,p.385.

have very good Friends, you are no Woman for this World'(p.359). His prediction may be accurate but his advice is in some measure a last resort and Moll is resolved to try other means first.

Moll comments, 'I had much to say, to bespeak the Mercy of the Court' 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 twist the law which determined ironically 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 seems 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. Defoe exploits the dramatic potential of courtrooms, which can have an almost mystical atmosphere of power: the process of judgement and the ceremony which surrounds it is designed to create awe in the 'spectators'. Dramatic and sombre robes reinforce the image of authority and, in an eighteenth-century context, the power of life and death, symbolised in particular by the black cap worn when pronouncing the death penalty and the white gloves worn at the end of a "maiden assize" when no prisoners had been condemned to death.¹ Interestingly, Moll's anger at the sentence seems partly due to the fact that her defence, carefully crafted in accordance with law, has failed to save her; she has been trying to use the law to subvert itself and is condemned not only as a thief but, in some darkly comic way as a 'lawyer'.

Defoe is careful to present the court in such a way as to create awe and respect, reflecting accurately the reality of court procedure and language, a language which deliberately alienates itself from everyday life, highly formalised and symbolically powerful, with hidden meanings of life and death. As Swift's Gulliver comments: 'this society hath a peculiar cant and jargon of their own, that no other mortal can understand'.² Eighteenth-century people were fascinated by the language of law and legal 'phrase books' such as 'those inestimable Fountains...the *Attorney's Pocket-Companion*, and Mr *Jacob's Law-Tables*',³ were popular throughout the century. Defoe reflects this interest in

¹See Hay, pp.27-9.

²J.Swift, *Gulliver's Travels* (1726), edited by Peter Dixon and John Chalker, London: Penguin, 1988, p.297.

³Henry Fielding, *Joseph Andrews* (1742), ed. Mmtin C. Battestin with a textual introduction by Fredson Bowers. The

the language of law in Moll's trial, assuming that the reader is aware of the importance of words and their attendant meanings in court rhetoric.

Moll's tone would suggest to the unwary reader that she is a victim of a cruel legal process but her testimony is based largely on lies, judiciously chosen according to her knowledge of the law in order to obtain the lightest possible punishment. Moll is an accomplished felon who has committed serious crimes in full cognisance of the law. Defoe assumes that we recognise this and that we will not be fooled by her behaviour as self-styled victim. He ensures that the legal detail condemns her both in the courtroom and in the mind, if not the heart, of the reader. Moll changes rôle from penitent sinner to cunning felon, according to whichever proves to be expedient; this in turn discredits her in the eyes of the careful reader.

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'.¹ Defoe exposed the corruption and cruelty of the legal system on many occasions, not least in *Moll Flanders*. Moll's 'Lancashire husband' is imprisoned without trial for three months, the authorities 'not doubting but a farther Evidence would at last come in'(p.374); it was not unknown for innocent prisoners to die in prison pending trial. Defoe exposes the practice of buying pardons through the same character, who 'could, for Money have got his Name into some particular Pardon'(p.378). Newgate itself, where even the Ordinary is corrupt, is a deeply disturbing image of the eighteenth-century penal system.

It is tempting to assume that because the eighteenth-century criminal law system was 'one of the bloodiest criminal codes in Europe',² it was always inequitable. However, Moll's trial is not an instance of the system victimising a powerless individual. Zimmerman accepts that 'Justice is done at Moll's trial' but he claims that it is achieved 'despite the legal system'(p.103), citing the malice of the witnesses as an example. Given the often justified criticism of the eighteenth-century legal system, such cynicism is understandable but in this case it is misplaced. Moll receives a fair trial: she is given ample opportunity to set forth the evidence and she is even prompted by an anonymous member of the court to plead with the Judges. The malice of the witness 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'. Moll differentiates between

Wesleyan Edition of the Works of Henry Fielding (Middletown, Conn: Wesleyan University Press, 1967), pp. 68-69.

1 E.Zimmerman, *Defoe and the Novel*, London: University of California Press, 1975, p.103.

2 Hay, p.19.

herself and other felons but it is unwise to accept her self-analysis: 'necessity' was a common and often genuine excuse for crime but it 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.¹

When Moll finally faces hanging in one of her calmer moments, she ironically articulates the view of the 'establishment': 'I was to Expiate all my Offences at the Gallows'(p.349). Her penitent tone and acceptance of what appears to be divine fate may seem incongruous with her character, although presumably consistent with condemned prisoners *in extremis*. However, they make 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.² The Ordinary, a chaplain who attended condemned prisoners, 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'(p.371).

Transportation was a form of pardon, when the sentence was commuted to a period of exile in the colonies. Wood explains, 'A Man or Woman [convicted of felony] is to be Hang'd 'till Dead'. Yet if they 'pray to be Transported, It may be done if the Court thinks fit'(IV,p.650).³ 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).⁴ 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).⁵ He argues usefully that it was a powerful tool in a complex ideology of mercy, an ideology which I would argue is central to Defoe's thematic concerns.

Hay argues pertinently that the courts were 'a selective instrument of class justice'(p.45),

1 I.Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding, Fielding*, London: Chatto and Windus, 1967, pp.113-4,131.

2 See Faller, *Turned to Account*, pp. 91-116, 196-200; Richetti, pp. 246-69, 235-36.

3 See also J.M.Beattie, *Crime and the Courts in England 1660-1800*, Oxford: Clarendon Press, 1986, pp.450-519.

4 As a merchant, Defoe himself profited from transpOlting people. See Backscheider, pp. 485-87.

5 Baker gives similar statistics in 'Criminal Courts and Procedure', p.43.

biased in favour of the ruling classes and their interests, 'yet simultaneously proclaim[ing] the law's incorruptible impartiality'(p.48) by occasionally sparing the lives of the poor, with pardons 'presented as acts of grace'(p.47). Faller notes the wider sociological implications of the system in *Turned to Account*: 'The capture, trial, and punishment of criminals can...contribute to social solidarity, giving all good people occasion to reaffirm...the orthodoxies that bind them together'(p.91). Defoe explores such ideological constructs in *Moll Flanders*, presenting Moll's experience as a kind of experiment in juridical mercy. He is clearly aware that, as Hay phrases it, 'mercy was part of the currency of patronage'(p.43), exposing the power relations through the experience of Moll's Lancashire husband and indeed Moll herself. Human justice is inevitably flawed but Defoe considers ways in which it can be used equitably to balance the needs of society with those of the individual.

Backscheider comments pertinently, 'The experience of Moll Flanders is authentically rendered' but 'Defoe's depiction...included powerful propaganda for the' Transportation Act (1718). Prior to the Transportation 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 is an object lesson in the appropriateness of transportation. Transportation was hardly an easy option but as Moll admits, 'we shall all choose any thing rather than Death'(p.371). Moll faces her juridical fate squarely, determined to make the best of it, arguing, 'we should live as new People in a new World'(p.383). Her optimism 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.

Defoe has to maintain a careful balance between Moll's character and the ideological concerns which underpin her narrative. He elicits a degree of sympathy for her, particularly early in the novel, where the reader may even enjoy her roguery, participating vicariously in her exploits. Yet Moll must be punished because she has consistently transgressed moral and social values. By having the court find Moll guilty, Defoe gives the law its due and maintains respect for the system. However, if the death penalty were exacted, the reader would be likely to revolt against the very system Defoe is seeking to defend; the subsequent presentation of judicial clemency is vital in encouraging the reader to support the legal system.

Moll is judged and accepts her punishment with courage. She relates that the first night on

board the ship, 'We were...clapt under Hatches, and kept so close, that I thought I should have been suffocated'(p.386), continuing, 'All that night I lay upon the hard Boards of the Deck'(p.387). However, her suffering is short-lived: the Boatswain gives 'so good a Character of Moll and her husband that 'for fifteen Guineas we had our whole Passage and Provisions, and Cabbin, eat at the Captain's Table, and were very handsomely Entertain'd'(p.397).

Moll dwells not on the inevitable hardships of long sea journeys and life in a harsh climate but on the economic possibilities. She tells the reader, 'I...was to be discourag'd with nothing'(p.414). On arrival in Virginia Moll is sold to a planter 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). Her good fortune here is not implausible: women convicts were often regarded as poor workers; the planter may feel that Moll's money will provide a better return on his investment than her labour.¹

The fact that Moll does not return to crime testifies to the positive potential of transportation. She and her husband reflect 'with a great deal of Pleasure...how much better' their new life is 'not than *Newgate* only, but than the most prosperous of our Circumstances in the wicked Trade that we had both been carrying on'(p.415). Indeed they 'liv'd together with the greatest Kindness and Comfort imaginable', so much so that they 'perform'd much more than the limited Terms of [their] Transportation'(p.427)', not returning to England until Moll is seventy. In this instance, at least, transportation serves the ideals of justice more effectively than the death penalty would.

During her time in Newgate, where Defoe himself had suffered,² Moll is forced to face the ugly reality of crime and its punishment; it ceases to be a game. The nature and extent of Moll's repentance is difficult to determine.³ While in Newgate she suffers what Bender refers to as 'A redemptive hell for the wayward soul, a reformatory regime for the felonious mind' and, at least to some extent, she learns to work within the legal system, as opposed to trying to subvert it. Bender goes further than I would wish to do in arguing that Moll's 'secular rehabilitation is complete';⁴ I am not convinced that Moll internalises the corrective values of the penal system. However, her apparent penitence makes her an appropriate candidate for clemency. Her willingness to accept her punishment and to work to establish a new life based on industry as opposed to crime, suggests

¹Hay, pp. 45, 48, 47, 43; Faller, *Turned to Account*, p. 91.

² Backscheider discusses legal proceedings against Defoe for debt and seditious libel in *Daniel Defoe*.

³ For an account of Moll's apparent penitence and rehabilitation, see Faller, *Crime and Defoe*, pp.104-6, 123-29.

⁴ J.Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England*, London: University of Chicago Press, 1987, pp.150,47.

some form of rehabilitation in social if not spiritual terms.

The issue of penitence derives much of its significance in eighteenth-century terms from the parallel between human and divine judgement.¹ Eighteenth-century spectators assumed that those facing execution were going to face the ultimate court of Judgement Day, where truth would become apparent. Human courts are but a pale reflection of such a process: 'truth' is not an absolute but a probable, dependent on the interpretation of events.

Defoe addresses the issue of interpretation by suggesting the impossibility of ascertaining absolute truth in a human court. Absolute truth is known only by God; human courts must judge according to finite and thus potentially fallible evidence. Defoe makes the reader conscious of this fundamental juridical problem through the essentially rhetorical nature of much of Moll's discourse, be it legal or apparently spiritual. Moll appeals to the reader on a personal level, admitting her guilt in asides calculated to elicit sympathy or at least to weaken our condemnation. Yet she also appeals to the reader as Judge, stressing mitigating circumstances. We may like to feel that we are given privileged access to Moll's feelings but ultimately we cannot be sure that she is not simply providing us with different versions of reality, without ever giving us access to the 'truth'. Reading inevitably involves a process of literary judgement; Defoe invites us to parallel this with judicial judgement.² This may be problematic in that it encourages scepticism towards Moll, but Defoe persuades the reader to enter imaginatively into the realm of juridical interpretation, to understand more fully the function of the court and the nature of its judgements.

The reader of *Moll Flanders* learns that law is limited, not omniscient; it cannot see into the inner recesses of Moll's mind. It cannot transform the psyche, which is perhaps the rôle of the Church, but at its best it can access something approximating to truth and, through careful use of its powers, effect some measure of reform, leading to an individual becoming a more productive member of society.

Foucault identifies two types of felon: "'monsters", moral or political, who had fallen outside the social pact' and 'the juridical subject rehabilitated by punishment'(p.256). Defoe's presentation of Moll is less clear - cut: the ideological focus of the text is not on Moll's repentance *per se* but on the way in which the law can best deal with her. Repentance is significant not spiritually, in terms of conviction of sin, but in so far as it may indicate the likelihood of her re - offending; the

1 Hay comments interestingly on the relation between religion and law (pp. 29-30).

2 Posner provides a useful introduction to the theoretical issues raised by the study of literature and law, noting the 'parallel concern with the problematics of interpretation' and discussing the ways in which 'Judges and other lawyers resemble literary artists in the close attention they pay to the choice of words'. R.Posner, *Law and Literature: A Misunderstood Relation*, London: Harvard University Press, 1988, pp.1-21 (pp.11,9).

judgement is socio-legal, not moral. Legal theory determines that language is studied in relation to evidence and the evidence is that Moll is a first time offender who is repenting.

Moll Flanders follows its heroine's criminal career but also her experience within the penal system. She articulates the views of felons, a social group who may not be deemed appropriate commentators but who are in one sense uniquely qualified. In her dual rôle as felon and 'lawyer', Moll is a multi-faceted representative of the law, commenting on it more comprehensively than characters we traditionally view as legal representatives could do.

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