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DEFOE AND THE CRIMINAL LAWYER: EIGHTEENTH-CENTURY IDEOLOGIES OF JUSTICE

'Scripture bids us not despise […] a Thief, who steals to satisfie his Hunger; not that the Man is less a Thief, but despise him not, you that know not what Hunger is' (Secord 1938, 543-44). Defoe in his *Review* here is on 8 February, 1709, articulating a moral view but one which is rooted firmly in contemporary juridical discourse concerning crime and justice. Defoe responded to contemporary fear and fascination with crime with popular criminal biographies[1] such as the *History of John Sheppard*, promising: 'His History will astonish! And is not compos'd of Fiction […] but Facts done at your Doors, Facts unheard of, altogether new, Incredible, and yet Uncontestable' (Defoe 1968, 234-5).[2] *Moll Flanders* lacks this journalistic hype but it clearly owes much to this tradition.

McLynn notes, 'Breaking and entering private property with felonious intent was the most commonly encountered capital crime of the eighteenth century' (McLynn 1989, 87). Rawlings points out that the term 'crime' evoked 'physical danger […] gangs and a whole criminal underworld, of moral collapse and anarchy' (Rawlings 1992, 17). Such fears are embodied in Moll Flanders. As a felon, Moll is by definition also her own defence lawyer since felons usually defended themselves in court.[3] The figure of the criminal lawyer is doubly significant here, as part of both the criminal body and the legal process. In the course of his editorial work for Applebee's *Journal* in the 1720s, Defoe would have seen numerous examples of the criminal as lawyer. This experience informs much of the writing of *Moll Flanders*.

In theory, the eighteenth-century legal system embodied ideals of justice to which the accused could appeal in the form of Judges and juries. Yet justice inevitably lies in the eye of the beholder: the criminal lawyer is concerned not with justice but with winning his case.[4] Part of the drama of the eighteenth-century courtroom lay in the figure of the criminal lawyer, effectively pleading for his or her life, trying to manipulate and indeed subvert the system. Through the figure of Moll Flanders as criminal lawyer Defoe encourages the reader to engage imaginatively in the difficult process of balancing the interests of the individual with those of society.

Defoe opens his address 'To the Citizens of London and Westminster', which introduces John Sheppard's narrative, with an appeal to the readers' collective understanding of crime: 'Experience has confirm'd you in that everlasting Maxim, that there is no other way to protect the Innocent, but by Punishing the Guilty.' Exploiting the popularity of the criminal biography, he articulates, and arguably feeds, public fear of crime: 'At this time the most

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1 For discussions of crime literature, see Faller 1993, 4-31; and 1987, 203-8; Foucault 1977, 65-9; Rawlings 1992, 1-27; Richetti 1992, 23-59.

2 For the question of Defoe's authorship, see Furbank and Owens (1997).

3 Blackstone, arguably the foremost legal commentator of the age, explains: 'no counsel shall be allowed a prisoner [...] in any capital crime, unless some point of law shall arise proper to be debated' (1775, IV, 349-50). Felons did not have the right to a defence lawyer until 1836.

4 Swift famously defined lawyers as 'a society of men' skilled 'in the art of proving by words multiplied for the purpose, that white is black, and black is white' (Swift 1988, 296).

flagrant Offenses, as Burning of Dwellings; Burglaries, and Highway Robberies abound', promising, 'here's a Criminal bids Defiance to your Laws'; the 'your' is significant here, implying collective ownership of the law, depicted as a protective force, 'providing necessary and wholesome Laws against these evils' (Defoe 1968, 234-5). Defoe here reflects contemporary juridical discourse: James Mountagu charged the jury: 'the Law is the Safeguard [...] the Custody of all private Interest' (Lamoine 1992, 141).

This collective social interest is traditionally embodied in the jury. The magistrate Henry Jodrell identified the importance of this public role in justice: 'you may be able, collectively, to redress what, in your private capacities, you have had occasion, individually, to complain of' (Lamoine 1992, 78). The public also played a role in the legal system as spectators: Hay notes that 'Tradesmen and labourers journeyed in to enjoy the spectacle, meet friends, attend the court and watch executions' (Hay 1975, 27). Fielding criticised this practice as 'mak[ing] a holiday for, and […] entertain[ing] the mob', acknowledging that 'Foreigners have found fault with the cruelty of the English drama, in representing frequent murders upon the stage' (Fielding 1967, 123).

Beccaria problematised the spectacle of justice: 'The penalty of death becomes for most men a spectacle, and for a few an object of compassion mingled with indignation, one or other of these sentiments occupying the spectator's mind to the exclusion of that salutory dread which the law pretends to inspire' (Beccaria 1996, 55). Fielding objected similarly that the sight of 'a poor wretch, bound in a cart, just on the verge of eternity, all pale and trembling' (Fielding 1967, 123) will raise compassion, not disgust, in the heart of the spectator.[5] The legal rationale for public executions lay largely in their function as a deterrent from crime; it was therefore crucial that they had the right impact on the audience. Fielding acknowledged: 'No man indeed of common humanity or common sense can think of a man and a few shillings to be of an equal consideration' but argued that '[t]he terror of the example of execution is an effective deterrent; hence 'one man is sacrificed to the preservation of thousands' (Fielding 1967, 120-21).

Spectators debated issues of justice both at the Sessions and subsequently in coffee houses and taverns, providing an informal verdict of their own.[6] We see the significance of such informal trials in many Charges to the Jury, which, delivered in public, addressed both formal and informal juries and sought not only to explain the law but to encourage belief in the universality of justice, collective ownership of the system: 'We All', declared a Guilford magistrate, 'in our Several Stations, Partake of its supVirtue and Effects' (Lamoine 1992, 298).[7] Prisoners were able to watch the proceedings at the Sessions House from where they stood fettered, paralleling the role of the public as spectators but with a particular professional

5 He also objected to the possible glorification of the criminal: 'His procession […] attended with the compassion of the meek and tender-hearted, and with the applause, admiration, and envy, of all the bold and hardened' (Fielding 1967, 122).

6 Beccaria argues that 'Proceedings and proofs of guilt alike should be public' (1996, 25). Linebaugh suggests that this 'counter-theatre of the Old Bailey' provided more considered verdicts than 'the hurried agreements of jurors who couldn't avoid a Shylock reasoning' (1991, 87-8).

7 Georges Lamoine notes in his introduction to *Charges to the Grand Jury*: 'Considering the publicity given to the sessions, the importance of the magistrate's speech to the crowd, always restless and ready to riot, could be considerable' (Lamoine 1992, 8).

interest, often informed by studying legal books in prison, sometimes with the help of law students.[8]

Defoe exploits public interest in trials in *Moll Flanders*, presenting every step of the judicial process, encouraging the reader to enter imaginatively into its various stages; as Zomchick notes of contemporary collections of trial narratives, 'readers become [...] unofficial magistrates' (Zomchick 1989, 540).

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', echoing the legal definition of larceny: Blackstone notes that '[t]here must not only be a taking, but a *carrying away*' (Blackstone 1979, IV, 231). She is clearly guilty, admitting to the reader, 'certain it was, that I had taken the Goods, and that I was bringing them away' but she also faces a charge of burglary. Wood notes in his *Institute*, 'there must be an *Entry*' such as 'Draw[ing] the Latch' or 'Setting the Foot over the Threshold after the Door is Broke open' (Wood 1728, III, 377). Moll insists in full cognisance of the legal implications, 'they stop'd me before I had set my Foot clear of the Threshold' (Defoe 1989, 348, 362, 361).[9]

Moll is found 'Guilty of Felony, but' is 'acquitted of the Burglary', presumably because the incident took place in the daytime and theft was only deemed burglary if it occurred at night.[10] She realises that the distinction is somewhat academic: they are both capital crimes. She is temporarily speechless when she is brought before the Judges to be sentenced, but an anonymous voice, presumably that of a clerk of the court, prompts her to plead with the Judges, who have the power to recommend a reprieve or a pardon. Moll is asked, 'What I had to say, why Sentence should not pass', referring to the *allocutus*.[11] She knows that she is on tenuous ground, 'I had nothing to say to stop the Sentence' (362); she cannot plead benefit of clergy because, as Blackstone explains, it was denied 'in all larcinies to the value of 40 *s.* from a dwelling-house' even 'without breaking in' (Blackstone 1979, IV, 240). 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's plea is calculated according to specific legal criteria. She stresses 'the Circumstances' of the case: 'I had broken no Doors, and carried nothing off (Defoe 362), presenting it as minor and as a 'first Offence' (363), exploiting the law which determined ironically that in spite of 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' (371).

Moll is confident in her performance as lawyer, 'I spoke […] in such a moving Tone […] that I cou'd see it mov'd others to Tears' (363) but her rhetoric fails to convince the court and the Judges, seemingly omnipotent, pronounce the death sentence. Defoe evokes the powerful atmosphere of the courtroom, the process of judgement and the dramatic ceremony which surrounds it designed to create awe in the 'spectators'. Fielding argued, 'It is not the essence of

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8 See Linebaugh, 1991, 75-77; Sheehan 1977, 237.

9 For a more detailed account of the legal context to Moll's trial, see Swan 1998, 33-48.

10 Wood explains, 'If the like Offence is Committed by Day, It is call'd *House-breaking*'. Wood 1728, 376.

11 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: presentation of a pardon already granted, a plea for benefit of clergy or a plea of pregnancy, which entitled women to a respite from judgement until the birth of the baby.

the thing itself, but the dress and apparatus of it which makes an impression on the mind' (Fielding 1967, 124). Dramatic and sombre robes reinforced the image of authority and, in an eighteenth-century context, the power of life and death, symbolised 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.[12]

Beccaria criticised 'the solemn priests of justice, who with tranquil indifference have a criminal dragged with slow ceremony to his death' (Beccaria 1996, 59), the word 'priests' reflecting the popular association of religion and law but also the authority over life and death, which many believed was usurped. Beccaria argued: 'men […] have always believed that life should be at the mercy of none save that Necessity which rules the universe' (59).

Defoe reflects 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' (Swift 1988, 297).

It is tempting to assume that because the eighteenth-century criminal law system was 'one of the bloodiest criminal codes in Europe', as Douglas Hay phrases it (1975, 19), it was always inequitable. Beccaria's criticism lends weight to Hay's thesis: 'the groans of the weak, sacrificed to cruel ignorance and wealthy indifference […] prodigal and useless severity for crimes' (8-9). Fielding acknowledged, 'that many cart-loads of our fellow-creatures are once in six weeks carried to slaughter is a dreadful consideration' (Fielding 1967, 127).

However, legal theorists such as Blackstone and Beccaria testify the concern for justice from within the system itself, concern which is reflected in Charges given by individual magistrates. The Norfolk charges in 1767 indicate a tradition of genuine concern for the accused: 'the most tender Regard has always been had on the Tryal of [capital crimes] so as to preserve the Life of the Criminal where other Circumstances do not render him an Object unfitt for mercy.' (Lamoine 1992, 378)

Zimmerman acknowledges that 'Justice is done at Moll's trial' but argues that it is achieved 'despite the legal system' (Zimmerman 1975, 103), citing the malice of the witnesses as an example. His cynicism is understandable but in this case it is misplaced. Moll receives a fair trial precisely because of the law, not in spite of it. The malice of the witness is irrelevant: Moll is guilty and it is the evidence which convicts, not private malice.

Courts were concerned not only with the nature of the crime but its motive. Moll pleads 'necessity', a common and often genuine excuse for crime, used in court to present the accused as a person of fundamentally good character and deserving of a pardon. Defoe's narrative reflects contemporary legal debate: Blackstone argues, 'theft, in case of hunger, is far more worthy of compassion, then when committed through avarice, or to supply one in luxurious excesses' (Blackstone 1979, IV, 15). Beccaria argued, 'Who made these laws? Men of wealth and power who have never…had to share out a mouldy loaf of bread, to the innocent out-cry of their starving children', declaring that theft 'is generally the crime of the wretched and the desperate' (Beccaria 1996, 57, 88).

Chief Justice Aston argued that theft could be motivated by 'a mere Spirit of Malice and Mischief', in which case 'nothing can be urged in the Mitigation of such Crimes, and they deservedly receive the utmost Severity in Punishment' (Lamoine 1992, 403). Moll comes closer to this kind of felon than to the thief who steals through poverty. She admits, 'as I was

12 See Hay 1975, 27-29.

not at a loss to handle my Needle, it was very probable [...] I might have got my Bread honestly enough' (Defoe 1989, 267).

The debate concerning the bearing motive should have on punishment is reflected in literary criticism, with most scholars providing a very sympathetic jury. Starr argues, 'We are asked to distinguish between act and agent – between what Moll does and what she essentially is', apparently falling victim to Moll's persuasive rhetoric (Starr 1970, 79).[13] He cites Defoe in support of this moral relativism: 'there are very few things in the world that are simply evil, but things are made circumstantially evil when they are not so in themselves' (Starr 1970, 79). Yet clearly much of Moll's criminal career is 'simply evil' rather than 'circumstantially evil', perhaps the most obvious example being preying on a young child. Starr argues that Moll 'distinguishes her essential self from her admittedly reprehensible doings' (80). Indeed she does but we should not.

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' (Hay 1975, 43) none of which apply to Moll. Not only do such popularly accepted extenuations for crime not apply to Moll but aggravations do: Chief Justice Aston declared 'The principal Aggravations of Larceny are, where the felonious taking is from the Person, or from the House, and where it is accompanied with the Circumstance of […] putting in Fear' (Lamoine 1992, 403). The reader knows, although the court does not, that Moll is guilty of all of the above.

Nonetheless, her apparent penitence impresses the Ordinary, the Newgate prison chaplain, who gains her a reprieve and she requests transportation.[14] 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' (Hay 1975, 43).[15] He cites transportation in a context of powerful ideologies of mercy, arguing that the courts were 'a selective instrument of class justice' (Hay 1975, 45), serving the ruling classes and their interests, 'yet simultaneously proclaim[ing] the law's incorruptible impartiality' (48) by occasionally sparing the lives of the poor, with pardons 'presented as acts of grace' (47). Swift highlights the potential injustice of the system through Gulliver, who explains: 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' (Swift 1988, 297).

While we need to allow for court rhetoric, many Charges to the Jury demonstrate genuine concern for justice, a concern which Hay acknowledges in parenthesis[16] but whose

13 For other sympathetic readings of Moll and her crimes, see Watt 1967, 113-14 and 131, and Mitchell, who argues, 'Moll steals because she is poor and leads a moral life because she is prosperous' (Mitchell 1978, 17).

14 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 widespread 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' (Baker 1977, 44).

15 Baker gives similar statistics (1977, 43).

16 Hay cites the case of a Chief Justice who expressed deep concern for a young girl he had sentenced to death for infanticide (Hay 1975, 29) and acknowledges that 'Visitors remarked on the extreme solicitude of judges for the rights of the accused, a sharp distinction from the usual practice of continental benches'(32).

implications he does not address. A Guilford magistrate declared 'Those Forms of Government are the mildest and best that So temper their Justice and Mercy […] Where Justice is not loose to range at large in an arbitrary cruell manner and carry its avenging Sword without control' (Lamoine 1992, 293).

Blackstone commented, 'juries, through compassion, will sometimes forget their oaths, and either acquit the guilty or mitigate the nature of the offence: and judges, through compassion, will respite one half of the convicts' (Blackstone 1979, IV, 19). He declared the proper principles of law to be 'conformable to the dictates of truth and justice, the feelings of humanity, and the indelible rights of mankind' (IV, 3).

I would not want to echo Blackstone's at times disturbing confidence in eighteenth-century law, nor his assurance that 'the thorough and attentive contemplation of [the system] will furnish its best panegyric' (Blackstone 1979, IV, 436). Nonetheless, this arch defender of English law argued: 'Where the evil to be prevented is not adequate to the violence of the preventive, a sovereign that thinks seriously can never justify such a law to the dictates of conscience and humanity' (IV, 10-11). Beccaria warned, 'let the laws be inexorable […] but let the lawmaker be gentle, lenient, and humane […] and let the public interest be the outcome of the interests of every individual' (69-70). Defoe anticipates such arguments in *Moll Flanders*.

Faller identifies the wider sociological significance of the system: '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' (Faller 1993, 91). Such ideological constructs form the backdrop to *Moll Flanders*, which represents Moll's experience as a kind of experiment in juridical mercy. Blackstone articulates the difficulties of judicature: 'It is, it must be owned, much *easier* to extirpate than to amend mankind' (Blackstone 1979, IV, 17). 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 argues pertinently that *Moll Flanders* 'include[s] powerful propaganda for the' (1989, 485) Transportation Act of 1718, which enabled courts to transport felons if they believed the death penalty to be too harsh and whipping too lenient.[17] Transportation was hardly an easy option but as Moll admits, 'we shall all choose any thing rather than Death' (Defoe 1989, 371). Moll faces her juridical fate squarely, arguing, 'we should live as new People in a new World' (383). Her optimism reflects Defoe's belief in transportation as a means of rehabilitating felons, giving them the opportunity to break the pattern of crime, which for Moll has become something of an addiction and make a new life for themselves within society as opposed to in conflict with it.[18]

Foucault identifies two types of felon: '"monsters", moral or political, who have fallen outside the social pact' and 'the juridical subject rehabilitated by punishment' (Foucault 1979, 256). Defoe's representation 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 but in so far as it may indicate the likelihood of her

17 Prior to the Transportation Act, grand larceny (theft of goods worth more than twelve pence) was often punished by death. Convicted felons could not be sentenced to exile, although they could be pardoned on condition that they transport themselves voluntarily.

18 It is perhaps worth noting that as a merchant, Defoe himself profited from transporting people. See Backscheider 1989, 485.

re-offending. The fact that Moll does not re-offend testifies to the positive potential of transportation, although the cynical reader may counter that she has become wealthy and therefore has no need to return to crime.

Defoe has to balance the sympathetic aspects of his criminal's character and the ideological concerns which underpin the narrative. The reader may enjoy Moll's roguery, participating vicariously in her exploits. Yet Moll must be punished because she has consistently transgressed moral and social values (she has committed theft, bigamy and even contemplated murdering a child). 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; as Blackstone explains, 'when the punishment surpasses all measure, the public will frequently out of humanity prefer impunity to it' (Blackstone 1979, IV, 17). Beccaria argued that 'extreme severity of punishments' would 'contradict justice and the nature of the social contract itself' (Beccaria 1996, 15), declaring that unnecessarily severe punishment is actually contrary to the justice it purports to serve. Defoe's representation of judicial clemency is vital in encouraging the reader to support the legal system. In this instance, at least, transportation serves the ideals of justice more effectively than the death penalty would. As Blackstone phrases it, the 'hope of transportation' prevents 'frequent [judicial] assassination and slaughter' (Blackstone 1979, IV, 18).

However, Beccaria objected, 'by a long and almost wholly pointless slavery [transported felons] may set an example to nations they have never offended' (Beccaria 1996, 67), criticising 'the disorder of a penal system in which pardon and mercy are necessarily proportioned to the absurdity of laws and the appalling severity of sentences' (69). Blackstone identifies problems with the system of pardons which provide an effective context for reading Moll: 'Among so many chances of escaping, the needy or hardened offender overlooks the multiple that suffer […] and, if unexpectedly the hand of justice overtakes him, he deems himself peculiarly unfortunate, in falling at last a sacrifice to those laws, which long impunity has taught him to contemn' (Backstone 1979, IV, 19). Fielding argued that the hope of a pardon 'inspires men to face the danger' (Fielding 1967, 120) of law and thus 'the design of the law [to deter and thus prevent crime] is rendered totally ineffectual' (121). Defoe counters such objections by demonstrating that even a calculating criminal like Moll can change, at least in terms of behaviour and no longer be a threat to society. In encouraging the reader to acknowledge the justice of transportation rather than execution in the case of Moll, guilty of grand larceny, the text invites us to support such mercy for people who have committed lesser crimes.

While in Newgate Moll experiences what Bender refers to as 'A redemptive hell for the wayward soul, a reformative regime for the felonious mind'. He goes further than I would wish to do in arguing that Moll's 'secular rehabilitation is complete' (Bender 1987, 150 and 47).[19] I am not convinced that Moll internalises the values of the juridical system but she does learn to co-operate with it. More significantly, her apparent penitence makes her an appropriate candidate for clemency. Her willingness to accept her punishment suggests some form of rehabilitation in social if not spiritual terms.

19 Faller discusses the significance of felons' repentance (1987, 98-109).

The issue of penitence derives much of its significance in eighteenth-century terms from the parallel between human and divine judgement.[20] Eighteenth-century spectators assumed that those facing execution were going to face the ultimate court of Judgement Day, where truth would become apparent. Mr Baron Lovell charged the jury, 'If [God] has ordained eternal punishment to such as disobey his omnipotence, what insect will dare take the place of divine justice' (Lamoine 1992, 77-8).

Defoe's narrative shares with criminal biographies an interest in the circumstances and motivation for crime but also a religious context. *The Newgate Calendar,* one of the most popular collections of 'criminal lives', recounts criminal exploits (from minor theft to a cannibal living in a cave in Scotland, who murdered and ate tourists).[21] It combines graphic detail of violent crime with a degree of moral earnestness in a manner which would make all but tabloid journalists blush, insisting not only on the horrors of the crime but the significance of the spiritual state of the criminal.

Joseph Blake, alias Blueskin, was indicted, like Moll, for theft. In spite of ingeniously cutting the famous Jonathan Wild's throat to prevent him from testifying, he was found guilty and was executed. 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' (Wilkinson 1991, 134-5).

Charges to the Jury regularly use religious language to exhort the audience; Sir John Gonson declared: 'the Fear of God, so manifestly tends to preserve the Peace of Society […] Take away Religion, and you take away with it mutual Faith and human Society, and the most Excellent of Virtues, Justice' (Lamoine 1992, 259). The law derives authority and majesty from Heaven itself, encouraging confidence in its workings. Beccaria declares, 'Divine justice and natural justice are of their essence constant and unchangeable' but he acknowledges that human courts are but a pale reflection of divine justice: 'human justice, or rather political justice […] can vary in proportion as […] actions become useful or necessary to society' (Beccaria 1996, 5).

Human justice is further problematised by relying on fallible beings to interpret evidence. Beccaria argues: 'The gravity of sin depends upon the inscrutable wickedness of the heart. No finite being can know it without revelation' (Beccaria 1996, 78). 'Truth' in a human court is not an absolute but a probable, dependent on the interpretation of rhetorical figures. As Robert Frost famously commented, 'A Jury consists of twelve persons chosen to decide who has the best lawyer'.

It is these difficulties in interpreting the evidence, the 'truth', that Defoe explores in *Moll Flanders*, leaving the reader with what Posner refers to as 'the problematics of interpretation'.[22] His text grapples with issues of justice which have yet to be resolved, difficulties in reconciling practice and principle in a system struggling with the contradiction of principles of justice and the common good sitting alongside what Beccaria referred to as 'cold, legalized barbarity' (Beccaria 1996, 8). Many Charges to the Jury stress the importance

20 See Hay 1975, 29-30. The link between religion and law was further underlined by the assize sermon, preached by the sherrif's chaplain.

21 For the character of Sawny Beane, see Smith 1973, 138.

22 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' (Posner 1988, 11).

of equitable application of the law: a Guilford magistrate declared 'All Laws […] are no more than a dead letter, except they are enliven'd and actuated by a fair and due Execution' (Lamoine 1992, 294). We will find much in the eighteenth-century legal system to exercise our cynicism but this should not blind us to its genuine engagement with ideals of justice. Defoe reflects the discourse of magistrates who sought to apply the law humanely and consistently, inviting the public's confidence in law as a protective force against Hobbesian 'wildness of ungoverned Multitude' (Lamoine 1992, 283). Defoe articulates the ideal, if not always the practice, of eighteenth-century law, charging his jury as a Guilford magistrate exhorted his: 'Our laws are neither writ in Sand nor with Blood' (Lamoine 1992, 283).

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