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CRIME AND THE COURTS IN ENGLAND 1660-1800. By *J.M. Beattie*. Princeton: Princeton University Press. 1986. Pp. xxiv, 663. Cloth, \$72; paper, \$19.95.

Every society seems afflicted by "rising crime." Most societies respond with one of two deterrents: Draconian justice for the worst offenders, or comprehensive punishment proportional to the crime. Traditionally, Britain deterred crime by punishing severely those few scoundrels whose examples would be most sanguine. In *Crime and the Courts in England 1660-1800*, J.M. Beattie¹ argues that an apparent failure of this harsh system of justice led England to remodel its penal philosophy, adopting instead a milder, proportional approach, and eventually replacing selective execution with massive imprisonment.

Beattie's basic data are the prosecutions recorded in the assize files

1. Professor of History at the University of Toronto and author of *THE ENGLISH COURT IN THE REIGN OF GEORGE I* (1967).

and quarter session rolls of Surrey and Sussex. These records indicate the charge, occupation of the accused, verdict, and punishment. Through statistical analysis Beattie argues that crime grew with urbanization. Crime became acute after a scarcity or military demobilization, and Beattie shows that prosecutions and contemporary concern increased upon a dearth or peace. These crime waves indicated that the justice system was failing. The authorities' first response was to augment the law's severity through harsher corporal punishment, such as branding on the cheek, and to limit benefit of clergy. Judges and victims were reluctant to apply the full rigor of these reforms, however, and barbaric execution ceased to deter crime.

To restore vigor to the law, judges and Parliament gradually transformed the penal system. Guilt, rather than mere exemplary circumstance, became the prerequisite motive for punishment. Courts tightened rules of evidence, and informed defendants of the charges and evidence, so that only those who deserved their fate were punished. More defendants employed counsel, who were permitted greater latitude (pp. 314-99). The authorities, most significantly, de-emphasized general deterrence through execution and stressed individual deterrence, incapacitation, and even rehabilitation. They sought universal sanctions, for their new purposes necessarily required punishment of each offender, and not merely of notorious exemplars.

Parliament selected transportation to America as the new punishment. Exile could be administered comprehensively, with a proportionality impossible with execution. Transportation was a "striking success": between 1749 and 1775 sixty per cent of those convicted of property offenses in Surrey were transported. Many were sentenced to death and transported as a condition of pardon. Executions declined (pp. 518-19, 539).

When the rebellious American colonists began to refuse the criminals, the courts revived harsh corporal punishment, and sentenced convicts temporarily to "hulks" anchored in the Thames (pp. 560-68). When transportation was resumed in the 1780s the destination was Australia, for the virtuous American republics were as reluctant to accept convicts after independence as before. The passage was expensive, however, and Australia could no more accept all Britain's criminals than could the American South. Permanent institutions in England were the only reasonable solution. Parliament began large-scale construction of prisons in the early nineteenth century, according to Beattie — though he does not carry his analysis into the period — because the failure of the death penalty had prompted successful experiments with incarceration and transportation (pp. 592-618).

Central to Beattie's argument is his correlation of prosecutions with the actual incidence of crime. He concedes that the records of prosecutions reveal only indirectly the actual incidence of crime. Sev-

eral factors discouraged prosecutions: the absence of police and public prosecutors, the low probability of detection, the expense of private prosecution, the unlikelihood of restitution, and particularly, Beattie concludes, the harshness of the penalty should prosecution succeed. Consequently the criminal laws were less than effective, and the records of their enforcement give an incomplete statistical sample. The prosecution rolls nevertheless reflected crime, Beattie contends. When actual crime increased, Englishmen feared for their safety and property. Fear caused them to prosecute in spite of the difficulty and expense (pp. 35-48, 73).

Beattie unfortunately limits his data, and his conclusions thus are less convincing than they might be. He considers only the most serious offenses against persons and property: homicide, infanticide, and rape; robbery, burglary, and larceny. When eighteenth-century commentators "complained that crime was rising out of control they meant violence and theft" (pp. 7-8), particularly burglary and robbery, according to Beattie. He thus excludes from his study even the most important "social crimes," such as smuggling, poaching, coining, and riot, without analyzing their significance to English lawmakers (pp. 6-8).

Beattie restricts his data in another way that subtly influences his argument. He assumes the penal system is central to the social order, and so disregards informal means of maintaining the peace and other determinants of prosecution. For example, Beattie does not consider involuntary enlistment into the Royal Navy or the Army. Beattie shows that prosecutions rose during peacetime. According to Beattie, demobilized soldiers and sailors skilled only in arms rarely could find peacetime work. They turned to crime, and increased crime led to more prosecutions (pp. 213-35).

Beattie may not have the complete story, however. The influx of demobilized men may have increased the number of potential criminals, and thus of crime and prosecutions. It may also be true that crime stayed relatively constant during war and peace, and prosecutions *decreased* in wartime because troublemakers were shipped off to the wars rather than indicted. Beattie addresses this issue briefly. If prosecutions fell because "undesirables" were compelled to enlist, Beattie contends, such treatment would have been given especially to minor offenses. Prosecutions for capital crimes would have remained steady. In fact all prosecutions declined (p. 221). Impressment or enlistment, however, may have been a worse fate than most penalties, save capital punishment: Johnson observed that "no man will be a sailor, who has contrivance enough to get himself into a jail."² By considering only prosecutions, Beattie neglects those who were punished severely without a trial, by impressment.

2. 5 J. BOSWELL, LIFE OF JOHNSON 137 (Hill ed. 1887).

Impressment was but one informal instrument for keeping the peace. Beattie does not consider the influence on the social order of other institutions, such as the family, the ecclesiastical and manorial courts, and the administration of the vagrancy and poor laws. Contemporaries lamented the decline of parental authority as much as they regretted the danger of the streets, for instance. Another of Johnson's aphorisms was that "No man, now, has the same authority which his father had, — except a gaoler."³ Horace Walpole echoed the sentiment. Of a newly published Tudor manuscript he wrote:

the most amusing passage is one in a private letter, as it paints the awe of children for their parents a *little* differently from modern habitudes. Mr. Talbot second son of the Earl of Shrewsbury, was a member of the House of Commons and was married. He writes to the Earl his father, and tells him that a young woman of a very good character has been recommended to him for chambermaid to his wife, and if his Lordship does not disapprove of it, he will hire her.⁴

Former "habitudes" had given society a cohesion that Britons thought was dissolving. Traditional authority, including that of the family, declined as the expansion of London and the economy made society more mobile, and the effect was most pronounced at the bottom rather than the top of the social scale.⁵ Crime may have increased because the traditional order dissolved with the stability of the rural community. The decline of traditional institutions, as much as any failure of the penal system, may have caused the authorities to turn to formal means and rely on the "gaoler" rather than the father.⁶

Geographical and social mobility weakened other societal controls that depended on long-term status relationships. The threat of prosecution, for example, itself restrained behavior and induced settlement. Cleland's *Fanny Hill* recalled the effect such threats had during a dispute with her landlady:

At the word "prison!" every drop of my blood chill'd, and my fright acted so strongly upon me, that, turning as pale and faint as a criminal at the first sight of his place of execution, I was on the point of swooning. My landlady, who wanted only to terrify me . . . began to soothe me again, and told me, in a tone compos'd to more pity and gentleness, that

3. 3 J. BOSWELL, *supra* note 2, at 262.

4. Letter from Horace Walpole to Mary Berry (May 26, 1791), reprinted in H. WALPOLE, *SELECTED LETTERS* 289 (W. Lewis ed. 1973).

5. See Wrigley, *A Simple Model of London's Importance in Changing English Society and Economy 1650-1750*, in *ARISTOCRATIC GOVERNMENT AND SOCIETY IN EIGHTEENTH-CENTURY ENGLAND: THE FOUNDATIONS OF SOCIAL STABILITY* 62-95 (D. Baugh ed. 1975).

6. See, e.g., Goldsmith, *The Traveller* at lines 381-83, 397-412, 423-38 (1764), reprinted in, J. MAHONEY, *THE ENLIGHTENMENT AND ENGLISH LITERATURE* at 500-506 (1980) [hereinafter MAHONEY] (prosperity depends on virtue; tyrannical laws cannot counteract depopulation of villages and end of simple rural virtues); Goldsmith, *The Deserted Village* (1770), reprinted in MAHONEY, *supra*, at 506-11 ("rural virtues leave the land"); Gray, *Elegy Written in a Country Churchyard* (?1742-1750, 1751), reprinted in MAHONEY, *supra*, at 494-96 ("Far from the madding crowd's ignoble strife / Their sober wishes never learned to stray").

it would be my own fault, if she was forc'd to proceed to such extremities; but she believ'd there was a friend to be found in the world who would make up matters to both our satisfactions.⁷

As society became more mobile the actual chances of punishment must have declined, and threats to prosecute must have become less potent. The anonymity of urban London was far different from the close society of the rural parish. Informal means — such as the threat to prosecute debtors like the recalcitrant tenant Fanny Hill — would not restrain a transient population.

Threats to prosecute, furthermore, carried less impact as the opportunity to view the consequences declined. For this reason the shift from public executions to less spectacular sanctions was not universally approved by contemporaries (pp. 525-30). Johnson, in 1783, lamented the change:

[Johnson] said to Sir William Scott, "The age is running mad after innovation; all the business of the world is to be done in a new way; men are to be hanged in a new way; Tyburn itself is not safe from the fury of innovation." It having been argued that this was an improvement,— "No, Sir, (said he, eagerly,) it is *not* an improvement: they object that the old method drew together a number of spectators. Sir, executions are intended to draw spectators. If they do not draw spectators they don't answer their purpose."⁸

Boswell of course agreed, and ventured the cause of the innovation: not reformation of penal philosophy, but the "ease" of the attending magistrates.⁹ The terror of executions to the potential criminal may not have been as great as to young Boswell, who was fascinated by executions,¹⁰ but as executions became less a part of the culture their deterrent effect must have diminished.

Beattie's argument, in part because of his choice of data, is somewhat circular. He declares that contemporaries most feared certain violent crimes, and argues that when these offenses rose prosecutions rose commensurately — yet he finds evidence of this fear in the level of prosecution. He relies most heavily for anecdotal evidence on journalists, pamphleteers, and professional crime fighters such as Defoe and the Fieldings, each of whom had an interest in magnifying every crime wave.

Beattie's study nevertheless is a careful analysis of the eighteenth-century courts as they appear in the assize files and quarter session rolls of Surrey and Sussex. He marshals an impressive array of figures

7. J. CLELAND, *MEMOIRS OF A WOMAN OF PLEASURE* 67-68 (G.P. Putman rev. ed. 1982) (1st ed. 1749). On the "undoubted historical value" of Cleland's fictional account of Fanny Hill as a portrait of the age, see Quennell, *Introduction to id.* at x-xiv.

8. 4 J. BOSWELL, *supra* note 2, at 188 (footnote omitted).

9. 4 J. BOSWELL, *supra* note 2, at 189.

10. See, e.g., J. BOSWELL, *LONDON JOURNAL* 1762-1763, at 250-53 (F. Pottle ed. 1950).

for support.¹¹ He tests his hypotheses by imaginative analysis of independent data, both quantitative and traditional. He considers other modern studies.¹² His work is an important contribution to that scholarship, despite his neglect of some social trends. If changes in the formal machinery of the law are to be studied together with changes in social structure, Beattie's book will add much to such comprehensive study. Reforming a penal system takes time and effort, and many factors may contribute to the result. Beattie's history is a timely view of one such reformation.

— *Frank C. Shaw*

11. Beattie's work contains 69 tables analyzing the assize files and quarter session rolls.

12. Beattie seems to have been influenced particularly by the work of Douglas Hay (e.g., pp. 6 n.7, 197 n.115, 203 n.5, 212, 587-88).
