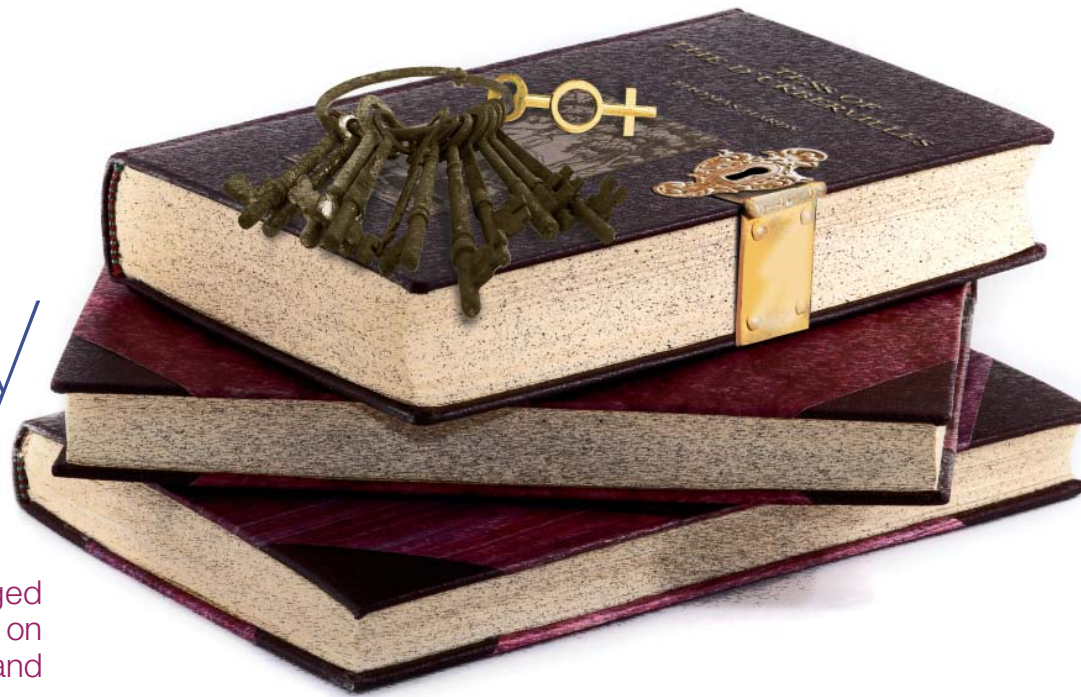


From Moll to modernity



Moll Flanders: The Fortunes and Misfortunes of the Famous Moll Flanders, Etc. Who was born in Newgate, and during a life of continu'd Variety for Threescore Years, besides her Childhood, was Twelve Year a Whore, five times a Wife (whereof once to her own brother), Twelve Year a Thief, Eight Year a Transported Felon in Virginia, at last grew Rich, liv'd Honest and died a Penitent.

Written from her own Memorandums
(Daniel Defoe, 1722)

How we understand crime and punishment has changed dramatically in the last 300 years. **Nicola Lacey** takes us on a tour from Moll Flanders to rising prison populations here and in the US.

At first glance there appears to be little in common between Daniel Defoe's *Moll Flanders* – a glorious romp through the adventures of a late 17th century sexually adventurous property offender – and a major piece of research on punishment in modern democracies.

But for me the two are intimately related. Academics are increasingly encouraged to work in a multidisciplinary way, to infuse ideas from one area of research expertise into another. I have been unusually lucky in receiving Leverhulme funding which has allowed me to do just that.

In 1999 I began work on a project exploring the historical development of ideas of responsibility for crime from the early 18th century to the present day, but was diverted by writing a biography of the legal philosopher HLA Hart. It was not until 2006 that a Leverhulme major research fellowship allowed me to return to the project. I needed to find a way of thinking myself back into the period, so I devoted part of the summer of 2006 to reading a range of early novels.

My argument is that 18th century attributions of responsibility for criminal conduct were founded primarily in assessments of the accused's character and reputation; and that the idea of responsibility as founded in psychological states and capacities, which is fundamental to criminal justice today, did not develop fully until the 20th century. I was aware that early novels featured an extended debate on the nature and significance of ideas of character, and in Defoe, Richardson, Fielding, Burney and others, I quickly found what I was looking for, alongside fascinating insights into the operation of contemporary criminal justice.

The novels also shed considerable light on the further question of how ideas of responsibility are modulated by changing assumptions about gender and class. As I was thinking about how to carve out a distinctive theme for the Clarendon Lectures, which I delivered in Oxford last autumn,

I found myself reading Daniel Defoe's luminous early novel, *Moll Flanders* (1722). While it was entirely natural for Defoe to have a sexually active, socially marginal female thief as his central protagonist, only half a century later this would become next to unthinkable.

Curiously, historians of crime have discovered that, exceptionally, women constituted roughly half of the defendants before London's main criminal court during the period in which *Moll Flanders* is set (a number which diminished steadily, reaching a low of about ten per cent by the end of the 19th century, before gradually rising to the roughly 20 per cent typical today). The more I read, the more it seemed to me that the disappearance of Moll, and her supersession by very different literary models of female criminality such as Tess of the D'Urbervilles, served as an illuminating metaphor for fundamental changes in ideas of selfhood, gender and social order. So I wove together law, literature, philosophy and social and economic history, to argue that these broad changes underpinned a radical shift in mechanisms of responsibility-attribution, with decisive implications for the criminalisation of women.

The lectures – 'Women, Crime and Character: from Moll Flanders to Tess of the D'Urbervilles' – will be published by Oxford University Press this autumn. They focus on the question of how the treatment and understanding of female criminality were changing during the era which saw the construction of the main building blocks of the modern criminal process – notably the adversarial trial process, policing and systematic legal representation. They tell the story of the shifting relationship between informal codes of norms and the formal system of criminal justice, and of the impact on women of these complementary systems of discipline. I hope that this story casts light into corners which remain obscure in accounts informed by a single discipline.

Leverhulme also allowed me to take up another opportunity which I would have otherwise had to

decline: the invitation to deliver the 2007 Hamlyn Lectures. These lectures, which have run annually since 1949, are aimed at a general audience and, according to the Trust set up by their founder, Emma Hamlyn, should be concerned with 'the comparative jurisprudence and ethnology of the chief European countries'. This gave me an ideal forum to focus on another question on which I have been working intermittently for the last decade: why is it that, notwithstanding proportionately similar rising and falling crime rates in most advanced democracies over the last 50 years, reaction in terms of levels of punishment has been markedly varied? It is a project which is close to my heart, both politically, and because my argument is animated by the work of my husband, political scientist David Soskice, formerly a centennial professor at LSE and now research professor of comparative political economy at Oxford. Its genesis therefore crosses the boundaries between those two primary sources of intellectual inspiration: the library and the dinner table.

The starting point of my analysis is the widely remarked fact that, in the last three decades, British criminal justice policy has become increasingly politicised. Both the scale and intensity of criminalisation, and the salience of criminal justice policy as an index of governments' competence, have developed in new and worrying ways. Across the Atlantic, we witness the inexorable rise of the US prison population: a ratcheting up of penal severity which seems unstoppable in the face of popular anxiety about crime. Many scholars have reached the depressing conclusion that contemporary democracies are constrained to tread the same path of penal populism and severity, albeit that their progress along it is variously advanced.

But is this dystopian vision convincing? In *The Prisoners' Dilemma: political economy and punishment in contemporary democracies*, to be published by Cambridge University Press in May, I

set the nature and genesis of criminal justice policy in Britain and America within a comparative perspective, to make the case for thinking that, far from being an invariable factor, the rise of penal populism does not characterise all late modern democracies. Rather, certain features of social, political and economic organisation, characterising two systematically different varieties of capitalism, favour or inhibit the maintenance of penal tolerance and humanity in punishment. Just as it is wrong to suppose that crime can be tackled in terms of criminal justice policy alone, it is erroneous to think that criminal justice policy is autonomous. Rather, the capacities which governments possess to develop and implement criminal justice policies, and the constraints under which they do so, are a function not only of perceived crime problems, or the cultural norms or macro-economic forces which surround them, but also of institutional factors distinctive to particular political and economic systems. Notwithstanding a degree of convergence, 'globalisation' has left many of the institutional differences between advanced democracies intact, and these may help to explain the striking differences in crime levels and penal severity between otherwise relatively similar societies. Only by understanding the institutional preconditions for a tolerant criminal justice system, I argue, can we think clearly about the possible options for reform within the British system.

The journey from Moll Flanders to Tess of the D'Urbervilles may appear distant from today's rising prison populations. But to me there are strong connections. In my further work on criminal responsibility, I will track developments up to the present day. This will involve an analysis of a resurgence of character-based principles of responsibility-attribution not so different from those prevailing in the 18th century: mandatory sentencing laws; counter-terrorism laws which distinguish between foreign nationals and others; legal arrangements singling people out for restrictive treatment on the

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basis of assessments of their 'dangerousness'. These phenomena are closely related to the mentality which has characterised recent British and American criminal justice policy. It would of course be interesting to investigate whether this resurgence of character is also affecting other countries. But that might just take another Leverhulme. ■



Nicola Lacey

is professor of criminal law and legal theory at LSE and a fellow of the British Academy. Her book *A Life of HLA Hart: the nightmare and the noble dream* (Oxford University Press, 2004) was awarded the Swiney Prize and shortlisted for the British Academy Book Prize and the James Tait Black Memorial Prize for Biography.