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POLICING AND PUNISHMENT IN LONDON, 1660-1750: URBAN CRIME AND THE LIMITS OF TERROR BY JOHN M. BEATTIE (OXFORD: OXFORD UNIVERSITY PRESS, 2001) 491 pages.

BY JIM PHILLIPS¹

Anyone with an interest in the history of crime and criminal justice is familiar with University of Toronto Professor John Beattie's definitive work on early modern England.² Published some fifteen years ago, it remains the standard source on almost every aspect of the system by which crime was prosecuted and punished before the late eighteenth and early nineteenth-century developments which saw, among other things, the replacement of capital punishment as the principal mode of punishment, "modern" policing, and public prosecution. The principal contribution of that book to our understanding of the history of crime and criminal justice was that significant and far-reaching changes took place in the administration of the criminal law throughout the eighteenth century, changes often identified with the later, "reform" period. Most notably, it revolutionized our understanding of the history of punishment by charting the emergence and extensive use of transportation. Other developments—in prosecutorial procedure and in the nature of the trial—were informal, ad hoc, and gradual, not the result of sustained campaigns in parliament and the press, but they were highly significant nonetheless. Beattie's work was not only important for English historians; it became indispensable reading for Canadian historians of criminal justice, for it was the English system that he so fully described and analyzed that was introduced to many North American colonies in the second half of the

¹ Professor of Law, University of Toronto, Faculty of Law.

² John M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton: Princeton University Press, 1986) [Beattie, *Crime and the Courts*].

eighteenth century, including Nova Scotia, Quebec/Lower Canada, New Brunswick, and Upper Canada.

Beginning a review of one book with a summary of another might seem strange, but understanding *Policing and Punishment in London* requires it. One of the central arguments in *Crime and the Courts*, which was based on the records of the courts of Surrey and Sussex, was that the urban parishes in the former county experienced a “crime problem” that was greater in extent and different in nature than that of the rural communities in both counties. And it seemed as if urban crime problems precipitated and played a crucial role in encouraging and facilitating innovation in criminal justice administration. In his current work, the focus of which is the “city” of London, the old city governed by a Lord Mayor and aldermen and the centre of what was even by then a much larger metropolis of ever-expanding suburbs, Beattie has followed up on, and sought to test, this insight. In his words, this book is “an effort to understand the ways in which the influence of London shaped the changing foundations of criminal procedure in ... a century of significant alteration in the criminal law and its institutions.”³

Although this book is about criminal justice rather than crime, it begins with an introduction to the crime problem in London, as contemporaries saw it, because it was the problem of crime that impelled the significant innovations in criminal justice policy that are the focus of the book. Using the records of the Old Bailey, Beattie establishes that property crime was prosecuted at much higher levels than anywhere else in the country, and that it was “more visible and so much more alarming” than elsewhere because of the large number of women brought to court.⁴ Over the whole period some 40 per cent of those prosecuted were women—a remarkably high figure compared to all other historical and contemporary studies—and in some years women outnumbered men. Other features of London crime contributed to making it seem especially threatening, particularly the fact that petty larcenies were not prosecuted at the Old Bailey, meaning that the large number of offences brought there contained a higher proportion of the more serious charges, such as robbery, burglary, and other capital property crimes. Beattie has plenty of evidence to show that contemporaries did indeed see crime as a serious problem, at times, as the prosecution rate rose dramatically upward, one of crisis-like proportions. Crime was both a cause of concern in itself and a symptom of a deeper malaise in moral standards, a symbol of the social dangers of

³ *Ibid.* at vii.

⁴ *Ibid.* at 20.

freeing people, young men and women in particular, from traditional forms of restraint and social control.

The rest of the book is divided into two parts, which together cover all aspects of criminal justice administration. The first of these two parts, on "Policing and Prosecution," analyzes the roles of magistrates, constables and other public peace officers, and the private agents who came to play an increasingly large role in detection and apprehension (and sometimes the manufacture) of crime—thief takers. Here the story is essentially one of the transition from a system marked by localism and reliant on non-professional, sometimes voluntary, agents to one more regularized, bureaucratic, and professional. Policing and prosecution were always fragmented and combined public and private initiative; over time the public-private balance shifted, laying the foundations for what historians see as the "modern" system which has hitherto been seen to emerge only in the mid-to-late eighteenth century. Beattie pushes the origins of that system back half a century or more, and locates the wellspring of reform in the later seventeenth century. The principal landmarks he delineates are the creation of the first true magistrates' court in 1737, the large-scale use by the 1720s of paid and semi-professional "deputies" as constables, serving instead of those elected to do so under the customary system whereby householders were chosen for a year, and the evolution of the night watch into a paid and professional force, financed by local taxes.

The story told here is complicated, not the least because criminal justice administration was embedded in local institutions and power structures and ancient rights and privileges were thus often threatened by innovation. It is wonderfully well told nonetheless, as the author marshals a wealth of archival material not only to explain how criminal justice systems worked and changed but also to set them against a complex system of city government and developments in economic and cultural life which shaped and constrained criminal justice reform. We come to understand not only how and why change occurred, but also why it was halting and episodic and why localism, especially in policing arrangements, remained a feature of the system.

A review must necessarily concentrate on these general themes and arguments, but doing so tends to underplay the variety in this book which makes it also a splendid read. A remarkable chapter on thief takers leads us through the seamy underside of law enforcement, showing that such men were often in league with those who stole and received the goods that thief takers arranged to return to their owners, and that they incited crime for the rewards of a successful prosecution. Yet they were encouraged by authorities whose "official" police forces did little in the way of investigation and apprehension because that was still largely a matter for

the victim of crime, worked with constables, and in some sense, albeit a not very creditable sense, represented the origins of the modern detective. A similarly fascinating section on street lighting, in the chapter on policing the streets at night, shows Beattie taking a broad approach to policing, and he convincingly argues that improvements in technology and innovations in the organization of lighting had much to do with providing an enhanced sense of security to many residents.

The second major part of the book comprises four chapters on "Prosecution and Punishment" and investigates the prosecution of crime in court and the debates over penal options. Here Beattie returns to and amplifies issues he has dealt with in other work, including the composition of juries, the changing nature of the trial, the pardon system, and the search for secondary punishments, especially the emergence of transportation.⁵ But the story told is richer and more detailed than previous accounts, and the discussions of transportation before the Transportation Acts of 1718 and 1720, of objections to capital punishment, and of the enlargement of entitlement to the benefit of clergy as a punitive measure, are especially revealing of the richness and complexity of the early modern history of criminal justice.

Part Two begins with a chapter on "The Old Bailey in the Seventeenth Century," which argues convincingly that juries used a substantial discretion in finding verdicts, based on their dissatisfaction with the limited penal options available. High rates of acquittals were the product of jurors' unwillingness to risk sending too many offenders to the gallows. Succeeding chapters examine state initiatives in punishment as responses to the perceived crime problem, revealing a blend of policies—increasing the number of capital offences while searching for alternative sanctions. The principal secondary punishment that emerged was transportation, and it remained the mainstay of a system otherwise based on the selective use of the terror of the gallows until late in the eighteenth century.

Beattie's major contribution here is not to take the partial displacement of capital punishment by transportation (and a few other secondary punishments) for granted, but to trace precisely why it was that

⁵ See variously Beattie, *Crime and the Courts*, *supra* note 2; John M. Beattie, "London Juries in the 1690s" in J. S. Cockburn and Thomas A. Green, eds., *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton: Princeton University Press, 1988) 214; John M. Beattie, "The Cabinet and the Management of Death at Tyburn after the Revolution of 1688-1689" in Lois G. Schworer, ed., *The Revolution of 1688-1689: Changing Perspectives* (Cambridge: Cambridge University Press, 1992) 218. On the trial see also his work on a slightly later period, "Scales of Justice: Defence Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries" (1991) 9 *Law and History Review* 221.

finding an alternative punishment moved to the forefront of the parliamentary agenda. It did so, he finds, because London was influential in national politics, and London had a particular crime problem, especially a problem of crime committed by women. Transportation at one and the same time avoided the crisis that would ensue if too many people, especially too many women, were hanged, while also helping to ensure that substantial numbers of those prosecuted were not acquitted by juries squeamish about the sanction that awaited the guilty. In influencing the shape of penal options, London did much more than provide experiments that other local authorities could later follow; transportation was national policy, and the city's innovations thus changed the entire penal landscape.

There is little to quibble about in *Policing and Punishment in London*, but a few points perhaps deserved more attention. For example, Beattie very effectively describes how over the first three to four decades of the eighteenth century magisterial duties were carried out by fewer and fewer men, but not until the death of the only man doing the work did the city's Justices of the Peace get together and establish a new arrangement where they shared the duties in what became a regularized magistrates' court. Beattie is persuasive about the complex of reasons why Justices shied away from their magisterial duties before the 1730s. In particular, he is surely correct to say that the increasingly judicial nature of the magistrates' initial inquiry made the work much more onerous than it was when the purpose was simply to take depositions and commit the accused for trial. One of the results of this judicialization was that an increasing number of accused felons were discharged without trial. Yet the evidence in Beattie's book includes no expressions of contemporary concern about the consequences of more process—fewer active magistrates and more accused felons discharged without a trial. Complacency cannot account for this phenomenon, for as Beattie shows so well in Chapter One these were a body of men who evinced deep concern about increasing crime. The sources may simply not be adequate to explain why the magistrates allowed the situation to deteriorate so far if indeed they were so worried about crime, and thus it remains a conundrum.

I also wondered at times about why the background chapter on prosecuted crime was restricted to property crime. Its purpose is both to show the extent and nature of London crime, and also to chart how seriously it was taken by contemporaries. Especially given that the kinds of property crime most worrying were those, like robbery, associated with violence, it would have been useful to include crimes of violence in the analysis, and comparing verdict figures for murder and property offences would also have enriched the analysis of jurors' attitudes to capital punishment. All this is to say no more, however, than that a path-breaking

book raises questions at the same time that it informs, and this book informs constantly as it entertains throughout. Engagingly and very clearly written, based on a wealth of judiciously employed archival sources, it will surely take its place alongside *Crime and the Courts* as standard and required reading for all students of criminal justice history.