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The Intricacies of Office Constables, Thieves and the Uses of Literacy in *Moll Flanders* and *Colonel Jack*

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Abstract

Among the many duties of constables during the early modern period was that of 'carrying' suspects taken by ordinary people before justices and then to prison. *Moll Flanders* and *Colonel Jack* are justifiably terrified when one arrives on the scene, but on all occasions – except that of Moll's last arrest – they manage to get themselves out of the hands of the law. The article discusses three episodes in *Moll Flanders* and one in *Colonel Jack*, showing how thieves use hard-won knowledge of the intricacies of a constable's office and their 'tactic mobility' to frustrate law enforcement. In conclusion, it follows Hitchcock's and Shoemaker's attribution of unself-conscious agency to plebeian Londoners, stressing the urgent needs that force the poor and the criminal to acquire that knowledge and develop defensive tactics. It also suggests that in diffusing that know-how through print the two fictions may have, thanks to the growth of literacy, been of help to thieves as well as officers of the law, and indirectly weakened public confidence in amateur policing.

Keywords: *Colonel Jack*, *Constables*, *Duties*, *Moll Flanders*, *Tactics*

1. Gatekeepers

... the saucy Wenches were run even before they were sent, and had fetch'd a Constable, and then the Master said, he could not go back, I must go before a Justice, and answer'd his Wife that he might come into Trouble himself if he should let me go.

THE sight of the Constable indeed struck me with terror, and I thought I should have sunk to the Ground; I fell into faintings, and indeed the People themselves thought I would have died ... (Defoe 2011, 227-228)¹

¹ In the wake of Furbank and Owen's questioning of the Defoe canon (1988), Ashley Marshall has argued that, although the authorship of *Colonel*

... at last being overcome with Sleep, I Dropt, but was immediately Rouz'd with Noise of People knocking at the Door, as if they would beat it down, and Crying and Calling out to the People of the House, Rise, and let in the Constable here, we come for your Lodger in the Garret.

I WAS frightened to the last degree, and started up in my Bed; but when I was awake, I heard no Noise at all, but of two *Watch-men* thumping at the Doors with their Staves, and giving the Hour past Three a Clock, and a Rainy wet Morning *for such it was*: I was very glad when I found it was but a Dream, and went to Bed again, but was soon Rouz'd a Second time, with the same, very same Noise, and Words ...

I LAY'D no stress upon the thing call'd a Dream, neither till now did I understand that Dreams were of any Importance. (Defoe 2016, 124-125)

The two passages quoted above mark crucial transitions in the progress of Defoe's fictional thieves along the 'corridor' of cultural spaces that made up early modern England's system of justice.² Until well into the eighteenth century, it was up to ordinary people to detect, apprehend and prosecute most felons, including the thieves and robbers that obsessed late Stuart and early Georgian London. For the most part, victims and those they called on to help seem to have been ready to chase and arrest, but the disincentives to organising a formal prosecution were many,³ and a high proportion of those taken must have been let off with a beating, an apology and/or financial compensation. Even so, enough apprehenders were keen enough to send their captives to court for 4,522 trials for theft to have been heard at the Old Bailey between 1715 and 1725, the years immediately before and after the publication of *Moll Flanders* and *Colonel Jack* (The Proceedings of the Old Bailey, 1674-1913, Hitchcock *et al.* 2012; henceforth *OBP*). Of the reports of these trials, only 225 mention constables explicitly, but many more legal processes would have been set in motion by someone calling in an officer of the law to charge a suspect, 'carry' him or her before a justice of the peace, and then to prison to await the convening of assizes.

Though unpaid and given no legal training, constables and their subordinates, the headboroughs, had powers and duties which ordinary people did not. Among their special functions was that of acting as gatekeepers to justices' parlours, courtrooms, houses of correction and prisons, the 'proper places' of law enforcement (de Certeau 1984, 35-36): hence the terror they induce in Moll and Jack. The officer before whom the former falls 'into faintings' will indeed march her off to a magistrate, who then commits her to Newgate, while the latter will learn 'the importance of dreams' when he sees a flesh-and-blood constable and three men running towards him bearing an arrest warrant. Yet before the magistrate Jack manages to argue himself free, and on a series of earlier occasions Moll has fallen into but wriggled out of the 'Hand of Justice'. They succeed in this, I suggest, through a combination

Jack seems fairly certain, 'satisfactory substantiation for the attributions of ... [*Moll Flanders* and *Roxana*] has not yet been offered' (2010, 232). The arguments put forward here do not depend on the two novels being by the author of journalism and pamphlets more securely attributed to Defoe, but do assume that they are by the same author.

² Peter King describes the system as consisting of 'several interconnected spheres of contested judicial space in each of which deeply discretionary choice were made. Those accused of offences in the eighteenth century found themselves propelled on an often-bewildering journey along a route which can best be compared to a corridor of connected rooms or stage sets. From each room one door led on towards eventual criminalization, conviction and punishment, but every room also had other exits. Each had doors indicating legally accepted ways in which the accused could get away from the arms of the law, while some rooms also had illegal tunnels through which the accused could sometimes escape to safety' (2000, 1). The literature on crime and justice in the long eighteenth century is vast: Sharpe (1984) is still useful as an introduction, while the work of Beattie, Shoemaker, Langbein as well as King offer deep analyses of specific areas. Defoe's 'crime' fiction has attracted attention from many literary critics, but Faller (1993) and Gladfelder (2001) are the most useful for the new focus on law enforcement proposed here and in my other explorations of the 'rooms' along King's 'corridor'; see Clegg 2008 and 2016.

³ Costs in time and money, risks of unpopularity or retaliation, the prospect of the case either ending with an extreme penalty or being dismissed; Beattie 1986, ch. 2.

of the accumulated legal knowledge on which Beth Swan has remarked (1997, 150-157), and a talent for ‘Watch[ing] the Advantages of other People’s Mistakes’ (Defoe 2011, 244).

Michel de Certeau’s distinction between ‘strategies’ and ‘tactics’ is useful here. Whereas the former ‘postulates a *place* that can be delimited as its own and serve as a base from which relations with an exteriority composed of targets or threats ... can be managed’, the latter are of necessity constantly mobile, and

must accept the chance offerings of the moment, and seize on the wing the possibilities that offer themselves at any given moment. It must vigilantly make use of the cracks that particular conjunctions open in the surveillance of the proprietary powers. It poaches in them. It creates surprises in them. It can be where it is least expected. It is a guileful ruse. (1988, 36-37)

Tim Hitchcock and Robert Shoemaker have used this idea to explain the limited but ‘real and effective agency’ of eighteenth-century plebeian Londoners:

the very poverty and apparent powerlessness of the poor and the criminal – their identification as ‘problems’ – both ensure that they become the object of ‘strategies’ and in turn give greater significance to their tactics. Additionally, the highly pressured circumstances they confront – hunger and possible execution – make them doubly motivated to develop a profound knowledge of the narrow social system with which they were forced to engage. (2015, 20)

This essay will illustrate the knowledge and the tactics used to open up those ‘cracks in surveillance’ in three episodes involving constables in *Moll Flanders* and one in *Colonel Jack*. In narrating these incidents Defoe takes for granted his readers’ familiarity with the ‘social system with which they are forced to engage’ – customs, laws and apparatus of norms, regulations and provisos to which we in the twenty-first century are culturally blind.⁴ In my central sections, contemporary primary sources – conduct books and trial reports – will help bring these implicits to the surface, but it will be useful to begin by looking briefly at what historians of crime and justice can tell us about the general functions and powers of early modern constables and how these were being *de facto* bureaucratised and professionalised over the long eighteenth century. In conclusion, I shall suggest that in exposing his thieves’ ‘imaginative exploitation of the systems of “police”’ (Hitchcock and Shoemaker 2015, 20), these fictions could have been of help to thieves as well as to constables, and also helped undermine an already declining confidence in amateur law enforcement.

2. *An Insupportable Hardship*

Of all the ‘punishments’ that could be inflicted on a householder by a parish vestry, thundered Andrew Moreton in *Parochial Tyranny*,

the most terrible is to that of the Constable, or Parish-Drudge, for he is in Effect a greater Slave than the Beadle ... The Imposition of this Office is an insupportable Hardship; it takes up so much of a Man’s time that his own Affairs are frequently totally neglected, too often to his Ruin; yet there is neither Profit nor Pleasure therein, but an inconceivable Fatigue. Besides the Office is so intricate that a Man is generally out of his Constabship before he has learn’d half his Duty. (Defoe 1727, 16-17)

⁴ Similarly, in *Moll Flanders* and *Roxana* Defoe assumes ‘that the reader will recognise the relevant laws’ (Swan 1997, 68).

The office had certainly become 'intricate' by the time Defoe wrote this, in 1719, although the constableness had never been a simple institution. Originally heads of local self-governing communities, constables had by Tudor times been made subordinate to the central government judiciary, a change which forced them into what Joan Kent calls a 'dual allegiance': 'On the one hand, the constable was the lowest officer in a hierarchy of authority that stretched from the monarchy to the village ... On the other hand, the constable also had to represent the village's interests to his superiors' (1981, 30-31).

In another classic essay, Keith Wrightson described early modern constables as torn between 'two concepts of order': on the one hand, responsible for 'the maintenance of harmony between neighbours in the face-to-face and day-to-day relationships,' on the other, obliged to uphold a positive concept of order, 'a pattern of authority and an ultimate scheme of values' (1980, 24 and 32). Their ability to do either in practice would have been limited by the temporary nature of their mandate and consequent reliance on local good will, aspects of the constableness underlined by Cynthia Herrup:

Both the staff of office and its aura of expertise would, within a few months, be transferred into new hands ... at best the headborough or the constable was an equal among equals; that meant that he was likely to be resisted at times by other people, and that he could not counter that resistance without popular support. (1989, 69-70)

Over the sixteenth and seventeenth centuries, the duties of constables became increasingly burdensome as the scope of criminal, social and economic legislation expanded. Traditionally, they had been responsible for apprehending or reporting breakers of the peace, nightwalkers and 'lewd men and women'; to these were by stages added other perpetrators of victimless offenses: vagrants, disorderly persons and gamblers, tipplers, certain kinds of religious offenders, violators of social and economic regulations, and on occasions 'such diverse offenders as conventiclers, profaners of the Sabbath, keepers of unlicensed or disorderly alehouses, prostitutes, players of "drolls and interludes", singers of seditious ballads, people who sold oranges from wheelbarrows, and landlords who divided tenements or kept inmates' (Shoemaker 2008b, 217). In the rapidly growing capital, they had also to direct increasingly chaotic traffic and keep the peace among 'more and bigger crowds of people, more frequent riots, larger gatherings at pillories, at hangings, at royal processes and holidays, the latter now often perilously enlivened by fireworks' (Beattie 2001, 124 and 155). Shoemaker remarks that it is 'unlikely that constables and their parish colleague systematically fulfilled the manifold duties with which they were burdened' and cites allegations by the JPs of Middlesex and Westminster of their failure to carry out 'the most basic of them'. He notes also that 'Where popular support for laws was absent or divided, as was the case with the laws against vice and conventicles, constables were particularly reluctant to act'; for the unscrupulous, however, such laws offered opportunities for extortion in return for "screening" from prosecution (2008b, 220-222). Hurl-Eamon (2005, 463-464) relates actual corruption to public expectations of constables' behaviour, expectations which must have fed off old stereotypes still cultivated in rogue literature, satirical ballads and plays (such as Bullock's *Per-Juror*, 1717). The ever-larger statutory rewards offered by late seventeenth- and eighteenth-century governments for convicting robbers and thieves of all kinds provided another source of income, but also associated constables with professional informers and thief-catchers intent on 'blood money', and thus eroded popular support still further. In making arrests, especially in London, constables were increasingly exposed to threats, physical violence, and counter prosecution for assault, theft and false imprisonment (Hay 1989, Shore 2009; Hitchcock and Shoemaker 2015, 107-121). By 1754 Saunders Welch, High Constable of Holborn, assistant

to and later fellow justice of Henry then John Fielding, was complaining bitterly about the effects of declining public support on his fellow officers' ability to enforce the law: the 'necessary power of calling in aid – lodged in you ... has of late years been treated with contempt by the commonalty' (6).

Welch's *Observations on the Office of Constable. With Cautions for the more safe Execution of that Duty. Drawn from Experience* (1754) was a latecomer to the genre of advice literature for officials that flourished between the late sixteenth and mid-eighteenth century. Maurizio Ascari notices how the very existence and organisation of conduct books, such as William Lambard's *The Duties of Constables, Borsholders, Tythingmen, and such other Lowe Ministers of the Peace* (1582), assumes literacy and specialisation among the various types of 'lowe and lay Ministers', and that in *Much Ado about Nothing* Hugh Oatcake and George Seacole are considered fit to be constables in that they can read and write (2016, 80). The prefatory matter of officials' manuals harps on the necessity of guidance, given what one author refers to as, on the one hand, the 'large extent of the Constables Office' and, on the other, the 'little skill many of you have who are called upon to take upon you the same Office' (Meriton 1682, A3r). The same author also warned that the chief guide books in use at this time were 'very unsafe': 'Mr. Lambert's Book being a Discourse principally of the Common Law cases, is now much alter'd by Statute since' (*ibid.*), another full of 'unwarrantable Authorities and gross Errors,' (*ibid.*) yet another vitiated by including legislation of the Interregnum years no longer in force. Meriton no doubt hoped to sell more copies of his own manual by denigrating the others, and would have had an interest in repeatedly updating himself; his seventh edition proclaimed that the sixth, published just three years earlier, had already been 'found by late Experience to be a Blind Guide, apt rather to lead thee out of the way, than to direct thee' (A2r). With the institution of tri-annual parliaments after the Glorious Revolution the rate of legislating increased even more; this, together with the ever-growing bulk of case law, must have made it increasingly difficult for the authors of these books – never mind the 'Parish Drudges' who bought and studied them – to keep abreast.

Yet to do so became ever more imperative. Already by 1703 enough suits for assault and false arrest were being brought against constables for Henry Care to have to remind his readers that there was legal obligation to serve, and 'it would go hard, if, for every trivial Slip, he should run the Risk of being ruined by Vexations Suits' (188). In 1705 'P.S. Gent.' expressly hoped that his *A Help To Magistrates* – and other officers – would do

a great deal of Good: *First*, In giving Men an Insight into what they ought legally to do. And, *Secondly*, What they ought to avoid, as not warrantable, in the one Kind to rest secure, and in the other to keep out of Danger, saving themselves much Trouble and Expence. (1721, A2r)

How to protect oneself, not so much from physical violence (although that too was a problem), as from fines from above and lawsuits from below was a constant concern of these manuals, which represent the world of the constable as a minefield of pitfalls to be avoided and obstacles to be overcome. To keep them 'out of Danger' they offer detailed, technical instruction on matters such as how to draw up testimonials for servants, how to distinguish between *ex officio* duties and those which required warrants, and how to decide which warrants were faulty and should not be obeyed – and much more. Andrew Moreton was not exaggerating when he estimated that a year was insufficient for a constable to learn 'half his duty,' and that even that short service could so distract a man from his own affairs as to ruin him financially. As Robert Gardiner, Clerk to the Court of Common Pleas, reminded those responsible for selecting them, 'Constables have no Allowance, but are bound to performs their Office gratis', for which reason 'This Office ought not to be put upon the poorer sort ... for they are usually most ignorant and fearful, and less able to attend their office; their Necessity requiring them to mind their own Trade and Employment' (1710, 7).

Parish vestries would have found it difficult to avoid choosing from among the ‘poorer sort’ however, as over the previous century Londoners of the richer sort had become increasingly unwilling to take on civic duties, preferring to pay the fine for avoiding service, purchase a ‘Tyburn ticket’ giving exemption, or finance men poorer than themselves to take their places (Beattie 2001, 134). By the 1720s over 100 out of 360 constables in the metropolis were deputies, and by the 1750s some 90% of those elected were buying their way out. Many hired men served repeatedly, sometimes taking on other paid posts such as that of beadle, and/or acting as or with thief-takers. In the meantime, the night watch, itself originally an unpaid obligation of local householders, had become in effect a paid office, a development Moreton seems to support (Defoe 1719; Reynolds 1998, ch. 2; Beattie 2001, 173-197). By the end of the eighteenth century, the early stages of law enforcement had been *de facto* professionalised, a transformation signalling a ‘sea-change in thinking about policing issues’ (Beattie 2001, 157). The fictions to which we now turn register some of the early signs of that change, and may have unintentionally encouraged it.

3. *The Hue and Cry after Jemmy*

Hue and cry, perhaps the most ancient of ‘organic’ strategies for apprehending felons, called for good organisation and close collaboration with and between communities (Ascari 2016, 79). It was up to the victim to alert the officer, call on him to raise the alarm, describe the culprit and show which way he or she had gone, while local parishioners were to help in the pursuit as far as the next parish, where the task is handed on (Gardiner 1710, 23-24). This is what is meant to happen in Brickhill, Bedfordshire (Defoe 2011, 155-156), where Moll Flanders has come to meet and marry a prosperous City banker. Suddenly three horsemen turn up at the inn opposite, and Moll is ‘frighted to Death’ to see that one is her ‘*Lancashire* Husband’, Jemmy, and relieved to see them ride off in a westerly direction. Later that evening, however, she and her new spouse are

alarm’d with a great Uproar in the Street, and People riding as if they had been out of their Wits, and what was it but a Hue and Cry after three Highway Men, that had rob’d two Coaches and some other Travellers near *Dunstable* Hill, and notice had, it seems been given, that they had been seen at *Brickhill*. (156)

Now ‘heartily concern’d’ for Jemmy’s safety, Moll puts his pursuers off his trail by spreading word that

those were not the Persons, for I knew one of the Gentlemen to be a very honest Person, and of a good Estate in *Lancashire*.

THE Constable, who came with the Hue and Cry, was immediately inform’d of this, and came over to be satisfy’d from my own Mouth, and I assured him that I saw the three Gentlemen as I was at the Window, and that I saw them afterwards take Horse, and I could assure him that I know one of them to be such a Man, that he was a Gentleman of a very good Estate, and an undoubted Character in *Lancashire*, from whence I was just now upon my Journey.

THE assurance with which I deliver’d this, gave the Mob Gentry a Check, and gave the Constable such Satisfaction, that he immediately sounded a Retreat, told his People these were not the Men, but that he had an account that they were very honest Gentleman, and so they went all back again. (*ibid.*)

Striking here is the enthusiasm with which the ‘Mob Gentry’ pursue the robbers, only to obediently turn back at the constable’s countermand. Striking too is the alacrity with which

Moll's affirmation of Jemmy's status and honesty is referred to the officer, and how easily he is 'satisfy'd from my own Mouth'; as in the 'accused speaks' trial, direct oral testimony is preferred, and the character reference is decisive (Clegg 1998; Langbein 2005, 233-246). As would have been the case in court, Moll's testimonial is made all the more convincing by her assured delivery and by the circumstantial detail with which she bolsters it: she had seen the three Gentlemen 'as I was at the Window', and had – she claims – herself come 'just now' from Lancashire.

Constables' conduct books can help us understand the issues involved here. In calling off the pursuit, this officer has allowed three highwaymen to get away with a huge haul (£560 and some valuable lace), and exposed himself to a charge of permitting felons to escape, 'a Misdemeanour, for which he [a constable] may be indicted and fined' (Jacob 1720, 20).⁵ On the other hand, had he persisted and arrested a man who turned out to be a respectable landowner, he could have found himself in trouble with a social superior and incurred a £20 fine (see below, section 5). Although in law the power of arresting felons belonged to constables *ex officio*, Welch was later to advise his fellow officers that if called on to arrest persons they did not know personally they should obtain warrants from justices (1754, 17-18). That, however, would have involved delay, and constables could also be fined for not responding promptly to an alarm. If formal hue and cry fell into disuse in the eighteenth century (Herrup 1989, 71; Shoemaker 2004, 29), it may well have been in part because of the difficulty of steering a course between demands for speed on the one hand, and caution on the other.

At least until the mid-century, however, the custom survived in vestigial form in that cries of 'stop thief' or 'murder' were generally responded to, even in the metropolis (Shoemaker 2004, ch. 2), and in the pages of *Moll Flanders* and *Colonel Jack* we meet several crowds of people running after thieves through the city's streets and alleys (Clegg 2008). But – with one interesting exception – the *Old Bailey Proceedings* for 1715-25 tell of no chases initiated or led by constables or headboroughs.⁶ The exception is to be found in the report of a trial heard at the Old Bailey on 5 December 1722, when Edmund Neal and William Pincher were indicted for assaulting and robbing an elderly couple on the streets of Hoxton. The amount stolen was tiny ('3 Pence 3 Farthings in Copper Money') but the assault seems to have been brutal, especially in the case of the wife, whose cries were heard by one Richard Bays, variously described as 'Headboro' and 'Constable'. Bays deposed that he

ran out to be assisting to the distressed, having with him two Dogs: That coming to the Prosecutors, the Old Man was but just got up, and the Woman upon the Ground, very much abus'd, and in a bloody Condition; that inquiring which Way the Rogues were gone, the Old Man pointed, that he pursu'd with his Dogs, and that when he came up to the Prisoners, who had taken into the Fields, he found Pincher lying on the Ground, feigning himself to be drunk; that other Persons also being come to his Assistance, they bid Pincher rise, but he not doing so, they attempted to help him up, but he refus'd to rise, bidding them let him alone, telling them he was choaked, he was strangled, asking them if they came to rob him,

⁵ He would also have lost himself and his 'Mob Gentry' a share in the government reward that would have come with the conviction of three highway robbers (£40 a head), and perhaps a private reward for the recovery of the booty.

⁶ City of London constables and headboroughs were, according to Giles Jacob, 'to arrest Affrayers, Rioters and such as make Contest to the Breach of the Peace, and to lead them to the House of Correction, or Compter of one of the Sheriffs; and in Cases of Resistance, to make Outcry on them, and pursue them from Street to Street, and from Ward to Ward, 'till they are arrested', but in general they were expected to be 'easily found when wanted' rather than to go about looking for trouble (1720, 6-8). Night watchmen, on the other hand, were paid – minimal wages – to patrol the streets during the hours of darkness and often did become involved in pursuit and arrest; see *OBP* t17200907-33; 17201012-21; 17200427-33.

bidding them take what he had, but not abuse him. That in the mean Time Edward Neal came up, and they having got Pincher up, they tax'd him with the Robbery committed, upon which Neal told them he knew Pincher, that he was an honest Fellow, that he did not believe he would do any such Fact. That upon this Bays being a Constable, told them, he suspected him to be his Companion, and so secur'd him also. (*OBP*, t17221205-5)

As is usual before the 1730s, the *Proceedings* do not give the defendants' side of the story (Shoemaker 2008a), but Neal and Pincher were probably highway robbers of a very different type from the gentlemanly Jemmy, and Bays, with his two dogs, a tougher officer than Moll's country constable, certainly more leery of tales told by those found near crime scenes.⁷ But what is most interesting for us, and for what follows, is the nature of the ploy that Pincher and Neal tried on Bays and his neighbours: the perpetrator playing victim, and his accomplice offering a character reference less circumstanced than but essentially similar to the one Moll uses to put his more credulous counterpart off the scent.

Yet what if it had *not* been a ploy? What sort of predicament could Richard Bays have found himself in if Pincher had, after all, been 'an honest Fellow' and the 'other Persons' who come to 'assist' in fact intent on robbing him? Bays does not seem to have hesitated to secure the two, and the jury agreed on their guilt; but other officers might have been less confident.

4. *Rules for Searching*

Our second episode follows a smash-and-grab attempt on a warehouse, from whence Moll and her partner have had to flee a hotly pursuing crowd. The latter is taken with the goods on him, but Moll, who has been operating in male disguise, manages to get into her Governess's house,

whither some quick-eyed people follow'd me so warmly as to fix me there: they did not immediately knock at the Door, by which I got time to throw off my disguise and dress me in my own Cloths; besides, when they came there, my Governess, who had her Tale ready, kept her Door shut, and called out to them and said there was no Man came in there; the People affirm'd there did a Man come in there, and swore they would break open the Door. (Defoe 2011, 181)

The three mentions in this passage of 'the Door' – knocked on, kept shut, and liable to being broken open – call attention to the significance of this barrier between private and public. Had Moll's pursuers carried out their threat to break into her Governess's home they could have been accused of the misdemeanour of trespass, or even the felony of forcible entry into what Coke had defined as every man's 'Castle and Fortress as well for defence against injury and violence, as for his repose' (2003, I, 140). Constables, on the other hand, had *ex officio* powers to 'search in all suspected Houses and Places' in order to discover felons or stolen goods and, in case of resistance, to 'break open Houses which are shut' (Gardiner 1710, 23; P.S. Gent. 1721, 92).

The Governess clearly knows the rules, but also that Moll herself would not have been protected by them: 'the house of any one is not a Castle or privilege but for himself, and shall not extend to protect any person who flieth to his house, or the goods of any other which

⁷While awaiting execution, Neal gave the Ordinary a detailed life-history and offered an unusual motive for his and Pincher's violence: 'they ... talk'd of beating People whom they should find, because the World had always frown'd upon them, and every body was happier in Life than they'. In the light of the resemblance between their story and the gang episodes in *Colonel Jack* it is interesting that the novel is among the publications advertised at the end of this issue (*OBP*, OA17221231).

are brought and conveyed into his house' (Coke 2003, 141). She now uses her knowledge to concoct a ruse that will stall the pursuers while apparently showing readiness to admit them:

My Governess, not at all surpriz'd, spoke calmly to them, told them they should freely come and search her House, if they should bring a Constable, and let in none as such the Constable would admit, for it was unreasonable to let in a whole Crowd; this they could not refuse, tho' they were a Crowd. (Defoe 2011, 181)

The crowd indeed cannot refuse without putting themselves on the wrong side of the law, so an officer is fetched, 'freely admitted' then set to keep the door against the crowd, while 'the Men he appointed search'd the House, my Governess going with them from Room to Room' (*ibid.*). Not finding 'the man' they think they have chased but only a lady in desabille at her needle, the search party withdraws offering apologies. If the constable's presence has conferred official sanction on their incursion into a private house, the time spent in fetching him has been used to set up a scene of domestic innocence. In using the rules for searching to render the search itself futile, Moll's Governess has successfully 'poached in' the proper space of legality, and inveigled, the officer into presiding over a confidence trick.

Most of the house searches mentioned in *Old Bailey Proceedings* for these years are not for thieves but for stolen goods, which the constable was meant to take charge of and produce in court. When, for instance, John Meriton Esq. missed the linings of his curtains and other household goods, he dismissed his servant, Ann Cook, then 'took a Constable and search'd the Prisoners Lodgings, where he found the Goods mention'd in the Indictment, some under her Bed, others in a Chest of Drawers. His Coachman and the Constable confirmed the finding the Goods in her Room' (*OBP*, t17200303-14).

Meriton won his case, as did Baldwin Peyton, who in April 1721 accused his neighbour, John Phillips, of having bought 'divers goods' stolen from his house. Peyton deposed that he had 'got a Search Warrant, that the Prisoner at first refused, till they produced the Warrant, that they found several of his Goods in several parts of the Shop,' a statement confirmed by constable John Green and a certain William Browne, who had evidently been bought along as a second witness (*OBP*, t17210419-64). It was unwise of Phillips to refuse the search warrant, for this probably helped establish his guilt in the eyes of the jury. If Moll's Governess succeeds in saving her *protégée* from the law it is not by defying its representative, but by having one called in and making him serve as an ally against the law itself.

5. 'a more legal way'

In turning legal procedure to her advantage, Moll's fence and protector employs defence tactics analogous to those de Certeau attributes to indigenous peoples in their efforts to divert Spanish colonisers from their purposes:

Even when they were subjected, indeed even when they accepted their subjection, the Indians often used the laws, practices, and representations imposed on them by force or by fascination to ends others than those of their conquerors; they made something else out of them, they subverted them from within – not by rejecting them or by transforming them (though that occurred as well) but by many different ways of using them in the service of rules, customs, or convictions foreign to the colonization which they could not escape. (1988, 32)

The episode in which Defoe shows a thief making most subversive use of the law and its representative (2011, 201-205) has been perceptively read by Lincoln Faller as illustrating

the presence of 'other subjectivities' (1993, 154-158). Among the eight different voices we hear in the Covent Garden mercer's shop is that of the constable called in as 'Jaylor' to Moll, who has been mistaken for a similarly dressed shoplifter and dragged to the shop. There the mercer declares 'that I was not the Woman ... and would have let me go immediately', but is persuaded to await the journeyman who has sworn to her guilt. The constable, evidently assuming that he will be testifying for the prosecution, responds to Moll's request for his name with the snide jest 'that I might be sure to hear of his Name when I came to the *Old Bayley*', while the mercer's servants 'likewise used me saucily, and had much ado to keep their hands off of me' (Defoe 2011, 202).

Step by step Moll will undermine the constable's confidence, turn the servants' sauciness to her advantage and take over from the master the role of victim and prosecutor. 'I hop'd he would not take it ill if I made my self amends upon him in a more legal way another time ... it was his time now, but I would be mine by and by' (*ibid.*), she menaces. Her politely formulated threat is clearly meant also for the ear of the constable, who at her request now calls in a porter as second witness to a brilliantly staged piece of theatre:

I spoke aloud to the Master of the Shop, and said, Sir, you know in your Conscience that I am not the Person you look for ... therefore I demand that you detain me here no longer or tell me the reason of your stopping me; the Fellow grew surlier upon this than before, and said he would do neither till he thought fit; very well, said I to the Constable and to the Porter, you will be pleas'd to remember this, Gentlemen, another time; the Porter said, *yes, Madam*, and the Constable began not to like it and would have perswaded the Mercer to dismiss him, and let me go, since, as he said, he own'd I was not the Person. Good Sir, *says the mercer to him Tauntingly*, are you a Justice of Peace, or a Constable? I charg'd you with her, pray do you do your Duty: The Constable told him a little mov'd, but very handsomely, *I know my Duty, and what I am Sir, I doubt you hardly know what you are doing*; they had some hard words, and in the mean time the Journey-men, impudent and unmanly to the last degree, used me barbarously, and one of them, the same that first seized upon me, pretended he would search me, and began to lay Hands on me: I spit in his Face, and call'd out to the Constable, and had him take notice of my usage; and pray, Mr. Constable, said I, ask that Villain's Name, pointing to the Man; The Constable reprov'd him decently, told him that he did not know what he did, for he knew that his Master acknowleg'd that I was not the Person that was in his Shop; and, says the Constable, I am afraid your Master is bringing himself and me too into Trouble, if this Gentlewoman comes to prove who she is, and where she was, and it appears that she is not the Woman you pretend to. (202-203)

That Moll is indeed 'not the Woman' is made plain to all when two other journeymen drag in 'the true Widow,' triumphantly exhibiting the stolen satin found on her; the constable is 'charg'd with the right Thief', the Master turns pale, while Moll sits silently smiling.

Well she may, for she has set up the Master and his man in a 'sting' in which the constable has unwittingly played a crucial part. Douglas Hay's study of malicious (or vexatious) prosecution in eighteenth – and nineteenth-century England helps us understand what is going on under the surface. Hay finds that litigation was commonly used for three purposes – to forestall prosecution, in pursuit of gain, and for revenge – and that in London the large number of courts, their relative anonymity, the presence of 'trading justices' and of large numbers of attorneys 'all increased both the temptation and the opportunity to use the law to further one's interests and one's quarrels in this way.' He also shows that litigants included many poor men and women and criminals, people whose 'hard-won knowledge' had taught them 'how to work the system' (1989, 362). Hay's findings are confirmed and applied to just the years and the area of London that interest us – Covent Garden in the 1720s – by Heather Shore's study of the women who, during the Reformation of Manners campaigns against taverns and

brothels, defended themselves and their livelihoods by means of counter prosecution (2009; see also Hitchcock and Shoemaker 2015, 110-121). Early readers of *Moll Flanders* would not have found it so odd that a plebeian woman seized on these streets should threaten to make herself amends 'in a ... legal way' (Defoe 2011, 202), and succeed in reducing a wealthy tradesman and his journeyman to grovelling before her.

But what charges might Moll have brought against the mercer? She might have maintained that the mercer's intended prosecution was malicious, an offense that had around the turn of the seventeenth century been defined as including 'all cases where scandal, punishment or expense had resulted for the victim' and lacking 'probable cause' (Hay 1989, 349). In making the mercer repeatedly and publicly refuse to 'tell me the reason of your stopping me' Moll has called attention to the lack of 'probable cause' for her arrest. No wonder the constable begins 'not to like' his role in detaining her and fear that the mercer is 'bringing himself and me too into trouble'. A charge more routinely brought by the poor and criminal was that of assault, in law a misdemeanour only, but one which could consist of a mere touch of the arm: the mercer's men have gone well beyond that, seizing Moll, laying hands on her and attempting a body search. The charge which could have brought the constable himself directly 'into trouble,' however, would be that of false arrest, for which he could have been fined £20 or more. Again, the activities of the Societies for the Reformation of Manners would have made this topical. In 1709 John Dent, one of a group of reforming constables attempting to arrest a woman walking the streets of Mayfair, had been killed by three soldiers who had come to the woman's defence. At the soldiers' trial, Chief Justice Holt took their side, ruling that 'the arrest of the woman was injurious and oppressive' and complaining that 'constables nowadays make a common practice of taking up people only for walking the streets' (Shoemaker 2004, 179 and 181). In 1719 Charles Hitchen, corrupt City Marshall who specialised in raiding molly-houses, and who trained Jonathan Wild in techniques of thief-taking, took the opposite stance, complaining that the many lawsuits being brought against officers were discouraging them from arresting 'disorderly persons' (Hitchcock and Shoemaker 2015, 107). Some years later Saunders Welch claimed to have been 'very fortunate' in never in his eight years as High Constable 'had a complaint against me to the magistrates ... nor action of any sort brought against me in the courts of law' (1754, 6).

The 'action' implicitly threatened in our fictitious case comes not from Hitchen's type of 'disorderly person', but from a well-to-do tradesman who clearly considers himself the constable's superior and perhaps assumes that he is dealing with a poor deputy who can be easily bullied. On this the reader is emphatically set right when the mercer, having failed to put Moll off her determination to get 'reparation', tries to get out of his predicament by ordering the constable to discharge his prisoner, only to earn himself a lesson on 'what it is to be a Constable':

now, Sir, I find you do not understand what is my Duty, for you would make me a Justice indeed; but I must tell you it is not in my Power: I may keep a Prisoner when I am charg'd with him, but 'tis the Law and the Magistrate alone that can discharge that Prisoner; therefore 'tis a mistake, Sir, I must carry her before a Justice now, whether you think well of it or not: The Mercer was very high with the Constable at first; but the Constable happening to be not a hir'd Officer, but a good Substantial kind of Man, I think he was a Corn-chandler, and a Man of good Sense, stood to his Business, would not discharge me without going to a Justice of the Peace; and I insisted on it too. (Defoe 2011, 204)

The corn chandler does indeed know his duty. The rulebooks agree that, however convinced he may come to be of his prisoner's innocence, to let one go constituted 'an Escape' and hence

a 'felony in the Constable' (Jacob 1720, 21). Moll's description may imply denigration of the 'hir'd Officer[s]' who by now constituted a high percentage of London's constabulary, but also reflects badly on wealthy citizens who look down on the 'Parish Drudge[s]' and try to order them about without, presumably, having served their turn or studied the differences between the various civic offices.

Moll has, meanwhile, assumed the part of champion of legal procedure, scorning the mercer's apologies and attempts to buy her off: 'I told him I should not be my own Judge, the law should decide it for me', and as I was to be carried before a Magistrate, I should let him hear there what I had to say' (Defoe 2011, 204). He will indeed hear what she has to say, but not without himself being 'carried before a Magistrate' in a publicly humiliating manner. When the constable accuses him of having 'broken the Peace in bringing an honest Woman out of the Street, when she was about her lawful Occasion, confining her in your Shop, and ill using her here by your Servant' (204-205), and attempts to arrest the journeyman, the man looks 'like a condemned Thief', resists arrest and assaults the officer. At this, 'the Constable knock'd him down, and call'd out for help, and immediately the Shop was fill'd with People, and the Constable seiz'd the Master and Man, and all his Servants' (205).

The arrest proves a popular one, but hardly conducive to the common peace. As the officer and his charges set off for the justice they are followed by a dirt-throwing 'Mob of about 500 People'; the mercer has a coach called 'and so', as Moll somewhat comically puts it, 'we Rode the rest of the way, the Constable and I, and the Mercer and his Man' (Defoe 2011, 206). The pairing of the four protagonists in this sentence nicely highlights the unlikely alliance between shoplifter and officer of the law, temporarily united against two tradesmen who have sought to apprehend a felon but know less than she about how such things should be done.

6. *'managing my own defence'*

In the last of our episodes (Defoe 2016, 127-130), we discover that even a justice's warrant did not necessarily protect a constable from getting into trouble. Some conduct books dedicated whole chapters to the penal responsibilities that could be incurred in executing a warrant issued by a justice 'for a Matter out of his Jurisdiction' and/or 'where he is no Judge of the Causes', one 'not specifying the Cause', or one in which 'a Mistake by the names agreeing may run him into taking the wrong Party' (P.S. Gent. 1721, 86-89). In London, with its huge and fluctuating population of migrants, and where a constable would often not be 'well acquainted' with [the Party or parties mentioned in the Warrant] this last must have been a problem not infrequently encountered (see Hurl-Eamon 2005, 468).

Defoe relates one such instance at length (2016, 124-130). On the 'Rainy, wet morning' after his disturbed night, Colonel Jack learns from his 'former Brother, Capt. *Jack*' that his comrade, Will, has been impeached by a member of their gang and is in Newgate. 'Extreamly alarmed', he prepares to leave London, but before he can do so is seized on the street by three men and a constable who read to him – for he cannot read himself⁸ – a warrant ordering them to 'Apprehend a known Thief, that went by the Name of one of the three *Jacks of Rag-Fair*' for that he was charg'd upon Oath, with having been a Party in a notorious Robbery, Burglary, and Murther, committed so and so, in such a Place, and on such a Day' (127-128).

⁸ Defoe seems to have changed his mind about when Jack learned to read, first suggesting that he had done so before the age of 10 (2016, 64), but having him present himself as illiterate at the time of his arrest.

Although the Colonel had not actually been ‘out’ with the gang on the fatal robbery, he is certain that he is now bound for the gallows. Luckily for him, however, the justice before whom he is brought (evidently not the one who had issued the vaguely worded warrant) is willing to hear both sides of the story and meticulous in applying guarantees of arrestee’s rights. His rigorous cross-questioning of suspect and constable is presented in the form of a long drawn-out ‘dialogue’ (Faller 1993, 150) which begins as follows:

the Justice ask’d me my Name; but, hold, says he, young Man, before I ask you your Names, let me do you Justice, you are not bound to answer till your Accusers come, so turning to the Constable, he ask’d for his Warrant.

WELL, says the Justice, you have brought this young Man here by Vertue of this Warrant; is this young Man the Person for whom the Warrant is granted?

Con. I believe so, and please your Worship.

Just. Believe so. Why are you not sure of it?

Con. An’t please your Worship. The People said so, where I took him.

Just. It is a very particular kind of Warrant, it is to apprehend a young Man, who goes by the Name of Jack, but no Sir name, only that it is said, he is call’d Capt. *Jack*, or some other such Name. Now young Man pray is your Name Capt. *Jack*? Or are you usually call’d so?

I presently found, that the Men that took me knew nothing of me, and that Constable had taken me up by Hearsay, so I took Heart and told the Justice, that I thought with submission, that it was not the present Question, what my Name was, but what these Men, or any one else had to lay to my Charge, whether I was the Person, who the Warrant empower’d to Apprehend.

HE smiled, ‘tis very true young Man, says he, ‘tis very true, and on my Word if they have taken you up, and do not know you and there is no Body to Charge you, they will be mistaken to their own Damage.

THEN I told his Worship, I hop’d I should not be oblig’d to tell my Name till my Accuser was brought to charge me, and then I should not conceal my Name.

IT is but Reason said his Worship. (Defoe 2016, 128-129)

In this series of exchanges the justice lays bare a number of ‘cracks in surveillance’ which could render the constable vulnerable to claims for ‘Damage’, and in so doing furnishes Jack with arguments he will turn to his own advantage. By stressing the ‘very particular’ nature of the warrant – the absence of any ‘Sir name’ – the justice draws attention to an anomaly in its wording, and in reading it aloud he reveals that it refers to ‘Capt Jack’ rather than to our ‘Colonel’. From this Jack ‘takes Heart’, realising that he has been mistaken for ‘another of the same Name’; ‘such taking’, Giles Jacob advised, was ‘wrongful’ (1720, 54). Wisely, however, Jack does not try to divert suspicion onto his brother, choosing instead to profit from the constable’s indirect admission that he had no personal knowledge of him and had relied on the word of ‘the People ... where I took him’. To this the justice himself has drawn attention by underlining the difference between being ‘sure’ and ‘believing’: hearsay evidence in general was coming into disrepute in this period (Clegg 1998), and eighteenth-century constables’ manuals agreed that it was a risky basis for an arrest. P.S. Gent., for instance, advised that, in serving warrants on anyone not personally known, a constable’s ‘safest Way is to charge the Party making the Plaint to assist him in the King’s Name, and shew him the Party ... mentioned in the Warrant’ (1721, 86). In this case however the ‘Party’ concerned is in jail, and Jack has to reiterate for over an hour that he ‘not be oblig’d to accuse myself’ before the magistrate insists on getting George brought from jail to accuse or exonerate. Luckily for Jack, George does not recognise him, and the constables’ three witnesses admit that they have no proof of his identity, so the justice gives his ruling:

The young man must be Discharg’d; and I must tell you, Mr. Constable, and you Gentlemen, that have brought him hither, he may give you Trouble if he thinks fit for your being so rash; but look you young

man, *says the Justice*, you have no great Damage done you, and the Constable, tho' he has been Mistaken, had no ill-design, but to be Faithfull to his Office; I think you may pass it by. (Defoe 2016, 130)

Unsurprisingly, Jack has no desire to 'give ... Trouble' by suing his apprehenders, but insists that they 'go back to the Place where they insulted me, and Declare publicly there that I was honourably acquitted, and that I was not the Man ... and so we came all away good Friends, and I was clear'd with triumph' (Defoe 2016, 130).

With this oddly jolly conclusion, there remains the fact that Jack 'is no innocent victim', a point Faller makes à *propos* of Moll (1993, 156). She may not have actually stolen from the Covent Garden mercer, but she *had* been wandering on the lookout for a chance to steal; Jack may not be guilty of the particular 'Robbery, Burglary, and Murther' for which he has been arrested, but he *had* been involved in a number of cowardly and brutal street robberies (Cervantes and Sill 2016, 34-45; Clegg 2016). He is extremely lucky not to have been known to George, and in that George is honest enough to say so rather than attempting to save his own neck at the price of Jack's. Positive eye-witness testimony against him would have caused all his clever, legalistic reasoning to collapse and sent him to join Will in Newgate – just as, in Moll's last adventure, the sworn testimony of the fiery servant girls who seize her in Anthony Johnson's warehouse forces the constable to march her off to a magistrate, and the magistrate to send her on to trial. It is important that in the end a constable does actually carry out his law-enforcing function, but it is also significant that this is the only occasion in the two novels on which he does so.

7. *The Uses of Literacy*

In a coda to the *Colonel Jack* episode, we are invited to reflect on the young man's 'well managing [his] ... own Defence' (Defoe 2016, 130). This compliment from the justice had been the subject of a boast made much earlier in the novel:

I remember very well, that when I was once carried before a Justice, for a Theft which indeed I was not guilty of, and defended my self by Argument, proving the mistakes of my Accusers, and how they contradicted themselves; the Justice told me it was pitty I had not been better employed, for I was certainly better taught; in which his Worship was mistaken, for I had never been taught any thing, but to be a Thief ... But I had a natural Talent of talking, and could say as much to the purpose as most people that had been taught more than I. (64)

Jack has certainly demonstrated his 'Talent of talking' and speaking 'to the purpose', but made to feel his deficiency in literacy. The justice's mistaken deduction that he has been 'better taught'

had this good effect upon me, that I resolv'd if it was possible I would learn to Read and Write, that I would not be such an incapable Creature, that I should not be able to read a Warrant and see whether I was the Person to be Apprehended or not. (130)

Later, under the influence of his slave tutor, Jack will read morally and culturally edifying books, but the first of the uses of literacy presented in *Colonel Jack* is strictly practical: the ability to make out an arrest warrant.

Defoe here has his narrator pinpoint an extreme manifestation of the basic, practical need for information and guidance which J.P. Hunter sees as having driven the young, urban, mobile and ambitious to learn to read, taking the proportion of adult literate males from 25% to 45%

between 1625 and 1675, and to 60-70% by 1800 (1990, ch. 3). In 1582 William Lambarde could assume that his parish officers could read his manual and copy out testimonials; by the end of the century many of those waiting to be hanged, among them a high proportion of artisans, apprentices, journeymen, often migrants and surely desirous of a better life, would have been among the 'new readers' for whom the print industry supplied news, ideologically orientated narratives – and guide books (Hunter 1990, Part III; Linebaugh 2006, ch. 3). Constables' manuals were not, of course, written to aid the accused or those vulnerable to arrest, yet as Roger Chartier has taught us (1988), texts are read by different readers and for diverse purposes, and de Certeau argues that reading too can be a form of 'poaching' 'invent[ing] in texts something different from what they "intended" ' (2011, 133). According to Robert Shoemaker (2008a), the *Old Bailey Proceedings and Ordinary's Accounts*, though intended mainly for a middling-sort public of the kind to which potential victims, prosecutors, officials belonged, also circulated in jails and were used by prisoners preparing for their day in court, perhaps with the aid of the much disparaged 'Newgate attorneys'. The rule books of Henry Carey, Robert Gardiner, P.S. Gent. and Giles Jacob could have offered valuable advice on how to avoid being committed in the first place. Guidance on organising a hue and cry, making a search or an arrest or serving a warrant could be read against the grain for hints on tactics for evading or diverting a pursuit, on stalling or passing unnoticed under the eyes of a search party, on finding the faults in and challenging a warrant. In the fictional episodes we have discussed Moll, Jack and the Governess do just those things and more: they manoeuvre officers of law into taking *their* sides against the would-be prosecutors who have called on them to help make or formalise an arrest. If the early novel took over many of the functions fulfilled by 'pre-texts', including guidebooks (Hunter 1990, 54-57), it may also have taught its readers more than their authors would have wished.

The difference between the two kinds of reader lies in the relative strength of their positions in society, and thus in the very nature of their needs. Constables may have looked for help in avoiding fines and counter prosecutions, or loss of time that could ruin his business; Moll, Jack and their kind are fighting – or speaking – for their lives. In this they resemble the actual plebeian Londoners of the eighteenth century, *à propos* of whom Tim Hitchcock and Robert Shoemaker suggest

that basic human need and fear, whether in the form of hunger, disease or the prospect of death on the scaffold, motivate the poor and the accused criminal to explore ... the structures of society as thoroughly as possible (more thoroughly than any other group). In Peter Mandler's words, "for the poor" rich social knowledge is "essential for survival". While a single person, often in alliance with more powerful actors such as overseers or lawyers, may take the imaginative leap that identifies the tensions within a system and discerns the best way to manipulate that system for short term gain, our claim is that this knowledge rapidly spreads, creating shared and copied tactics that exert collective pressure on the system. (2015, 22-23)

Instrumental in sharing and spreading that knowledge would have been networks of orally-transmitted know-how, but also the many forms of printed matter in circulation, including the fictions we have been discussing.

Defoe's criminal novels, I would like to suggest in conclusion, may have had other unintended effects. The constables we meet in *Moll Flanders* and *Colonel Jack* differ from the drunken, lascivious and corrupt, stereotypes of the rogue literature and satirical plays of early modern England. Defoe's parish officers may be rather credulous, but they are conscientious, honest and fair-minded, men of good sense, 'faithful to their office' and well-informed. If they fail in the exercise of their duties it is not because of personal failings but because their antagonists, driven by desperate motives, manage to identify weaknesses in the intricate and bureaucratic

system they – the constables – are forced to serve with ‘neither Profit nor Pleasure therein, but an inconceivable Fatigue’ (Defoe 1727, 17). In offering sympathetic portraits of civic officials who, for all their efforts, prove no match for criminals, *Moll Flanders* and *Colonel Jack* may have helped to undermine an already weakening trust in amateur law enforcement and reinforced the trend towards professionalisation that, by the end of the century, had caused the traditional English constable to disappear from the streets of London.

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Cross-Dressing, Crime and Revenge

