On the offences against the Person Act, 1828

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Abstract

The early nineteenth century saw a new valuing of self-restraint and heightened social anxiety about interpersonal violence and unruly behaviour. The 1828 Offenses Against the Person Act streamlined penalties for assault, battery, rape, infanticide, attempted murder, manslaughter, and murder. It also granted to magistrates summary powers over common assaults, making prosecution of such offenses quicker and more accessible to the poor. Part of Sir Robert Peel's larger program of legal reform, it heralded a new focus on social regulation, public order, and manliness as self-discipline.

Figure 1: The Royal coat of arms of the United Kingdom of Great Britain and Northern Ireland.

On 27 June 1828, the British Parliament passed into law the Offenses Against the Person Act. Known as "Lord Lansdowne's Act" after the Home Secretary who introduced it in the House of Lords, it formed part of Sir Robert Peel's sweeping reform of the criminal law achieved between 1825 and 1828. In those three years, parliament streamlined the criminal codes of the nation, repealing 278 piecemeal statutes and putting eight omnibus statutes in their place. Peel's reforms clarified and consolidated the procedure in criminal cases and organised the laws governing evidence, theft, and offenses against the person. By 1830, when Peel left the Home Office, fully 75 per cent of criminal offenses were governed by legislation passed in the previous five years (Jenkins 27). The reforms reflected Peel's core beliefs: that the law "should be as precise and intelligible as it can be made" (Hansard 1214-15) and that the legal code defines "the moral habits of the people" (1214). Historian Gregory Smith hails the 1828 Act as "the first truly comprehensive piece of legislation designed to address interpersonal violence in British society" (58). Unlike many previous pieces of legislation establishing the nation's criminal code, it was not inspired by a particular crime but by an urge to clarify and simplify the legal code itself.

The Act's first achievement was synthesis: it repealed, consolidated, and rationalized parts of 57 statutes passed between the eras of Henry III and George IV. In lieu of a "patchwork of legislation" (Smith 58), offenses against the person were now governed under one clear and comprehensive law. For example, the Act equated punishments for attempted murder by means of poisoning, drowning, strangling, or wounding a victim with those for attempted murder by shooting, stabbing, or cutting. The idea that all acts of attempted murder should be treated as equivalent may seem rational (indeed obvious) to us now, but at the time it represented a new way of categorizing acts of violence—that is, by the degree of harm to the victim rather than by whether an offensive weapon such as a knife or gun had been used (Smith 60).

The 1828 Act's second achievement was to make assault a more serious and more readily prosecutable crime. The new law thus formed part of a new reformist attitude towards interpersonal violence. Before the end of the eighteenth century, society had tolerated some degree of violence as a natural part of manliness (in the form of honour duels), entertainment (in cock-fighting, bear-baiting, and blood sports), and of the social hierarchy (in a man's right to discipline his children, servants, and wife). Before 1750, very few assault cases proceeded to trial; they were often viewed as private matters to be resolved between the disputants before trial or mediated by a magistrate during the trial process (Beattie 42). However, in the last 30 years of the eighteenth century, this view shifted. The early nineteenth century saw the "emergence and vigorous promotion of a more-self-disciplined and pacific ideal of manhood" (Crone 4). Courts began to see violence as socially dangerous and to punish it more heavily, handing out stiffer fines and even prison sentences (Wiener, *Men of Blood* 20). The press expressed growing concerns about interpersonal violence, lamenting that industrial and crowded cities eroded character and family and drawing attention to the perceived rise in the crime rate (see Godfrey and Lawrence 17; Wiener *Reconstructing* 14; Gatrell 252). In fact, crime had not increased, the rate of prosecutions had—a very different phenomenon, and one that attests to a growing condemnation of violence (Gatrell 250).

The 1828 Act thus participated in a wholesale shift towards new anxieties about interpersonal violence and in the enshrining of nineteenth-century virtues of personal self-control and social discipline. The same era that gave birth to the Act saw the development of the metropolitan and other police forces (established between 1829 and 1850), which provided the nation with "machinery for detecting and apprehending offenders" (Weiner, *Men of Blood* 19) as well as of deterring and regulating public behavior. In addition, prosecution of crimes became increasingly a public responsibility and professional activity, overseen by "the police, clerks to Magistrates, or borough solicitors" (Bentley 7). Historian Martin Weiner regards this shift as a "major transition" characterized by "intensified social surveillance and regulation of public order and also a heightening of the penalties for violent behavior. . . . One chapter in English criminal justice history was closing and another was opening" (*Men of Blood* 27). At the time, however, some thought the Act had gone too far: the *Law Magazine; or, Quarterly Review of Jurisprudence* objected to its changes to the law governing assault, describing the potential consequences as "fearful": "every aggravated assault on a constable, where, as not infrequently happens in alehouse squabbles, the man of authority gets a broken head, will become not only a felony, but a capital felony" ("Lord Lansdowne's Act" 132).

The 1828 Act's signal achievement was to make it easier for the poor to access justice for minor assaults by giving magistrates summary powers over such offenses. Introduced into the Act by members of the House of Commons after it had passed through the House of Lords, this change was inspired by an open letter penned by a magistrate to Sir Robert Peel in 1826. The anonymous writer suggested to Peel that minor assaults be transferred from the courts of quarter sessions to magistrates' courts in order to make prosecuting an assailant cheaper and easier for a poor person. To understand this suggestion, one has to know something about the court system of the period. At the time, every case was examined on a preliminary basis by a magistrate. Depending on the seriousness of the crime, magistrates would either try the case summarily or, in the case of more serious offenses, commit the accused for a full trial by judge or jury at the quarter sessions or assizes. A magistrate sitting alone in "petty sessions" could himself arbitrate minor disputes and hear summary offenses such as theft and poaching. More serious crimes were referred to the courts of quarter sessions, so named because they sat quarterly (four times a year) in most of the larger towns. In theory, the quarter sessions could hear all cases except treason, but in practice they tried mostly cases of petty larceny and misdemeanor. The most serious (indictable) offenses—that is, all capital felonies such as treason, murder, attempted murder, and assault causing grievous bodily harm, plus a number of non-capital felonies and misdemeanours—were tried by judge and jury at the assizes, which were held twice a year in major towns, more often in emergencies (Bentley 8-9; Godfrey and Lawrence 52; Emsley 13-14). In London, the equivalent of the assizes was the Old Bailey, which was in session eight times a year. Notably, crimes were prosecuted not—as now—by crown counsel, but by the victim or complainant him or herself (Smith 66).

With this background in mind, we can understand the anonymous magistrate's suggestion to the Home Secretary. The magistrate invited Peel to consider a poor labourer earning about eight shillings a week. What would happen, he asked, if such a labourer were beaten by a man of richer means? He pointed out how difficult it would be for the assault victim to obtain justice. The magistrate pointed out that the victim would bear the costs of a warrant (two shillings), payment to a constable (two or three shillings), and perhaps the cost of recognizance—the promise to return to court on a specified date—(half a crown). Even in the wake of the Criminal Justice Act of 1826, which reimbursed expenses of prosecutors and witnesses, the burdens of lost work and travel time to attend quarter sessions in the local town (perhaps as many as fifty miles away) would be considerable. The writer suggested instead that magistrates be empowered to hear cases of minor assault, making the process cheaper, more local, and thus more accessible to ordinary people ("A Letter" 460-62). Peel's 1828 Act entrenched this suggestion, transferring minor assaults to magistrates' courts and giving two magistrates the power to hear such cases and to levy fines up to five pounds (or prison sentences of up to two months). The *Law Magazine; or, Quarterly Review of Jurisprudence* hailed this change as a "new and very important alteration in the administration of justice" and a "great public benefit" because it freed up the quarter sessions for hearing more serious assault cases ("Lord Lansdowne's Act" 139).

In practice, the 1828 Act significantly reduced the caseload of the courts of quarter sessions. Since few magistrates kept formal records, it is difficult to track how many assault cases were heard by the newly empowered magistrates, but on 4 September 1829, the *Times* noted a reduction in cases at the Westminster quarter sessions (4b), and in January 1836, magistrates at the Lambeth Police Office observed in a letter to the Home Office that the 1828 Act had greatly increased their work (both qtd. in Smith 64).

The new Act also had an unexpected effect upon cases of marital violence: beaten women could now access swift, local judicial aid in abusive situations (Doggett 30). Historian Anna Clark notes that while it had been possible before the 1828 Act for wives to prosecute their husbands in higher courts, they seem to have been loath to do so. She speculates that the expense, trouble, and long delays (as well as, perhaps, the intimidating effect of Old Bailey or quarter-session judges) discouraged them (198). Not that magistrates were able to solve the problems of spousal abuse. Even if punishments were handed out, the Act preceded the widespread availability of divorce, meaning that victims faced the prospect of their abuser returning to the marriage after a fine, a reprimand, or a prison sentence of a month or two. Indeed, as James Hammerton notes, some magistrates assumed the "paternalistic role" of "marriage menders" (39), preferring to mediate disputes in lieu of punishing the abusive spouse.

However, the unexpected prevalence of wife-abuse cases in magistrates' courts gave the issue of marital violence "unprecedented visibility in the public press" (Surridge 8-9). As reports of these assault cases appeared in newspapers, they drew the attention of middle-class readers, politicians, and journalists. Newspapers had not been free of accounts of marital assault in the past, but in the 1830s, wife-assault reports "became part of middle-class culture" (Surridge 8-9). The sheer dailiness of such reports shocked readers: wife abuse, as J. W. Kaye noted in 1856, became an "every-day story" in newspapers (234). Such reports reveal a society in the midst of a sea change regarding the acceptability of interpersonal violence and the nature of gender roles, with a new sanctification of femininity and an enshrining of masculine self-control competing with older models of marriage as a place in which the man might lash out with his fists and the woman with her tongue (Surridge 21-27). The 1828 Act can thus be seen as part of a new public intolerance of interpersonal violence that heralded the Victorian era.

Paradoxically, however, the era that saw a reduction in public displays of violence generated art forms that seemed both to glorify and to deplore crime. The very era that created the 1828 Act also spawned the tale of Sweeney Todd, one of the most horrific—and popular—tales ever created (Crone 1-2). Popular entertainments of the early nineteenth century seemed to wallow in violence and gore, showing that "excess and the carnivalesque spirit" (Crone 7) were flourishing in early to mid-nineteenth-century society: the Newgate genre of the period fascinated readers with accounts of gory crimes; G. W. M. Reynolds' *Mysteries of London*, the era's bestseller, represented scenes of working-class atrocities; and popular melodramas presented fantasies of good rewarded and evil punished (Wiener, *Reconstructing* 20-23). On the other hand, newspaper records of family violence acted as a catalyst to the young Charles Dickens, who forged his career as a reporter in the London magistrates' courts in the wake of the 1828 Act. In his writings of the 1830s, Dickens immortalized the figure of the battered woman: in "The Pawnbroker's Shop" (30 June 1836), she appears pale, bruised, and pacific with her "thin, sickly child" in her arms (*Sketches* 191); in "The Hospital Patient" (6 August 1836), a forgiving young woman dies of injuries inflicted by her lover, Jack; and in *Oliver Twist* (1837-39), the prostitute Nancy is beaten to death by her lover, Bill Sikes. The 1828 Act thus drew marital violence into the public eye and, in turn, into the purview of both the crime novelist and reformist writer.

In summary, the 1828 Act was born out of a period of intense anxiety surrounding interpersonal violence and a new valuing of the sanctity of the person. It represented a moment of transition in its perception of the legal code as a means of reforming the moral habits of the nation and in its heightening of punishments for interpersonal violence.

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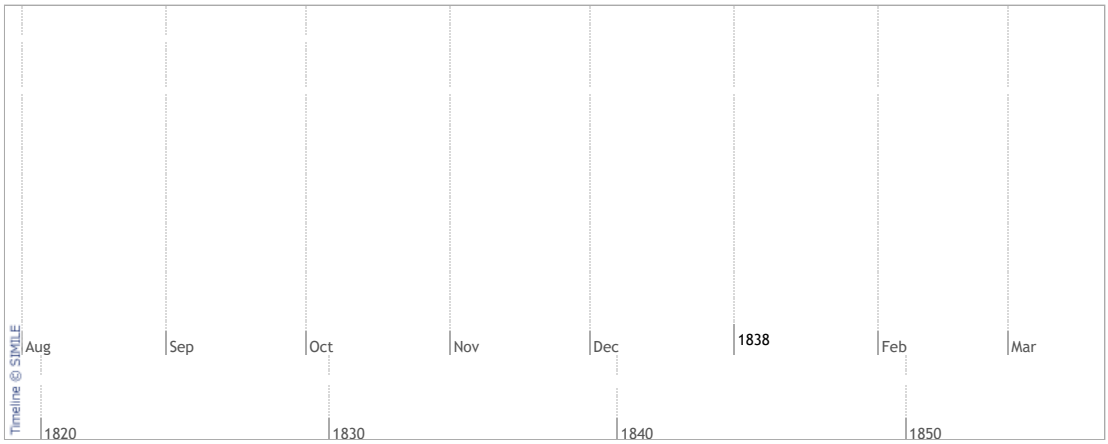

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