Making Murder Public: Homicide in Early Modern England, 1480-1680

Although England was just about early modern Europe's least violent place to live it has, paradoxically, produced far and away the most research on the problem of homicide. The trend shows no sign of abating, as recent works by Lockwood and Sharpe demonstrate. It is remarkable that anything new could be said on the subject, particularly given—as Krista Kesselring admits—the mediocrity of the record survival. England's unbureaucratic legal system renders criminal justice history much more difficult to research than it is elsewhere in Europe, where the problem is quite the opposite: the vastness of the documentation presents major challenges to the lone scholar. For both these reasons, England's main contribution has been, by virtue of Coroners' inquests, to furnish most of the quantitative data on which pre-modern computations of the European homicide rate are based. This research supports the claim that early modernity was responsible for a steady and progressive decline in violence. We are frequently reminded that the barbaric middle ages needed ordering by a punitive state and Renaissance codes of civility. That Kesselring has something new to say on the subject is attributable to the fact that she treats these claims with scepticism. She pays full tribute to the richness of medieval legal innovations, does something unusual for a historian of England and places it in a broader European context (Scotland included) and, crucially, sees homicide not as any old crime, but as a phenomenon closely associated with the political.

Her research is based on a dataset of 3,601 homicides from 1480 to 1680 and the 4,324 people implicated in the killing. In the past, homicide was substantially a male-on-male phenomenon and 80% of her sample were men. Early modern England was unusual in that it had very low rates of firearms ownership, and her records reflect this exceptionalism. Kesselring is aware that, *pace* Weber, the state does not necessarily repress violence, since in France and Italy kleptocratic regimes had a great deal of responsibility for causing the homicidal violence that exploded in the mid-17th century. Across Europe, the idea that homicide was a *crimen exceptum*, since it had the potential to disturb the public peace, was a consequence of late medieval developments, usually associated with the rise of Roman Law. Rising rates of interpersonal violence in 16th-century Europe were an indication not that educated individuals were ignoring this injunction, but rather that the public peace might require the elimination of public enemies. The homicide problem in France and Italy was not due to lawlessness. In fact, there was too much law. There were a plethora of competing courts, where high standards of proof made convictions difficult, and the complex appeals procedure sustained a

mushrooming legal class. The English legal system developed after 1480 in very different political circumstances. Usually interpreted as a financial measure, the timing of Henry VII's 1487 murder statute, which forced coroners into action with fees and fines, is surely significant. Henry was confronting the fact that during periods of civil conflict all forms of homicide, common or garden domestic killings and pub brawls, will increase, as will political-motivated attacks. Kesselring shows that Coroners' inquests, which were attended by juries made up of a broad cross-section of the community, permitted an openness and publicity in the proceedings, curtailing the possibilities for those wishing to buy influence and offer protection. There was increasing oversight that prevented corruption and illegality. The second important development was in the definition of homicide. The law of manslaughter overcame juries' reticence and the conviction rate increased—in England killers were very likely to face some form of punishment and the public humiliation of being branded a criminal. Trial by peers ensured that anyone who acted out of 'prepensed malice' faced death. Lord Dacre killed a mere gamekeeper, but his execution in 1541 established the principle of equality before the law. Even if this principle was not always upheld, it was a radical departure from the norm elsewhere in Europe, where a convicted killer usually escaped the scaffold if they could provide financial satisfaction (a Canon Law concept) for the victim's family. As Kesselring shows, private settlements and compositions continued in England far longer than is previously thought, but their use was highly circumscribed. English commentators denounced the practice as uncivilized and blamed the feuding culture they encountered in Scotland and Ireland on blood money compensation. Given the widespread hostility to the principle of satisfaction, it is perhaps unsurprising that the English did not take much to duelling. James I denounced the practice, though he protected individual duellists for political reasons. In England duellists tended to fight to first blood—only 70 of Kesselring's sample seem to have been the result of deaths in duels. The principle that the law and violence were not co-ordinate ways of redressing grievances and that retribution belonged only to the king seems to have been embedded in public discourse by the time that duelling arrived from the continent at the end of the 16th century. However, its resurgence during the Restoration once again demonstrates the role of civil conflict in promoting all sorts of homicides.

The other unique aspect of the English legal system was its barbarity. European courts briefly experimented in the 16th century with harsher punishments, but this was largely abandoned after 1600 and replaced by a flexible system that balanced punishment (usually banishment) with financial restitution. Kesselring calculates an annual execution rate in England of 600-1,200 per annum for the early modern period. To place this in context, the Parlement of Paris, which acted as the sovereign court of appeal for about a third of France, issued only about 70 death sentences a year in the early 17th century. As Kesselring demonstrates, English harshness was not simply a matter of the bloody code. The law of manslaughter meant a public trial and exposure to disgrace for the social elite, and monarchs had to use their grace with extreme caution. James I lost a great deal of credit in 1616 for pardoning his favourite, the Earl of Somerset.

In England, the principle of equality before the law and public participation in the legal process were fundamental to fostering trust in the law and underpinning the legitimacy of the state. The roots of this can be traced to at least the 12th century. It is an important story and worth retelling. But Kesselring is aware of the darker side of summary justice and the shortcomings of a legal system overly-influenced by public opinion. The first legal reform of the French Revolution was to institute the jury system, which proved to be the perfect tool for enacting popular vengeance, or what Kesselring calls public satisfaction for a crime. It is only recently that the English legal system has given due consideration to justice for the victim and their family. One wonders whether the gamekeeper's widow might have preferred another form of satisfaction, *in lieu* of Lord Dacre's public beheading. The Irish feuding culture, predicated on cattle-raiding and ransom, and so despised by Spenser and his acolytes, was 'civilized' (a verb minted by the English in the 1570s) using extraordinary levels of judicial violence and state-sanctioned murder. Kesselring has performed a great service in taking homicide out of the silo of crime history and placing it firmly in the context of the political.

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