

**Bodies of Evidence:  
Sex and Murder (or Gender and Homicide) in Early Modern England, c. 1500-1680**

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ABSTRACT: To see how contemporaries understood the body's place in differences between men's and women's homicidal violence, this paper disaggregates the data from a sizeable sample of English homicide records produced between c. 1500-1680 to see who men and women were accused of killing, and how, and places that information within the context of early modern medical and legal works. Women killed far fewer people than did men, which accords with studies of homicide in other times and places; but if we include in our counts (as contemporaries would have done) both infanticide and killings by means of witchcraft, we see that women were disproportionately represented amongst those deemed to have committed murder rather than the less serious crime of manslaughter. Early modern responses to homicide, and thus the long-lived laws that grew from them and the bodies of evidence upon which we rely, had embedded within them humoral understandings of male and female difference that were premised on variations in vital heat. More so than their 'hot-blooded' counterparts, women were associated with cold-blooded killings.

In 1564, Agnes and Edward Baynton lost their only son in what they thought suspicious circumstances. In their grief and anger, they turned to Jane Marsh, a widow said to be of such 'skill and knowledge that she could detect and accuse such persons as did use that devilish art of witchcraft'. Marsh blamed two women: she said that Dorothy Baynton, the wife and mother of the people to whom Edward's estate would pass should he die without a son, had procured one Agnes Milles to use 'sorcerers' charms and witchcraft' to kill the young boy. Dorothy Baynton denied the charge, evaded punishment and responded with law suits of her own, making Marsh pay for her temerity. Agnes Milles, however, confessed and was hanged as a murderer.<sup>1</sup>

Accused witches, we know, tended to be women. Killers tended to be men. We might simply count Milles amongst the former and not the latter, confident that she did not kill anyone at all. To do so too quickly, though, risks misunderstanding the beliefs and practices that shaped

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<sup>1</sup> The National Archives, Public Record Office, C 3/8/113. All manuscript references are to the National Archives unless otherwise noted.

the very records upon which we rely, and missing an opportunity to rethink our treatments of sex and murder, or gender and homicide, in the era in which legal definitions that persist to the present first took shape. To understand the history of homicide in early modern England requires recognition that people accused of doing so by means of witchcraft were executed right alongside those thought to have killed in more conventional ways. In her own day, contemporaries of Agnes Milles would have seen her not just as a killer, but as the very worst sort of killer: a murderer, and one made susceptible to such actions by her very sex.

Lest opening a discussion of homicide with a story in which the woman identified as a killer in fact killed no one start us off in the wrong direction, though, let us add a second. In 1645, Susan Adams beat Hester Pride to death. Pride was Adams's servant, however, and a jury endorsed Adams's story that she had only beaten her 'with a small stick, by way of correction...for some fault which she had committed'. As such, the jurors deemed Adams guilty simply of manslaughter. Over the sixteenth century, murder and manslaughter had come to be legally distinct species of the broader class of criminal homicide; while both remained capital offences, men found guilty of manslaughter, the lesser kind of killing, could have their sentences mitigated by claiming a legal device known as 'benefit of clergy'.<sup>2</sup> The jurors were alarmed then to find that they had mistaken the law: they had thought that Susan Adams would be able to evade sentence of death with a manslaughter verdict by claiming benefit of clergy, 'as men in such case use to have'. Unlike the many men who did so, however, women could not escape a

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<sup>2</sup> Over the sixteenth century, clerics' long-standing immunity from trial in secular courts became a device by which men who committed one of a shrinking list of offences for the first time could escape capital punishment. A statutory change in 1575 regularised the practice, meaning that men convicted of a 'clergyable' offence – which included manslaughter – could claim the 'benefit of clergy', reading a passage of Scripture to prove their supposed clerical status, and then face at most a branding, forfeiture of property, and a year's incarceration instead of execution. Women, in contrast, could try to claim 'benefit of the belly', submitting to a physical examination to determine whether they were pregnant, but this secured only a temporary reprieve, not necessarily an escape from execution. See K.J. Kesselring, *Mercy and Authority in the Tudor State* (Cambridge: Cambridge University Press 2003), pp. 212–4.

death sentence for manslaughter in this way. In the end, members of parliament saved Adams with a special ordinance that pardoned her for the killing.<sup>3</sup>

Both incidents involved types of slayings for which women came before the courts in higher numbers than did men: killing by means of witchcraft and of servants. Overall, however, men far outnumbered women amongst those accused of homicide in early modern England. Indeed, they do so in studies of homicide in every time and place done to date: while their participation in crime in general is highly variable, women have typically constituted fewer than a fifth of all those charged with killing another person.<sup>4</sup> Such persistent differences in homicidal behaviour seem to demand explanations drawn, in part, from 'nature'. Yet, clearly, the ways in which people defined, committed and punished crimes depended in part on socio-cultural factors, too. How, then, ought we to explain the disparities between men's and women's histories of

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<sup>3</sup> *Lords' Journal*, vol. IX, p. 4 (11 February 1646).

<sup>4</sup> Malcolm Feeley and Deborah L. Little provide the classic overview of changing rates of women's involvement in criminal processes in the English context: 'The Vanishing Female: The Decline of Women in the Criminal Process, 1687–1912', *Law and Society Review* 25 (1991), pp. 719–57. European data is brought up to date in Manon van der Heijden and V. Koningsberger, 'Continuity or Change? The Prosecution of Female Crime in the 18<sup>th</sup> and 19<sup>th</sup> Centuries', *Crime, Histoire et Sociétés* 17 (2013), pp. 101–27 and Greg T. Smith, 'Long-Term Trends in Female and Male Involvement in Crime', *The Oxford Handbook of Gender, Sex and Crime*, ed. Rosemary Gartner and Bill McCarthy (Oxford: Oxford University Press, 2014), pp. 139–57. Manuel Eisner, 'Long-term historical trends in violent crime', *Crime and Justice: A Review of Research* 30 (2003), pp. 109–12 provides a succinct overview of the data on homicide throughout Europe, noting that women typically account for no more than 15% of killers, when infanticide is excluded. Pieter Spierenburg's work is also required reading: see especially 'How violent were women? Court cases in Amsterdam, 1650–1810', *Crime, Histoire et Sociétés* 1(1997), pp. 9–28; his introduction to Spierenburg, ed., *Men and Violence: Gender, Honour and Rituals in Modern Europe and America* (Columbus, 1998); and *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present* (Cambridge, 2008), pp. 117–22. For works on the English homicide data that distinguish male from female killers, see, for example, Barbara Hanawalt, 'The Female Felon in Fourteenth-Century England', *Viator* 5 (1974), pp. 253–68; Peter Lawson, 'Patriarchy, Crime and the Courts: The Criminality of Women in Late Tudor and Early Stuart England', *Criminal Justice in the Old World and the New*, ed. Greg T. Smith, Allyson May and Simon Devereux (Toronto: University of Toronto Press, 1998), pp. 16–57; Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge: Cambridge University Press 2003), pp. 113–58; J.M. Beattie, *Crime and the Courts in England, 1660–1800* (Princeton: Princeton University Press, 1986), p. 82 and his article on 'The Criminality of Women in Eighteenth-Century England', *Journal of Social History* 8 (1975), pp. 80–116; Gwenda Morgan and Peter Rushton, *Rogues, Thieves and the Rule of Law: The Problem of Law Enforcement in North-East England, 1718–1800* (London, 1988), pp. 97–9, 112–23; and Martin Wiener, *Men of Blood: Violence, Manliness, and Criminal Justice in Victorian England* (Cambridge, 2004). For contemporary surveys of homicide that speak to the sex differences today, see the reports issued by the United Nations Office on Drugs and Crime [UNODC], e.g., *UNODC Global Study on Homicide 2013* (United Nations Publication, Sales No. 14.IV.1), p. 13, which indicates that, world-wide, only 5% of those people convicted of the intentional homicides it includes in its surveys were women.

homicide? How do we understand the relationship between ‘sex’ and ‘gender’, the biological and the socio-cultural, in these histories? Answers given to such questions tend to emphasise one aspect or the other, either nature or nurture; even if acknowledging both, they often insist that one or the other be given priority.<sup>5</sup> Yet we may well find that they cannot be separated so far as to allow such prioritisation.

Much recent work has sought to move beyond discussions of why men’s criminality so often exceeded women’s, preferring to study the latter ‘in its own right’—and valuably so.<sup>6</sup> But a recent resurgence of interest in biological explanations of human behaviour, whether derived from evolutionary psychology or from feminist biologists’ work that emphasises ‘diversity against dichotomy’, suggests that we might return to such questions.<sup>7</sup> My aim here is much more

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<sup>5</sup> See the works cited in no. 4 and Anne-Marie Kilday’s overview of the debates in her essay, “‘That Women are But Men’s Shadow’: Examining Gender, Violence and Criminality in Early Modern Britain”, *Gender in Late Medieval and Early Modern Europe*, ed. Marianna Muravyeva and Raisa Maria Toivo (New York: Routledge, 2012), pp. 53–68. For a more focused treatment of explanations rooted in sociobiology and evolutionary psychology, see especially the classic work by Martin Daly and Margo Wilson, *Homicide* (New York: A. de Gruyter, 1988). For overviews of more recent literature in the field, see John Carter Wood, ‘A Change of Perspective: Integrating Evolutionary Psychology into the Historiography of Violence’, *British Journal of Criminology* 51 (2011), pp. 479–98 and Gregory Hanlon, ‘The Decline of Violence in the West: From Cultural to Post-Cultural History’, *English Historical Review* 128 (2013), pp. 367–400. There was, for a time, a third set of explanations which denied the differences as more apparent than real, suggesting that women’s crimes were either hidden from or overlooked by contemporaries. The view that stealth or ‘chivalry’ can account for much of the differential has long since been discarded, but for its classic statement, see Otto Pollak, *The Criminality of Women* (Philadelphia: University of Pennsylvania Press, 1950).

<sup>6</sup> A move that often harkens to Jenny Kermode and Garthine Walker, eds., *Women, Crime and the Courts in Early Modern England* (Chapel Hill: University of North Carolina Press 1994). See, too, Jennine Hurl-Eamon, *Gender and Petty Violence in London, 1680-1720* (Columbus: Ohio State University Press, 2005) and Marisha Caswell, ‘Married Women, Crime and Questions of Liability in England, 1640–1760’, Queen’s University PhD Dissertation, 2012.

<sup>7</sup> For examples of the former, see Steven Pinker, *The Better Angels of Our Nature: Why Violence Has Declined* (New York: Penguin, 2011); the recent special issue of the *British Journal of Criminology*, 51 (2011) devoted to ‘Human Evolution, History and Violence’; and the section devoted to ‘Psycho– and Sociobiological Perspectives’ in the *Oxford Handbook of Gender, Sex and Crime*, pp. 245–318. For a helpful introduction to the latter, see Riki Lane, ‘Trans as Bodily Becoming: Rethinking the Biological as Diversity, Not Dichotomy’, *Hypatia* 24 (2009), pp. 136–57. For historians seeking to combine cultural and biological elements, see Lyndal Roper’s *Oedipus and the Devil: Witchcraft, Sexuality and Religion in Early Modern Europe* (London: Routledge, 1994) and more recently, Dror Wahrman, ‘Change and the Corporeal in Seventeenth– and Eighteenth-Century Gender History: Or, Can Cultural History Be Rigorous?’, *Gender & History* 20.3 (2008), pp. 584–602, which calls cogently for a ‘corporeal critique’ of cultural history that engages with extra-cultural elements. He writes: ‘Unlike unreflective essentialism that presupposes that certain aspects of the human condition necessarily lie outside history and culture, and unlike unreflective constructivism that presupposes that no aspect of the human condition lies outside history and culture,

modest, though: I want to look at how early modern understandings of the body mapped onto differences between men's and women's homicidal behaviour. In a classic article, Susan Amussen urged us to examine the often contested place and meanings of violence in early modern society, noting the historically specific, mutually reinforcing and power laden ways in which understandings of legal, illegal and extralegal violence took shape.<sup>8</sup> Accordingly, this paper disaggregates the data from a sizeable sample of early modern English homicide records to see who men and women were accused of killing, and how, and places that information within the context of early modern medical and legal works. In her important study of Cheshire's court records, Garthine Walker observed that homicide law itself encoded male standards of behaviour.<sup>9</sup> This paper builds upon that insight, showing that early modern responses to homicide, and thus both the long-lived laws that emerged from them and the bodies of evidence upon which we rely, had embedded within them understandings of male and female difference rather different than our own, ones grounded in climatic rather than chromosomal models. When humours and heat distinguished male from female, talk of killings in hot-blood and in cold counted as something more than metaphor. While women in early modern England killed far fewer people than did men, their very nature was thought to make them more susceptible to committing the kinds of killings deemed egregious acts of murder rather than the less serious crime of manslaughter.

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the self-reflexive preoccupation of the "corporeal" (or the "neo-essentialist") is the un-predetermined boundary between the two' (p. 599.)

<sup>8</sup> Susan Amussen, 'Punishment, Discipline and Power: The Social Meanings of Violence in Early Modern England', *Journal of British Studies* 34.1 (1995), pp. 1–34, which builds upon J.A. Sharpe's urging that quantification of homicide rates be contextualised with studies of the 'social meanings of violence': 'The History of Violence in England: Some Observations', *Past and Present* 108 (1985), p. 214.

<sup>9</sup> Walker, *Crime, Gender and Social Order*, p. 157. For recent efforts to reform gender biased homicide laws, see, for example, Danielle Tyson, *Sex, Culpability and the Defense of Provocation* (New York: Routledge, 2013); Jeremy Horder, *Homicide and the Politics of Law Reform* (Oxford, 2012), esp. pp. 205–11; and Carolyn B. Ramsay, 'Provoking Change: Comparative Insights on Feminist Homicide Law Reform', *Journal of Criminal Law and Criminology* 100 (2010), pp. 33–108.

First we turn to the data, to see what cases people brought before early modern English courts as suspected homicides and who they identified as the killers in their midst. A dataset compiled from coroners' inquests and court indictments produced between *c.* 1500-1680 includes information on 3601 people identified as victims of homicide and 4374 people implicated in their killings.<sup>10</sup> This is not a complete set of records for a given area of the sort that might allow the generation of homicide rates expressed as *x*:100,000, but should serve as a reasonably representative sample of the larger whole. One must take care in using these records, of course. Not least to be borne in mind is that they document accusations, not 'actual' killings. Trial juries later decided that some of these supposed victims died of natural or accidental causes, and they deemed a good number of the people charged with killings not guilty. Some other homicides presumably went undetected. Reasons for caution in how one reads these records certainly exist, but as an indication of the claims that came before the courts, they can be revealing. The sample lets us look at how homicides attributed to women differed from those

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<sup>10</sup> The database is based largely on already calendared records, but as they only become numerous from about 1559, supplements them with roughly 1000 manuscript inquests from the early 1500s. It was compiled from records calendared in the following:

– R.F. Hunnsett, ed., *Calendar of Nottinghamshire Coroners' Inquests, 1485–1558* (Nottingham, 1969); *East Sussex Coroners' Records, 1688–1838* (Sussex Record Society, 2005); *Sussex Coroners' Inquests 1485–1558* (Sussex Record Society, 1985); *Sussex Coroners' Inquests, 1558–1603* (London, 1996); and *Sussex Coroners' Inquests, 1603–1688* (London, 1998).

– James Cordy Jeaffreson, ed., *Middlesex County Records*, vols. 1–3 (London, 1886–92).

– J.S. Cockburn, ed., *Calendar of Assize Records: Home Circuit Indictments, Elizabeth I and James I*. 10 vols (London, 1975–82) and *Kent Indictments, 1625–1688*, 4 vols (London and Woodbridge, 1989–1997).

– data compiled by James Sharpe and R. Dickinson for Cheshire, in *Violence in Early Modern England: A Regional Survey, 1600–1800: Cheshire* [computer file], Colchester, Essex: UK Data Archive [distributor], July 2002, SN: 4429, <http://dx.doi.org/10.5255/UKDA-SN-4429-1>.

– calendars of the Essex assize records in the Essex Record Office, T/A 418.

– manuscript coroners' inquests in KB 9, taken at 5 year intervals.

Both because of the nature of the surviving records and the choices made when entering data into the database, this dataset vastly underrepresents excusable homicides (misadventure and self-defence), and does not include suicides (though early modern contemporaries treated self-slaying as homicide, too). Otherwise, it should serve as a reasonably representative sample of the events identified by contemporaries as felonious homicides. Anne Cumming's assistance in entering the data was invaluable.

attributed to men, in a much larger set of records than has previously been compiled for early modern England.

Of all the supposed killers in these records, 825 – roughly 20% – were women, said to have killed 907 people, or 25% of the total number of victims. [*See Table 1*]. The numbers of victims and killers do not match because, of course, some incidents involved multiple killers and some killers were charged with the deaths of multiple victims. Already differences emerge: Men were more often implicated in killings said to have been done by groups, but women figured far more heavily among killers thought responsible for sets of victims.

Looking at the victims, we see differences in the ages and genders of people identified as falling prey to men and to women. Overall, 84% of victims were adults. For the subset of victims with female killers, that percentage drops nearer to 50, with about 35% of women's victims being infants and the rest identified as children. [*See Tables 2 and 3.*] When we turn to gender, overall, the vast majority of victims were male. Men overwhelmingly killed men. Female killers were much more even-handed, only slightly more likely to kill male than female victims. (This remains so even when we set aside infants and children and look only at adult victims of women.) [*See Tables 4 and 5.*] So, while men far outnumbered women as accused killers in this set of records, and while a slight majority of women's victims were adult men, women were disproportionately represented amongst those charged with killing the young and defenseless.

Indeed, women were disproportionately charged with domestic killings. Some 563 purported victims in this set of records were identified as sharing familial or household bonds with their supposed killers. If we can assume that the indictments and inquests note familial and master-servant relationships when they existed, this would suggest that only 16% of these homicides might be counted as 'domestic', happening between people linked by bonds of blood,

marriage or service. This contrasts quite markedly with the proportion of domestic homicides today – a proportion that typically goes up as the overall rates of homicide in a society decline and is in England now closer to 30–50% of the total number of homicides, depending on who one includes. It contrasts, too, with what one might expect from a reading of the lurid murder pamphlets of the early modern era with their focus on domestic dangers.<sup>11</sup> As Frances Dolan has observed, these pamphlets often located the threat to social order ‘in the least powerful and privileged, in those most likely to be the victims rather than the perpetrators of violence’.<sup>12</sup> Indeed, domestic killings more often involved superiors killing inferiors than the reverse: husbands killed wives, masters killed servants and parents killed children far, far more frequently than the other way around.

In one subset of these domestic killings, then, those between husbands and wives, men did dominate: whereas 66 men in this sample were charged with killing their wives, only 32 women were accused of killing their husbands (a crime that might well be construed not just as murder, but as petty treason, and thus punished more severely, with burning at the stake rather than hanging). In other domestic killings, however, women more often figured as the killers. Only 58 killings were noted as being between masters and their servants or apprentices, with 8 servants accused of killing masters (frequently, in self-defence during a beating) and 50 servants identified as the victims of their masters or mistresses, most often in killings construed as over-zealous corrections. Here, women were said to have killed 28 servants, whereas men were charged as the killers of 22. Children were very rarely charged with killing their parents, with

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<sup>11</sup> See especially Frances Dolan, *Dangerous Familiars: Representations of Domestic Crime in England, 1550–1700* (Ithaca: Cornell University Press, 1994); Vanessa McMahon, *Murder in Shakespeare’s England* (London: Routledge, 2004); and Randall Martin, *Women, Murder and Equity in Early Modern England* (New York: Routledge, 2007). See also J.A. Sharpe, ‘Domestic Homicide in Early Modern England’, *Historical Journal* 24 (1981), pp. 29–48 and Susan Amussen, ‘“Being Stirred to Much Unquietness”: Violence and Domestic Violence in Early Modern England’, *Journal of Women’s History* 6 (1994), pp. 70–89.

<sup>12</sup> Dolan, *Dangerous Familiars*, p. 15.



only two daughters and three sons noted as having done so in this set of records. Many more parents killed their offspring: at least 351 victims (of whatever age) in these records died at the hands of a mother or father, with some others dying at the hands of a step-parent. Of the 304 infants killed by a parent, fathers were named as the principals in only four deaths.

The killing of newborns by their mothers is a fraught subject, its understanding complicated not least by moralising and anachronistic tendencies to separate it from the broader class of homicides. Habits of seeing women as victims or, conversely, as heroic agents rather than simply as perpetrators interfere.<sup>13</sup> So, too, does terminology: distinguishing it with its own label, some historians treat ‘infanticide’ separately from the larger category of criminal homicide and exclude infanticidal women from their counts of killers.<sup>14</sup> For some research questions, such a separation makes sense, but not if we want to understand contemporary perceptions and responses to lethal violence.

Indictments did not give the killing of an infant a special name; they called it murder. The indictment of Anne Gowsworthe, for example, identified her victim as an ‘infantem feminam’ [female infant] but described the offence in the same terms as other homicides, accusing Gowsworthe of having ‘felonice interfecit et murdravit’ [feloniously killed and murdered] the unnamed baby.<sup>15</sup> Similarly for Margaret Gybson: her indictment read that ‘ex malicia sua precogitata’ [of her malice aforethought] she had ‘felonice submersit, interfecit et

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<sup>13</sup> See, for example, Brigitte H. Bechtold and Donna Cooper Graves, ‘The Ties that Bind: Infanticide, Gender, and Society’, *History Compass* 8.7 (2010), pp. 704–17.

<sup>14</sup> See, for example, Pieter Spierenburg, ‘Long-Term Trends in Homicide: Theoretical Reflections and Dutch Evidence, 15<sup>th</sup> to 20<sup>th</sup> Centuries’, *The Civilization of Crime*, ed. E.A. Johnson and E.H. Monkkonen (Urbana: University of Illinois Press, 1996), pp. 72–3. The literature on early modern infanticide is sizeable; for a recent overview, see Anne-Marie Kilday, *A History of Infanticide in Britain, c. 1600 to the Present* (Basingstoke: Palgrave Macmillan, 2013). Other key works include Mark Jackson, *New-Born Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England* (Manchester: Manchester University Press, 1996); Laura Gowing, ‘Secret Births and Infanticide in Seventeenth-Century England’, *Past and Present* 156 (1997), pp. 87–115; Mark Jackson, ed., *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550–2000* (Aldershot: Ashgate, 2002); and Walker, *Crime, Gender and Social Order*, pp. 148–56.

<sup>15</sup> ASSI 35/5/3, m. 25.

murdravit' [feloniously drowned, killed and murdered] an unbaptised child.<sup>16</sup> The infamous 1624 statute that made a special crime of concealing the death of an infant born to an unmarried mother did not use the word 'infanticide', either.<sup>17</sup> As Mark Jackson notes, the term only came to be commonly used over the nineteenth and twentieth centuries, as the crime became medicalised with talk of 'puerperal insanity'. Acts of 1922 and 1939 categorised infanticide as manslaughter rather than murder, with the latter Act defining it as any 'wilful act or omission' by the mother within a year of her child's birth 'while the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child.'<sup>18</sup> We might well continue to use the term as a convenience, but must be wary of bringing along with it anachronistic assumptions that it was an offence categorically separate from other homicides. While some few women charged with the crime of murdering their newborns in early modern England were acquitted or reprieved on grounds of insanity, the majority were treated as murderers, pure and simple.

Moreover, despite some historians' assertions to the contrary, courts had long treated the killing of infants as a felony.<sup>19</sup> Confusion seems to come in part from misunderstandings of the 1624 Act, which dealt only with attempts to keep secret the births and deaths of 'bastard' babies. Common law courts tried the killing of infants as murder well before and long after this statute.

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<sup>16</sup> ASSI 35/8/4, m. 5.

<sup>17</sup> 'An Act to Prevent the Destroying and Murthering of Bastard Children', 21 Jac. 1, c. 27.

<sup>18</sup> Jackson, 'The Trial of Harriet Vooght: Continuity and Change in the History of Infanticide', in Jackson, ed., *Infanticide*, pp. 10–11, quoting the Infanticide Act (1939), 1&2 Geo. VI, c. 36.

<sup>19</sup> In a few publications Barbara Hanawalt has maintained that infanticide only became a felony in the sixteenth century, a claim subsequently picked up by others. See: Hanawalt, 'Medievalists and the Study of Childhood', *Speculum* 77 (2002), 452, which cites her *Ties that Bound: Peasant Families in Medieval England* (Oxford, 1986), p. 103, which in turn refers the reader to her *Crime and Conflict in English Communities, 1300–1348* (Cambridge, 1979), pp. 154–7, but nothing can be found there to support the claim. See, too, the classic and influential essay by Barbara Kellum, 'Infanticide in England in the Later Middle Ages', *History of Childhood Quarterly* 1 (1974), 372. Claims that the killing of an infant was not a felony before the mid-sixteenth or early seventeenth century reappear more recently in, for example, Karen Jones, *Gender and Petty Crime in Late Medieval England: The Local Courts in Kent* (Woodbridge, 2006), p. 88, and Keith M. Botelho, 'Maternal Memory and Murder in Early-Seventeenth Century England', *SEL: Studies in English Literature* 48.1 (2008), 111:

Sara Butler has found a sizable set of such cases scattered throughout medieval court records; my own sample includes over 160 indictments for the murder of infants previous to the passage of the 1624 Act.<sup>20</sup>

In total, the sample includes 336 infant victims, 9% of the whole. Of that number, 94% (316) were said to have been killed by women, 89% (300) by their mothers.<sup>21</sup> While descriptions of women's marital status in indictments are not always reliable (one thinks of those that describe the accused as 'spinster, wife of...'), the indictments do overwhelmingly identify these people as unmarried, either as spinsters or widows.<sup>22</sup> If married women were killing newborns in an attempt at family planning, their actions did not result in criminal prosecutions.<sup>23</sup> We are left,

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<sup>20</sup> Sara Butler, 'A Case of Indifference? Child Murder in Later Medieval England', *Journal of Women's History* 19.4 (2007), 59–82.

<sup>21</sup> This would seem to counter recent assertions that infanticide was 'rare', though 'rare' is, of course, a relative notion. Eleanor Hubbard, for example, suggests that prosecutions for infanticide were rare and exaggerated, but seems to overlook a number of cases in the Middlesex records she examines, noting only four whereas there are at least ten. [Hubbard, *City Women: Money, Sex and the Social Order in Early Modern London* (Oxford: Oxford University Press, 2012), p. 104.] Anne-Marie Kilday says that her study has 'dispelled the notion that new-born child murder was a frequently indicted offence during the early modern period'. (Kilday, *A History of Infanticide*, p. 32.) True, it is worth emphasising that women more often killed adults than infants, but with 35% of their victims being newborns, this seems frequent enough. The difficulty may derive from the dating of Kilday's sample, taken from Old Bailey records that begin only in the late 1600s.

<sup>22</sup> And interestingly, the victims of these mostly single mothers show a sex ratio of 138:100, with the sex of 170 identified as male, 123 as female, and the rest not noted.

<sup>23</sup> Work done by Greg Hanlon and his students suggests that marital infanticide may well have been 'routine' in parts of continental Europe in these years, not tried in criminal courts at the time but detectable by the historian when sex ratios in baptismal records differ from the universal sex ratio at birth. [See: Gregory Hanlon, 'L'Infanticidio di coppie sposate in Toscana nella prima età moderna', *Quaderni Storici* 38 (2003), pp. 453–98; Laura Hynes, 'Routine Infanticide by Married Couples? An Assessment of Baptismal Records from Seventeenth-Century Parma', *Journal of Early Modern History* 15 (2011), pp. 507–30.] A preliminary test suggests that English couples were not doing the same, however, or at least not in any statistically significant or sex-selective way. A survey of the baptismal registers of 13 Yorkshire parishes from the 1530s through to 1660 reveals a ratio amongst the nearly 40,000 recorded baptisms of 105 boys to every 100 girls, a ratio that fits within the expected sex ratio at birth of 104–107:100. [My thanks to Hilary Doda for doing this rather laborious count for me.] While more and bigger samples might be wanted before turning away from the possibility of widespread, covert infanticide by married couples in early modern England, in a sense, those studies have already been done centuries ago, by the very first English statisticians. John Graunt in 1662 published *Natural and Political Observations Made Upon Bills of Mortality*. From 1629, the London Bills of Mortality broke down baptisms by the sex of the child; Graunt tallied these and was the first to observe the slight preponderance of male births over female. Graunt observed that the sex ratio in London baptisms for the years from 1629–1661 was 106.8:100; using parish records for the town of Romsey from 1569–1658 as a comparison, he found a ratio of 105.6:100. In 1710, John Arbuthnott followed up on Graunt's observations in *An Argument for Divine Providence, Taken from the Constant Regularity Observed in the Births of Both Sexes*. (For Arbuthnott, the regularity of that ratio proved that polygamy defied nature, for example.) These are, in fact, the earliest recorded investigations of the human sex ratio. They show nothing to suggest that English

then, with the inquests and indictments, which deal primarily with unmarried women, likely impelled to the deed by some combination of desperation, poverty, and pragmatic calculations of the very tangible costs of a ruined reputation. A good many contemporaries would have recognised this, while also seeing the crime as the product of sin's inevitable downward spiral; Antonia Strong, a 'Southwark spinster' also known as 'Timy Strange' – quite possibly someone who earned her living through sex work – was convicted for the murder of her infant, and may well have been an exemplar of the sort of person contemporaries sought to punish for this crime.<sup>24</sup> According to the indictments, most of these infants died by smothering, strangling, exposure, or drowning in privies or ditches. Some suffered more violent deaths: Alice Bankes was accused of throwing her infant out a window; Margaret Fothergell with using an embroidery needle to stab her baby repeatedly; and Joan Bassett supposedly pulled out her newborn's tongue before leaving her to freeze to death.<sup>25</sup> Of a subset of 272 cases for which verdicts are known, juries found 60% of the women accused of killing their infants guilty of murder, and 40% not guilty. Juries deemed some dead infants stillbirths; some the victims of accidents; and a few the victims of fictitious killers, presumably signs of discomfort with the evidence or pity for the killer. (Both Catherine Gray and Avid Read escaped guilty verdicts when juries decided that 'John Death' had killed their infants, for example.<sup>26</sup>) There is no point now in either excoriating or excusing these women, but they should surely be included in a discussion of homicide as understood and tried in early modern courts.

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couples were engaging in routine sex-selective infanticide. [See R.B. Campbell, 'John Graunt, John Arbuthnott, and the Human Sex Ratio', *Human Biology* 73.4 (2001), pp. 605–10.]

<sup>24</sup> ASSI 35/11/5, m. 7.

<sup>25</sup> ASSI 35/4/3, m. 9 ASSI 35/21/1, m. 8 ('a brode stick sharped'); ASSI 35/23/5, m. 28.

<sup>26</sup> ASSI 35/32/4, m. 9 and ASSI 35/27/6, m. 10. Interestingly, even the fictitious killers were generally given men's names; for one exception, in which 'Joan Atstile', the female equivalent of the ubiquitous 'John Atstyle', was blamed for the murder of Frances Gargrave's infant, see ASSI 35/31/1, m. 60.

While the profiles of people identified as the victims of male and female killers differed, so too did the means of killing. [See *Tables 6 and 7.*] Those individuals killed by men most often died of injuries inflicted by knives, daggers, swords and rapiers, with cudgels and staffs accounting for another good number of deaths. Women who killed, in contrast, killed more often with their bare hands. Female killers pummelled or kicked to death a sizable number of people. They strangled, suffocated and drowned more victims than did male killers, as these were the most common ways of killing an infant. One other way in which women's purported means of killing differed from men's, and one that applied more so to the shared range of adult victims, was in respect to poison. Poison was blamed in only a tiny number of these fatalities: only 56 people, just under 2% of the victims in this sample, were identified as being killed by such means, which seems surprising given the intensity of the fear of poison expressed in popular texts. But this, too, was an area in which the victims of women outnumbered those of men, with women charged in 33 of these deaths and men in 23. According to these indictments and inquests, though, women were more likely to use witchcraft than any other method to kill their victims and turned to it in far greater numbers than did men. Witchcraft was identified as the cause of death for 373, roughly 10%, of the total number of victims in this set of records. Fully 93% of *these* victims supposedly died because of women's malice. Witchcraft, then, accounted for almost 38% of the fatalities attributed to women.

The bulk of these indictments appeared after the passage of the 1563 witchcraft statute, with only an earlier outlier or two.<sup>27</sup> While we might well be tempted to treat these supposed homicides differently than the rest and to remove them from our counts for certain purposes, they were treated as homicides at the time. Even more so than with the killing of infants, with witchcraft we run up against differences between modern and early modern notions of what

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<sup>27</sup> See, e.g., KB 9/414, m. 88 (1529).

constituted homicide. Few if any historians of murder are likely to include supposed victims of witchcraft amongst their body counts, and understandably so; and yet, in setting these ‘victims’ and the people charged with their deaths aside, we miss an extraordinary amount of women’s supposedly homicidal behaviour. While indictments mentioned magic as the means, they identified murder as the charge. Alice Chaundler, for example, was found guilty of four counts of murder on an indictment that charged her with, ‘ex malicia sua precogitata’ [of her malice aforethought], having ‘felonice interfecit et murdravit’ [feloniously killed and murdered] her victims using ‘witchcraft, enchantments, charms et sorceries’.<sup>28</sup> She was indicted for murder, not for witchcraft. Chaundler and many others charged with such killings hanged alongside those who killed with fists and knives, punished no differently than other murderers.

Some women charged with the crime confessed. The belief that people might kill in this manner was widely held, though not blindly so: juries acquitted slightly more than half of those charged with such killings. Of the 255 people accused of killing by witchcraft in this set of records, verdicts are known for 240: 47% were deemed guilty but 53% were not. Of the 17 men charged with such killings, verdicts are known for 16: 5 guilty, 11 not. Of the 238 women, verdicts are known for 224: 107 guilty, 117 not. Some of these women did find themselves acquitted of the murder – and thus freed from facing death – but convicted on a lesser charge of using witchcraft to maim livestock or some other such thing and thus sentenced to lesser punishments.

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<sup>28</sup> ASSI 35/16/2, no. 10 (see also nos. 7, 8, 9). This pushes a bit further a point raised recently by Garthine Walker in ‘The Strangeness of the Familiar: Witchcraft and the Law in Early Modern England’, *The Extraordinary and the Everyday in Early Modern England*, ed. Angela McShane and Garthine Walker (Basingstoke: Palgrave Macmillan, 2010), pp. 105–24. Walker demonstrates that in England, witchcraft was not a ‘*crimen exceptum*’ but indeed a rather ‘unexceptional’ crime, tried like other felonies, whatever our own difficulties in understanding how to deal with a crime that just could not have happened. In these homicide indictments, it is worth emphasising, the witchcraft is secondary to the killing being tried, mentioned much as other homicide indictments might mention a staff, club, knife or other weapon.

A few things, then, can be concluded from this survey of how women killed and were thought to have killed. Significantly fewer women than men killed other people. True, some killings presumably were not detected, but we have no reason to think that killings by women were less likely to be discovered than men's, at least not in numbers sufficient to account for such a significant difference in indictment levels. True, too, that for some offences, women might be treated in ways that led to lower levels of accusations reaching the courts: for some minor offences, married women were assumed to be acting at their husbands' direction and not treated as legally responsible individuals, but not in cases of homicide. For many offences, victims or bystanders had some choice in how, whether and where to lay charges against a suspected offender and may have used that freedom in ways that favored female criminals; again, though, it is difficult to imagine that this sort of informal discretion accounted for any significant difference in indictment levels for a crime such as homicide.<sup>29</sup> As a group, women simply engaged in less lethal violence than did men.

That more men than women killed other people is rooted in some ill-definable mix of social roles, cultural conditioning and biology. Statements that 'women were less violent than men' must be treated carefully, though. Individually, of course, some women could be every bit as vicious or physically aggressive as any man.<sup>30</sup> The family and friends of Thomas Blackbone and Richard Carver (two adults) might not have thought women any less brutal than men: Mary Crowche strangled the first with her bare hands, and Mary Hartnopp hacked the second to death

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<sup>29</sup> See Kilday's survey of the debates on women's criminality, "'Women are but Men's Shadow'", for the general consensus that indictment levels for serious crimes are at least a rough reflection of differences in actual behaviour. That prosecution levels for some types of violent crimes could vary from one court to another is explored in Manon van der Heijden, 'Women, Violence and Urban Justice in Holland, c. 1600–1838, *Crime, Histoire et Sociétés* 17 (2013), pp. 71–100.

<sup>30</sup> A point also made by Jennine Hurl-Eamon in *Gender and Petty Violence* and Anne-Marie Kilday in "'Women are But Men's Shadow'", p. 65. See, too, Trevor Dean's 'Theft and Gender in Late Medieval Bologna', *Gender & History* 20 (2008), pp. 399–415; though focusing on a non-violent form of criminal behaviour, Dean helpfully notes that historians have been too quick to emphasise not just the quantitative but also qualitative differences in behaviour, suggesting the value of focusing instead (or as well) on the similarities.

with an axe.<sup>31</sup> It is worth emphasising that women were by no means missing from the ranks of those charged with impulsive, brutal beatings and bloody stabbings and, indeed, that they were more likely to engage in these sorts of killings than the supposedly distinctively ‘feminine’ sorts of killings. Witchcraft killings were the largest single category of deaths attributed to female killers, but looking at Table 6, and setting aside the supposed victims of witchcraft, poison and methods unknown, one is left with many more victims of women killed with cudgels, knives, and bare handed beatings.

Yet one notes that women were not just brought up on homicide charges in smaller numbers than men, but also that they were thought to dominate in particular types. While the records often make it difficult to distinguish planned from unplanned killings, for those that clearly did involve forethought – the deaths by witchcraft and poison – women outnumbered men. Women were thought to dominate amongst those charged with fatalities that involved insidious, pre-planned methods against which defence was difficult. To summarise, then, women were charged more often than men with multiple victims; they killed more infants and dependants than did men; they dominated amongst those charged with planned, forethought killings. That is to say, women were vastly overrepresented amongst cold-blooded killers. Given their implication in only about a fifth of all homicides, women were disproportionately represented amongst those deemed to have committed murder rather than the less serious crime of manslaughter.

Definitions of what counted as murder changed subtly but significantly in England over the sixteenth and early seventeenth centuries. Early in the sixteenth century, statutes and other legal documents formally recognised what lay jurors had already seen as a difference between more and less abhorrent forms of homicide by identifying the first as murder and the second as

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<sup>31</sup> ASSI 35/34/2, m. 32; ASSI 35/27/6, m. 11 (‘securi’, possibly a cleaver).



manslaughter. Malice and premeditation supplemented an earlier emphasis on secrecy as the defining elements of ‘murder’.<sup>32</sup> As manslaughter became formalised, the distinguishing feature between it and murder seemed initially to be suddenness or evidence of prior planning, and then between killings in ‘hot’ or in ‘cold blood’. Both suddenness and ‘hotness’ of the blood served to mark some killings as less heinous than others.<sup>33</sup> Sir Francis Bacon described this ‘privilege of passion’ by noting that ‘Our law hath made a more subtle distinction between the will inflamed and the will advised, between manslaughter in heat and murder upon premeditated malice or cold blood.’<sup>34</sup> Sir Edward Coke defined manslaughter as those killings done when ‘the heat of the blood, kindled by ire, was never cooled’.<sup>35</sup> Both murder and manslaughter remained capital crimes, but punishment for the unplanned, hot-blooded act of manslaughter could more easily be avoided, at least for those men who could read sufficiently to claim benefit of clergy. That this legal fiction, which allowed the mitigation of death sentences for the form of homicide deemed less serious, was not available to women until the 1690s is one obvious factor working against them.<sup>36</sup> Another perhaps not yet adequately noted factor is the very physiological notion on which the distinctions between hot-blooded manslaughter and cold-blooded murder rested and how it mapped on to notions of male and female difference.

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<sup>32</sup> For changes to homicide law in this period, see in particular T.A. Green, ‘The Jury and the English Law of Homicide, 1200–1600’, *Michigan Law Review* 74 (1976), pp. 462–87; J.H. Baker, *Introduction to English Legal History* (London: Butterworths, 2002, 4<sup>th</sup> edn), pp. 529–31; J.G. Bellamy, *The Criminal Trial in Later Medieval England: Felony Before the Courts from Edward I to the Sixteenth Century* (Toronto: University of Toronto Press, 1998), pp. 57–69; W.D. Sellar, ‘Forethocht Felony, Malice Aforethought and the Classification of Homicide’, *Legal History in the Making*, ed. W.M. Gordon and T.D. Fergus (London: Hambledon, 1991), pp. 43–60; Kesselring, *Mercy and Authority*, pp. 102–7.

<sup>33</sup> On early modern understandings of manslaughter, and its relationship to both ‘chaude melle’ and ‘chance melle’ killings, see especially Baker, *op. cit.* See, too, Edward Coke, *Third Part of the Institutes* (London, 1669), pp.54–6; Matthew Hale, *Historia Placitorum Coronae*, ed. Sollom Emllyn (Philadelphia, 1847), pp. 471–5; William Blackstone, *Commentaries on the Laws of England* (Oxford, 1765–69), Book IV, ch. 13.

<sup>34</sup> Francis Bacon, *The Charge of Sir Francis Bacon...Touching Duels* (London, 1614), pp. 21, 20

<sup>35</sup> Coke, *Third Part*, p. 55.

<sup>36</sup> A discrepancy explored nicely in Walker, *Crime, Gender and Social Order*, 113ff. From 1624, women could claim benefit of clergy for minor thefts (21 Jas 1, c. 6); only from 1692 could they claim clergy on par with men; with the reading test abolished in 1706, thereafter all men and women had equal access to the benefit, for a first instance of one of a shrunken list of offences. See Beattie, *Crime and the Courts*, p. 452.

‘Cold-blooded’ and ‘hot-blooded’ persist as metaphors today, but meant rather more in the pre-modern era with its climatic model of the human body. It was precisely their cold-bloodedness that made women women, according to the medical understandings of the day. Humoural theory inherited from Aristotle and Galen explained human nature and human health with reference to the balance of the four fluids of phlegm, blood, cholera and melancholy, and deemed heat the vital differentiating factor between men and women. As one medical tract of the era explained, ‘the natural beginning of all growing and living things is heat’. Male and female are shaped by the ‘perfection of heat’, with men the hotter of the two.<sup>37</sup> As another explained, ‘we know that the male and the female are both of one kind’, though the hotter variants are male and the females the colder, a difference necessary for generation.<sup>38</sup> Whether any given writer treated men and women as members of ‘one sex’, at different points on a spectrum that allowed many exceptions to the norms, or as fundamentally dimorphic, they saw heat as the key.

Moreover, as everyone knew, ‘it be plentifully proved by Galen that the manners of the mind do follow the temperature of the body.’<sup>39</sup> The climatic model allowed variety: some men manifested the attributes of a colder body than others, and some women might well be like

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<sup>37</sup> John Jones, *A Brief, Excellent and Profitable Discourse of the Natural Beginning of all Growing and Living Things* (London, 1574), sigs. A3v, D4r.

<sup>38</sup> Helkiah Crooke, *Mikrokosmographia* (London, 1616), p. 270. For pre-modern medical views of male and female difference, see the now classic work by Thomas Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge, Mass.: Harvard University Press, 1992) and a number of the works that seek to refine and nuance his view of a shift from a ‘one-sex model’ to a ‘two-sex model’ while further clarifying the climatic model of the body that underlay various notions of sexual differentiation, including Joan Cadden, *Meanings of Sex Difference in the Middle Ages: Medicine, Science and Culture* (Cambridge: Cambridge University Press, 1993), esp. pp. 169–88; Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth Century England* (New Haven: Yale University Press, 2003); Alexandra Shepard, *Meanings of Manhood in Early Modern England* (Oxford: Oxford University Press, 2003), esp. pp. 48–69; Lynda L. Coon, ‘Somatic Styles of the Early Middle Ages’ *Gender & History* 20.3 (2008), pp. 463–86 and Dror Wahrman, ‘Change and the Corporeal’, pp. 584–602. On the concept of vital or innate heat (which was generally differentiated from elemental heat), and the iatrochemical challenges to this ancient theory that began to take shape over the seventeenth century, see Everett Mendelsohn, *Heat and Life: The Development of the Theory of Animal Heat* (Cambridge, Mass.: Harvard University Press, 1964), esp. pp. 8–66.

<sup>39</sup> Jones, *Natural Beginning*, sig. E1v.

Maude Rye, 'of a manly disposition and hot spirit far unfitting her sex'.<sup>40</sup> Alongside the broad general truth that men were defined by heat and women by its relative lack, the complexions and temperaments of individuals varied depending on age, food, drink, exercise, music, climate and more. Bodies were incredibly porous, susceptible to environment. Given this porosity, maintaining the 'temperate ideal' took great effort.<sup>41</sup> And yet, it was 'of distemperature of the body, whether natural from the womb or accidental [that] evil passions spring.'<sup>42</sup>

That cold-blooded females were more likely to commit cold-blooded killings only made sense, in this view. That men would be responsible for more deaths than women, overall, in the heat of their inflamed passions also made sense. Helkiah Crooke, physician to King James VI/I, addressed the confusion over women's seeming abundance of anger but relative coldness of blood. He posited a difference between anger and wrath. What women exhibited was a fretful, petty, petulant kind of anger. 'Anger', he wrote, 'is a disease of a weak mind which cannot moderate itself but is easily inflamed, such are women, children and weak and cowardly men.' Hot-blooded men were more likely to exhibit wrath, which could have positive manifestations but could also be a problem if not reined in by reason. Young men, whose heat remained undimmed by age, had particular difficulties moderating their wrath.<sup>43</sup> As legal writer William Lambarde explained, the more merciful treatment of manslaughter took into account 'the

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<sup>40</sup> STAC 5/G2/5.

<sup>41</sup> On the environmental challenges to men's maintenance of the 'temperate ideal', see Shepard, *Manhood*, pp. 64–8.

<sup>42</sup> While these quotations come from Jones, *Natural Beginning*, sigs. E1r-v, the sentiments are repeated with only minor variation in other works of the era; see, for example, Thomas Wright, *The Passions of the Minde in General* (London, 1630), p. 38.

<sup>43</sup> Crooke, *Mikrokosmographia*, pp. 272–6. See, too, Gwynne Kennedy, *Just Anger: Representing Women's Anger in Early Modern England* (Carbondale: Southern Illinois University Press, 2000). The scholarship on early modern emotions is now sizable; for an introduction, see, also, Fay Alberti, *Matters of the Heart: History, Medicine, and Emotion* (Oxford: Oxford University Press, 2010); Penelope Gouk and Helen Hills, eds., *Representing Emotions: New Connections in the Histories of Art, Music and Medicine* (Aldershot: Ashgate, 2005); Thomas Dixon, *From Passions to Emotions: The Creation of a Secular Psychological Category* (Cambridge: Cambridge University Press, 2003); Gail Kern Paster, *Humoring the Body. Emotions and the Shakespearean Stage* (Chicago: University of Chicago Press, 2004); Gail Kern Paster, et al, eds., *Reading the Early Modern Passions: Essays in the Cultural History of Emotion* (Philadelphia: University of Pennsylvania Press, 2004).

infirmity of man's nature', specifically the quick temper and ready violence associated with 'manhood'.<sup>44</sup> Early modern writers understood the passions to have both corporeal and cognitive aspects, insisting that the humoral, hydraulic pressures could be controlled.<sup>45</sup> Mastering those passions marked an ideal man, but jurists and jurors saw the great difficulty in doing so as reason to mitigate charges of murder.

Over the early seventeenth century, provocation began to supplement hotbloodedness as a marker of manslaughter. After a key case in 1600, as J.H. Baker has noted, the nature of the provocation came to matter more so than simply the heat of the blood, for judges at least.<sup>46</sup> John Downname's *Treatise of Anger* (1609) sought to distinguish between just and moderate anger and the unjust and immoderate. Anger was 'an affection, whereby the blood about the heart [was] heated, by the apprehension of some injury offered to a man's self or his friends'; when directed at proper ends and used rationally, it made a man more 'constant and resolute'. Too often, though, it resulted in 'a wrongful and an unreasonable desire of revenge, stirred up in us by unjust causes'.<sup>47</sup> Judges, too, tried to clarify this line. As Jeremy Horder has explained, they set out grounds for what they considered sufficiently, legitimately provocative to justify moderating a charge of murder to manslaughter; words alone should not count, but insulting assaults on one's person would, for example.<sup>48</sup> All this talk of moderation – whether of the law or of the passions – focused on men.<sup>49</sup> The very heat that made them men made them more likely to be violently angry than their cold-blooded counterparts. Women in early modern England killed far

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<sup>44</sup> William Lambarde, *Eirenarcha* (London, 1599), p. 244.

<sup>45</sup> See Linda Pollock's 'Affective Life in Shakespeare's England', forthcoming in *The Oxford Handbook of the Age of Shakespeare*, ed. Malcolm Smuts.

<sup>46</sup> *Watts v. Brains* (1600), 78 *Eng Rep* 1009; Baker, *Introduction*, 530.

<sup>47</sup> John Downname, *Treatise of Anger* (London, 1609), p. 205.

<sup>48</sup> Jeremy Horder, *Provocation and Responsibility* (Oxford: Clarendon Press, 1992), pp. 23–42. See also Horder, 'The Duel and the English Law of Homicide', *Oxford Journal of Legal Studies* 12 (1992), pp. 419–30.

<sup>49</sup> On the broader significance of discourses of 'moderation' in early modern England, see Ethan Shagan, *The Rule of Moderation: Violence, Religion and the Politics of Restraint in Early Modern England* (Cambridge: Cambridge University Press, 2011).

fewer people than did men, and contemporaries knew it. Contemporaries would have been less confident that women *murdered* fewer people, however. While women killed less often than did men, their very nature made them likelier to commit particular kinds of killings that came to be deemed the most egregious, according to contemporary views. As Garthine Walker has observed, manslaughter developed as a ‘distinctly *masculine* form of homicide’ as ‘societal concepts of honour and violence had become conflated with legal ones to make manslaughter a gendered category’.<sup>50</sup> Medical concepts mattered, too. When jurists such as Coke used ‘the heat of the blood’ to distinguish some kinds of killings from others, understandings of ‘natural’ differences between men and women worked their way into the law and its application.

People in the sixteenth and seventeenth centuries included killings by witchcraft and of infants in their understandings of homicide; should we? Whether we ought to include such accusations when examining the history of lethal violence depends on the questions we ask and what we want to know. If we want to understand the meanings and subjective experiences of violence in the past – subjective experiences that shaped laws and trials and executions – then yes. Whether discussing homicide as sin, sickness, or as crime – whether in tracts theological, medical, or legal – the early modern English included killings by means of witchcraft and of infants. They executed people for such crimes, and in great numbers.

Of 713 accused female killers for whom we can be fairly confident of the trial jury verdict, 49% were found not guilty; 51% were found guilty.<sup>51</sup> Of the group of 1348 men for whom we can determine a jury verdict, in contrast, only 33% were found not guilty or convicted of a non-culpable form of homicide, such as killing in self-defence. Juries found 67% of these men guilty of culpable homicide, a conviction rate that seems significantly higher than that for

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<sup>50</sup> Walker, *Gender and Social Order*, p. 124.

<sup>51</sup> Not all of the guilty would have hanged; some would have received pardons, for example. The numbers given here should be read exactly as written: numbers of guilty verdicts, not numbers of executions.

women, until we realise that only about 30% of the men in this set of records were found guilty of murder. Slightly more than half of them were found guilty only of manslaughter, and thus most likely able to evade the punishment of death. Understandings of the bodies of men and of women meant that evading death through the charge of hot-blooded manslaughter was not an option for female killers. As Garthine Walker noted in her study of court records in early modern Cheshire, a much greater proportion of the women charged with homicide faced sentences of death than did men<sup>52</sup> – a fact that accords with the notion that they committed the kinds of killing deemed most heinous, crimes to which their very nature was thought to make them more susceptible. A greater percentage of women than men received pardons, but not in numbers sufficient to make up for the difference.<sup>53</sup>

If we were to exclude indictments for killings of infants and by means of witchcraft, moreover, we would miss one of the more significant changes in indictment levels over these years. While women constituted about 20% of all people implicated as killers over the period as a whole, responsible for about 25% of all the killings, the proportion of homicides attributed to them increased dramatically after the middle of the sixteenth century. Amongst those named as killers in this set of records, women went from single digit percentages early in the century to a high of 37% in the 1570s and 1580s. If we turn to victim counts, female killers were identified as responsible for as many as 45–46% of all bodies in the peak decades of the 1570s and 1580s. These increases were driven very largely (though not entirely) by charges that women had murdered their infants or by means of witchcraft. [*See Figure 1*].

The timing of the increases makes one wonder if source issues are partly responsible: the early sixteenth-century data derives mainly from coroners' inquests and indictments in the gaol

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<sup>52</sup> Walker, *Crime, Gender and Social Order*, pp. 113ff.

<sup>53</sup> Kesselring, *Mercy and Authority*, pp. 77–9.

delivery files returned to King's Bench from all areas of the country, whereas from mid-century, the data comes largely from the inquests and indictments preserved in the assize files of the five 'Home Counties'. It is possible that some crimes, and criminals, were more likely to appear in one of these legal fora than the other. These are changes in proportions, too, not in absolute numbers: thus, differences in men's homicidal behaviour may well play a part, with men over time less often killing in groups with multiple principals. But given the correspondence between the timing of the increases and the passage of the 1563 Witchcraft Act, in particular, as well as what we know of generally rising concerns about the financial and spiritual perils of bastard bearers, the increases manage to be at once both shocking and not all that surprising. We have known for some time that the overall rates of felony indictments increased late in the sixteenth century;<sup>54</sup> it seems that the proportion of women amongst those charged with the most serious offences increased, too. Concerns about what women were doing – about the deeds to which their natures were thought to make them particularly susceptible – manifested themselves in much higher rates of indictment for murder in the later sixteenth and early seventeenth centuries. For certain purposes, we may well want to focus on the percentage of victims attributed to women once witchcraft killings are removed (16%), or even on the percentage of victims attributed to women once both witchcraft and infant killings are deducted (7%). But to understand the experiences and perceptions of homicidal violence and women's place within them in an era that developed highly gendered and long lasting definitions of homicide, we should not too quickly impose our own standards of 'real' homicides.

When we look at whom women and men were accused of killing, and how, and at how jurists and jurors defined and responded to those killings, we see clear evidence of cultural and

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<sup>54</sup> See J.A. Sharpe, *Crime in Early Modern England, 1550–1750* (London: Longman, 1999, 2<sup>nd</sup> edn), pp. 82–6 and J.S. Cockburn 'Patterns of Violence in English Society: Homicide in Kent, 1560–1985', *Past and Present* 130 (1991), pp. 70–106.

social factors at work. If we want to understand change over time – in shifting rates of homicidal violence, for instance – these cultural and social factors will be a necessary focus. Differences as stark and persistent as those between men’s and women’s lethal violence, though, seem to demand explanations drawn at least partly from ‘nature’. Concerns about the sometimes crassly ideological examples of biological determinism that appear in the popular press, and in some ostensibly scholarly publications, should not scare us away from talk of the natural, or of the body and its place in history. Yet engaging with the early modern history of homicide offers a salutary warning that a turn to biology will not release us wholly from history, from change or from culture. Biology may seem the relatively stable substrate, but the biological explanations on offer are themselves historical. Whether natural differences are understood in terms of humours and heat or hormones and evolutionary psychology, cultural norms remain embedded in those understandings, sometimes with wholly unnatural implications. Recent works by feminist philosophers of science question the very notion that nature and culture can be separated.<sup>55</sup> While they have rather grander ontological and epistemological projects in hand, we might well take heed from them and move beyond attempts to prioritise the socio-cultural or the biological when studying propensities to violence. At the very least, the nature of the records we use should prompt us to think carefully about the relationships between sex and homicide and gender and murder. Murder is clearly, brutally about bodies and brute material facts. But it is also partly discursive, a matter of construction. What we define as murder in the abstract varies across time. How we apply those abstractions to individual cases depends on interpretations of intentionality, provocation, circumstance – and sex.

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<sup>55</sup> See, for example, Karen Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning* (Durham: Duke University Press, 2007) and Evelyn Fox Keller, *The Mirage of a Space Between Nature and Nurture* (Durham: Duke University Press, 2010).



**Table 1: Killer's Gender**

	Frequency	Percent
Unknown	27	.6
Female	825	18.9
Male	3522	80.5
Total	4374	100.0

**Table 3: Victim's Age (Female Killers)**

	Frequency	Percent
unspecified/adult	441	48.5
infant	316	34.9
child between 1 and 14	150	16.6
Total	907	100.0

**Table 2: Victim's Age (All Victims)**

	Frequency	Percent
Unspecified/Adult	3036	84.3
Infant	336	9.3
Child between 1 and 14	229	6.4
Total	3601	100.0

**Table 4: Victim's Gender (All Killers)**

	Frequency	Percent
Unknown	46	1.3
Female	696	19.3
Male	2859	79.4
Total	3601	100.0

**Table 5: Victim's Gender (Female Killers)**

	Frequency	Percent
Unknown	37	4.1
Female	407	44.9

Male	463	51.0
Total	907	100.0

**Table 6: Weapon or Means  
(Victims of Female Killers)**

	#	%
unknown	40	4.4
knife, dagger	57	6.3
sword, rapier	8	.9
agricultural or work tool	17	1.9
staff or cudgel	43	4.7
firearm	4	.4
unarmed beating, kicking	99	10.9
strangling, suffocating	151	16.6
drowning	46	5.1
poison	34	3.7
burning	9	1.0
witchcraft	342	37.7
other	57	6.3
Total	907	100.0

**Table 7: Weapon or Means  
(All Victims)**

	#	%
unknown	162	4.5
knife, dagger	693	19.2
sword, rapier	494	13.7
agricultural or work tool	313	8.7
staff, cudgel	558	15.4
firearm	121	3.4
unarmed beating, kicking	288	7.9
strangling, suffocating	182	5.1
drowning	61	1.7
poison	56	1.6
burning	19	.5
vehicle	5	.1
witchcraft	373	10.4
other	280	7.8
Total	3601	100.0

Figure 1:

