’Murder’s Crimson Badge’[1]: Homicide in the Age of Shakespeare

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K.J. Kesselring

Historicizing homicide in late sixteenth and early seventeenth-century England, this paper examines changes in its incidence, legal definitions, and reporting in ‘true crime’ pamphlets. In addition to surveying the punishment of such relatively new forms of homicide as death by witchcraft and by dueling, it traces the developing distinctions between murder and manslaughter, including the new emphasis jurists placed on provocation over hotbloodedness. Highlighting novelties in a story that can seem unchanging, it argues that murder’s meanings proved particularly malleable in these years, not least in becoming clothed more completely in a rhetoric of ‘public’ interests.

Keywords: homicide, murder, manslaughter, punishment, provocation, witchcraft, duel, pamphlets.

Reporting on a recent court session in Carmarthen, in September of 1639, Tym Tourneur observed that the judges had condemned two men to die: one for being a ‘mountain thief’ and the other for wilfully murdering his wife. A problem then arose. ‘Neither of the sheriffs could get a hangman of the male sex’, Tourneur noted, ‘but at last procured a woman in man’s apparel which did it very artificially.’[2] Here we have the very odd instance of a woman doing a job usually reserved for men, and doing so in masculine dress. Such gender bending was not in itself unusual, but would most often have been observed on the stage, with boys playing the parts and wearing the dress of women. When Tourneur reported that the hang(wo)man killed the men ‘very artificially’, he presumably meant ‘skillfully’, but we might be forgiven if the word also conjures up the various other connotations of art and artifice.

[1] *Henry VI, pt 2*, 3.2.200.
[2] Henry H. Huntington Library, EL 7288. [All other manuscript references are to The National Archives: Public Record Office unless otherwise noted.]

Tourneur's report thus calls to mind the oft-noted similarities between the scaffolds of punishment and those of players. In the age of Shakespeare, both presented many murders to the public's attention. Both presented fictions, of a sort: stories constructed from messy bits of reality that in turn had material effects. In both, much turned on constructions of motivation. Like the theatre, too, both the incidence and punishment of homicide underwent significant developments in this era. Murder can seem unchanging, as old as time; indeed, contemporaries sometimes prefaced accounts of killings with reference to Cain. Yet in their discussions of different types of killing, a few writers also referenced the novelty of distinctions they drew: while 'murder' had long been reserved for the most serious subset of homicides, writers noted that 'at this day' they defined it in new ways, for example, in distinguishing it from manslaughter and other killings.[3] (And, interestingly, they often included 'homicide done by justice' in their categorizations of the many ways in which one person could kill another, though among those homicides they considered justifiable.) The incidence of homicide changes from one time and place to another; so, too, do the distinctions drawn by law between one killing and another. How people sorted individual killers into the law's categories proved contested and changeable, as well. To be sure, whatever the varying attempts to comprehend and contextualize a killing, one fact remained unchanged: a person lay dead. Even though Tourneur's hangman was a woman, or even if the killer she executed had killed his wife inadvertently rather than intentionally, one effect of their actions stayed the same: an individual's life ended violently and prematurely. Yet, those encountering the basic, brutal fact of death deal with it 'very artificially' and in ways that change over time. Homicide has a history.

[3] See, e.g., John Wilkinson, *A Treatise Collected out of the Statutes…concerning the office and authorities of coroners and sherifes* (London, 1618), 10.

Murder's meanings are never static, but they proved particularly changeable in the age of Shakespeare. Pointing to the law's fictional elements is by no means novel, but may yet help us recognize how very unstable and problematic the category of 'murder' proved to be in the late Elizabethan and early Stuart years. The decades of Shakespeare's career roughly correspond to what seems to have been a spike in the incidence and prosecution of homicide, within an otherwise declining trajectory of fatal interpersonal violence. These years also saw refinements to legal definitions of murder and manslaughter, definitions that had very real consequences as those men found guilty only of the lesser charge of manslaughter could try to avail themselves of the legal fiction of 'benefit of clergy' to evade the noose.[4] They witnessed, too, a profusion of printed discussions of homicide, most notably in the cheap 'true relation' murder pamphlets, which helped make murder more a matter of public interest. The pages that follow provide an overview of what is known of the pattern of homicide and its punishment in these years, highlighting along the way novelties, changes, and moments of artifice in what can sometimes seem a story as old as time. This can, at minimum, serve to enrich our understanding of the context in which the murderous content of early modern drama was composed and consumed. Identifying the influences that shaped to what or to whom 'murder's crimson badge' applied can also afford some insight into the broader political and cultural trends of the age.

I.

In 1981, T.R. Gurr compiled estimated homicide rates from a number of local studies of crime to produce a graph that showed an unmistakable downward trend over a span of centuries. While

[4] Over the sixteenth century, clerics' long-standing immunity from trial in secular courts became a device by which any man committing one of a shrinking list of offences for the first time could escape capital punishment. After a statutory change in 1575, men convicted of a 'clergyable' offence 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. See K.J. Kesselring, *Mercy and Authority in the Tudor State* (Cambridge: Cambridge University Press, 2003), 212-4.

precise numbers cannot be had, homicide rates in the thirteenth century seemed about twice as high as those in sixteenth- and seventeenth-century England, with rates of about 20 killings per 100,000 people per year dropping to fewer than 10 per 100,000 per year, which rates in turn proved significantly higher than those of the eighteenth century and beyond.[5] More recently, Manuel Eisner has fleshed out Gurr's homicide graph with the results of more detailed quantitative studies and confirmed the general picture of a dramatic decline in homicide rates. He locates the beginning of the long slide in the mid-sixteenth century, though noting that the lack of late fifteenth and early sixteenth-century assize records leaves the contours of the decline poorly delineated.[6]

Yet, while the big picture is one of decline, studies of those criminal court records that do begin to survive from the reign of Elizabeth forward suggest a brief but notable interruption of this downward trend, most marked from the 1580s to 1620s. With due caveats about imperfect record survival and imprecision in population estimates, James Cockburn's work on Kentish records suggests a homicide rate of fewer than 4:100,000 for the 1560s and 70s, with an increase to 6:100,000 dating from the 1580s, and no lasting tendency to decline until the 1680s.[7] James Sharpe's work on Cheshire records indicates a significant increase in indictments for all sorts of felonies, including homicide, from the 1580s, peaking in the 1620s, and declining thereafter.[8] Work on the Home Circuit counties in general also indicates an increase in the prosecution (and thus most likely the incidence) of homicide from the 1580s to 1620s.[9]

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[5] T.R. Gurr, 'Historical Trends in Violent Crime: A Critical Review of the Evidence', *Crime and Justice* 3 (1981): 295-353; see also P.E.H. Hair, 'Deaths from Violence in Britain: A Tentative Secular Survey', *Population Studies* 29 (1971): 5-24.
[6] Manuel Eisner, 'Long-Term Historical Trends in Violent Crime.' *Crime and Justice* 30 (2003): 83-142.
[7] J.S. Cockburn 'Patterns of Violence in English Society: Homicide in Kent, 1560-1985', *Past and Present* 130 (1991): 70-106, esp. 78.
[8] James Sharpe, *Crime in Early Modern England, 1550-1750* (London: Longman, 2nd ed., 1999, 82, 86.
[9] *Ibid*, 83-4.

Executions generally followed suit, though at much higher rates: Essex, for example, saw about 6 criminal homicides and an average of 26 executions a year between 1597 and 1603.[10] Cheshire, which saw its highest numbers of indictments for homicide in the 1620s, with roughly 110 charges laid in those years, also witnessed its highest numbers and proportions of offenders executed in the same decade, with 166 people hanged for felonies of all sorts, 22 per cent of the total number accused.[11] In Middlesex, James Cordy Jeaffreson's research found an annual average of 70.4 people hanged in each of the ten years after 1609—a 'penal death rate' that becomes all the more striking when we realize that an average of only 10.3 people were charged with murder and manslaughter in each of those same years.[12] Most of the condemned suffered for crimes against property, not homicide. In early Stuart Middlesex, as elsewhere in these years, one stood a better chance of dying a violent death at the hands of the authorities than at those of common killers. Moreover, as Philip Jenkins has noted, evidence suggests that the English 'might have hanged more people between 1580 and 1630 than in *all* subsequent decades up to the virtual abolition of capital punishment in 1967'.[13]

When Lawrence Stone tried to extrapolate from estimated homicide rates to discuss levels and perceptions of violence more generally, he provoked a spirited debate that ended with many historians of early modern England feeling more comfortable discussing the culturally specific meanings of violence rather than levels or rates.[14] Certainly, the invaluable work of

[10] *Ibid*., 92 and J.S. Cockburn, ed. *Calendar of Assize Records, Elizabeth I: Essex* (London: H.M.S.O., 1975-1980), passim.
[11] Sharpe, *Crime in Early Modern England*, 87, 91, 92.
[12] J.C. Jeaffreson, *Middlesex County Records*, 4 vols (London: Middlesex County Records Society, 1886-92), 2.291-300 and 3.xx.
[13] P. Jenkins, 'From Gallows to Prison? The Execution Rate in Early Modern England', *Criminal Justice History* 7 (1986): 51-71, quote at 52.
[14] Lawrence Stone, 'Interpersonal Violence in English Society, 1300-1980,' *Past and Present* 101 (1983): 22-33; J.A. Sharpe, 'The History of Violence in England: Some Observations', *Past and Present* 108 (1985): 206-15; Stone, 'A Rejoinder', *ibid*., 216-24; Cockburn, 'Patterns of Violence', 70-106; Susan Amussen, 'Punishment,

Susan Amussen and others should leave us leery of seeing homicide rates as a measure of experiences or perceptions of violence.[15] But for present purposes, we might well remind ourselves that the incidence of interpersonal homicide did fall over the early modern period, and that the late sixteenth and early seventeenth centuries—roughly, the 'age of Shakespeare'—seem to have witnessed an interruption in that decline, with an increase in both instances of homicidal violence coming before the courts and from the courts.

Moreover, while insufficient records remain to allow precise calculations of homicide rates, enough survive to serve as a sample of the larger, deadlier whole and thus to give insight into the particular kinds of killings most commonly tried at law. A set of records from the reign of Elizabeth provides information on 1158 people identified by indictment or inquest juries as victims of homicide and the 1235 people initially named as their killers.[16] True, trial juries later decided that some of these supposed victims died of natural causes, and we can be confident that even more did so, too. Of the people initially identified as killers, trial juries later deemed a good number not guilty, and we might well think others not guilty either. Of the 847 cases in this dataset for which verdicts survive, for example, juries found 62% of the accused guilty of murder or manslaughter, but found 6% guilty only of excusable forms of homicide (such as

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Discipline and Power: The Social Meanings of Violence in Early Modern England', *Journal of British Studies* 34 (1995): 1-34.

[15] Amussen, 'Punishment, Discipline and Power'.

[16] The database was compiled from records calendared in the following: *Calendar of Nottinghamshire Coroners' Inquests, 1485-1558*, ed. R. F. Hunnsett (Nottingham: Thoroton Society, 1969) and *Sussex Coroners' Inquests, 1558-1603* (London: H.M.S.O, 1996); *Middlesex County Records*, ed. Jeaffreson [hereafter designated as MCR], vol. 1; *Calendar of Assize Records: Home Circuit Indictments, Elizabeth I*, ed. J. S. Cockburn (London: HMSO, 1975-82), volumes for Kent, Sussex, Surrey, Hertfordshire and Essex [hereafter designated as 'CAR + county name']; and few from 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. Anne Cumming's assistance in entering the data was invaluable. 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 in Elizabethan England.

misadventure or self-defence), and acquitted 32%. Moreover, some modern commentators prefer not to include infanticidal mothers in counts of killers; and presumably no modern commentators would agree that those people thought to have killed by means of witchcraft actually did so. Their early modern contemporaries, though, most certainly did deem such people killers and killed them in turn. As such, both are included here. Reasons for caution in how one uses these numbers certainly exist, but as an indication of the business that came before the courts, they can be revealing.

Of these 1158 people identified as victims, 28% (325) were female. Twelve per cent (138) were infants; a further 10.5% (122) were identified as children. The majority of the victims, then, were adult men, as were most of the killers: of the 1235 supposed killers, the sex of twelve is unknown, 31% (385) were women and 68% (838) were men.

For only 338 of the victims can a relationship with their killers be firmly identified. Of these, 221 sets of purported victims and killers shared familial or household bonds. If we can assume that familial and master-servant relationships are noted in the indictments or inquests when they existed, this would suggest that only 19% of these homicides 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, and also with what one might expect based on a reading of the lurid murder pamphlets of the era with their focus on domestic dangers.[17]

[17] See especially Frances Dolan, *Dangerous Familiars: Representations of Domestic Crime in England, 1550-1700* (Ithaca: Cornell University Press, 1994) and Vanessa McMahon, *Murder in Shakespeare's England* (London: Hambledon, 2004). See also J.A. Sharpe, 'Domestic Homicide in Early Modern England', *Historical Journal* 24 (1981): 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): 70-89.

Table 1: Household/Familial Killings

Relationship	**Number**	**Verdict Unknown**	**Acquitted**	**Guilty (murder and manslaughter)**
Husbands killing wives	21	5	4	12 (57%)
Wives killing husbands	10	0	5	5 (50%)
Parents killing children	139	18	48	73 (52.5%)
Masters killing servants	29	5	16	8 (27.6%)
Servants killing masters	2	0	0	2 (100%)
Other familial	20	4	6	10 (50%)
Total	*221*	*32*	*79*	*110 (49.8%)*

This set of domestic killings includes accusations against ten women for killing their husbands and twenty-one men for killing their wives. Of the widows, juries acquitted and convicted in equal numbers. Of the widowers, verdicts for five are unknown, four were acquitted, one was found guilty only of manslaughter and allowed to go free, and eleven were convicted of murder.[18] While more men than women killed their spouses in this sample, then, juries proved at least as likely to find the one as the other guilty. Most of these deaths seemed sad, simple domestic tragedies, coming in the midst of quarrels or beatings of a common sort. Joan Saxton, for example, died after her husband threw a chamber pot at her during an argument; Gervase Crooche died when his wife fought back during a beating with a knife she grabbed from the dinner table.[19] Relatively few seem to have been premeditated. Only three spouses in this sample were described as dying as a result of the sort of planning by adulterous partners so prevalent in the print and plays of the age: Robert Stacy and his new wife Agnes were accused, but later acquitted, of having poisoned his first wife.[20] Petronella and Thomas Hayward,

[18] *Cf*. Garthine Walker, *Crime, Gender and the Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003), 140.
[19] MCR i. 221 [London Metropolitan Archives (hereafter LMA) MJ/SR/0323, m. 15]; CAR Kent no. 1048 [ASSI 35/22/3, mm. 22].
[20] CAR Sussex no. 1403 [ASSI 35/35/7, mm. 53, 72].

however, went to their deaths for having fed both of their previous spouses ratsbane.[21] Parents proved more dangerous than partners. Some 139 infants and children were said to have died at their parents' hands, the vast majority newborns killed by their mothers; only nine men were indicted for killing their own infants. Of the 121 parents charged with killing infants for whom verdicts are known, 40% (forty-eight) were acquitted, but 60% (seventy-three) were found guilty, even if many later managed to escape by means of remands. In contrast, these records note no parents as having been killed by their offspring. Besides these killings of spouses and children, twenty more cases seem to have been familial killings, with the victim and killer related by either blood or marriage.

Another thirty-one killings happened between masters and servants. In these records, only two servants were accused of killing their masters. One of those servants, moreover, while indicted for manslaughter, was described as having slain his master in self-defence during a brutal beating.[22] In contrast, some twenty-nine masters or mistresses killed their servants. Here, on both sides, women were disproportionately represented, with twenty of the victims and eighteen of the killers being female. Agnes Gaynesford seems to have imposed a sadistic reign of terror on a series of servants, literally rubbing salt in the wounds she caused, before killing one young woman.[23] The court records portray most mistresses as having killed in more casual moments of violence that infused the relationship of dependency and power. Young Brian Perrett's mistress, for example, found the boy asleep in the field she had sent him to weed. Purportedly intending only to chastise the boy, she struck him on the head with the weed-hook:

[21] CAR Kent no. 1200 [ASSI 35/25/9, mm. 34, 35].
[22] CAR Kent no. 2288 [ASSI 25/37/5, mm. 57, 58]. Initially drawn for murder, the bill was amended to serve as an indictment for manslaughter; he was ultimately found guilty only of self-defence.
[23] CAR Surrey nos. 527, 571 [ASSI 35/13/7, m. 2; ASSI 35/14/1, m. 31]; see SP 12/83/43, ff. 98-99 for an elaboration of the charges.

he died a week later.[24] People who killed their own servants were quite likely to be found not guilty or to escape punishment by other means: while the outcome for five of the people accused of killing their servants is unknown, at least eight evaded sentence of death by pleading pardons or benefit of clergy and juries acquitted sixteen, sometimes clothing the real killers in such fictitious identities as 'John Death', 'William Nemo', or 'John in le Wind'.[25]

Table 2: Weapon/Means of Causing Death

Weapon/Means	**Number**	**Percentage**
Witchcraft	238	20.6
Knife or dagger	181	15.6
Sword or rapier	176	15.2
Staff or cudgel	143	12.3
Unarmed beating	93	8.0
Agricultural or work tool	82	7.1
Strangling or suffocating	54	4.7
Firearm	43	3.7
Poison	31	2.7
Drowning	24	2.1
Burning	8	0.7
Other	49	4.2
Unknown	36	3.1
Total	*1158*	*100*

Returning to the larger set of 1158 people identified in these Elizabethan records as victims of homicide to examine how these killings were said to have happened also offers a few surprises, even while confirming some standard impressions of the age. Relatively few people died from gunshot wounds, and of the forty-three who did, at least thirty were involved in hunting mishaps or accidents with loaded guns left sitting around for the curious to handle. Indeed, the first clearly intentional use of a handgun to kill someone, in this set of records,

[24] CAR Kent no. 2098 [ASSI 35/35/5, m. 36].
[25] For a brief discussion of the propensity to pardon masters who killed their servants, see Kesselring, *Mercy and Authority in the Tudor State*, 98-9.

happened in 1591.[26] While guns were fairly new, poison was ages old but not used much more frequently to kill. The relatively small number of those thought to have died from poison is surprising, given the level of fear this form of killing often inspired. Only twenty-eight individuals—ten men and eighteen women—were charged with this crime; moreover, twelve of them were acquitted and two immediately remanded because of the judge's doubts about the evidence.

Witchcraft, in contrast, was suspected in a good many deaths, with indictments that alleged murders committed in this manner beginning to appear, unsurprisingly, shortly after the passage of the 1563 Witchcraft Act. This set of records identified 238 victims of such killing, sixty-nine of whom were infants or children and 138 female. Witchcraft, more so than poison, seemed the favoured explanation of Elizabethan observers for sudden, mysterious fatalities. Less surprising, though, is the sex of the accused. Here, as with the killing of infant and servants and poisoning, women dominated among the supposed offenders, with only nine men appearing among the 157 people accused of this particularly insidious method of killing. Among those deemed guilty, at least a few confessed to having killed their victims with witchcraft. The belief that some people might kill in this manner was widely held, it seems, but not blindly so: more than half of the total—53% (83/157)—were acquitted of the homicide, though some were nonetheless found guilty of using witchcraft to other, less deadly ends and thus subjected to other, less deadly forms of punishment than hanging.

Yet, killings by men far outnumbered those by women; those outside the home outnumbered those within; killings with weapons more mundane than guns, poison, and witchcraft dominated. While some people killed in the course of burglaries or highway robberies, most did so in routine encounters. The majority of victims died from injuries inflicted by

[26] MCR i. 208 [LMA MJ/SR/0312, mm. 26, 27, 33.]

instruments commonly available, such as the knives and staffs so many people would have carried with them or the work tools readily at hand, which suggests the continued deadliness of casual, easy anger in these years. Pitchforks, scythes, and hedging bills claimed many lives. The joiner who stabbed his co-worker with a wood chisel while the two argued over a bedpost they were carving was not unusual among these killers.[27] So, too, did blacksmith William Belche die in all too common a manner, when stabbed with a dagger during a disputed card game.[28]

Something somewhat new in the expression and perception of male anger did emerge in these decades, however: the duel. Imported from the continent in the late 1500s, the concept of the duel as a contest between gentlemen to assuage insults and injuries to one's honour would prove a challenge to the authorities—and a source of dramatic material for the stage. While some later historians thought the duel contributed to declining levels of deadly violence by codifying and regularizing the expression of anger, a good many contemporaries feared otherwise.[29]

Despite heated condemnations of the practice over the early 1600s, however, duelling never became a specific legal offence; as such, indictments do not specify whether observers deemed a particular instance of deadly combat a 'duel'. We can nonetheless, rather arbitrarily and anachronistically, try to identify some killings in our records as the products of duels: by a

[27] CAR Kent no. 1026 [ASSI 35/22/4, m. 32].
[28] CAR Kent no. 1285 [ASSI 35/26/4, m. 31].
[29] For the latter, see for example King James's proclamation in *Stuart Royal Proclamations*, ed. James F. Larkin and Paul L. Hughes, 2 vols (Oxford: Clarendon Press, 1973), 1.296, 303. For the older, scholarly view of duelling as a civilizing agent, see especially Lawrence Stone, *The Crisis of the Aristocracy* (Oxford: Clarendon Press, 1965), pp. 242- 50. Much of the discussion of duelling as a civilizer remains rooted in the work of Norbert Elias, *The Civilizing Process*, trans. Edmund Jephcott (Oxford: Blackwell, 2004). Note, though, that Stuart Carroll has recently challenged this view in his study of dueling in early modern France: *Blood and Violence in Early Modern France* (Oxford: Oxford University Press, 2006). For key works on duelling, see also: V.C. Kiernan, *The Duel in European History* (Oxford: Oxford University Press, 1988); François Billacois, *The Duel: Its Rise and Fall in Early Modern France*, trans. Trista Selous (New Haven: Yale University Press, 1990); David Quint, 'Duelling and Civility in Sixteenth Century Italy', *I Tatti Studies* 7 (1997): 231-78; Markku Peltonen, *The Duel in Early Modern England: Civility, Politeness and Honour* (Cambridge: Cambridge University Press, 2003); Roger B. Manning, *Swordsmen: The Martial Ethos in the Three Kingdoms* (Oxford: Oxford University Press, 2003); Jennifer Low, *Manhood and the Duel: Masculinity and the Duel: Masculinity in Early Modern Drama and Culture* (New York: Palgrave, 2003); Courtney Thomas, 'Honor and Reputation among the Early Modern English Elite, 1530-1630', Yale University PhD dissertation, 2012.

generous count, some fifty-six of the 1158 victims in this set of records—just under 5% of the whole—might be considered the victims of duels, with two such victims in the 1560s, five in the 1570s, seventeen in the 1580s, twenty-seven in the 1590s, and already a good handful in the first few years of the 1600s before Elizabeth's reign came to an end. But what do we include in such a tally? Only gentlemen fighting with rapiers, themselves a fairly new weapon in these years? Or men of other social ranks, too, if in a pre-arranged fight to avenge an affront? We might feel safe in including the encounter between gentlemen John Tench and John Overs after one accused the other of having deserted his colours in battle. The two arranged to meet in in St. George's Fields, where Tench ran Overs through the chest with a rapier.[30] So, too, might we include the fight between gentleman Neville Godden and yeoman William Lamparde: While drinking together in an inn, the former teased the latter about his jerkin. The two left the inn, found a field, and fought with rapiers. There, Lamparde killed Godden.[31] Though the record gives no details of preceding events, we might also feel justified in including in this set the earliest such record in this sample, the 1564 killing of Edmund Jakes by a rapier thrust from Marinus Beltram, a resident of East Greenwich known as 'Morett of Verona'.[32] But what of such conflicts as that between two labourers who quarrelled in the highway: One challenged the other, reportedly saying 'Thou villain, if thou darest, meet me at the town's end'. They later met at a private spot and engaged in a duel of sorts, but with cudgels.[33] Given the status of the men and the weapons used, most contemporaries would probably not have described this as a duel, a supposition strengthened by the fact that this was one of only three fatalities in this 'duel-like' list of 56 cases that manifestly resulted in a sentence of death.

[30] CAR Surrey, no. 2539 [ASSI 35/37/8, m. 51] and Richard Cust's chapter in this collection.
[31] CAR Kent no. 2678 [ASSI 35/41/2, mm. 58, 59].
[32] CAR Kent no. 319 [ASSI 35/7/3, mm. 30, 42].
[33] CAR Kent no. 426 [ASSI 35/10/5, m. 28].

II

Clearly, the frequency of some types of killings compared to others changed over time. Guns would come to be feared more than witchcraft or rapiers, and killings outside the home would diminish in number to leave domestic slayings responsible for a greater proportion of victims. A variety of factors, themselves subject to change, shaped the incidence of homicide, including gendered and household structures of power, codes of honour, the availability of weapons and drink, the general legitimacy of some uses of violence to chastise, and more besides. So, too, did a variety of factors shape decisions about which killings warranted 'murder's crimson badge'.

Duels posed a special challenge to jurors, jurists, and others when they tried to distinguish between killings more and less foul, between slayings that merited no mercy and those that, while neither formally 'excusable' nor 'justified', might not warrant death in turn. A coroner's jury trying to determine what to do with John Peerse for a killing in 1599 exemplified the confusion: Peerse and his victim, both sailors, quarrelled and fell to blows in their Rye lodging house early one afternoon. That evening they met to fight with rapiers; Peerse came out the victor. The inquest verdict neatly avoided drawing a conclusion: 'whether this be murder or manslaughter we refer it to the law and as it shalbe adjudged, so we find'. Ultimately, another jury indicted Peerse for murder but the third and final jury decided upon manslaughter. Peerse pleaded his clergy, was branded, entered a bond for his future good behaviour and then went free.[34]

Jurists exhibited little more clarity on the matter. Richard Crompton's manual for justices of the peace suggested how lightly drawn the line might be: 'Two men fall out suddenly in the town, and by agreement take the field nearby, and there one kills the other, this is murder, for

[34] *Sussex Coroners' Inquests*, ed. Hunnisett, no. 527.

there was precedent malice…But if they fight a combat suddenly without malice precedent, and paused a little in the combat, and then they took the field, and one killed the other, this is manslaughter, because everything was done in a continuing fury'.[35] Sir Edward Coke would later insist that deaths from duels epitomized premeditated, malicious slayings and as such had to be seen as murders.[36] But fights recognized as duels, in all their messy variety, exploited differences over how passion, premeditation, and provocation might clothe some killings differently than others.

Definitions of what counted as murder changed subtly but significantly in these years. The killings deemed most heinous—those of masters by subordinates (including husbands by wives)—had long since been marked out as acts of petty treason. Other distinctions would emerge. Early in the sixteenth century, statutes and other legal documents had formally recognized what lay jurors had already seen as a difference between more and less serious forms of homicide by identifying the first as murder and the second as manslaughter. T.A. Green has observed that jurors had long, in practice, treated some killings as more excusable than others, but had had to do so by crafting narratives that allowed a verdict of self-defence, with its guaranteed pardon, or else a simple acquittal.[37] Efforts to trace a formal distinction between types of homicide often point to a statute of 1390, which had noted that pardons for murder of 'malice prepensed' must specify the offence as such and by implication had allowed other killings to be pardoned under general terms.[38] Malice and premeditation had replaced an earlier

[35] Richard Crompton, *Loffice et Aucthoritie de Justices de Peace* (London, 1606), f. 23b.
[36] 'A discourse touching the unlawfulness of private combats, written by Sir Edward Cook, Lord Chief Justice of England, at the request of the Earl of Northampton', in J. Gutch, ed., *Collectanea Curiosa*, ed. J. Gutch, 2 vols. (Oxford, 1781), 1.10. See also Coke, *Third Part of the Institutes* (London, 1669), 157.
[37] T.A. Green, 'The Jury and the English Law of Homicide, 1200-1600', *Michigan Law Review* 74 (1976): 462-87.
[38] See *ibid*., and 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), 57-69; W.D. Sellar, 'Forethocht Felony, Malice Aforethought and the Classification of Homicide', in *Legal History in the Making*, ed. W. M.

emphasis on secrecy as the defining elements of 'murder', and in turn a distinction developed between murder and simple homicide.[39] Only in the early 1500s, though, did the distinction between murder and manslaughter emerge more clearly and consistently, and then again in attempts to distinguish those for which hanging could be readily avoided by pardons, benefit of clergy, and other such forms of mitigation.[40] The distinguishing feature seemed initially to be suddenness or evidence of prior planning, and then between killings in 'hot' or 'cold blood'. The appearances of 'chaunce medley' and 'chaude melle' as synonyms for manslaughter again highlight that both suddenness and 'hotness' of the blood served to mark some killings as less serious than others.[41] 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 their clergy (a privilege not available to women – fictions only extended so far). As William Lambarde explained, the distinction between murder and manslaughter took into account 'the infirmity of man's nature', specifically the quick temper and ready violence associated with 'manhood'.[42] As Linda Pollock notes elsewhere in this volume, early modern writers understood the passions to have both corporeal and cognitive aspects, insisting that the humoral, hydraulic pressures could be controlled. Mastery of those

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Gordon and T. D; Fergus (London: Hambledon Press, 1991), 43-60; Kesselring, *Mercy and Authority*, 102-7; J.H. Baker, *Introduction to English Legal History* (London: Butterworths, 4th ed., 2002), 529-31.

[39] For the early history of 'murder' and its links to *morð*, *murdrum* and concepts of secrecy and treachery, see, for example, T.B. Lambert, 'Protection, Feud and Royal Power: Violence and its Regulation in English Law, *c*. 850-*c*.1250', University of Durham PhD thesis, 2009, 57-63, 171-8. Some aspects are conveyed in his 'Theft, Homicide and Crime in Late Anglo-Saxon Law', *Past and Present* 214 (2012): 3-43.

[40] 4 Henry VIII c. 2; 14&15 Henry VIII c. 17; 22 Henry VIII c. 14; 1 Edw. VI, c. 12.

[41] The terminology of 'chaude' and/or 'chaunce' medly has proven particularly complicated, and indeed, seemed to confuse early modern jurors and jurists. In some hands it came to designate unintentional killings by misadventure, while in others it referred to killings in fights and borderline self-defence slayings. See especially Baker, *op. cit*. See, too, Edward Coke, who defined 'chance-medle' as the 'killing of a man upon a sudden brawl' (*Third Part of the Institutes*, 56); Matthew Hale, *Historia Placitorum Coronae*, ed. Sollom Emlyn (Philadelphia, 1847), 471-5 uses 'chance-medley' for accidents; and later still, William Blackstone, who notes that while the word is often used to refer to any death by misadventure, it is properly reserved for killing 'as happens in self-defence upon a sudden encounter' [Blackstone, *Commentaries on the Laws of England* (Oxford, 1765-69), Book IV, chap. 13].

[42] William Lambarde, *Eirenarcha* (London, 1599), 244.

passions marked an ideal man, to be sure, but jurists and jurors saw the difficulty in doing so as reason to mitigate charges of murder.

From the 1550s cases that tested the distinction between the two forms of killing began to appear in the law reports.[43] Further refinements developed. On the one side, 'murder' broadened on the back of the legal fictions of 'constructive', 'transferred,' or 'implied' malice. Someone who killed inadvertently in the course of some other criminal act could be treated as a murderer, with the malice implied by law, for example. Someone who unintentionally killed one person when trying to kill another obviously exhibited no 'malice prepensed' against the victim, but judges opined that the malice, in effect, transferred. Judges similarly allowed that especially brutal, though not evidently premeditated, killings could be deemed murder. The killing of officers of the law in the course of their duties, too, was taken to imply malice, however sudden or unplanned the attack may have been.[44] Most such expansion happened through judicial construction, but the so-called 'Statute of Stabbing' of 1604 sought to do the same as well. More properly titled 'An Acte to take away the Benefit of Clergy from some kinde of Manslaughter', it stipulated that anyone who fatally stabbed a person who had not drawn a weapon or previously struck the offender would be denied clergy and thus suffer death as in cases of willful murder, 'although no malice be proved'.[45]

On the other side, provocation began to supplement 'hotbloodedness' as a marker of manslaughter. A key decision came in 1600, after a widow contested a trial jury's verdict of manslaughter in her husband's death. True, the victim had made rude and mocking gestures to

[43] Two key cases: Salisbury's Case (1552), in Edmund Plowden, *Commentaries, or Reports* (London, 1816), i. 100a; and Herbert's Case (1558), in British Library Harleian MS 5141, f. 40-1.
[44] Jeremy Horder, *Provocation and Responsibility* (Oxford: Clarendon Press, 1992), pp. 16-9. See, also, Luke Wilson, *Theaters of Intention: Drama and the Law in Early Modern England* (Stanford: Stanford University Press, 2000), 43-7.
[45] 1 Jac. I, c. 8.

the man who then killed him, but judges decided that these insults should not be considered sufficient provocation to mitigate a charge of murder. Thereafter, as J.H. Baker has noted, the nature of the provocation came to matter more so than the heat of the blood, for judges at least.[46] Very quickly judges made a number of clarifications, setting out the 'modern doctrine of provocation' that has only recently been challenged for its gendered and outmoded medical bases.[47] In brief, judges outlined four key provocations that could serve to reduce murder to manslaughter: seeing a friend or family member attacked (from two cases in 1612); grossly insulting though not dangerous physical assaults such as tweaks of the nose or boxes on the ear (from a number of early seventeenth-century cases); seeing an English person unlawfully deprived of his or her liberty (from a 1666 case); and finally, seeing a man committing adultery with one's wife (from a 1671 case). Offering a deadly response to any of these affronts to one's honour, as it was understood by 'men of honour', could not legally be excused; but while it merited punishment, such a killing did not necessarily merit death. Moreover, honour and anger had room yet: alongside such killings upon provocation, notions of 'chaunce medly' manslaughter continued to allow mitigation for some hot-blooded killings in two-sided, even-handed fights.[48] Certainly, whatever jurists thought of the matter, jurors continued to lessen the charge for those who killed in fights they deemed 'fair'.

[46] Watts v. Brains (1600), 78 *Eng Rep* 1009; Baker, *Introduction*, 530.
[47] See Horder, *op. cit*; for the gendered nature of (now traditional) provocation defences, see also Carolyn B. Ramsey, 'Provoking Change: Comparative Insights on Feminist Homicide Law Reform', *Journal of Criminal Law and Criminology* 100 (2010): 33-108.
[48] Perhaps because the classic works delineating the distinction between murder and manslaughter typically ended in 1600 (or 1603), the subsequent development of provocation defences has gone underappreciated. Here, Jeremy Horder's work, though geared toward modern reform of such defences, is invaluable. See 'The Duel and the English Law of Homicide', *Oxford Journal of Legal Studies* 12 (1992): 419-30 and *Provocation and Responsibility*, especially 23-42, where Horder traces the development of the four-pronged definition of provocation over the seventeenth century and its formalization in a case from 1707. Note, however, that Horder mistakenly dates the adultery case to 1617, not 1671.

Unease over whether and when passion might prove exculpatory is exploited in a number of Shakespeare's theatrical slayings, whether Othello's strangling of Desdemona or Hamlet's slaughter of Polonius and Laertes. Shakespeare's characters trouble the distinctions between one kind of killing and another, not least Suffolk in threatening deadly vengeance against anyone who 'slanders' him with the murder of Duke Humphrey in *Henry VI, Pt. 2*. In such ways the plays speak to contemporary concerns. Indeed, besides the difficulties in deciding what marked some killings as more serious than others, some people disliked drawing any such distinctions at all. The puritans who left England for Massachusetts initially denied such differences.[49] Civil war era law reformers and lawyers criticized them, too. Justice Richard Aske of the Upper Bench even opined in 1655 that 'it was the Popish power' that introduced the distinction, insisting that 'by the law of God I find no difference between hot blood and cold blood as we do now distinguish'.[50] Echoes of such condemnations can be found earlier, too, not least in Sir Francis Bacon's invectives against duelling. Bacon seemed grudgingly willing to tolerate 'the privilege of passion' that allowed a 'subtle distinction between the will enflamed and the will advised, between manslaughter in heat and murder upon prepensed malice'. It was a novelty, but perhaps one 'not unfit for a choleric and warlike nation', as 'a man in fury is not himself'. But to allow such distinctions to extend to duellists and those who did have a 'forethought purpose' had no support in laws divine or human, he insisted. It was naught but 'a monstrous child of this later age'.[51]

III

[49] Steven Wilf, *Law's Imagined Republic: Popular Politics and Criminal Justice in Revolutionary America* (Cambridge: Cambridge University Press, 2010), 27.
[50] Buckner's Case (1655), Style 467, 469, cited in Horder, *Provocation*, p. 5. See also William Sheppard, *England's Balme* (London, 1657), p. 134; John March, *Amicus Reipublicae* (London, 1651), 122-5; Anon., *The Law's Discovery: Or, a Brief Detection of Sundry Notorious Error and Abuses* (London, 1653), 7.
[51] Sir Francis Bacon, *The Charge of Sir Francis Bacon, Knight, his Maiesties Attourney Generall, touching duelis* (London, 1614), 20-1.

Another thing new about murder in these years was its reporting to the public in print. A number of killers acquired not just the metaphorical crimson badge but also an inky ensign of their deeds. John Bellamy has traced the murder pamphlet's origins to the profusion of publications about the death of 'Protestant martyr' Richard Hunne at the hands of episcopal officers in 1514. As the century progressed, chroniclers came to include in their works ever lengthier narrations of noteworthy murders. From the 1570s the genre of the murder pamphlet took shape, and from the first decade of the 1600s took off. Works that sought to impose narratives on events and guide interpretations of their significance offered a mix of sensationalism, moralizing, and more.[52]

In Todd Butler's words, print became useful as a 'judicial technology'.[53] Randall Martin depicts the pamphlets as a form of 'preknowledge' that shaped readers' responses to subsequent events.[54] Indeed, he and others have noted that phrases from such texts later found their way into depositions, with words and ideas circulating from court room to quarto and back again. Malcolm Gaskill has examined the ways in which the pamphlets provided assurances that God's providence would unmask murderers if human efforts failed.[55] These 'true relations' insisted that murder could indeed speak 'with most miraculous organ': children who had never spoken suddenly named the offender, bodies bled afresh in the presence of a suspect, drops of blood indelibly marked killers. Murder offended God so deeply that heaven itself would direct the hue and cry.

Some scholars have noted how these pamphlets singled out particular objects of fear. Murderous wives and mothers figured disproportionately in these texts. As Frances Dolan has

[52] John Bellamy, *Strange, Inhuman Deaths: Murder in Tudor England* (Stroud: Sutton Publishing, 2005), 3-9 and chapter 2. Also useful on the history of the genre: Leigh Yetter's introduction to *Public Execution in England, 1573-1868* (London: Pickering and Chatto, 2009).
[53] Todd Butler, 'The Haunting of Isabell Binnington: Ghosts of Murder, Texts and Law in Restoration England', *Journal of British Studies* 50 (2011): 251.
[54] Randall Martin, *Women, Murder and Equity in Early Modern England* (London: Routledge, 2008), 5.
[55] Malcolm Gaskill, *Crime and Mentalities in Early Modern England* (Cambridge: Cambridge University Press, 2000), 203-80.

observed, in their focus on domestic dangers, 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'.[56] Others sought to brand not just an individual with a mark of infamy but to use that murderer to mark a larger group of which he formed part: *The Parricide Papist, or Cut-Throate Catholicke* offers one example of the works that asked, essentially, 'how can the tree be good that beareth such Gomorrah fruit'.[57] As Peter Lake has noted, puritans proved at least as popular as papists among pamphleteers on a moralizing mission.[58] Murder pamphlets served to reiterate lessons on obedience and conformity of all sorts.

Indeed, it was not just the marginalized or the sectarian that one needed to fear: murder might well be more common among the uncivilized or unsanctified, but was not the preserve of some criminal 'other'. All had within them the same blood as Cain. The same passions and humours that made murderers of some existed in all people. A surprising number of these pamphlets warned their readers not about the dangers posed by others, but about the dangers within themselves. As Arthur Golding cautioned in his 1573 pamphlet on the murder of George Saunders: 'Behold, we be all made of the same mold, printed with the same stamp, and endued with the same nature that the offenders are. We be the imps of the old Adam, and the venom of sin which he received from the old serpent is shed into us all…Such as the root is, such are the branches'.[59] Another offered this moral to his tale: 'It therefore behooveth every one to have a special care what actions we commit, not seeking to murder those that have in some sort

[56] Dolan, *Dangerous Familiars*, 15.
[57] George Closse, *The Parricide Papist, or, Cut-throate Catholicke* (London, 1606); quote from Richard More, *A True Relation of a Barbarous and Most Cruell Murther [com]mitted by one Enoch ap Euan* (London, 1633), sig. A4r.
[58] Peter Lake, 'Puritanism, Arminianism and a Shropshire Axe-Murder', *Midland History* 15 (1990): 37-64.
[59] Arthur Golding, *A Briefe Discourse of the Late Murther of Master George Saunders* (London, 1573), sig. D1r.

offended us, but to leave, as we ought, the revenge of all wrongs unto the Lord.'[60] The invocations of providential discoveries offered not just reassurance that murders by others would be discovered, but also warnings that the readers themselves ought not to kill. Narrating the case of a woman who killed her spouse with her lover's assistance, one author asked that 'the Lord give all men grace by their example to shun the hateful sin of murder, for be it kept never so close and one never so secret, yet at length the Lord will bring it out'.[61] True, some warned readers to take heed of these stories to ensure their own spiritual fitness should they die suddenly at others' hands; murder certainly showed that 'they that see the sun rise, are not sure to see it fall'.[62] Some urged people to be kinder to their servants or spouses lest they turn to violence. But the object of a good many warnings was to dissuade the readers themselves from the sin of murder. One earnestly listed twenty-two 'pregnant inducements to deter men from murder or manslaughter'.[63] Others, too, offered 'remedies against murder' that looked inward rather than out. As Joy Wiltenburg has suggested, such texts not only sought to harness horror at private slayings to legitimize public executions, but also called upon personal introspection in the interests of public order.[64]

These pamphlets helped in a variety of ways to make murder more fully 'public'—both in the sense of 'not secret' and in the sense of being a shared, common concern. Some authors explicitly professed a desire to serve the public good as their reason for writing. One maintained

[60] Anon., *Sundrye Strange and Inhumaine Murthers…wherein is described the odiousnesse of murther* (London, 1591), sig. A2r.
[61] Thomas Kyd., *The Trueth of the Most Wicked and Secret Murthering of John Brewen* (London, 1592), 6.
[62] Anon., *A True Report of the Horrible Murther, which was Committed in the House of Sir Jerome Bowes* (London, 1607), sig. B3r.
[63] More, *A True Relation of a Barbarous and Most Cruell Murther*, 12d-17.
[64] Joy Wiltenburg, 'True Crime: The Origins of Modern Sensationalism' *American Historical Review* 109 (2004): 1377-404. For a broader discussion of the dialectical and ideological relationship between internal and external restraints in this period, see Ethan Shagan, *The Rule of Moderation: Violence, Religion and the Politics of Restraint in Early Modern England* (Cambridge: Cambridge University Press, 2011).

that persons of authority who had a 'love of the weal publique' had urged him to publish.[65] Another compared himself to a sentinel or night watchman, observing that 'the Common good and preservation of my Country's welfare, incites me unto this officious service'.[66] One is reminded of Thomas Heywood's *Apology for Actors*, which claimed for the stage, too, a role in revealing individual murders and reiterating the wrongs they did to the public more generally.[67] Indeed, contemporaries encountered murder in an increasing number of genres and media, from sermons and jury charges, to medical tracts on the passions, to printed law reports and more besides. Increasingly one sees a rhetoric of murder offending not just victim, king, and God, but also a 'public' more broadly defined. Launcelot Andrewes's lengthy exposition of the sixth commandment explained its scope as 'the public good', describing murder as a 'sin also against the commonwealth', for example. [68] King James and others inveighing against the perils of duelling depicted its private vengeance as a particular affront to 'public Justice'.[69] Codes of religious discipline and secular civility vied against the values that promoted bloodfeud with a language that sought to subordinate private to public. As Alastair Bellany and Thomas Cogswell have shown, murder attained a public salience in popular political culture over the early Stuart years, as discussions of slayings real and imagined, done by the even highest in the land, infused a nascent public sphere.[70] Murder became political—tied up with *res publica*—in ways it had not been before.

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[65] Anon., *A True Report of the Horrible Murther which was Committed in the House of Sir Jerome Bowes, Knight* (London, 1607), sig. A2r.
[66] Henry Goodcole, *Heavens speedie hue and cry sent after lust and murder* (London, 1635), sig. A1v.
[67] Thomas Heywood, *An Apology for Actors* (London, 1612), sig. G1v.
[68] Launcelot Andrewes, *The Pattern of Catechistical Doctrine* (London, 1650), 403, 407.
[69] *Stuart Royal Proclamations*, ed. Hughes and Larken, 1.304.
[70] Alastair Bellany, *The Politics of Court Scandal in Early Modern England* (Cambridge: Cambridge University Press, 2002) and Thomas Cogswell, 'The Return of the "Deade Alive": The Earl of Bristol and Dr. Eglisham in the Parliament of 1626 and in Caroline Political Culture', *English Historical Review* 128 (2013): 535-70.

Murder pamphlets claimed to offer ‘true reports’; in their own way, so too did the jurists and jurors who issued their ‘veredicta’ both in the abstract and in particular cases. Like Tourneur’s unnamed hang(wo)man, though, they also performed their functions ‘very artificially’, in every sense of the word. Examining the ways in which they affixed ‘murder’s crimson badge’ reminds us that murder, while in some senses as old as the act that earned Cain his own mark of infamy, took on new aspects in the age of Shakespeare.