Men of Blood

Violence, Manliness and Criminal Justice in Victorian England

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Contents

List of Figures and Tables *page* ix
Preface xi
Acknowledgments xv
Introduction
Violence and Law, Gender and Law
When Men Killed Men
Sexual Violence
Homicidal Women and Homicidal Men: A Growing Contrast
Bad Wives: Drunkenness and Other Provocations
Bad Wives II: Adultery and the Unwritten Law
Establishing Intention: Probing the Mind of a Wife Killer
Conclusion: The New "Reasonable Man" and Twentieth-Century Britain
Index

Figures and Tables

Figures

: Victorian Era: Justice *page*
: The 'Satisfaction' of a 'Gentleman'
: Cruel Treatment of a Boy on Board the Ship Magera
: The full account and latest parts of the awful, inhuman and barbarous MURDER OF A FEMALE . . .
: Apprehension of Good for the Barbarous Murder of Jane Jones
: Sorrowful Lamentation of William Lees, Now Under Sentence of Death at Newgate
: A Wife Beater Lynched Near Rotherham
: Dreadful Murder Near Bolton
: Domestic Tragedy in Manchester
: Wife Murder at Wolverhampton
: The Finsbury Murder
: The Stockwell Tragedy

Tables

: (Virtually) All Wife Murder Prosecutions, England and Wales
: Disposition of Wife Murder v. of Husband Murder
: Disposition of All Murder Other Than of Wives
: Unfaithful Wife Murder Trials – Legally Married
: Murder Trials with Unsupported Claim of Unfaithful Wife – Legally Married
: Percentage of Murder Charges Resulting in Murder Convictions
: Percentage of Murder Charges Resulting in Executions

activities, each with its own sociology and psychology."[2] The study of social context and social expectations is thus an integral part of any history of violence.

Violence, however precisely defined, is certainly a powerful and meaningful subject, today and in the past. Claims involving it carry a special weight and an inherent connection with morality. As its etymology (linked with "violate") suggests, violence is not only the force its perpetrator uses, or the physical injury he inflicts, but also the act's aim and effect – a "violation." To cite Miller once more: violence "is distinguished from more generalized force because it is always seen as breaking boundaries rather than making them."[3]

Nonetheless, the constituents of violence are not so "incommensurable" or its distinction from "mere" force not so clear as scholars like Miller suggest. The use of physical force or threat of force is not just another means of social communication. It is an especially dangerous means, and thus always of great import to societies and states, most of all to modern societies, for whose members personal safety and social peaceableness has come to be one of the most basic expectations. Much of the rise of this expectation, and the associated stigmatization of most violence, can be followed in the nineteenth century, in Britain as much or more than anywhere.

While the content and definition of violence is not stable, the subject is a universal and trans-historical one. The employment of force itself is ubiquitous, while the notion of violence is to be found wherever and whenever one looks.[4] Wherever communities are formed and maintained, there "violence" is discovered, defined and dealt with in some way. Rules and values governing the use of force, however varying, seem to follow from the rootedness (strongly argued by evolutionary psychologists) of inclinations to the use of force in human (and predominantly male) nature. Universal yet mutable; resting on nature, yet a creature of culture – violence in history is a rich subject not only for measurement but even more for interrogation. Interrogation to understand the notion of violence itself, and to elucidate its relations with other social concepts grounded in nature, like gender, and with social institutions, like the law.

There is a specific and generally agreed-upon historical trend in which this current study must be located, and that is the centuries-long decline, in England and most of the West, in the incidence of the kinds of force broadly

[2] William Ian Miller, *Bloodtaking and Peacemaking: Feud, Law and Society in Saga Iceland* (Chicago, 1990), p. 77. See also Robert Muchemblad, "Anthropologie de la Violence dans la France Moderne [15th –18th s.]," *Revue de syntheses* (1987), 21–55.

[3] Miller, ibid., p. 60.

[4] See David Riches, ed., *The Anthropology of Violence* (New York, 1986); Levinson, *Aggression and Conflict* (New York, 1994); Dorothy Counts, Judith K. Brown and Jacquelyn C. Campbell, eds., *Sanctions and Sanctuary: Cultural Perspectives on the Beatings of Wives* (Boulder, Colo., 1992).

acknowledged, then as now, as violence.[5] Officially recorded homicides (the only kind of violence for which at least some usable figures survive for a long period) fell in England from something like 20 per 100,000 annually in medieval times to about one per 100,000 at the opening of the twentieth century, and this trend was similar, if most often not as pronounced, in other parts of Western and Central Europe.[6] Although many causes can be found for this decline, such as the growth of commercial–industrial society, of popular education and of the standard of living, one prominent and more direct source was a deliberate "civilizing offensive" waged by emerging and strengthening states and other institutions of social order like churches and schools against behavior now perceived as "barbaric," of which serious interpersonal violence was perhaps the most central mode.

Such a "civilizing offensive" was certainly at work in British history. Over several centuries, much unwanted infliction of physical (and sometimes mental) suffering was increasingly stigmatized, and exceptions to such stigmatization – the chastisement of children and other dependents, or social inferiors – were ever more reduced. The Victorian era formed a landmark in this long offensive. From one angle, Victorian England's heightened condemnation of interpersonal violence was but one chapter in a story of state-driven "pacification" of life going back at least to the sixteenth century, and broader than merely English.[7] Yet the Victorian chapter made fundamental contributions

[5]This trend, of course, applies only to violence *within* societies, and in particular to that between private groups or individuals. During the same centuries the amount of violence wreaked on those *outside* Western societies rose very greatly.

[6]James A. Sharpe, "Crime in England: Long-Term Trends and the Problem of Modernization" [p. 22], and Pieter Spierenburg, "Long-Term Trends in Homicide: Theoretical Reflections and Dutch Evidence, Fifteenth to Twentieth Centuries" [pp. 64–66], in *The Civilization of Crime: Violence in Town and Country since the Middle Ages,* ed. Eric A. Johnson and Eric H. Monkkonen (Urbana, Ill., 1996); V.A.C. Gatrell, "The Decline of Theft and Violence in Victorian and Edwardian England," in *Crime and the Law: the Social History of Crime in Western Europe since 1500,* ed. V.A.C., Gatrell, Bruce Lenman and Geoffrey Parker (London, 1980), p. 287.

[7]The leading explanatory model for this longterm "pacification" is that of Norbert Elias, *The Civilizing Process* [orig. pub. 1939] (London, 1978 & 1983; rev. ed. 2000); a sympathetic but knowledgeable evaluation of the model and its uses by historians is provided in Pieter Spierenburg, "Elias and the History of Crime and Criminal Justice: A Brief Evaluation," *International Association for the History of Crime and Criminal Justice Bulletin* no. 20 (Spring 1995), 17–30. In England, both the level of interpersonal violence and the tolerance of both state and public towards it diminished over the seventeenth and eighteenth centuries. In a 1996 paper ("Crimes Against Persons in Elizabethan Kent"), Louis Knafla found that a thorough examination of all levels of criminal courts in the last years of the sixteenth century uncovered at least twice as many crimes against the person as previously thought, and underlined the leniency of their punishment, as compared to that meted out to even trifling crimes against property. On the decline in recorded offenses against the person thereafter, see James Sharpe, *Crime in Early Modern England, 1550–1750* (London and New York, 1999), John Beattie, *Crime and the Courts in England 1660–1800* (Princeton, 1986) and James

to this story. Two crucial things were added in these years to the "civilizing project" in Britain: First, just when one might have expected a relaxation of the drive, apparently begun in the Tudor era, to suppress interpersonal violence, instead the Victorian era saw a major intensification, as crimes of violence came to be taken more seriously by the state than ever before.[8] It may at first puzzle us that, while (as we now know) the recorded homicide rate had fallen to its lowest level in English history, and lesser violence had very probably also diminished, both officials and members of the writing and reading public exhibited greater fear and outrage in the face of interpersonal violence than ever before. Typically for its time, the liberal *Law Magazine,* in drawing the line of criminal law reform at mid-century at the death penalty, justified its retention by what it called "the immense increase which has notoriously taken place in the whole catalogue of personal injuries, from common assaults up to attempts to shoot, stab, and poison."[9]

The puzzle becomes less baffling if we remember, for one thing, that contemporaries had only very minimally reliable data on the incidence of crime, violent and otherwise, and thus continued to feel threatened by an apparently rising tide of violent crime well into the second half of the century. Even more important, they were living in a time of unprecedentedly rapid change, in which industrialization, urbanization, population growth, and vastly increased mobility and anonymity appeared to many in the comfortable classes to threaten to overwhelm the degree of "civilization" that had been gradually attained, and plunge society into disorder and insecurity. It was only in part a fear of dispossession: if anything, as an ever-more productive economy spread material goods, it cheapened them, causing fears of crimes against property to at least become less ferocious. Yet economic growth seemed to most to do nothing for the security of the person (indeed perhaps diminishing it by, for example, making it more affordable for more people to drink themselves into belligerent intoxication). A new "modern" form of barbarism seemed possible (particularly as violence had diminished in the previous century more drastically among "gentlemen" and the middling sort than among the laboring classes, thus widening class differences in this realm).[10]

Cockburn, "Patterns of Violence in English Society: Homicide in Kent 1560–1985," *Past and Present,* no. 130 (February 1991), 70–106.

[8]James Sharpe and Roger Dickinson, in their preliminary report to the Economic and Social Research Council, "Violence in Early Modern England, Research Findings, Initial Results" (2000), p. 3, noted their strong impression that "fatal criminal violence was, in the early modern period [1600–1800], punished with surprising leniency by the courts."

[9]*Law Magazine* 44 (August–November 1850), 122.

[10]The gentry, formerly over-represented, virtually vanished from homicide prosecutions between 1700 and 1800, while middling men became rarer there. See Robert Shoemaker, "Male Honour," *Social History* 26 (2001), 190–208. Many assault

At the same time, the new economic, social and political order taking shape made personal self-discipline, orderliness and non-violence both more valuable and more necessary than ever before. Self-discipline, proverbially the way to better oneself morally and materially, meant restraining anger as well as lust, a gospel now preached more widely than ever before, in both religious and secular venues, to every member of society. Pushed by fears of a new barbarism especially in the growing numbers of working people congregated in towns and cities, and pulled by visions of never-before-attained levels of personal and social security, dignity and betterment, authorities and middle-class publicists went to work to narrow further the boundaries of tolerable interpersonal violence. And as the gospel of self-management spread, impulsive and violent behavior became all the more threatening, by its actual growing rarity, at least in the circles frequented by self-improving persons, and by the increasing contrast it made with the self-improving way of life.

Diminishing acceptance of interpersonal violence was perhaps heralded by an emerging unease about violence against animals, most visibly practiced by the lower-class men who handled and employed them. In 1822, a year in which penalties for manslaughter were sharply increased, cruelty to animals was first criminalized, by means of Richard Martin's bill against cruel practices to cattle. Two years later the Society for the Prevention of Cruelty to Animals was established, and in 1835, while prosecution and punishment of violent offences was being legislatively advanced, a sweeping act prohibited cockfighting and bull-baiting, and extended the protection of Martin's Act to domestic pets.[11]

Not that the new intolerance was of violence everywhere, even among humans: the intensified drive against interpersonal violence within the country went along with the development and employment of ever-larger and more destructive military forces, as British power spread worldwide. In very few years during the century were British forces not engaged in some war or another. Ironically, this imperial expansion could assist internal pacification, as many of the young men most prone to violence joined the military or became settlers overseas, in either case finding large opportunities to unleash their aggressive impulses against non-Europeans. From this angle, the increasing disapproval of violence within Britain provided a discourse readily put to use in attacking empire, while at the same time in its effects complementing and even supporting empire. However in conflict they were on one level, in both internal pacification and external aggression can be seen the lineaments

prosecutions formerly brought by middling men against each other seem to have migrated to the civil courts where they appeared as actions for damages. See Greg T. Smith, "Masculinity, Honour and Non-Lethal Violence at the King's Bench, 1760–1820," unpublished essay.

[11] See Harriet Ritvo, *The Animal Estate: The English and Other Creatures in the Victorian Age* (Cambridge, Mass., 1987), pp. 126–128.

of the increasing state monopolization of violence that has characterized modern history. The discourse of pacification, moreover, came to be drawn upon to provide the central moral justification of the British role overseas: as Britain came to rule over ever-growing numbers of less-developed peoples, they saw themselves as bringing law and order to those who possessed little of them. However, for this mission Britons themselves – soldiers and sailors as well as administrators – needed to be models of law-abiding, orderly virtues, and thus, even if abroad, they too eventually became targets of the civilizing offensive.[12]

In this repression of violence, law – primarily its criminal side – took a leading role. The law was a complex entity, shaped by many players. Legislators, politicians, civil servants, newspaper editors and reporters, amateur and professional magistrates, judges, jurors, lawyers and others all played parts in this broad movement. Offenses were redefined and penalties were increased, either statutorily, through judicial review of cases, or by judges presiding over particular cases. Judges delivered their views publicly in trial summations and privately to Home Secretaries and civil servants, who themselves contributed through their decisions in appeals. Lawyers argued both the law and the facts, and jurors rendered their verdicts, with newspapers and others commenting. The many players involved, and the complexity of law's imbrication with social institutions and relations, local as well as national, meant that it could never be (at least not in England) a single instrument of social policy. Rather, it mixed policies, interests, sentiments and values from this great range of social actors, with often unpredictable results.

Thus, while powerfully influenced by the priorities of the governing class, law was not simply its instrument. Neither, for that matter, could it have a single aim, effect, or even logic. In the comparatively open English system, even the criminal law's application was invoked by many persons, for various reasons, and its operation involved the collaboration of different persons and groups, who did not necessarily agree in general values or in specific instances. Further, in the daily operation of the criminal law at least, case law was as important as statute law, and case law rarely spoke with one voice. In the nineteenth century it was made by twelve and then fifteen High Court

[12] This issue came into the open at moments of crisis, such as in the debates over the handling of the Ceylon uprising of 1848 or the Jamaica disturbances of 1866. Many on both sides of those arguments accepted the need for Englishmen in the empire to serve as models for subject peoples; in part, their difference was over how they saw the rule of law in non-English societies to be best safeguarded – by decisive, if brutal, action or by self-restraint and avoidance of unnecessary violence. [See R.W. Kostal, "A Jurisprudence of Power: Martial Law and the Ceylon Controversy of 1848–51," *Journal of Imperial and Commonwealth History* 28 (2000), 1–34; Bernard Semmel, *The Governor Eyre Controversy* (London, 1962); Catherine Hall, "Competing Masculinities: Thomas Carlyle, J.S. Mill and the case of Governor Eyre," in Hall, *White, Male, and Middle Class* (New York, 1992), 255–295.]

judges over the course of very many particular prosecutions, each with its own peculiar set of circumstances. Sentences varied enormously, because of both the extensive personal discretion given judges, and the great diversity of circumstances between one case – even of the same offense – and the next. Juries also, while excluding women and all persons without property, varied a good deal in social circumstances and opinion from one to another.[13]

However diverse and flexible, the law's tasks were being expanded.[14] Even civil law was increasingly involved in dealing with questions of bodily harm and violence. Nineteenth-century tort law (the law governing liability for harms that do not fall under either criminal or contract law) exhibited diminishing acceptance of preventable personal injury. In previous centuries civil law had shared with criminal law what would seem to modern sensibilities to be a striking lack of concern about personal injury and even death as compared to damage to property interests. Although in principle any "trespass" – unauthorized contact with the person or property of another – was actionable, in practice such suits seem to have overwhelmingly dealt with property damage and only occasionally personal injury (and then disproportionately among the upper classes). In addition, the law made little allowance for indirect injury, however serious or even fatal. Moreover, grounds for civil action were removed by death; the heirs or dependents of a person killed by another had no right of civil redress.[15]

This situation, like the parallel one in criminal law, changed in the nineteenth century, as imputations of responsibility expanded and tort litigation grew.[16] Just as a fear of a "crime wave" exercised many early Victorians, so too did parallel fears of an "accident wave" (and not only in the new industries), producing state intervention in the form of a wide variety of safety

[13]On the complexity and variability of the criminal law in practice in that century, see Clive Emsley, *Crime and Society in England, 1750–1900* (London, 1996) and Carolyn Conley, *The Unwritten Law: Criminal Justice in Victorian Kent* (Oxford and New York, 1991); much of what Peter King has magisterially established for later eighteenth- and early nineteenth-century criminal justice continued in good measure to apply: see P. King, *Crime, Justice and Discretion: Law and Social Relations in England 1740–1820* (Oxford, 2000).

[14]As the Commissioners of Bankruptcy and Insolvency in 1840 declared, the law was "the most powerful of all teachers in showing men their social duties, and in compelling their performance."

[15]See P.W.J. Bartrip and S.B. Burman, *The Wounded Soldiers of Industry: Industrial Compensation Policy 1833–1897* (Oxford, 1983); Elisabeth Cawthorn, "New Life for the Deodand: Coroners' Inquests and Occupational Deaths in England, 1830–46," *American Journal of Legal History* 33 (1989), 137–147.

[16]In this, the way was led by Americans: see Peter Karsten, *Head Versus Heart: Judge-Made Law in Nineteenth-Century America* (Chapel Hill, N.C., 1997). America also led in the related development of medical malpractice litigation. See Kenneth Allen De Ville, *Medical Malpractice in Nineteenth-Century America: Origins and Legacy* (New York, 1990); De Ville discusses English case law precedents for American litigation on pp. 159–161.

legislation as well as more indirect use of the state through growing litigation and expanding imputations of legal responsibility.[17] These two sets of fears were not unrelated.

In recent years, the view that the "negligence" principle that developed in the nineteenth century chiefly served the purpose of restricting wider pre-existing notions of "absolute liability" for harms has been sharply revised.[18] Notions of absolute liability have turned out upon closer examination to have been confined to certain very limited areas of social interaction. Non-liability seems to much better describe the legal character of most pre-Victorian instances of harm.[19] As they were doing in regard to criminal liability, nineteenth-century legislators, judges and juries – despite oft-expressed concerns about opening "floodgates" to litigation – nonetheless were indeed extending civil liability.[20]

In 1846 the Fatal Accidents Act gave dependents for the first time a claim in certain cases of accidental death. Although limiting amendments were added by mining and railway interests, the act opened a new field of litigation. Even in cases of non-fatal injuries, more remote forms of liability were being successfully claimed, and at the highest levels of law. In an 1841 case in which a child had been injured by a cart that he had unlawfully entered and that had been set in motion by one of his fellows, Chief Justice Denman affirmed the judgment of Middlesex magistrates that the owner of the cart was liable for damages, for leaving it unattended where children were playing.[21] Despite nineteenth-century judicial reverence for "privity of contract" (the principle that a contract creates a legal relationship only between the parties directly involved in making it)[22] third parties began in the 1830s to win damage suits. In 1837 a man whose hand had been shattered by a defective gun bought by his father won a £400 judgment against the seller, though his only relation

[17] Whereas the "crime wave" has long been debunked by historians, a simplistic functionalism still tends to prevail in regard to the "accident wave," which may have been less pronounced than contemporaries believed, influenced as they were by expanded social investigation, by coroners, government inspectors and newspapers.
[18] Such a view is argued in F.H. Lawson, *Negligence in the Civil Law* (Oxford, 1950); the most influential statement of it is in Morton Horwitz, *The Transformation of American Law 1780–1860* (Cambridge, Mass., 1977).
[19] See Robert L. Rabin, "The Historical Development of the Fault Principle: A Reinterpretation," *Georgia Law Review* 15 (1981), 925–961, and Gary T. Schwartz, "Tort Law and the Economy in Nineteenth Century America: A Reinterpretation," *Yale Law Journal* 90 (1981), 1717–1775.
[20] See J.L. Barton, "Liability for Things in the Nineteenth Century," in *Law and Social Change in British History,* ed. J.A. Guy and H.G. Beale (London, 1984).
[21] *Lynch v. Nurdin* (1841) 1 Q.B. 29. The original case was heard at Middlesex Quarter Sessions in 1839.
[22] See P.S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford, 1979).

to the defendant was as a third party to a contract entered into by the defendant.[23] In 1858 another and even more removed third party triumphed – a passenger injured on a ferry whose crew had been hired for the day by the ferry operator successfully sued not the ferry operator but the man from whom he had leased the crew. Mr. Justice Erle, soon to become Chief Justice, upheld the jury's verdict of culpable negligence despite the fact that the plaintiff had nothing to do with the contract governing the employment of the crew.[24]

In like fashion, the liability of employers for harms to their employees expanded. The new and ingenious restrictive legal doctrines of common employment and assumption of risk, which have received much attention from critical historians, served only to limit, not to halt, this expansion.[25] The famous 1837 case of *Priestley v. Fowler*,[26] later taken as the first enunciation of the doctrine of common employment, used to limit employers' liability, was nonetheless also the first time in the long history of the common law, as D.J.P. Read pointed out, that the master had been informed "that he was under an enforceable duty to provide for the safety of his servant."[27] The early Victorian period saw the appearance of many new legal duties of care, enforceable civilly and sometimes criminally, in a growing effort to diminish the toll of avoidable injury and death. Such developments were very much in tune with the parallel increased determination to reduce the level of interpersonal violence.

While civil law was increasingly involved in rethinking responsibility for physical harm, the chief arena for this was of course criminal law. In this era criminal prosecutions grew enormously. The number of recorded crimes in England and Wales rose almost sevenfold between 1805 (the earliest date for which there are national statistics) and 1842.[28] This leap was seen by contemporaries as recording a proportionate increase in actual criminal activity, but a large part of it, as V.A.C. Gatrell has argued, must be ascribed to much more thorough, expensive and efficient machinery for detecting crimes, apprehending suspects and trying, convicting and punishing them. The creation of such expensive social machinery betokened an intensification of interest, inside and outside government, in repressing crime and ensuring order in society.

[23] *Langridge v. Levy* (1837) 2 M.&W. 519.
[24] *Dalyell v. Tyrer* (1858) El. Bl.&El. 898.
[25] See Bartrip and Burman, *Wounded Soldiers of Industry*, op. cit.
[26] 3 M.&W. 1; M.&H. 305.
[27] D.J.P. Read, "The History and Development of the Tort of Negligence in the Nineteenth Century" (Ph.D. thesis, University of Kent, 1983), p. 110.
[28] V.A.C. Gatrell, "Crime, Authority, and the Policeman-State, 1750–1950," in *The Cambridge Social History of Britain, 1750–1950*, vol. 3, ed. F.M.L. Thompson (Cambridge, 1990), pp. 243–310.

Along with increased legal scrutiny of violence went similarly increased scrutiny of "unnatural death." Coroners were given more work to do and more funding and legal backing to get it done.[29] Inquests became more common and much more thorough, bespeaking a new determination to uncover the causes of unexpected death, violent and other, and so to diminish its incidence. An 1836 statute provided for the first time for the payment of the cost of postmortem and toxocological examinations, and for the payment of medical witnesses at coroners' inquests. In case payment was not sufficient, legal penalties were also for the first time set out for medical practitioners who failed to comply with coroners' requests to carry out such examinations or appear as such witnesses.[30] All these changes improved fact-finding about the causes of sudden death. General verdicts like "act of God" or "found dead," which leap out from the pages of coroners' reports of the early years of the century, gradually yielded to more specific ones.[31] A second act of the same year established the first nationwide registration of deaths and created a government department to track births and deaths.[32] The first statistical head of this department, William Farr, began immediately to crusade for greater vigilance and vigor in seeking the causes of deaths, natural *and* unnatural. After 1836, more professional and more thorough inquests (together with improvements in medical science) were increasing the likelihood of detecting unnatural and perhaps culpable deaths and providing evidence for more successful prosecutions.[33] With more active coroners establishing culpability in a greater number of deaths, criminal prosecution of dangerous behavior, whether driving vehicles in the streets, handling machinery and equipment at workplaces, or misusing firearms, rose. Indeed, coroners' inquests were themselves seen as an increasingly important part of the criminal justice system, a key player in the repression of violent acts, whose role by late in the century embraced behavior in the home. In the words of a 1900 *British Medical Journal* article (when concern about mistreatment of children had taken center stage from that about violence against

[29] See J.D.J. Havard, *The Detection of Secret Homicide* (London, 1960); Gary Greenwald and Maria W. Greenwald, "Medicolegal Progress in Inquests of Felonious Deaths: Westminster, 1761–1866," *Journal of Legal Medicine* 2 (1981), 193–264; Thomas R. Forbes, *Surgeons at the Bailey: English Forensic Medicine to 1878* (New Haven, Conn., 1985); Ian Burney, *Bodies of Evidence: Medicine, Public Inquiry, and the Politics of the English Inquest, 1830–1926* (Baltimore, 2000).

[30] Medical Witnesses Act 1836. After 1836 more cases were recognized as violent [Greenwald].

[31] Marybeth Emmerichs, "Getting Away With Murder? Homicides and the Coroners in Nineteenth-Century London," *Social Science History* 25 (2001), 93–100.

[32] Birth and Death Registration Act 1836.

[33] Havard and Greenwald both argue that numerous cases of homicide went undetected before the Victorian era, when detection improved.

adults), "the publicity of its proceedings acts as a strong deterrent to parents and others (a very numerous class) whose conduct borders on 'criminal neglect.' "[34]

Simultaneous with the revival and enhanced use and prestige of coroners, a second, better-known new administrative development did even more to increase official scrutiny of harm-causing behavior. Between 1829 and the late 1850s, professional police forces were established throughout the country.[35] Established initially chiefly out of fear for the safety of property in an era of social dislocation, these forces came to press down on disorderly and violent activity as well as thefts. They patrolled places of public gathering, preventing a great deal of violence from getting started or from getting out of hand, and made a surprisingly large number of arrests.[36] A recent scholar of the early police forces has remarked on "the sheer size of the police intervention," which marked a significant departure from previous practice.[37] Even private violence felt their impact: it is notable how often in domestic homicides and near-homicides a constable, once called by neighbors, was quickly on the scene taking offenders into custody. Such offenders rarely sought to escape, seeming to accept the inevitability of arrest.

As more efficient machinery for detecting and apprehending offenders was being constructed, the criminal law itself was being redrawn to extend and toughen the punishment of violence more broadly defined. For eighteenth-century English criminal law, personal injury was in principle and practice a secondary concern. While theft of property valued as low as a shilling was a felony, punishable at least in principle by hanging, assault, no matter how vicious, was not – unless the victim died. Even manslaughter – culpable but non-intentional killing – carried a maximum penalty of only a year's imprisonment, and even that punishment was very rarely applied. Indeed,

[34] Quoted in Burney, *Bodies of Evidence*, op. cit., p. 85.

[35] David Philips and Robert D. Storch, *Policing Provincial England, 1829–1856: The Politics of Reform* (Leicester, 1999).

[36] See Philips and Storch, ibid., p. 225, and Chris A. Williams, "Counting crimes or counting people: Some implications of mid-nineteenth century British police returns," *Crime, History and Societies* 4 (2000), 77–94.

[37] Williams, ibid., 86. In Sheffield 1844–62 arrests totaled twenty times the number of indictable offenses recorded; the great majority of arrests were for public order offenses like "drunk and disorderly," which no doubt nipped a great deal of violence in the bud. Arrests for common assault were also frequent, 96% of these of men. [Williams, ibid.] Sometimes they served a classic detective function: The *York Herald* in 1842 heaped praise upon an Inspector from the Metropolitan Police who solved the murder of a widow, tracing it to a former employee who sought money from her [appendix to John Carter, *A Sermon preached . . . the Sunday after the murder of Mrs. Jane Robinson, with an appendix, as to the proceedings of Mr. Inspector Pearce, in tracing out the murderer* (Whitby, 1842)].

most incidents of private violence in the eighteenth century seem not to have reached the courts, and even those that did were generally viewed as essentially private matters.[38]

There were signs of diminishing legal tolerance of interpersonal violence in the late eighteenth century,[39] with administration preceding the formal law. Few assault complaints in the first half of the eighteenth century ever went to trial (instead being "settled" between the parties before, or even in court).[40] From about 1780, such cases, at least for working-class offenders, began to move from being treated civilly to being treated criminally. The size of fines for assault tended to increase, while courts became increasingly willing to order some time in jail in cases of serious violence. In general, by 1820 the typical penalty for most assault convictions had altered from a nominal fine to the clearly harsher one of imprisonment.[41] Similarly, in manslaughter cases by the turn of the century the jury's finding that the victim's death came by way of accident did not necessarily, as earlier, lead to a discharge; in such cases, if offenders had shown recklessness or imprudence, they were increasingly likely to be sentenced to some jail time.[42]

Many forms of reckless disregard for the safety of others were being taken more seriously by the law. Traffic and occupational accidents resulting in a death appear to have become more likely to lead to prosecutions for

[38]John Beattie, "Violence and Society in Early Modern England," in *Perspectives in Criminal Law,* ed. A.N. Doob and E.L. Greenspan (Aurora, Ont., 1985), pp. 42–43, 49–50; also Beattie, *Crime and the Courts,* op. cit., pp. 75–76, 457–461; Clive Emsley, *Crime and Society,* op. cit., p. 141; Greg T. Smith, "The State and the Culture of Violence in London, 1760–1840," (Ph.D. thesis, University of Toronto 1999).

[39]*Popular* tolerance also seems to have begun to wane not long after official tolerance: examples of execution crowd execration of murderers cited in V.A.C. Gatrell, *The Hanging Tree: Execution and the English People, 1770–1868* (Oxford, 1994) all date from after 1820.

[40]Norma Landau, "Indictment for Fun and Profit: A Prosecutor's Reward at Eighteenth-Century Quarter Sessions," *Law and History Review* 17. 3 (Fall 1999), 507–536.

[41]Peter King, "Punishing Assault: The Transformation of Attitudes in the English Courts [1748–1821]," *Journal of Interdisciplinary History* 27 (1996–1997), 43–74.

[42]Beattie, *Crime and the Courts,* p. 609; Beattie, "Violence and Society," pp. 48–49; King, "Punishing Assault." Concern for personal security also seems a major motive behind the war on juvenile crime which began in the 1790s and accelerated after 1815. Just as the growing intolerance of violence was chiefly impacting upon men, this new effort against youthful delinquency was disproportionately directed against boys, whose prosecution rose faster than that of girls. Boys, who were far more likely than girls to combine theft with a degree of personal violence, were perceived as a threat in a way that girls were not. See Peter King and Joan Noel, "The Origins of 'The Problem of Juvenile Delinquency': The Growth of Juvenile Prosecutions in London in the Late Eighteenth and Early Nineteenth Centuries," *Criminal Justice History* 14 (1993); the inference concerning violence is mine.

manslaughter or occasionally even murder.[43] Moreover, the criminal law was reaching now into locales as well as types of offenses it had hitherto little touched. The courts were showing a newfound interest in prosecuting violence in and by the military, which like sea-borne offenses had hitherto been left alone, or to military or naval authorities. James Cockburn found soldiers first appearing in assize court in the county of Kent as accused killers in 1806, although that county's dockyards and ports had long been home to an unruly military population. He also uncovered a series of early nineteenth-century cases in Kent in which efforts were made for the first time to impose liability upon ships' masters who had killed men under their command.[44] The wartime expansion and increased visibility of the Navy and merchant marine made behavior on board a greater concern, and in 1799 Parliament expanded the jurisdiction of the criminal sessions of Admiralty Court to reach all offenses of whatever kind committed at sea. The growth of the empire demanded further expansion, and an 1817 act permitted naval officials to arrest and try British subjects for homicides committed outside British territory.[45] One of the provisions of the 1828 Offences Against the Person Act empowered magistrates in both England and Scotland to investigate suspected homicides of or by British subjects anywhere overseas, and gave judges throughout the empire authority to act on any such indictments.[46] Later this jurisdiction was further extended by a clause of the 1867 Merchant Shipping Act to any crime committed by any British subject on a foreign ship "to which he does not belong" (was not a member of its crew).[47] The reach of English law was continually widening, most of all in regard to acts of violence.

By legal categories, the nineteenth century's hardening approach to interpersonal violence is clear. Just as many property offenses were having their penalties reduced in the 1830s, maximum sentences for various kinds of assault were actually raised, both in law and in practice. By the opening of Victoria's reign the transition from "civil" to "criminal" treatment of assault was almost complete. Within the criminal courts that handled assaults – petty sessions and Quarter Sessions – the hitherto usual practices of dropping assault charges upon reconciliation or imposing a nominal fine upon some kind

[43] Unlike earlier: as John Beattie concluded [*Crime and the Courts* p. 86]: "For most of this period [1660–1800], men were rarely charged with a criminal offense when death occurred in accidents."

[44] Cockburn, "Homicide in Kent," op. cit.

[45] 57 Geo. III, c.53.

[46] 9 Geo. IV, c.31, s.12.

[47] This clause was inserted to enable magistrates in the empire and in English ports to deal with British seamen boarding foreign ships and there causing trouble. See Geoffrey Marston, "Crimes by British Passengers on Board Foreign Ships on the High Seas: The Historical Background to Section 686(1) of the Merchant Shipping Act 1894," *Cambridge Law Journal* 58 (1999), 171–196.

of compensation to the complainant were increasingly subject to criticism by magistrates and judges, and giving way more often to the imposition of some term of imprisonment.[48]

This process was gradual: in its 1814 edition, Burn's *Justice of the Peace,* the standard handbook for magistrates, instructed that in assault cases "the court frequently recommends the defendant to talk with the prosecutor, that is, to make him amends for the injury done him," and thereafter impose a small fine.[49] By the 1825 edition, the usual punishments inflicted (fine, imprisonment and the finding of sureties to keep the peace) were listed, and mention of private negotiation was confined to "cases where the offence more immediately affects the individual."[50] But this was a gradually shrinking category: more and more, interpersonal violence was seen as affecting the public as a whole.

While magisterial practices on assault were already changing, other changes in treatment of crimes against the person, chiefly affecting the higher courts of assize, were being made legislatively. The first piece of legislation to deal generally with violence, commonly known as Lord Ellenborough's Act, was passed in 1803. Ellenborough replaced a limited bill proposed by another Lord to repress an outbreak of face-slashing attacks in Ireland that numbered among its victims "respectable" members of the public with a broader one applying to England as well, and addressing a wider range of violent acts, indeed most that aimed at or resulted in "grievous bodily harm," a term left undefined. Ellenborough and his supporters seem to have been particularly determined to do away with armed robberies, hitherto dealt with essentially as crimes against property rather than against the person. Since they were already subject to the sentence of death, armed robberies did not need any augmentation of penalties, but now it appears the injury to persons, even if only from having a loaded pistol in their faces, was bulking larger in the Lords' outrage than even the loss of property. Ellenborough's bill provided an alternative way to capitally prosecute such offenses, as offenses against the person. It made attempts to kill, or even only to inflict grievous injury, if employing firearms or such potentially lethal instruments as swords or knives, punishable by death. The bill also removed the necessity of proving previous malice or intention in woundings. It passed fairly easily into law and soon came to be used more widely than simply against armed robberies;

[48] King, "Punishing Assault," op. cit.; Smith, "The State and the Culture of Violence," op. cit. Robert Shoemaker has noted the focus of complaint in defamation suits shifting in the course of the eighteenth century from words to "inappropriate physical conduct . . . as if it was the pushing, beating, mobbing and spitting that was as much the source of complaint as the actual words used." ["The Decline of Public Insult in London 1660–1800," *Past and Present,* no. 169 (2000), 117].
[49] Burn, *Justice of the Peace,* 22nd ed. (1814), 3: 185.
[50] Burn, *Justice of the Peace,* 25th ed. (1825), 3: 231.

gradually, a wide range of violent acts were brought under its aegis, including serious violence between men and women.[51] The passage of this act in retrospect seems a milestone in criminal justice, even if the actual disposition of cases shifted only slowly thereafter.[52] Henceforth, more violent offenses were charged at assizes, where they received more severe punishments.[53]

When the French wars ended, anxieties about violence in Britain also rose further, and not only about political violence. By 1826 criminal law enforcement had become a salient political issue; that year Home Secretary Robert Peel (also working to establish the first professional police force on English soil) saw an Act through Parliament to encourage the prosecution of the more serious forms of assault by extending to them the provision of expenses to witnesses as well as prosecutors which already obtained in capital prosecutions.[54] Two years later, the laws on violence were consolidated and much further hardened by the Offences Against the Person Act of 1828 (9 Geo. IV c. 31), which was, in the judgment of its most recent student, "the first truly comprehensive piece of legislation designed to address interpersonal violence in British society."[55] Known as Lord Landsdowne's Act (for the Home Secretary at the moment it was introduced) it was actually in large part the result of efforts by Robert Peel during his tenure at that post. It was a part of Peel's broader program to improve the effectiveness of law enforcement, and (unlike Lord Ellenborough's Act) it was immediately made use of in the courts. This measure eliminated the earlier act's requirement of the use of offensive weapons – henceforth, even simpler assaults could, if considered sufficiently threatening, be prosecuted capitally. It also expanded the scope of that act by explicitly describing various behaviors that could be

[51] For example, in 1811 at the Surrey assizes Thomas Livermore was convicted under this act for attempting to murder his wife (he had cut her throat, but she survived) [*Times,* 1 April 1811, p. 3]. The following year Ann Sheldon was similarly charged with administering poison to her husband, but was acquitted [*Times,* 14 August 1812, p. 3].

[52] Looking back from the height of the Victorian era, James Fitzjames Stephen observed that "the very grossest and worst class of offences against the person were, till 1803, treated with the capricious lenity which was as characteristic of the common law as its equally capricious severity." *History of English Criminal Law* (London, 1883) 3: 116.

[53] Charges of attempted murder, already generally handled at assizes, gradually rose thereafter. For example, there were twenty convictions at the Old Bailey for attempted murder (apart from cases of attacking constables or other agents of the state) in the almost half-century from 1756 through 1803, but thirty-five in the almost quarter-century from 1804 through 1827, almost twice as many in half the time. [Throughout, however, acquittals on this charge continued to well outnumber convictions.] [Humphry Woolrych, *History and Results of the Present Capital Punishments in England* (London, 1832), pp. 128–132.]

[54] The Criminal Justice Act 1826, 7 Geo. IV, c.64.

[55] Greg T. Smith, "The State and the Culture of Violence" op. cit., p. 108.

capitally prosecuted. This act also shifted a very large body of lesser cases from quarter sessions to petty sessions, encouraging the prosecution of more non-capital violent offences.[56] At assizes, indictments and convictions for attempted murder significantly increased after its passage.[57]

Both of these changes – broadening the definition of violent offenses and facilitating their prosecution and conviction – were carried further in the next important measure, the 1837 Offences Against the Person Act (1 Vict. c.85). Enacted together with another better-known law eliminating the death penalty for most property offenses,[58] it *extended* the death penalty, at least in principle, to *more* cases of serious violence. In particular, it revised the 1828 Act to make an attempt to murder by "any other means whatsoever" liable to the same capital penalty as the use of a knife or other sharp instrument.[59] It also made it clear that failed attempts to kill where no bodily injury had been produced were still felonies, liable to punishment of up to transportation for life.

This extension of the meaning of wounding was taken in the courts to apply also when no intent to kill could be proved. In 1843, Chief Baron Abinger, citing this statute, held in a trial of a man who, when kicking another man, caused severe injury, that an instrument of some sort was no longer necessary to establish the serious charge of "wounding" (rather than the mere misdemeanor of "assault"): all that was necessary was to prove that some wound had been inflicted in the course of an assault.[60] The 1837 act

[56]After the 1828 act, cases in Middlesex Quarter Sessions were on average more serious, yet despite the diversion of the less serious ones their number did not fall, suggesting either (or both) an increase in such offenses or an increased propensity to prosecute [Smith, ibid.]

[57]At least at the Old Bailey, where the rate of convictions more than doubled in the less than five years from 1828 through Sept. 1832, from a yearly average of about 1 1/2 to one of about 3 1/2; in 1833 alone there were five convictions [Woolrych, op. cit., 131–132]. The *Times* reported only ten prosecutions (and eight convictions) for all forms of attempts to murder in the quarter-century from 1803 to 1828, but it only took another five years to report another eleven prosecutions (and nine convictions). Even though in this period the *Times* reported criminal trials only very erratically, the increase is suggestive.

[58]1 Vict. c.91.

[59]Lord John Russell, introducing the bill: *Parliamentary Debates,* S.3, 37 (1837): 723. 1 Vict. c.85, s.3.

[60]As often happened, however, the jury refused to follow his direction and found only assault [*R.v. Duffill* (1843): 1 Cox C.C. 49; *Lincolnshire Chronicle,* 21 July 1843, p. 1]. Even for judges some wound remained necessary to make the offense a felony, as Baron Rolfe reminded a Lancashire grand jury in 1845. Citing the case before them of "a man charged with having assaulted, kicked, and beaten a woman with intent to do grievous bodily injury. I must point out that . . . to kick a person, if it does not cause a wound, is no felony. Without a wound there is no felony in such cases, except in some attempts to strangle. . . . I can easily see how gentlemen are desirous,