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‘Completely innocent or wholly culpable’: Judicial outcomes of women tried for homicide in pre-modern England.

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Abstract: There is much debate among historians on how pre-modern English legal systems treated women accused of homicide. Some argue that women received leniency due to squeamishness concerning execution and the female body (King, 2006), whereas others suggest a patriarchal structure which sought to disproportionately punish women (Given, 1977). This chapter demonstrates that these two radically different conclusions have been reached due to the differing statistical methods employed – whether that involves assessing acquittal rates or examining the outcomes for the defendants who were not acquitted. Thus, the two approaches produce two different stories – one of leniency towards women, or one of harsh punishments for female convicts. While pre-modern men and women were sentenced to execution at similar rates, women were more likely to be found not guilty. Women were either deemed to be wholly culpable or to be wholly innocent (Walker, 2003). The outcome of a woman’s trial was usually limited to execution or acquittal. Men were more likely to be found guilty, but then pardoned and released. The jury seemed willing to hear the mitigating circumstances of male killers, such as self-defence, but these narratives are typically absent for women (Brown, 2021; Walker, 2003).

Keywords: homicide; gender; criminal justice; judicial outcomes

Introduction

As highlighted by Peter King, ‘historians have been slow to pick out gender as an important variable’ when studying homicide (King, 2006, p.196). Nonetheless, there is now much debate among historians on how the pre-modern English legal system treated women accused of homicide. Some point to a chivalric leniency, which led to a reluctance to execute women, whereas others highlight the existence of a patriarchal legal and social structure which sought to disproportionately punish women. This chapter consists of a literature review of the judicial outcomes for women accused of homicide in England from the thirteenth to the early nineteenth century. Initially, this

chapter provides an overview of the key studies on pre-modern homicide which have used the lens of gender in their assessment of judicial outcomes. It argues that two different conclusions have been reached, and reviews both positions in turn. Firstly, this chapter outlines the evidence from those historians who maintained that pre-modern female homicide defendants were treated more leniently than men. Subsequently, this chapter looks at those arguing that women convicted of homicide were punished more harshly than their male counterparts.

The studies examined here are geographically and temporally diverse, hence some variation in their conclusions is to be expected. However, this chapter argues that these two radically different conclusions have been reached due to the differing statistical methods employed by the various studies. As this chapter shows, both positions can be supported by evidence. Nonetheless, the difference emerges due to the way in which criminal statistics have been read – whether that involves assessing acquittal rates or examining the outcomes for the defendants who were not acquitted. Thus, the two approaches produce two different stories – one of leniency towards women, or one of harsh punishments for female convicts. Consequently, there is a divide in the historiography on the impact of gender on judicial outcomes for homicide in pre-modern England, with works broadly falling into two camps.

On the one hand, it has been suggested that women were treated more leniently when accused of crimes. Historians of early modern England have contributed much of the current literature on this subject. This question has received less recent attention from medievalists. The reason for this is that the pioneering studies of medieval crime in the 1970s, which borrowed quantitative methods from the social sciences, since fell out of fashion. This was due to these scholars receiving criticism for treating medieval legal records as a perfect window onto crime (Powell, 1981). Therefore, subsequent studies have largely shied away from the measurable and analytical study of the legal material instead drawing on literary and anecdotal evidence (Bellamy, 1998; Dean, 2001). While medievalists (Butler 2001; Thornton 2014) have started to revive this methodology, all recent works have drawn their evidence from coroners' records. While a useful source, due to their pre-trial nature, coroners' rolls do not shed any light on acquittal or conviction rates.

Accordingly, in order to gain an insight into medieval verdicts and punishments for homicide, one must return to the early work on medieval crime conducted in the 1970s. The first of the 1970s works discussed in this chapter is Barbara Hanawalt's 1974 article on female felons in fourteenth century England and followed five years later by her monograph, *Crime and Conflict in English Communities, 1300–1348*. Hanawalt (1979) used trial records for Essex, Norfolk, Northamptonshire, Huntingdonshire, Yorkshire, Herefordshire, Somerset, and Surrey from the first half of the fourteenth century. Hanawalt (1974) suggested that the lower incidence of female suspects was because women were treated more leniently and were less likely to be arrested. These conclusions have been echoed for early modern England. J. M. Beattie's *Crime and the Courts in England 1660 – 1800* drew on trial records from the Surrey assizes and quarter sessions. Finally, most notably is Peter King's (2002 and 2006) work which suggests that women received favourable treatment from the courts in late eighteenth century England. King (2002) also attempted to explain the highly gendered nature of trial outcomes.

On the other hand, some historians have disagreed with this position by arguing that women convicted of homicide actually received harsher punishments than men. Two years before Hanawalt's (1979) study, James Buchanan Given's monograph on *Society and Homicide in Thirteenth Century England* quantitatively engaged with court records from five counties and two cities - Bedfordshire, Kent, Norfolk, Oxfordshire, Warwickshire, Bristol, and London - to complete a sociological study of homicide. Given's (1977) work contained a chapter on gender and concluded that violence by women was seen as aberrant. In response to the early modern scholarship such as King (2002), Garthine Walker's (2003) monograph *Crime, Gender and Social Order in Early Modern England* used gender as an analytical tool to reassess the treatment of men and women before the courts in Cheshire. Walker's (2003) study used evidence from sample years in four decades from the 1590s through to the 1660s; one of the central arguments was that women were not treated leniently by the Cheshire courts. This chapter now explores each of these studies in more detail.

Gendered Leniency

As outlined above, the idea that women accused of, and tried for, homicide in pre-modern England were treated more leniently than men, is a persistent argument in the

literature. The scholars on this side of the debate have supported their conclusions with statistical evidence. In his seminal monograph, *Crime and Law in England*, King (2006) found that 12 percent of male murder suspects were convicted compared to just 2 per cent of female suspects in Lancaster from 1798 to 1818. King (2006) suggests that women were six times less likely to be hanged for murder than men. This pattern, in varying degrees, is present in many studies of crime in early modern England. For example, James Sharpe's (1983) work on seventeenth-century murder uncovered that while only 29 percent of female suspects were convicted, the conviction rate for male suspects was 39 percent.

Likewise, J. M. Beattie's (1986) study on the Surrey Assizes found that 75 percent of women accused of murder were discharged or acquitted compared to just 50 percent of men. Interestingly, despite arguing against the existence of a gendered leniency, a higher acquittal rate for female suspects of murder and manslaughter was even present in Garthine Walker's (2003) study of gender and crime in early modern Cheshire. Walker (2003) found a female acquittal rate of 41 percent but a male rate of only 26 percent. All these studies seem to support the argument that men were more likely to be convicted for homicide than women. Accordingly, this points to a key role played by gender in the legal fora of pre-modern England.

In addition to his argument that women in early modern England received leniency, King (2006, p.184) suggested that 'continuity is a key theme in the study of the impact of gender in judicial outcomes.' This study maintained that 'leniency towards women may have survived (albeit with short-term variations)' until the 1990s (King, 2006, p.184). In support of this, King cited a 1997 article by *The Times* which said that in some areas of Britain women accused of serious crimes were twice as likely to be acquitted compared to men (King, 2006). There is also support for this statement in modern criminal statistics. Over the last decade, men indicted for murder and manslaughter saw an average conviction rate of 79 percent, while women charged for the same crimes saw an average conviction rate of 70 percent (Home Office, 2021). Although this disparity is not as vast as the pre-modern data, it appears to still be present. Notwithstanding, hidden variables must also be considered. It is possible that the trend of women receiving lesser sentences could be informed by lower rates of recidivism among women rather than chivalry (King, 2006).

Despite this vast amount of quantitative analysis, there is comparatively little qualitative evidence to explain why women may have been favoured by pre-modern English justice systems. King (2006) even acknowledged that there was little to suggest that contemporaries were even aware of the patterns. Nevertheless, there are three main reasons that have been proposed for this apparent leniency towards women. The first of which is chivalric attitudes or squeamishness about the female body which made the hanging of women inappropriate. Secondly, gender norms implying that women were weak and easily led, which resulted in diminished responsibility for women and subsequent judicial leniency. Finally, a woman's inability to claim benefit of clergy which, until the seventeenth century, was reserved only for men. In medieval England, the privilege of benefit of clergy resulted in the convict being transferred to the church courts and thus avoiding capital punishment. These arguments are addressed below as part of the review of the scholars who have argued against a gendered leniency which favoured pre-modern women.

In order to explore the other side of the argument, one must consider the outcomes for those who were not acquitted. Pre-modern justice was not a binary choice between conviction and acquittal and as a result acquittal rates do not provide the whole picture. When scholars base their conclusions solely on acquittal rates, they fail to consider the effects of gender on the judicial responses to those who were *not* found to be innocent. The defendants who were not acquitted typically faced three outcomes – execution, pardoning, or benefit of clergy – which are now discussed in turn below.

Execution

In 1445, when a woman was hanged in Paris, it was said that 'a great multitude of people especially women and girls, flooded in, because of the great novelty of seeing a woman hanged for thus had never before been seen in the kingdom of France' (Dean, 2001, p.124). This anecdote was used by Dean (2001) to conclude that women were rarely hanged in medieval Europe. A key area of interest for social historians and criminologists has been the sex ratios of offenders. This led to the emergence of a shared observation that violent crime, in virtually all times and places, is more characteristic of men than of women (Godfrey and Lawrence, 2005; King 2006). Criminologists point to a 'stubbornly stable ratio' of male to female offenders and have

stressed continuity by concluding that recorded crime is overwhelmingly a male activity (Morris, 1987; Heidensohn, 1989; Spierenburg, 1998). Consequently, Dean's (2001) conclusion is logical, based on the extremely low numbers of women tried for homicide. Moreover, this is coupled with the high acquittal rates found in medieval England. It has been shown that acquittal rates could be as high as 70 or 80 per cent in pre-modern felony trials (Pugh, 1973; Hanawalt, 1979; Ireland, 1987; McLane, 2014).

Therefore, low numbers of women indicted for homicide, coupled with high acquittal rates resulted in few female executions. When only a small number of women are executed, it can create the impression of gender discrimination and a system that favours female offenders. Elizabeth Rapaport (1991) argued that this view prevails in the US because women made up less than three per cent of the executions from the colonial period through to the 1990s. Notwithstanding, Rapaport (1991, p.382) found that there is 'no credible evidence that women are spared the death penalty in circumstances where it would be pronounced on men'. As noted by King (2006) there is also a lack of qualitative evidence for early modern England. Those who support the idea of a justice system which treated women leniently have attributed this to squeamishness concerning execution and the female body (King, 2006). However, prior to 1790, if a woman was convicted of murdering her husband, she would have been burned rather than hanged (Yetter, 2010). This is because until 1828, mariticide[1] was classed as petty treason, while uxoricide[2] was merely homicide (Doggett, 1993). As a result, many studies (Campbell, 1984; Heinzelman, 1990; Doggett, 1993; Dolan, 2003; Walker, 2003, Yetter, 2010) have used petty treason to highlight the systemic oppression of women and the patriarchal nature of the pre-modern legal system.

Most of these studies fail to acknowledge that the Statute of Treasons, 1351 also stated that it was petty treason for a servant to kill their master, or a man, secular or religious, to kill his prelate. For each of these crimes it assigns the gruesome sentence of hanging, drawing, and quartering (Luders et al., 1810. p. 319-320). In theory, as argued by Bellamy (1970) it was also petty treason for a child to kill a parent. While it

[1]Mariticide means the killing of one's own husband or boyfriend
[2] Uxoricide means the killing of one's wife or girlfriend.

is challenging to modern feminist views to compare wives to servants and children, this would not be as problematic in pre-modern England. It could then be argued that the primary aim of this statute is not necessarily to single out and punish women, it says more about the importance of status and social hierarchy – albeit one based on gender norms. Hence, concerns about the female body do not seem to have prevented executions of women but rather altered the method.

In order to fully assess the role of gender in pre-modern executions, one must compare the percentages of defendants, of each sex who were executed, rather than drawing comparisons based on the absolute number. This is because more men were tried for homicide, thus it is likely that more were executed. While Given (1977) found that men and women were acquitted in equal proportions in thirteenth-century homicide trials, this work demonstrated that women were more likely to be executed. Given (1977) found that 18 per cent of men tried for homicide in thirteenth century England were sentenced to hang, compared to 33 per cent of women. He proposed that this reflects the 'strong social and cultural inhibitions against the use of force by women' (Given, 1977, p.137).

While Hanawalt (1979) maintained that women were treated leniently, her data included all felonies. Given (1977) proposed that this was the reason for the discrepancy between his finding and Hanawalt's data. Given advocated that while juries may 'excuse many forms of deviant behaviour engaged in by women, they most certainly did not extend their tolerance to violence perpetrated by women' (Given, 1977, p.137). Likewise, even though Walker's (2003) data suggests that a higher percentage of women were acquitted of homicide compared to men, once convicted, women were more likely to be executed. Moreover, Walker (2003) observed that all the women convicted in her study were sentenced to be hanged but only 33 per cent of male convicts received the same sentence. To investigate this matter further, one must consider the outcomes for the defendants who were neither acquitted nor executed. This group could either be pardoned or claim benefit of clergy; these are assessed in order below.

Pardoning

The second option facing someone who was not acquitted in pre-modern England was to be granted a pardon. Prior to the creation of the separate legal categories of murder and manslaughter in 1512, as outlined by Hanawalt (1974), those who had killed in mitigating circumstances, such as self-defence, could secure a pardon. Therefore, pardons for homicide, as explained by J. H. Baker (1990) were an essential part of late medieval justice because there was no legal difference between murders committed with stealth and malice aforethought and those who had killed openly in self-defence. If convinced of the existence of mitigating circumstances by the trial jury, the suspect, or even details in the coroner's roll, then the judges at the county gaol could recommend mercy and apply to the chancellor for a pardon for the defendant. The chancellor was authorised to act in the name of the king and automatically approved all pardons once a fee had been paid. Alternatively, the suspect might apply for a pardon themselves. This process ensured that there was a written record of why mercy should be granted prior to the issuing of a pardon and therefore, as found by Helen Lacey (2009), was less flexible than pardons granted directly by the king. The petitioner was not to be released immediately. As shown by Thomas Green (1976) they were *remittitur ad gratiam domine regis*, returned to gaol to await a pardon from the king, which could take months.

While Given (1977) found that only three per cent of the suspects in his study were pardoned, all of them were male. It has been argued that this gendered difference was due to the idea that violence was a 'normal mode of behaviour' for men (Given, 1977, p.96). Consequently, male violence could be excused. Walker, who arrived at a similar conclusion, put it best when she stated that 'women were seemingly completely innocent or wholly culpable' (Walker, 2003, p.143). Moreover, Walker (2003) observed that women rarely used self-defence as a mitigation for their crime. This is because, as argued by Walker (2003), invoking a tale of self-defence could exacerbate rather than mitigate a woman's crime. If a woman had used a weapon against a man attacking her with his hands, it could have been deemed as use of unequal force. Likewise, using poison or striking from behind could have been seen as premeditation. Finally, a wife who killed her husband in response to him beating her could not claim that there had been no provocation. This is because it could be argued that she had initiated the violence by causing her husband to beat her (Walker, 2003, pp.141-143). Now, this does not completely explain why women did not employ self-defence in

court; there are still questions about female-to-female violence and other cases that could fit a narrative of self-defence. Yet, if one were to accept the notion that self-defence was linked to masculinity, then it is not surprising that all the pardons in Given's (1977) study were for men.

It must also be considered that the pre-modern system of criminal pardoning could also be quite different to the process seen in more recent centuries where a petition would be made to the monarch, and later the Home Secretary, following a conviction. While the Victorian prisoner would typically exhaust the normal legal process with the aim of acquittal before seeking a pardon, pre-modern pardons could be granted much earlier in the judicial process (Hurnard, 1969; Brown 2020). A person could secure a pardon before they were even brought to trial. To obtain one, Lacey (2009) stated that the convict would submit a petition to the king or have someone submit a petition on their behalf. There seems to have been a high likelihood that the pardon would be granted. Hurnard (1969) argued that this system favoured those who had personal access to the king and could afford to buy a pardon. As a result, medieval pardons were politically contentious. Green (1976) has shown that the Commons complained about royal pardons throughout the fourteenth century.

If already in possession of a charter of pardon, the defendant could present it to the judges at their arraignment and then they would not be required to answer the charge (Lacey, 2009). Given (1977) also stated that many in receipt of pardons would not even bother turning up to be tried. This points to the fallible nature of pre-modern criminal statistics. If offenders were pardoned before trial and never appeared in court, their crimes are largely lost to the historian, especially those scholars focusing on acquittal or conviction rates. A person who received a pardon before trial and never engaged with judicial proceedings would not appear in the statistics that historians construct from legal records. As a result, this could have huge ramifications when comparing acquittal rates and punishments by gender. In theory, an individual pardon was available to all the king's subjects, irrespective of gender or social status. However, as discussed by Hanawalt (1976), a pardon could have been granted in return for military service, which would mean that this particular method of pardoning was limited to men because women could not officially perform military roles until the twentieth century. Moreover, as Green (1976) has outlined after 1294, due to the

needs of military recruitment, royal pardons were issued to homicide suspects in greater numbers than ever before. In his study of English armies, Alfred Prince (1931) evidenced that at the Battle of Halidon Hill in 1333, there were around two hundred pardoned felons serving the English king, and they were instrumental in the victory. This one battle illustrates the sheer number of pre-modern criminal pardons that were issued in exchange for military service.

In 1343, Edward III decreed that any man who served with him on campaign for a year, at their own expense, would be pardoned for felonies including those indicted for homicide. Bellamy used an example of a man who was granted a pardon for his brother who was in Scarborough gaol for murder, after serving at the Battle of Crecy, 1346 (Bellamy, 1998). Parliament were also unhappy about military pardons and in 1347 they petitioned Edward III to cease granting pardons because they thought that there had been an increase in murders. Nevertheless, Hanawalt (1979) argued that the number of homicide cases appearing in the trials at county gaols remained consistent in the wake of troops returning to England. Yet, as stated by Given (1977), it is possible that such cases never came to trial.

While men were able to claim pardons in exchange for military service, if gendered leniency skewed criminal statistics, then many women should have had a good case for clemency. King (2006) has suggested that the leniency which women received could be as a result of gender norms; women were viewed as weaker and easily led. Therefore, they were less culpable than men. The ‘feme covert’ defence has also been cited as a reason for women being treated with leniency (King, 2006). This is the idea that women who offended with their husbands would be acquitted because she was acting under his orders. There is certainly Victorian evidence to support this argument. For example, in 1852, Abel Ovans and Eliza Dore, were found guilty of the murder of Eliza’s child. Abel was hanged whereas, after the jury’s recommendation for mercy, Eliza was transported for life. It is possible that preconceptions of gender shaped the jury’s decision (*Monmouthshire Merlin*, 1852). Though, there is no evidence for this in pre-modern pardons.

In opposition, as argued by Walker (2003), it was men who were able to employ cultural discourses about gender and violence to limit their own culpability. Gender

has also been used to argue the opposite, that women were treated less leniently than men. It has been proposed that violent women were treated harshly ‘because they are effectively being punished for a breach of expectations as much for breaking the law’ (King, 2006, p.190). This idea also appears in the historiography of the nineteenth century. Lucia Zedner (1991, p.320) maintained that the ‘seriousness of female crimes was measured primarily in terms of women’s failure to live up to the requirements of the feminine ideal’. Now, this chapter considers another option that was also only available for pre-modern men.

Benefit of clergy

The second exception to a death sentence for those found to be culpable of homicide in pre-modern England was benefit of clergy. This was a legal anomaly that, as argued by Stanly Grupp (1963) and Baker (1990), placed clergymen beyond the reaches of royal justice and encroached on the rights of the Crown. In simple terms, as explained by Newman F. Baker (1927), it meant that felonious clerks could request to be tried, and more importantly punished, in ecclesiastical courts. This caused a clash between ‘Church’ and ‘State’. It was one of the key disagreements between Henry II and Thomas Becket, the Archbishop of Canterbury, culminating in the death of the latter in 1170. This incident has been extensively discussed in English historiography (Maitland, 1892; Duggan, 1962; Fraher, 1978) and so this chapter need not provide another reiteration of the conflict. The key point is that Henry thought it was unjust that clergymen, who were found guilty by his justices, were allowed to escape royal punishment. On the other side, Becket did not see benefit of clergy as an immunity. Instead, he thought it protected clerks from being punished twice – by the bishop and by the king (Baker, 1927).

Members of the clergy who were suspected of committing homicide would follow the same judicial process as their lay counterparts; they received a trial by jury at the county gaol. As stated by Baker (1990), defendants would only need to utilise their position as clergymen if they were found guilty. In this event, those who had successfully claimed benefit of clergy were to be transferred from the county gaol for trial in an ecclesiastical court, where they could escape execution. As presented by Baker (1927), this is because the Church did not pass sentences of blood. Baker also suggested that clerics would face equal, if not more, lenient treatment in Church courts

because the ‘procedure was little better than a farce’ (Baker, 1927, p.100). However, that comment seems to be based on the Church’s use of compurgation – a process where the suspect swore that he was innocent and 12 other men swore that they believed him. While an oral system of oath-swearing rituals might seem unfathomably naïve in the twenty-first century, it was by no means unique to ecclesiastical trials and, as shown by Baker (1990), it was still being used in local courts in late medieval England.

Given (1977) found that only one per cent of murder suspects in thirteenth century England used the privilege of benefit of clergy. Hence, it does not appear that benefit of clergy was widely used. Nevertheless, these figures are skewed by the high acquittal rate. Therefore, it would perhaps be more representative to consider those pleading clergy as a percentage of those who were found guilty, rather than as a share of all suspects. This is because the claim would only need to be invoked after the defendant had been deemed to be culpable. Although a small number of people claimed benefit of clergy in the thirteenth century, the role of gender must yet again be considered. All the people who used this privilege were men. As acknowledged by King (2006), in theory, the law did not favour women because they could not claim benefit of clergy until the 1620s.

It has been suggested that ‘benefit of the belly’ was the ‘female equivalent’ to this privilege. As detailed by Butler (2018), some female felons avoided execution because they were pregnant. However, this mercy was, in fact, granted to the innocent child, not the female convict. Also, at least in theory, the reprieve was only temporary, until the child had been born, unlike benefit of clergy which was a permanent escape from execution for that offence. James Oldham (1985) suggested that there was widespread abuse of this privilege with women faking pregnancy to save their lives. However, Butler (2018) highlighted that in an age with high rates of heterosexual marriage and before modern contraception, many female convicts would have been pregnant. Furthermore, Butler (2018) outlines that there were very few pleas of the belly compared to pleas of clergy.

Thus, the key question that needs to be answered in order to unravel whether pre-modern male convicts had an unfair advantage due to benefit of clergy lies in how

easy it was to obtain this privilege. If it was simply available to all men, then it is reasonable to conclude that the justice system was prejudicial to female offenders. On the other hand, if the process was tightly controlled, it would only be accessible to the privileged few and ordinary laymen would face the same options as women. Baker (1990) stated that before 1330, to claim benefit of clergy the prisoner would have to appear in the clerical habit and tonsure and then would need to be claimed by a representative of the bishop. However, after this date reading became the standard test of clerical status. As described by Baker (1927), the suspect was required to undergo a test of reading. Then the bishop's ordinary had to answer the question of whether the defendant could read as a clerk, "*Legit ut clericus*?" The response was binary - "*Legit*" or "*Non legit.*" – he reads, or he does not read. The fact that the bishop's ordinary, or another representative, had to approve pleas of clergy could suggest that the process was strictly regulated. However, it seems that the ordinary was only supposed to be judging if the prisoner could read 'as a clerk' rather than vouching that they were a known cleric.

A reading test should have been robust in an age where literacy was relatively uncommon among the laity. However, although justices were able to choose a section of text at random, it became customary to ask the prisoner to read the first verse of the Psalm 51, which came to be known as the 'neck-verse' (Baker, 1990, p.587). Therefore, it is possible that prisoners could memorise the wording. It is evident that this was a concern because it was an indictable offence to teach prisoners to read so that they could claim clergy. Baker (1927) used an example of a vicar from Canterbury who was indicted in 1383 for instructing an unlearned criminal. It has been argued (Baker, 1927; Baker, 1990; Walker, 2003; Butler 2018) that with the rise of literacy, benefit of clergy increasingly became a legal fiction.

While the protection of benefit of clergy lasted throughout the middle ages, executions of clergymen for murder were first seen in the reign of Henry VIII (Baker, 1927). Nevertheless, this was at the same time as the distinction between murder and manslaughter reappeared in English law. With the emergence of the category of manslaughter, the ability to attempt to claim benefit of clergy was extended to all men. If a killing was done with no malice, and it was a first offence, then it was clergiable (Baker, 1990). In other words, if laymen were convicted of manslaughter, they could

potentially plead benefit of clergy. Hence, the ability to plead clergy was now a male privilege rather than a clerical one. The punishment for an early modern ‘cleric’ found guilty of manslaughter was branding an ‘M’ on their thumb with a hot iron (Baker, 1927).

This legal adjustment, coupled with the gendered nature of self-defence, led Walker (2003) to argue that manslaughter was a masculine form of homicide. She maintained that ‘societal concepts of honour and violence had become conflated with legal ones’, which made manslaughter an accepted, if not acceptable, fact of male culture.’ (Walker, 2003, pp.124-125). Furthermore, Krista Kesselring (2019, p.24) has suggested that the distinction between ‘hot’ and ‘cold’ killings could not be separated from ‘assumptions about male and female bodies and behaviours.’ This is supported by William Lambarde, an Elizabethan legal writer, stating that quick temper and ready violence was associated with manhood (Kesselring, 2019). Yet, these are not early modern concepts, in fact they can be traced back to the Roman Empire and Ancient Greece. Humoural theory stated that women had an abundance of cold and wet humours, compared to the ‘hot’ and ‘dry’ temperament of men. Galen built on the Aristotelian principle that men and women were polarised – hot and cold, active and passive (Cadden, 1995). However, the fact that Walker (2003) found no examples of women’s killings being reduced from murder to manslaughter, may simply be because women could not claim benefit of clergy. Thus, this pattern could be shaped by the fact that the only punishment available for homicide by women, whether that be murder or manslaughter, was execution. If the sentence was the same, then there would be less reason for a pious jury to reduce the charge.

Summary

This chapter sought to explain the state of the field on gender and judicial outcomes for homicide in pre-modern England. The studies discussed here have temporal and geographical variations, hence some socio-legal differences were expected. However, this chapter revealed a stark divide in the literature. There are two contradictory views on the impact of gender on conviction rates and sentencing. The two medieval studies (Hanawalt, 1977 and Given 1979) which quantitatively used court records broadly sit on either side of the debate. Moreover, King (2006), through his own investigations and drawing upon past studies, firstly concluded that early modern women received

judicial leniency, then endeavored to explain this pattern. Conversely, Walker (2003) has challenged this viewpoint. While Walker's (2003) own data supports that the acquittal rate was higher for early modern women compared to men, there is a shift in the methodology to the assessment of outcomes for those who were not acquitted.

Both Walker (2003) and Given (1977) point to high execution rates among the women who were not acquitted. On the other hand, pre-modern men were able to take advantage of benefit of clergy and pardons. Ideas about masculinity appear to have allowed men to enter a grey area – guilty of homicide but their actions were seen as acceptable, or perhaps rather, excusable. For women, the picture was black and white – innocent or condemned. Either way, those both sides of this debate have adopted the position that the male figure in criminal statistics is 'normal' and then assessed how female conviction rates or sentencing patterns deviate. Furthermore, while the focus on gender is vital to historical criminology, one must remain cautious of hidden variables. There is a need for future studies to be more intersectional. Having said that, the matter of gender still requires more attention. Rather than landing on one side of the debate or the other, this chapter concludes that both arguments are valid. It is precisely because women were wholly innocent or wholly culpable that both positions must be accepted. All these studies found higher acquittal rates for women, thus painting a picture of gendered leniency. At the same time, the women who were not acquitted did not have the same options as men, and as a result, typically received the harshest outcome.

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