Collins on Kesselring, 'Making Murder Public: Homicide in Early Modern England, 1480-1680'

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In her erudite study, Making Murder Public: Homicide in Early Modern England, K. J. Kesselring argues that homicide was public and thus political in the early modern period. No longer content to leave violent felony in the hands of the king, early modern men and women read about murder prosecutions, learned about legal proceedings, and demanded retribution against those who had violated their peace. Homicide declined as a result, aided in no small measure by the advent of the manslaughter offense, which expanded nonlethal sanctions. Building on the recent work of historians of the public sphere and on the older and much more voluminous literature on crime, Kesselring writes a new history of homicide that covers doctrinal changes in criminal law, the development of the state and record keeping, the history of print, gender, the impact of the Protestant Reformation, as well as transformations in politics. The work is carefully constructed; her readings of both primary and secondary literature are precise. The result is a highly successful history of homicide in early modern England.

The introduction of the book sets out the considerable stakes. Building on more than a century of historiography and social theory as well her own database of 3,601 victims of homicide compiled from coroners’ inquisitions and indictments, Kesselring argues that homicide rates indeed declined in the early modern period because the state “laid claim to a monopoly on coercion resting on deadly force” (p. 18). But they also declined because private forms of vengeance were understood to be subversive to the public interest. Conceptual changes informed and were informed by changes in governmental structure.

The following chapters are arranged thematically. All of them, according to Kesselring, “speak to the politics of homicide and its criminalization” (p. 34). The first theme is the coroner’s inquest. Coroners were Crown officials who investigated suspicious deaths, but their offices were uniquely public because they were elected. Further, their juries “met publicly and deliberated openly” (p. 39). For Kesselring, inquests were meant to serve the interests of “public justice” (p. 40). Jurors, who often came from the poorer or middling orders, and coroners, who were often poor gentry, had discretion over whether a death should be reported as suspicious and over whether the central state was intervening in the proceeding. Politics emerged from these discretions as debates were had over which coroner had jurisdiction, who was empaneled on a jury, and whether the central state was intervening in the proceeding.

The second theme is the decline but not end of the appeal of homicide. The appeal was a popular
medieval legal device that allowed the relatives of victims of homicide to exact private revenge on the guilty party. The appeal was a separate device from criminal legal prosecution and was impervious to a royal pardon. This satisfaction was intricately related to another common medieval practice: the feud, defined by Kesselring as “vengeance seeking done in ways that might channel or limit violence, within a range of rough equivalence to the original injury, done openly and with a sense of legitimacy” (p. 71). The Tudors and the Stuarts largely brought this practice to an end within England as the Court of Star Chamber began to investigate and punish families for feuding. The practice still existed on the Anglo-Scottish border, but overall the frequency of the feud declined in the period. Beginning in the reign of Henry VII, the Crown and Parliament privileged indictments and public justice. However, people, most noticeably widows, still utilized the appeal, which survived as a means of private compensation—perhaps a form of specialized welfare—for the family members of homicide victims.

With the decline of the feud came the rise of the aristocratic duel, a form of elite violence that Kesselring in her next chapter claims “reoriented discussions of vengeance and violence toward the state” (p. 97). The duel, according to Kesselring, was an early modern innovation that attempted to replace public justice with covert and unauthorized vengeance. This aristocratic assault on the powers of the state drew the attention of the king and his Court of Star Chamber to the point where James I eventually revived the Court of Chivalry in the hopes of preempting the need for dueling. These courts were perhaps successful; nevertheless, up to seventy homicides were the result of dueling in the early modern period and the practice had not stopped by the end of the seventeenth century. But despite its continued existence, it inspired a discourse that “drew forth clearer articulations of the supremacy of the law and its claims to effect retribution” (p. 118).

The fifth and final theme of the book is the discussion of homicide in the increasingly expansive printed literature of the period. In lawbooks, aspiring jurists and justices of the peace learned about homicide, murder, and the distinction between murder and manslaughter. In true-crime plays, readers learned of the motivations of the killers as well as criminal procedures during their trials. In printed sermons and biblical commentaries, readers learned about the Decalogue and the admonishment against killing. At increasingly public executions, they learned about how sinners were punished for homicide. These printed works also called into question the validity of the manslaughter offense, as it did not provide a blood sanction. Collectively, the printed works by the middle of the seventeenth century created “publics” or collectives that commented on homicide and its punishment. Murder and manslaughter were now public offenses more than merely offenses against the king’s peace.

Throughout, Kesselring’s main opponent is Matthew Lockwood, who has recently written a history of early modern coroners.[1] Where Lockwood tends to dismiss every historian of crime and the state since Max Weber, Kesselring is at pains to acknowledge and weave together previous historians’ works. Where Lockwood employs reductive techniques that ignore conceptual and political contexts, Kesselring sees those as vital. Where Lockwood sees a continuous decline in homicide rates, Kesselring, siding with previous scholarship, sees a brief rise in prosecutions from 1580 to 1620 before a return to declining rates. Overall, Kesselring emerges the victor. Her work will be enjoyed more by early modern historians, the intended audience of the book.

Nevertheless, there are some drawbacks to the work. First, Kesselring’s admittedly anachronistic
approach partially negates her otherwise laudable attempt at a conceptual history of homicide. As she notes, suicide in the early modern period was considered “self-murder” (p. 32). Yet she opts not to study it. While social historians seeking to understand past practices that mirror modern concepts might be able to get away with anachronisms, the conceptual historian cannot do so, as the primary purpose of her work is to show how constructs changed over time. Indeed, this is Kesselring’s primary, if not sole, purpose in writing on homicide. Understanding “self-murder” as a public crime that required justice would have strengthened the work by historicizing it.

It is also not entirely clear what Kesselring’s relationship is with the historiography of the public sphere that has burgeoned in recent years. While Kesselring seems to disagree with Peter Lake and Steven Pincus’s Jurgen Habermas–inspired approach in the introduction, in the conclusion, she argues for publics “in the Habermasian sense” (p. 146).[2] There are other key points that require further elaboration. Kesselring hints that a shift from the king’s justice to public justice also reflected a shift in the way people thought about sovereignty. She could have pursued this idea more thoroughly. Likewise, the relationship between homicide and slavery in the middle of the seventeenth century is fascinating but only gets two pages in the conclusion.

These reservations really show the fruits of the work, as Kesselring touches on so many aspects of early modern life and her thesis interacts with so many historiographies that she could have written a thousand-page book and still not have exhausted the subject. It is always wise to leave an audience wanting more. Hopefully, students and scholars of crime, the state, and the public sphere will contemplate and elaborate upon Kesselring’s inspiring book for years to come.

Notes
