Introduction

> Whatever else may be included in the education of the people, the very first essential of it is to unbrutalise them; and to this end, all kinds of personal brutality should be seen and felt to be things which the law is determined to put down.
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> . . . . J.S. Mill and Harriet Taylor, 1853[1]

The Problem of Male Violence

In the modern world, one of the most fundamental obstacles to social order and peace has been the nature of males. A mass of scientific study has established that from birth, males on average tend to be more aggressive, restless and risk-taking than females, and in general less amenable to socialization. History as well as anthropology bears out the implications of the scientific studies, for it would appear that all settled societies, past and present, have been faced with the twin tasks of putting to use and reining in these male propensities.[2]

This book addresses one such propensity: with greater physical strength combined with greater aggressiveness, men are and have always been far more seriously violent than women. Perpetrators of homicide, excepting the special case of infanticide, have in almost all times and places been largely male, often overwhelmingly so. It is in fact a cliche of criminology that violent criminals are far more likely to be male than female.[3] The problematic nature

[1] *Remarks on Mr. Fitzroy's Bill for the More Effectual Prevention of Assaults on Women and Children* (London, 1853) [published anonymously].
[2] For a stimulating survey of this question, James Q. Wilson, "On gender," *The Public Interest* no. 112 (Summer 1993), 3–26.
[3] As David Levinson summarized the findings of many studies in 1994, "in all places at all times in human history men have been far more likely to murder than have women, and men have been far more likely to kill other men than women have been likely to kill other women." Levinson, *Aggression and Conflict: A Cross-Cultural Encyclopedia* (New York, 1994), p. 4. Also see David Levinson, *Family Violence in Cross-Cultural Perspective* (New York, 1989). Recent statistics for the United Kingdom are analyzed in *Gender and the Criminal Justice System* (London: Home Office, 1992).

of this male propensity has if anything grown in modern times, with the emergence of a way of life very different from that in which male inclinations to violence developed. As evolutionary psychologists and anthropologists have argued, this is a trait that has lost much of its former functionality, but because of its long gestation, it is not one that is easy to banish.[4]

Thus, it is safe to say that homicide, whether the victims are female or male, is and as far as we can ascertain always has been highly gendered behavior and ought to be looked upon from that angle more than it has been. The obverse of this claim is that how homicide is treated by society, both today and in other times and places, can reveal much about notions of masculinity and their changes, just as the excavation and elucidation of such notions help in turn to make sense of homicide's treatment. Even though of course killing is highly unusual behavior, fortunately peripheral to everyday life, "what is *socially* peripheral," the cultural historians Peter Stallybrass and Allan White have reminded us, is "frequently *symbolically* central."[5] This book argues that this was certainly true of nineteenth-century homicide, especially homicides adjudged to be intentional. Putting such claims into practice, this book attempts to demonstrate how intertwined criminal justice, gender and the wider culture were in one particular place and period – Britain in the Victorian age.

In recent decades, education, legislation and the media have all been invoked and employed to discourage male violence. Yet social intervention to reshape this sort of male behavior has not been a phenomenon of only the past generation. It has a history, a neglected one, reaching back at least several centuries, and was especially prominent in nineteenth-century England, a society undergoing the most rapid transformation experienced since the invention of agriculture. The age of Victorianism, despite some of the staid associations that still cling to the term, was anything but static.

Victorian England and Homicide

Over this era, several broad changes took place in the recorded incidence and treatment of homicide. Most significant for this work's concern, public,

This appears to be true for the past as well as the present, for example Hertfordshire in Shakespeare's time: Carol Z. Wiener, "Sex Roles and Crime in Late Elizabethan Hertfordshire," *Journal of Social History* (1975), 38–60, and Peter Lawson, "Patriarchy, Crime and the Courts: The Criminality of Women in Late Tudor and Early Stuart England," in *Criminal Justice in the Old World and the New*, ed. Greg T. Smith, Alyson N. May and Simon Devereaux (Toronto: Centre of Criminology, University of Toronto, 1998).

[4]The best single work on our subject from this perspective remains Martin Daly and Margo Wilson, *Homicide* (Hawthorne, N.Y., 1988). For a recent study of gender and evolutionary psychology, see David P. Barash and Judith Eve Lipton, *Gender Gap: The Biology of Male-Female Differences* (New York, 2002).

[5]Peter Stallybrass and Allan White, *The Politics and Poetics of Transgression* (Ithaca, N.Y., 1986), p. 5.

normally male-on-male, killing apparently was declining markedly, while "private," domestic or other intimate killing was failing to show clear evidence of diminution. Along with these trends went a trend in treatment by the criminal justice system towards greater punishment for major crimes against the person and easing punishment for crimes against property, and within the treatment of crimes against the person a shift in severity of punishment from public to private violence, most especially murder. What might such shifts mean? Several things. For one, as has been much discussed by historians of crime, the nineteenth- and early twentieth-century decline in recorded violence was part of a long-term social tendency for life-threatening violence to diminish, at least in public, under both the pressures of authority against such "disorderliness" and the gradual rise in material standards of living and social standards of self-discipline and "civility."[6] The Victorian era greatly developed its inheritance from previous eras, racheting up the pressures of authority and, along with improving material conditions, raising the social standards of self-discipline. By its later years these efforts were being rewarded by a sustained rise in most indices of "civility." This move against interpersonal violence meshed with a second trend to shape the treatment of male violence, particularly that directed against women.

This second trend was a "reconstruction of gender," begun in the eighteenth century but only coming to fruition in the nineteenth. Women were increasingly seen as both more moral and more vulnerable than hitherto, while men were being described as more dangerous, more than ever in need of external disciplines and, most of all, of *self*-discipline. This re-imagining of gender played a crucial if as yet unappreciated role in criminal justice history, just as developments in the latter were contributing to the former. From this re-imagining, as it joined with the increasing intolerance of violence, came a tendency to see women as urgently needing protection from bad men, which brought acts of violence against women, more often than not taking place in the home, out from the shadows.

During the sixty-four-year reign of a woman, the treatment of women in Britain and in the burgeoning empire became a touchstone of civilization and national pride. As a young queen came to the throne in 1837, and after her marriage and the start of childbearing, there was much talk of her reign as a

[6]The *locus classicus* for theoretical discussions of this is Norbert Elias, *The Civilizing Process* [orig. pub. Zurich, 1939; Eng. trans. 1978 & 1983] (rev. ed., Oxford, 2000). The broad process of "pacification" has been examined by many historians: in particular see Lawrence Stone, "Homicide and Violence," in *The Past and the Present Revisited* (London, 1987); James A. Sharpe, "The History of Violence in England: Some Observations," *Past & Present* 108 (August 1985), 206–215; Jean-Claude Chesnais, "The history of violence: Homicide and suicide through the ages," *International Social Science Journal* 44.2 (May 1992), 217–234. The most authoritative study of this long-term trend and discussion of its possible causes is Manuel Eisner, "Modernization, Self-Control and Lethal Violence: The Long-Term Dynamics of European Homicide Rates in Theoretical Perspective," *British Journal of Criminology* 41 (2001), 618–638.

new age in which "family" values would spread their influence. One writer in praising the Queen after her marriage typically depicted a "beautiful chain," not the traditional one of hierarchy from Sovereign down to subject, but one of common family life: "which should be fastened at one end to the cottage, at the other end to the palace, and be electric with the happiness that is carried into both."[7] Indeed, when seeking a symbol of the nation's humanity and morality, the use of the female national symbol, "Britannia," was given a new life. After Victoria's accession several new coins were minted carrying the image of Victoria as Britannia, and the new bronze penny of 1860 had Victoria on one side and an older version of Britannia on the other. Elsewhere, Britannia appeared more often in magazine cartoons as "the apotheosis of values central to the dominant elites, Justice, Liberty and The Empire," and by the end of the century had become a matriarch conflated with Victoria herself. Britannia became, in Peter Bailey's phrase, "the Angel of the House, made the Matron at large and On Guard."[8] One way it was felt in which the new era distinguished itself from what went before was in the heightened moral influence of women and attention to their protection (at home and around the world) from a variety of evils, not least among them the violence of men.[9]

Of course, as many scholars have pointed out, this kind of protection often amounted to little more than rhetoric, and even when it did make a real difference in ordinary lives, it conferred its benefit at a price: abroad, by

[7]Quoted in John Plunkett, "Queen Victoria: the Monarchy and the Media 1837–1876" (Ph.D. thesis, University of London 2000), in turn quoted in Regenia Gagnier, "Locating the Victorians," *Journal of Victorian Culture* 6, no. 1 (Spring 2001), 118.

[8]For further information, see Roy Matthews and Peter Mellini, "John Bull's Family Arises," *History Today* (May 1987), 20, and "From Britannia to Maggie," *History Today* (September 1988), 18.

[9]One of the chief rationales of empire was its protection of women in other societies against their own menfolk; the abolition of suttee in India being only the most famous of many examples cited throughout the century. From another angle, the uncovering of female suffering itself helped justify empire: as Cannon Schmitt has argued about "Gothic" themes in Victorian writing, "women are [repeatedly] figures whose victimization calls forth Englishness from (implicitly male) spectators. This configuration, whereby women must suffer to produce or confirm Englishness [in men], is intensified and generalized as the century progresses, reaching something of an apogee during the Indian Rebellion." *Alien Nation: Nineteenth Century Gothic Fictions and English Nationality* (Philadelphia, 1997), p. 161.

The Victorian era also saw revived interest in the legendary national hero, King Arthur, which focused particularly upon Arthur's efforts to transform a warrior society based upon bloodthirsty conquest into a realm based upon a gentler, less combative code of conduct. Indeed, as Stephanie Barczewski has observed, "nineteenth century authors often utilized the legend to explore definitions of a new kind of masculinity capable of functioning in an increasingly domestic sphere" – while at the same time anxious that such a "new man" might be an emasculated one. [*Myth and National Identity in Nineteenth Century Britain* (London and New York, 2000), p. 169.]

justifying the domination of other peoples, and at home, by similarly justifying male paternalism – widening gender distinctions and making the home almost the only proper place for women, while men ran politics, business and much of the rest of public life. This is not to mention that it also produced new pressures on women to shape themselves behaviorally to fit the ideal of "true womanhood" worthy of such care and protection. Yet for all this it will not do to simply dismiss the ideal of protecting women as nothing but a hypocritical instrument of a new kind of white male domination. As scholars of class have shown, "Victorian values" did not simply tighten social controls; they also challenged and reconfigured existing relationships of power. It is past time for gender historians to heed what historians of class have painfully learned – while not ceasing to show how ideas and ideals can be employed to support existing distributions of power, at the same time to appreciate the multiple effects of values and sentiments, and how they sometimes create the conditions for real change in social relations.

In nineteenth-century Britain the seemingly endless (and well-studied) discussions of true womanhood were paralleled by a similar (if less studied) preoccupation with true manhood. Ill-defined terms like "manly" and "unmanly" appear everywhere in Victorian discourse, hinting at a continual gnawing on this indigestible bone.[10] If women were having their "nature" delimited, so too in some significant ways were men.[11] The concern of respectable persons to protect women more effectively easily allied with the other concern already in evidence – to reduce violence and "civilize" men in general (especially, though not exclusively, working-class men) in all their social relations. In the eighteenth century manliness' close association with bearing arms or fighting upon insult had already loosened; the gentry for the most part ceased carrying weapons and became more reluctant to get into duels or other affrays. Gentlemen dramatically yielded their once-prominent place in the rolls of violent offenders, while at the same time even plebeian men were resorting less often to lethal violence.[12] In the nineteenth century

[10]See J.A. Mangan and James Walvin, eds., *Manliness and Morality: Middle-Class Masculinity in Britain and America, 1800–1940* (Manchester, 1987); Michael Roper and John Tosh, eds., *Manful Assertions: Masculinities in Britain since 1800* (London, 1991); Stefan Collini, "Manly Fellows: Fawcett, Stephen, and the Liberal Temper," in *Public Moralists: Political Thought and Intellectual Life in Britain 1850–1930* (Oxford, 1991), pp. 170–196; John Tosh, *A Man's Place: Masculinity and the Middle-Class Home in Victorian England* (New Haven, 1999).

[11]On nineteenth-century restriction of male "nature," see the brilliantly suggestive remarks of Alain Corbin, "The 'Sex in Mourning'," in his *Time, Desire and Horror: Towards a History of the Senses* (Cambridge, Mass., 1995): "the range of masculine gestures shrank . . . tears went out of fashion. The photographic pose emphasized the calm, gravity and dignity of men. . . . We need to listen carefully; we then perceive the depth of male suffering. . . . The unhappiness of women flowed from the misery of men."

[12]See Robert Shoemaker, "Male Honour and the Decline of Public Violence in Eighteenth-Century London," *Social History* 26 (2001), 190–208.

this decline continued, and efforts to reduce it further both broadened and became more specifically gendered. More kinds of violence came to fall within the circle of condemnation and punishment, including, more than ever before, those directed against women. While men's prerogatives in relation to women expanded in certain directions, they narrowed in others. In particular in nineteenth-century England, even as much traditional tolerance continued towards violence against women, especially wives, such violence was increasingly investigated, censured and punished by more active – or intrusive – agents of criminal justice. In this way, the protection of women came to pose the question of the "reconstruction" of men, and the criminal justice system became a site of intense cultural contestation over the proper roles of and relations between the sexes.

Indeed, not only was male violence coming more and more to be denounced as a relic of benighted ages and a practice of barbaric peoples, but more generally, the elevation of the family values ever more associated with women's natures (such as religiosity, nurturing, sensitivity to the feelings of others and of course sexual self-denial) fed a questioning (even in the face of a surge of imperial enthusiasm in the late decades of the century) of the values of bravery, self-assertion, physical dominance and others traditionally associated with masculinity. The ideal of the "man of honor" was giving way to that of the "man of dignity," which required in place of a determination to avenge slights whatever the danger involved the qualities of reasonableness, forethought, prudence and command over oneself.[13] The newer expectation for men, to manifest peaceableness and self-restraint in more and more areas of life, well established among gentlemen by the end of the eighteenth century, was extended in the following century in two directions: from gentlemen to all men, and from public, male-on-male violence to "private" violence against subordinates, dependents and the entire female gender. Both extensions met strong resistance, from customary notions of masculinity among much of the populace in which violence had an essential place, from similarly customary notions of social hierarchy, and from related notions of gender relations, in which women's weapon of the tongue was met by men's weapon of the fist. Nonetheless, by the end of the nineteenth century newer standards of manliness had made great headway. In these movements and contestations, the Victorian era was witness to a powerful "second stage" in the centuries-long reconstruction and, to a degree, "domestication" of male ideals and, to a lesser but nonetheless significant extent, of male behavior – one that has not as yet received its due.[14]

[13]See John Tosh, "The Old Adam and the New Man: Emerging Themes in the History of English Masculinities, 1750–1850," in *English Masculinities 1660–1800*, ed. T. Hitchcock and M. Cohen (London, 1999), pp. 217–238.

[14]This is not of course to argue that Victorian criminal justice victimized men or favored women. The actual circumstances of women and men in the dock often

At the same time however "Victorianism" itself was conflicted, and had no simple approach to the "problem of men." This was particularly so in regard to the mistreatment of "bad" women, for heightened expectations of female virtue and domesticity, when unmet, could mitigate the otherwise-heightened offensiveness of male violence against members of the opposite sex. In addition, the idealization of the family home made intrusion into it by the state or other social actors even more questionable. Thus, efforts to "civilize" men often encountered cross-currents generated not simply by a persistence of older values but by parallel changes in expectations of women and of domestic life, making their advance a good deal less than straightforward.

This effort to change men's behavior, along with its accompanying conflicts and contradictions, was played out in the working of the criminal justice system.[15] Legal institutions are of course also cultural institutions. In the everyday implementation of the law can often be seen put into practice the generalizations of preachers and moralists as well as of ordinary people. As the law has a cultural dimension, cultural history also has a legal dimension. The cloth of cultural history is woven from diverse fabrics, some of these legal – discourse in the courtroom, among lawyers and officials, and in the press as well as in essays and conduct books, fiction and art. A crime, a trial, a reprieve effort, and public and private accounts of them are all potentially revealing cultural texts. We shall attempt to see what they can suggest of notions of violence and conceptions of manliness, and how these were put into practice in the century of the "pax Victoriana."

This book deals only with one area of the law – the criminal – and within that area only one statistically minor part – the treatment of major crimes of violence, chiefly homicide (predominantly that which had female victims) and also rape. Homicide embraces only a very small proportion of crimes of violence, and even rape only a part of sexual offenses. Moreover, recorded offenses, even of homicide, by no means represented all such acts, and certainly the number of rape prosecutions in the nineteenth century only hinted at the total amount of sexual violence against women. Yet very little can be said with any confidence about unrecorded violence, beyond the claim that

differed sufficiently to justify differential treatment. The actual behavior of men may possibly have merited even more punishment, and that of women less, than was actually handed out, then and now, as Susan Edwards, among others, has argued. [*Sex and Gender in the Legal Process* (London, 1996), pp. 371–372.] However, this study is not concerned with rights and wrongs, but with historical developments and their explanation.

[15]As James Sharpe has noted, "historians are only just beginning to study how masculinity was socially and culturally constructed in early modern England, yet it would seem that male criminality would offer a relatively well-documented way into this problem." [*Crime in Early Modern England* (rev. ed. 1999), p. 159.] This is true of more recent periods also, as this book hopes to demonstrate.

it existed and was ubiquitous. The gap between actual and recorded lesser violence was particularly great, and even when such violence was recorded, the records are usually not very forthcoming. Extreme crimes like homicide or rape can reveal more, for they arouse much more official and public interest and generate far more material of various kinds than do lesser offenses. Their legal prosecution produces a disposition, of course – a man goes free, goes to prison, or is hanged, to cite the most common outcomes – but such prosecutions do more: they engage a wide range of persons in reflection, discussion and pronouncement, often with life-or-death consequences, on deep moral questions. How does one define violence, how does one identify circumstances that justify, excuse or mitigate such violence, and what should one expect of persons placed in various provoking situations, or of those whose responsibility for their actions, for one reason or another, may be in question? The principles of the law, of course, offer some guidance for such questions, but they do not operate in a world of their own; principles, rules and procedures always arise and are applied within specific social and cultural contexts. How in relation to these major crimes of violence did the criminal law evolve, how was it applied, and what did it mean for widely-held understandings of masculinity? To these questions this book seeks to supply some answers.

1

Violence and Law, Gender and Law

Violence and Law

In nineteenth-century England, the problem of violence, the meanings of gender, and the workings of law were all assuming more prominent places in culture and consciousness. As they did, the three converged on one issue in particular – that of more effectively controlling male violence, particularly in order to better protect women. Of course, such a morally and politically stigmatized concept as "violence" is not simply descriptive of an objective set of actions but, particularly at its margins, subject to multiple, changing and often competing definitions. In some definitions, violence has not needed to be physical (it might, for example, be verbal, in the form of threats or insults, or the "mental cruelty" as cited in divorce law); in others, the infliction of physical pain and even injury has not necessarily been violence (in medical procedures or in the punishment of children, until very recently). New forms of "violence" are continually discovered, while behavior considered "violent" may in time cease to be so labeled.

Even today, in a climate of opinion more hostile to the use of physical coercion perhaps than any previous era, views still differ on when (legal) force becomes (illegal) violence. The banning in ever more jurisdictions of physical punishment of children, the establishment of the crime of marital rape and the controversies in legal cases concerning consensual sexual violence illustrate the difficulty even in one period of finding universal agreement on the definition or boundaries of violence.[1] In past times the concept of violence, however tangible and self-evident it may have seemed, was at least as mutable, constructed and contested. As William Ian Miller has observed, "the word violence is a depository for a large number of utterly incommensurable

[1]On the last, the case of *R.v. Brown* 1993, in which the House of Lords found consensual homosexual sado-masochistic acts to be unlawful violence, is instructive. See Leslie J. Moran, "Violence and the Law: The Case of Sado-Masochism," *Social and Legal Studies* 4 (1995), 225–251; Carol Smart, *Law, Crime and Sexuality: Essays in Feminism* (London and Thousand Oaks, Calif., 1995), pp. 115–120. Also highly relevant is the 1991 legal recognition of marital rape as a crime: see Keith Soothill, "Marital rape in the news," *Journal of Forensic Psychiatry* 5 (1994), 539–549.

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).