

In modo guerrino

Change and Continuity in English Elite Conceptions of Violence, 1450-1560

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Short Abstract

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Debates over the issue of violence in late medieval and early modern England tend to focus on ways that the legal system and institutions attempted to control it, or on the influence of wider political or economic forces that generated violence and criminality. This overlooks, or minimises, the cultural and social meaning of violence, particularly as it was performed by members of the social elite. This thesis re-evaluates the meaning of violence for socially elite performers of violence, their victims, and their audiences through a survey of case studies drawn from the records of the central Court of King's Bench and other sources. Using research drawn from criminology, anthropology, and sociology, meaning is found in the performances of violence and their contexts. This method contrasts with previous attempts at studying violence quantitatively or through the lens of the *civilizing process*.

Violence is a form of communication and the way violence is performed communicates meaning and intent. This survey of cases shows how much these performances were influenced by the deeply ingrained values of martial culture and right-violence amongst socially elite performers. As the value and meaning of martial culture changed, so too did the ways in which those elites chose to perform violence. This thesis tracks some of those changes from the militarised, public, and communal performances of the last half of the fifteenth century towards the less militarised, more private and individualistic performances of violence in the first half of the sixteenth century, foreshadowing the duelling craze that followed.

Long Abstract

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There is a consensus that interpersonal violence—both licit and illicit—was commonplace in fifteenth- and sixteenth-century English lives. There is less agreement on exactly how much violence that represents, which is a problem of sources as much as it is a problem of definitions. There is also little agreement on what that violence signified in the absence of obvious political, religious, or economic contexts. There is a sense that the nature of this violence changed over the period of transition from the medieval to the early modern., and the abstract notion that there is something fundamentally different between medieval interpersonal violence and that of the post-medieval world is an occasional feature of the historiography.

However, most scholarship has focused on questions of quantity rather than quality, often through the lens of legal or legislative efforts to control illegal violence and crime. Violence is treated as a problem that needed to be solved. This *problematization* of violence favours research methods that look for mechanistic causes and cures and treats most forms of violence on a scale of bad to worse. More recent studies of violence by sociologists, criminologists, and anthropologists provide alternative methods for studying historical violence by treating it as an act with social meaning and as a means of communication. Violence can be interpreted as constructive, conservative, restorative, and as personal or group expressions or aspirations, and England's social elites told themselves that they had a special relationship with *right violence*. Violence involving the social elites of the period (a category that includes the lesser gentry up to the titled nobility) provides the best documented material to work with. Therefore, this study has sought out instances of elite interpersonal violence from the central Court of King's Bench and elsewhere, with a focus on the performative meaning of violence in the historical context. This thesis tries to identify what violence meant to those who performed it and to those who were its victims, its witnesses, or its judges. Specifically, the violence we will study is interpersonal violence involving members of the social elite, usually as perpetrators. Most of the examples are classed as criminal violence but the

violence in warfare, judicial punishment, and the use of force as correction or retribution inform our questions about meaning. Most of the case studies of elite violence were found through a sample survey of the *rex* sides of the King's Bench rolls, beginning with the Michaelmas term of 1450, and each subsequent Michaelmas term, at five year intervals, to 1560. Case studies were added from other sources such as the return files of coroners' inquests, and records of the Court of Star Chamber and Chancery. Events found there are given meaning through comparison with contemporary literature on elite culture and more recent studies of interpersonal violence from anthropologists, criminologists, and social scientists.

By the early fifteenth century, English social elites saw themselves as part of a deeply militarised society where landowning men had a right and obligation to use force and the threat of violence to protect their rights and preserve the rights of the Crown. Sometimes this was made explicit in the legislation and laws. Didactic and leisure literature taught these lessons in more abstract and personal ways that made it fairly easy for social elites to justify their use of violence as morally and ethically defensible, even if there was little legal support for the same actions. Many of the cases involving elite participants between 1450 and the 1480s exhibit militarised characteristics—participants are described as armed *in the manner of war*, they gather publicly, and make little effort to conceal their identities or intentions. Often these events are interpreted by later historians as part of the factionalism of the period, or as a product of bastard-feudal systems of mutual support gone wrong. Looking more closely, it is possible to see much of this violence as a product of a deeply militarised community of elites who were taught to see themselves as part of the legitimate users of violence, which they were obligated to exercise to protect their own rights. This was not in opposition to the central courts or institutions of the law but supplemental to it, and those courts seemed to understand this relationship. Local disorder could be interpreted as local peacekeeping depending on the contexts of actions.

Public performances of militarised violence, no matter how apolitical, became harder to justify in the early years of the Tudor regime. The literature of the period and the actions of the courts began to draw a clearer line between the forms of violence social elites could use in defence of their own rights and those claimed by the Crown. This is reflected in the decline of militarised

violence employed in personal disputes (with some notable exceptions) but social elites never lost their attraction of martial culture and right violence.

However, by the middle of the sixteenth century, norms governing the social value of martial violence and interpersonal conflict diverged such that one could no longer use the tropes of the just war in private disputes. For that, English elites adapted the medieval cult of chivalry to the early-modern economy of honour and with it, the opportunities offered by the duel and specialised weapons for gentlemen. Throughout all of this, the legal system accommodated this illegal but socially accepted relationship with violence by exercising discretion in the application of the law and the sweeping jurisdiction of royal grace.

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Zena Charowsky, my partner of more than 20 years, has endured three years of separation and two years in residence with a hermit, his crowd of murderers, and his mood swings. None of that was worth an Oxford doctorate. I can only try and make up for what this has cost her over the next 20 years, or as many more as I am given.

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Table of Abbreviations

<i>AJLH</i>	<i>The American Journal of Legal History</i>
abr. ed.	abridged edition
Baker, <i>OHLE VI</i>	John Baker, <i>The Oxford History of the Laws of England: Volume VI, 1483-1558</i> (2004)
Baker, <i>IELH</i>	John Baker, <i>Introduction to English Legal History</i> , 4th ed.
‘Benet’s Chronicle’	‘John Benet’s Chronicle for the Years 1400 to 1462’, <i>Camden Miscellany</i> 9, G. L. Harriss and M. A. Harriss, eds. (1972)
<i>BJRUL</i>	<i>Bulletin of the John Rylands University Library</i>
BL	British Library, London
<i>Bracton’s Notebook</i>	Henry de Bracton, <i>Bracton’s Note Book: A Collection of Cases Decided in the King’s Courts During the Reign of Henry the Third</i> , F. W. Maitland, ed. (1887)
<i>Brut</i>	<i>The Brut, Or, The Chronicles of England</i> , (2 vols.) F. W. D. Brie, ed. (1906)
<i>Caryll’s Reports</i>	<i>Reports of Cases by John Caryll</i> , (2 vols.) John H. Baker, ed. (1999)
CCR	<i>Calendar of Close Rolls</i>
CFR	<i>Calendar of Fine Rolls</i>
CIPM	<i>Calendar of Inquisitions Post Mortem [...] Henry VII</i>
‘Cleopatra C IV’	BL, MS Cotton Cleopatra C IV, edited in <i>Chronicles of London</i> , C. L. Kingsford, ed. (1905), pp. 117-152
CPR	<i>Calendar of Patent Rolls</i>
CSPVenice*	<i>Calendar of State Papers [...] Venice</i>
CUP	Cambridge University Press
EHR	<i>The English Historical Review</i>
<i>Fabyan</i>	Robert Fabyan, <i>The New Chronicles of England and France: In Two Parts</i> , H. Ellis, ed. (1811)
<i>Fleta</i> *	<i>Fleta: Volume II, Prologue, Book I & II</i> , H. G. Richardson and G. O. Sayles, eds. (1953)
	<i>Fleta: Volume III, Book III and Book IV</i> , H. G. Richardson and G. O. Sayles, eds. (1972)
	<i>Fleta: Volume IV, Book V and Book VI</i> , G. O. Sayles, ed. (1984)
	[Citations in notes refer to book and chapter. There is no vol. I in this edition]
Gairdner, <i>PL</i> *	<i>The Paston Letters, AD 1422-1509</i> , (6 vols.) J. Gairdner, ed. (1904)
	[citations are to letter number in the 1904 ed.]
Gairdner, <i>Historical Collections</i>	<i>The Historical Collections of a Citizen of London in the Fifteenth Century</i> , J. Gairdner, ed. (1876)
Hil.	Hilary term of the courts of Westminster (c. late January-late February)
HMC	Historical Manuscripts Commission
<i>HoC 1386-1421</i>	<i>The History of Parliament: The House of Commons, 1386-1421</i> , (4 vols.) John Smith Roskell, Linda Clark and Carole Rawcliffe, eds. (1992)
<i>HoC 1509-58</i>	<i>The House of Commons 1509 – 1558</i> , (3 vols.) Stanley T. Bindoff, ed. (1982)
HMSO	His/Her Majesty’s Stationery Office
HR	<i>Historical Research</i>
<i>Issues of the Exchequer</i>	<i>Issues of the Exchequer</i> , F. Devon, ed. (1837)
<i>JLH</i>	<i>The Journal of Legal History</i>
<i>John Vale’s Book</i>	<i>The Politics of Fifteenth Century England: John Vale’s Book</i> (1995)
KB	King’s Bench
<i>Knyghthode</i>	<i>Knyghthode and Bataile</i> (EETS, vol. 201) R. Dyboski and Z. M. Arend, eds. (1935)

Leland, <i>Itinerary</i>	John Leland, <i>The Itinerary of John Leland in or About the Years 1535-1543</i> , (5 vols.) Lucy Toulmin Smith, ed. (1907)
LPHE*	<i>Letters and Papers, Foreign and Domestic, of the Reign of Henry VIII</i> , (23 vols.) J. S. Brewer, R. H. Brodie and J. Gardiner, eds. (1862-1910) [citations are to item number unless otherwise stated]
LPWars	<i>Letters and Papers Illustrative of the Wars of the English in France During the Reign of Henry the Sixth, King of England</i> , (2 vols.) J. Stevenson, ed. (1864)
Leadam, <i>Star Chamber</i>	<i>Select Cases Before the King's Council in the Star Chamber Commonly Called the Court of Star Chamber</i> , (2 vols.) I. S. Leadham, ed. (1906/1911)
<i>Materials, Henry VII</i>	<i>Materials for a History of the Reign of Henry VII</i> , (2 vols.) W. Campbell, ed. (1873)
Mich.	Michaelmas law term (early October to late November/early December)
'MS Rawlinson B 355'	in <i>Six Town Chronicles of England</i> , R. Flenley, ed. (1911), pp. 101-113
ODNB	<i>Oxford Dictionary of National Biography</i> , Online edition (2004-8)
OUP	Oxford University Press
P&P	<i>Past and Present</i>
Pasch.	Easter law term (c. April-May)
PL I, II*	<i>Paston Letters and Papers of the Fifteenth Century, Part I, II</i> , rev. ed. (2 vols.) N. Davis, ed. (2004) [citations are to vol. and letter number]
PL III*	<i>Paston Letters and Papers of the Fifteenth Century, Part III</i> , R. Beadle and C. L. Richmond, eds. (2004) [citations are to vol. and letter number]
<i>Plumpton Letters</i>	<i>The Plumpton Letters and Papers</i> , Joan W. Kirby, ed. (1996)
<i>Port's Notebook</i>	John Port, <i>The Notebook of Sir John Port</i> , J. H. Baker, ed. (1986)
PRO	Public Records Office (now The National Archives)
PRoME	<i>The Parliament Rolls of Medieval England</i> (16 vols.), various eds. (2005)
<i>Readings and Moots II</i>	<i>Readings and Moots at the Inns of Court in the Fifteenth Century: Vol II, Moots and Readers' Cases</i> , Samuel E. Thorne and J. H. Baker, eds. (1990)
<i>Rot, Parl.</i>	<i>Rotuli parliamentorum</i> (6 vols.) Records Commission (1783-1832)
RTDA	<i>Reports and Transactions of the Devonshire Association</i>
Sayles, <i>King's Bench</i>	<i>Select Cases in the Court of King's Bench</i> , (7 vols.) G. O. Sayles, ed. (1936-71)
<i>Pleas of the Crown</i>	<i>Select Pleas of the Crown: 1200-1225</i> , F. W. Maitland, ed. (1888)
Scofield, <i>Edward the Fourth</i>	C. L. Scofield, <i>The Life and Reign of Edward the Fourth</i> , 2016 ed. (2 vols., 1923)
Stapleton, <i>Plumpton Spelman</i>	<i>Plumpton Correspondence</i> , Thomas Stapleton, ed. (1839)
<i>Stat.*</i>	<i>The Reports of Sir John Spelman</i> (2 vols.) J. H. Baker, ed. (1976-7)
<i>Stonor*</i>	<i>The Statutes of the Realm</i> (3 vols.), ed. of 1810 [citations are by regnal year, reign, chapter, and section]
TBGAS	<i>Kingsford's Stonor Letters and Papers 1290-1483</i> , C. L. Kingsford and Christine Carpenter, eds. (1996)
TRHS	<i>Transactions of the Bristol and Gloucestershire Archaeological Society</i>
Trin.	<i>Transactions of the Royal Historical Society</i>
TNA	Trinity law term (June-July)
'Vitellius A xvi'	The National Archives (previously the Public Records Office)
Wedgwood, <i>Biographies</i>	BL, MS Cotton Vitellius A xvi, edited in <i>Chronicles of London</i> , C. L. Kingsford, ed. (1905), 153-263
	J. C. Wedgwood, <i>History of Parliament 1439-1509: Biographies</i> , Anne D. Holt, ed. (1936)

* References in these sources are usually made to document, section, or book and chapter number, rather than page.

Preface

‘The shortest way between two points, between violence and its analysis, is the long way round, tracing the edge sideways like the crab scuttling.’¹

There is a painting in the British Library’s St Pancras building, hanging on the north wall between the coat-check and the reader’s lockers that, by accident, is a convenient simile for the study of violence. Patrick Hughes’ ‘Paradoxymoron’ depicts a simple, almost cartoonish, set of book presses formed into rows and passages, representing a large, densely stocked library. Instead of a flat canvas, the image is applied to a set of angled panels, playing with the stereoscopic vision most of us share. It *works* as Hughes intended, only when the viewer looks at the painting while moving past it, so that the shelves seem to move unnaturally. For a moment you are looking at something familiar and distorted, orderly in its irregularity, like a banal but nightmarish library from the fiction of Jorge Luis Borges. ‘Your eyes tell you one thing, your feet tell you something different.’² Despite the distortions, the library in the painting always remains a library and it is often overlooked by visitors who pass this illusion and never see or feel its unnerving magic.

Studying violence often brings a similar sensation of familiarity and discomfort to a subject often overlooked or deliberately avoided. We like to think we know what is or is not *violent*, but meaning can change or distort as we alter our perspectives or find different angles of analysis. History is often described as an attempt at seeing, or rather understanding, the past through different eyes, and the object of violence is a difficult thing to view without distortion. The common solution is to fix our perspective in place, restricting our line of sight on one facet of a complex, multidimensional subject. This flattened view of violence is comfortable but inaccurate because it fails to reveal that ‘vast landscape of contingency’ on which the image of violence

¹ M. Taussig, quoted in Valentin Groebner, *Defaced: The Visual Culture of Violence in the Late Middle Ages* (New York: Zone Books, 2004), 35.

² Patrick Hughes, quoted in Norman D. Cook, *Harmony, Perspective, and Triadic Cognition* (Cambridge: CUP, 2012), 166.

appears.³ Violence only makes sense when seen against a surface that gives it meaning and guides its movement. This thesis, reduced to its shortest coherent description, is an exercise in historical empathy, an attempt to understand the place of violence—specifically interpersonal violence—within elite English culture during the late fifteenth and early sixteenth centuries.⁴ It argues that martial culture was one of the strongest influences over the performance of elite interpersonal violence, shaped how the elite understood the social value of force, and influenced the way victims, third parties, and other witnesses of violent performances understood its meaning. This thesis argues that elite violence was not the product of a brutalising civil war, tyrannical regimes, social or confessional upheavals, or a culturally sustained indifference to suffering or injustice. Rather, it was a consequence of a worldview steeped in the logic of virtuous violence. This is not a radical argument, but it does take a different approach than previous studies.

Violence was part of the language of elite culture and self-identity, and its structure of values gave elite violence its meaning. Those values and meaning changed over time while other cultural conceptions of violence endured. This change and continuity is visible in the way elites performed violence and it is these changes that we are looking for in the sources. To do this, the thesis is divided into four parts. Part I describes the conceptual basis of this study and some of the methods used by scholars in various disciplines to understand violence. Part II narrows the focus to English historiography and previous studies of violence occurring in the late medieval and early modern periods. It also describes the primary sources that give us our case studies. Part III discusses case studies found in the sources up to 1485, tracing continuity and change over time, and in particular the way in which violence moved out of the public eye and into private space. This is briefly traced through case studies up to 1560 and analyses further change and continuity in the Tudor period, where the study concludes.

³ This is the evocative phrase of Patrick Collinson, who is worth quoting in full: ‘Everything is the cause of everything. The Historian is not a scientist in a laboratory, where agents and catalysts can be isolated and tested against control experiments, but an artist confronting the whole messy world, a vast landscape of contingency’ (*The Reformation: A History* (New York: Modern Library, 2003), 205).

⁴ As Lawrence Stone and J. C. Fawtier Stone (*An Open Elite?: England, 1540 - 1880*, abr. ed. (Oxford: Clarendon, 1995), 3) pointed out, *elite* is a useful term because it is inclusive of the nobility (always a very small percentage of the English population) and the gentry (itself a very heterogeneous category), although the term is difficult to define, particularly where status and income intersect.

PART I: Meaning and Method

‘We are after all prone to count heads without enquiring as to what is in them.’¹

We often imagine the 1450s to 1560s as a period of transition in England. Sometimes we see this transition as deliberate, part of a concerted movement of reform guiding the English polity and its institutions in its movement out of the medieval and into the early modern.² We preserve that sense of transition through our use of the convenient chronological division that rests sometime after the Battle of Bosworth Field. We know that this division is largely arbitrary, but it has an aesthetic and heuristic appeal by simplifying, and chronologically compressing, a complex problem for historians and their students.³ Unfortunately, this makes it difficult to trace continuities between periods for more abstract concepts like violence, and so our divide appears here also. There is a consensus that interpersonal violence in many forms was commonplace in fifteenth- and sixteenth-century English lives (even if there is little consensus over its frequency). Likewise there is a sense that the nature of that violence or its quality of meaning changed over the same period—that there is something fundamentally different between medieval interpersonal violence and that of the post-medieval world. Previous scholarship has focused on questions of quantity rather than quality, or has managed to confuse the two questions without much resolution. The result is a fragmentary and disjointed image of violence during this period of transition. This thesis tries to identify what

¹ Colin Richmond, ‘The Nobility and the Wars of the Roses, 1459-61’, *Nottingham Mediaeval Studies* 21 (1977), 71. Richmond knew the irony in stating this opinion in a paper about counting noble heads.

² This characterisation of the period is sometimes explicit in the work of early twentieth-century English historians: ‘Men could see the need for reformation, but did not realize how much ruin had to be cleared away so that a new road might lie open before them.’ C. L. Kingsford, *English Historical Literature in the Fifteenth Century* (New York: Burt Franklin, 1913/1972), 1.

³ For British history, the boundaries are usually dynastic between the Plantagenet line and the early-modern Tudors. Periodisation helps organise complex events, but it also influences the way history is done and taught, giving a false impression of linearity or certainty. At its worst, it supports theories that see universal rules of causation in history (Stephane Lévesque, *Thinking Historically: Educating Students for the Twenty-First Century* (Toronto: University of Toronto, 2009), 87-111).

Various authors have identified the last *medieval* ruler of England, but with little agreement. Candidates include Richard III (David Hipshon, *Richard III and the Death of Chivalry* (Stroud: The History Press, 2009), 30), Richard II, (Hillary Eklund, *Literature and Moral Economy in the Early Modern Atlantic: Elegant Sufficiencies* (Farnham: Ashgate, 2015), 129), Henry VI, (George Goodwin, *Fatal Colours: Towton, 1461 - England's Most Brutal Battle*, digital ed. (Orion Publishing Group, 2011), unpaginated), or Henry VII (James Ross, *John de Vere, Thirteenth Earl of Oxford (1442-1513): 'The Foremost Man of the Kingdom'* (Woodbridge: Boydell, 2011), 227).

violence meant to those who performed it, and to those who were its victims, its witnesses, or its judges. Specifically, the violence we will study is interpersonal violence involving members of the social elite, usually as perpetrators. Most of the examples are classed as criminal violence but the violence in warfare and judicial punishment, and the use of force as correction or retribution inform our questions about meaning.

How did violence gain meaning? How did that meaning change or remain constant over time? Most of what we know about the place of violence in the moral landscape of social elites comes from textual sources that record their thoughts, values, and expectations for the use of force, and their ideas of justice, power, authority, honour, and respect. This study takes a slightly different approach from previous studies by looking at violence as a performance that reflects those normative values or violates those norms. This has been accomplished primarily through a survey of violent performances found in the plea rolls of the Court of King's Bench, supplemented by examples from the return files of coroners' inquests, sessions of the peace, and documents preserved in the records of the Courts of Star Chamber and Chancery. Events found there are given meaning through comparison with contemporary literature on elite culture and more recent studies of interpersonal violence from anthropologists, criminologists, and social scientists. These studies argue that the way violence is performed and how it is recorded by others contains messages about its meaning for performers, victims, and others. This is a self-consciously unconventional approach to the study of violence in that it uses a mix of interdisciplinary methods, although the questions it poses are fairly familiar.

Other disciplines would call this approach 'thick description' or micro-history, but the methods are otherwise familiar to scholars of social history who deal with the more abstract aspects of the past.⁴ Broadly speaking, this thesis shares the goal of the late Philippa Maddern's important

⁴ On 'thick description' see Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973), 6-10. On multi-disciplinary methods for the study of violence within the social sciences, see Sylvia Walby, 'Violence and Society: Introduction to an Emerging Field of Sociology', *Current Sociology*, 61 no. 2 (2013), 95-111.

and influential study of early fifteenth-century East Anglian violence.⁵ Maddern wrote that she would:

try, through a close examination of some cases and their contexts, to show what [...] people thought of violence, and how they classified it, how they acted it out, and why; and to suggest what significance this had for the ways in which they pursued their quarrels, treated their servants, governed their counties or neighbourhoods, wrote and read and heard their literature, punished their felons, and envisaged their God.⁶

I have chosen a narrower focus than Maddern by limiting study to elite and gentry participants but my chronological and geographical scope is significantly larger in order to better locate change and continuity in those performances of violence and their social meaning over time. This thesis resembles Maddern's work in another respect in that it follows a similar structure discussing the law, violence, and culture through a series of case studies drawn from the primary sources. It also tries to work in the spirit of Colin Richmond's deeply humane approach to historical subjects, by seeking to understand what their actions meant to them and not just to us.⁷ This thesis has avoided a thematic structure in favour of a chronological one, and the case studies are discussed in a narrative style. Those cases that form the foundation of this study were chosen based on their relevance to issues of content, time and place, from the sources sampled. No attempt has been made to create a comprehensive or exhaustive search of the records for all instances of elite interpersonal violence. Any attempt to do so that did not violate the word-limit would be grossly incomplete. Still, it is believed that the cases selected here are, for the most part, representative of trends over time and are not purely serendipitous in their value or arbitrary in their selection.

⁵ Philippa C. Maddern, 'Violence, Crime and Public Disorder in East Anglia, 1422-1442' (DPhil thesis, University of Oxford, 1984), supervised by G. L. Harris. It was revised and published as *Violence and Social Order: East Anglia, 1422-1442* (Oxford: OUP, 1992), quoting 21.

⁶ Maddern, *Violence*, 21.

⁷ While Richmond's scholarly methods are deeply traditional—almost antiquarian—his work is never impersonal or without empathy for his subjects. I doubt he would consider academic detachment as anything worth aspiring to. Better to be self-aware of one's moral judgements than to pretend to write without them. See Rees Davies, 'Colin Richmond: Historian and Friend', in *Much Heaving and Shoving: Essays for Colin Richmond*, M. Aston, R. Horrox, eds. (Lavenham, Suffolk: Lavenham Press, 2005), 1-4.

Chapter 1

The problem with treating violence as a *problem*

William Schinkel wrote that ‘no academic discipline has [violence] on a leash in a proper view that is all encompassing.’⁸ For historians, the primary issue has been the *problematization* of violence that treats it in strictly pejorative terms, and this is both a semantic and methodological problem for its study because it distracts us from the significance of violence as an element of culture.⁹

Anthropologist Anton Blok wrote that most scholars ‘want to understand violence primarily in utilitarian, “rational” terms, in terms of means and ends’ and that the question of ‘what violence signifies, “says” or expresses is at best of secondary importance.’¹⁰ The consequence is that scholars seek rational, utilitarian, explanations for violent acts, and when those cannot be found, the actions appear meaningless or ‘senseless.’¹¹ This is partly a fault of the semantics of the word *rational*, but is also a problem created by methods of analysis that see violence as either ‘instrumental or expressive’ in purpose and function.¹² Maddern understood how the problematization of violence limited the possibilities for historical understanding: ‘To speak of violence as “endemic,” for instance, is to portray it as a disease, as unmistakable and deadly as an outbreak of the plague.’¹³ Disease is a force of nature without rational motivation or social meaning, and to describe violence in the same way walls it off from analysis.

Deterministic theories about violence are ‘sometimes pushed to extremes, and from social or cultural, it may even in some approaches become natural, or biological.’¹⁴ This approach also denies performers of violence any real agency in their actions, while giving historians an easy way around problematic questions. An approach that sees violence as a kind of disease will also favour

⁸ Schinkel, *Aspects of Violence*, 4.

⁹ See J. Carter Wood, ‘Conceptualizing Cultures of Violence and Cultural Change’, in *Cultures of Violence: Interpersonal Violence in Historical Perspective*, Stuart Carroll, ed. (Palgrave, 2007), 80.

¹⁰ Anton Blok, ‘The Meaning of “Senseless” Violence’, in *Honour and Violence* (New York: Polity Press, 2001), 103-4.

¹¹ *Ibid.*, 4.

¹² Larry J. Ray, *Violence & Society* (Sage, 2011), 9.

¹³ Maddern, *Violence*, 4.

¹⁴ Michel Wieviorka, ‘The Sociological Analysis of Violence: New Perspectives’, *The Sociological Review*, 62 (2014), 51.

studies that seek to identify ways to cure it. These studies have been highly influential in shaping the methodological approach to violence in the period, but the focus on the legal or political framework for its identification and for its historical or social meaning makes it difficult to see violence in any other way.¹⁵ We can see this approach play out in the historiography of institutions, the emergence of the state, and the codification of laws and constitutions.

This approach may only be sustained if one does not worry about defining what we identify as violence. For many, the meaning of violence appears self-evident. It can be political, economic, religious or ideological in purpose, or else it is criminal, deviant, pathological or otherwise abnormal. As Blok explained, '[E]xamining accounts of violence confronts us with a paradox. The emotional value attached to violence in modern societies prejudges research and stands in the way of exploring the reason for and meaning of violence.'¹⁶ The *morality* of violence is rarely differentiated from the *legality* of violence, and this becomes obvious in discussions of order, control, and restraint. We know that there is more to violence than a division of function between criminality and state-sanctioned force, between sadism and lawful defence, but the social meaning of violence, and the norms that define it, are often ignored or treated as blatantly self-evident.¹⁷ Steven Pinker's recent and highly publicised study of violence and its decline in Western society is an example of how these issues combine in current scholarship. Pinker's work is wide-ranging and multidisciplinary and it demonstrates most of the obstacles scholars encounter when they try to combine quantitative and qualitative methodologies to study a social and cultural concept that is neither clearly defined nor contextualised. Pinker never pauses to explain what

¹⁵ Early and influential studies of English criminal law (and by association, criminal violence), include Luke Owen Pike, *A History of Crime in England: Illustrating the Changes of the Laws in the Progress of Civilisation* (Smith, Elder & Co, 1873), and W. S. Holdsworth, *A History of English Law* (Methuen, 1903). Also influential for the study of law and its place in English culture is the work of F. W. Maitland, who made some of the first critical editions of Early English legal literature available to a wider audience of scholars: Frederic William Maitland, *The Collected Papers of Frederic William Maitland, Downing Professor of the Laws of England*, H. A. L. Fisher, ed. (Cambridge: CUP, 1911).

¹⁶ Blok, 'meaning', 106.

¹⁷ This simplified conception of violence is now challenged by more recent works that are fortunately familiar to many undergraduate students who encounter the topic in the humanities. These include Natalie Zemon Davis, 'The Rites of Violence: Religious Riot in Sixteenth-Century France', *P&P* 59 (1973), 51-91, and David Riches, *The Anthropology of Violence* (Oxford: Basil Blackwell, 1986). Representative works on medieval and early-modern violence include Richard W. Kaeuper, *Chivalry and Violence in Medieval Europe* (New York: OUP, 1999) and Ruth Mazo Karras, *From Boys to Men: Formations of Masculinity in Late Medieval Europe* (Philadelphia: University of Pennsylvania, 2003).

violence means as a historical or even philosophical concept or what it meant to the historical actors he describes, quantifies, and judges.¹⁸ Not surprisingly, the historiography of medieval Europe has treated violence in similar ways, depicting historical actors as predisposed to violence that was reactive, self-centred, material in its goals, mechanical in its reasoning, abstractly symbolic, simply irrational, or even pathological. Johan Huizinga described people ‘always oscillating between the fear of hell and the most naive joy,’ who barely understood their own actions, and were incapable of articulating the moral reasoning in their ‘passionate and violent’ souls.¹⁹ We find the same caricatures in the influential, and still valuable, work of Marc Bloch and Georges Duby.²⁰ To these historians, medieval men and women were impulsive, savage, and incapable of self-restraint. They were overgrown children, slaves to violent impulses. But lack of self-control did not explain all violence. There seemed to be pleasure in violence for its own sake.²¹ And not just violence, but pain and cruelty were common forms of public and private entertainment. At least that is the most common interpretation; it is certainly the easiest one to make.

Pinker found the limits of his historical empathy did not extend to early Church sermons on the moral efficacy of pain or the redemptive qualities of publicly performed acts of corporal punishment. Thus the stories of tortured martyrs, quartered criminals, or the more painful forms of monastic asceticism were gathered together with bear-baiting, lashing students to aid in memorisation, and the most cynical interpretation of the cultural construction of chivalry.²² Recent studies of the social and cultural contexts of pain, violence, and punishment have advanced our understanding beyond the simplistic, but also deeply subjective and contextual, way that writers

¹⁸ Steven Pinker, *The Better Angels of Our Nature: Why Violence Has Declined* (New York: Viking, 2011). The best single critique of Pinker is the review article by G. Hanlon, ‘The Decline of Violence in the West: From Cultural to Post-Cultural History’, *EHR* 128 (2013), 367-400. See also Benjamin Ziemann, *History Reviews* (review no. 1232) <http://www.history.ac.uk/reviews/review/1232>, Date accessed: 24 March 2015, which contains an informative and highly confrontational reply from Pinker. In all fairness to Pinker, his principal field of study is neither historical nor anthropological. He works primarily in psycholinguistics.

¹⁹ Johan Huizinga, *The Waning of the Middle Ages*, Frederick Jan Hopman, trans. (Penguin, 1924/1965), 48.

²⁰ Huizinga, quoted uncritically in James Buchanan Given, *Society and Homicide in Thirteenth-Century England* (Stanford, CA.: Stanford UP, 1977), 33.

²¹ *Ibid.*, 33-5, where similar statements by Block and Duby are quoted.

²² Pinker, *Better Angels*, 1-36.

such as Pinker argue for an immutable and self-evident meaning to violence in the past.²³ A two-dimensional understanding of violence makes for two-dimensional explanations of historical events where violence occurs. If most historical violence is thought to be mechanistic or utilitarian—violence as extra-judicial self-help—and if violent actors are thought to be inclined to violence or conditioned for it, either by some abstract *nature* or because of moral or ethical deficiency unrestrained by external forces—then outbreaks of violence in the historical record are easily contextualised and explained. Rarely does one need to look any closer at the substance of that violence when only its presence is deemed relevant.

The place historians have given for violence in the English historiography has been largely political, not social.²⁴ The fifteenth century is understood within a framework of ineffective legal institutions and a weak or distracted Crown. Behind it all are the indistinct signs of intermittent disorder and petty violence. This is an easy image to sustain with examples such as Edward IV's first parliament's complaint of the 'maintenance of quarrels, extortions, robberies and murders' that 'multiplied and continued within this realm, to its great disturbance and disquiet.'²⁵ Henry V's parliament of 1413 likewise complained of 'many murders, treasons, manslaughters, robberies, and divers other offences' that demanded special commissions of the peace.²⁶ But they were only repeating what every parliament had said for decades and eventually the language of complaint became a part of the official administrative *idiom*, rather than a truthful description of the times.²⁷ It

²³ Important studies on violence and pain, which explain their social function in ways other than as prurient entertainment or as disciplinary exemplars, include Jody Enders, *The Medieval Theatre of Cruelty: Rhetoric, Memory, Violence* (Ithaca: Cornell, 1999), *The Art of Executing Well: Rituals of Execution in Renaissance Italy*, Nicholas Terpstra, ed. (Kirksville, MO: Truman State, 2008), Groebner, *Defaced*, and Esther Cohen, *The Modulated Scream: Pain in Late Medieval Culture* (Chicago: University of Chicago, 2010). There is some room for the argument that medieval and early-modern people experienced pain and suffering as pleasurable or enriching, but these practices are distinct from those discussed here and are not seriously considered by Pinker: see, for example, Niklaus Largier, *In Praise of the Whip: A Cultural History of Arousal*, Graham Harman, trans. (New York: Zone Books, 2007). Given the scale of Pinker's book, it is no surprise that many of these works appear in his bibliography, although they did not appear to make much of an impression.

²⁴ This is a serious feature of the historiography of crime in England. See J. A. Sharpe, *Crime in Early Modern England, 1550-1750*, 2nd ed. (Longman, 1999), 1-5.

²⁵ Quoting the preamble to Edward IV's statutes revising the use of badges and liveries (C65/106 m. 39), printed in *PROME XIII*, 65.

²⁶ *Stat.*, 2, Hen.V, c.v.

²⁷ Petitions to parliament uniformly claim that the petitioners were unable to obtain justice locally, if only to justify involving parliament, making the actual claims of injustice difficult to confirm (Christopher Allmand, *Henry V*, new ed. (New Haven, CT: Yale, 1997), 316). For the use of this dramatic language of pleading, and

is doubtful that hyperbole was invisible to contemporaries, although there is no reason to believe that their concern over violence was not still sincere. It is also important to remember that the Crown needed these complaints of lawlessness and disorder as a source of the authority to react to the needs of subjects. Without them, the Crown risked appearing overly aggressive in its exercise of authority. Better to have a complaint-driven system than tyranny.²⁸ As K. B. McFarlane wrote, ‘if history is written from the preambles to statutes, the denunciations of the moralists and reformers, and the *ex parte* statements of those engaged in litigation, there is every chance that it will be a record of bloodshed and injustice. The reality was a great deal less sensational.’²⁹ This rhetorical style of complaint became so recognisable that it influenced the production of popular texts and protest writing, which used these familiar topoi to give their voices an air of authority and legitimacy.³⁰

English historiography has rolled questions of violence into those about control, governance, and developing legal systems and institutions. The relationship between violence and these developments is not always clear and thus its meaning is obscure. Consider the 1455 murder of Nicholas Radford, considered ‘the most notorious crime of the decade’, by men associated with the Earl of Devon.³¹ R. L. Storey placed Radford’s death within his vivid picture of the undeclared civil war in the South-West, where magnates and their followers exhibited ‘a more than usually callous indifference to human suffering.’³² While there were plenty of armed demonstrations,

its development over time, see Gwilym Dodd, ‘Kingship, Parliament and the Court: The Emergence of “High Style” in Petitions to the English Crown, c.1350–1405’, *EHR* 129 (2014), 515–48 and Gwilym Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford: OUP, 2007), 279–316. The *idiom* of official warrants is represented in the King’s Bench records, surveyed for this study, where most entries begin with a repetition of the warrant authorizing the commission or assembly that originated the action. These authorisations are tediously uniform.

²⁸ On the development of the procedures and the documents that gave authority to commissions of the peace and other legal bodies, see *Proceedings Before the Justices of the Peace: In the Fourteenth and Fifteenth Centuries, Edward III to Richard III*, B. H. Putnam, T. F. T. Plucknett, eds. (Spottiswoode, Ballantyne, 1938), xix–lvi, and J. R. Lander, *English Justices of the Peace, 1461–1509* (Gloucester: Alan Sutton, 1989).

²⁹ K. B. McFarlane, *The Nobility of Later Medieval England: The Ford Lectures for 1953 and Related Studies* (Oxford: Clarendon, 1980), 115.

³⁰ Take for example the manifestoes prepared by or for the reforming rebels of 1450: *John Vale’s Book*, 204–8, Dodd, *Justice and Grace*, 293–5.

³¹ Martin Cherry, ‘The Struggle for Power in Mid-Fifteenth-Century Devonshire’, in *Patronage the Crown and the Provinces*, R. A. Griffiths, ed. (Gloucester: Alan Sutton, 1981), 123–44.

³² R. L. Storey, *The End of the House of Lancaster*, 2nd ed. (Gloucester: Sutton, 1986), 85, considers that ‘it is not surprising that some of the few allegations of torture in this period come from the South-West’ (*ibid.*). One should keep in perspective that the most familiar instance of torture during this period—that of Thomas

threats, trespasses and affrays at the time, which on their own generated a rich collection of legal documents, Griffiths' study of the Percy and Neville 'feud' of the early 1450s suggests that there was far more sound than fury in these dramatic confrontations. Actual physical violence was still rare and Radford's death was notorious partly because it was so unexpected and uncommon, not because it was uncommonly brutal in its details. This is lost in the historiography, which was more interested in the way these events were interpreted and handled by the Crown, than in the meaning of the event for its participants and victims.³³ Arguably, armed violence and disorder was more prevalent in the 1420s and 30s, during the minority of Henry VI, than in the years before the large-scale factional violence that began in 1459-60, but more attention has been brought to this later period because of its perceived relationship with factional struggles at the top of the political order.³⁴ Similarly, studies suggest that in the late fourteenth century, the central and northern counties experienced far greater disorder at the hands of organised criminal gangs than they ever did during the Wars of the Roses.³⁵ Of course, a closer look at the documented 'gangs' like those created by the Folville and Coterel families in the mid-fourteenth century, shows that they were hardly marginal, anti-social predators. They were, perhaps, 'a rival system of justice' for a time and place that was never very confident in the power of the Crown to act in accord with its own laws, or to exercise the power to grant justice.³⁶ That was partly behind the 1429 parliament, and the Commons' call to its members, and the Lords, to take a special oath to uphold the law, to condemn maintenance and manipulation of juries, justices, and officials of the court, and reaffirm their commitment to the abstract and specific values of good rule and order. Another similar oath was

Cooke in 1468—was done under the authority of Edward IV's institutions of justice (P. Holland, 'Cook's Case in History and Myth', *HR* 61, no. 144 (1988), 21-35).

³³ R. A. Griffiths, 'Local Rivalries and National Politics: The Percies, the Nevilles, and the Duke of Exeter, 1452-55', *Speculum* 43, no. 4 (1968), 589-632. See also S. J. Payling, 'The Ampthill Dispute: A Study in Aristocratic Lawlessness and the Breakdown of Lancastrian Government', *EHR* 114, no. 413 (1989), 881-907.

³⁴ R. A. Griffiths, *The Reign of King Henry VI*, 2nd ed. (Stroud: Sutton, 1988), 128-44, 562-97.

³⁵ On these gentry gangs see E. L. G. Stones, 'The Folvilles of Ashby-Folville, Leicestershire, and Their Associates in Crime, 1326-1347', *TRHS* 7 (1957), 117-36, J. G. Bellamy, 'The Coterel Gang: An Anatomy of a Band of Fourteenth-Century Criminals', *EHR* 79, no. 313 (1964), 698-717.

³⁶ Stones, 'The Folvilles', 135. The works of Stones and Bellamy are discussed in the context of the noble feud in Howard Kaminsky, 'The Noble Feud in the Later Middle Ages', *P&P* 177, no.1 (2002), 55-83.

extracted from the July 1433 parliament. Most of those who called for that public demonstration of law-abiding intent had only the most overt abuses in mind. The law was malleable; it had to be.³⁷

Vincent Redstone, writing in 1902, suspected the language of parliamentary petitions, pleas submitted to Chancery, and the panicked words of chroniclers were dramatic licence or self-interested exaggeration. His argument, largely unique at the time, was that England was not so perilous to life and limb and that the Wars of the Roses were the most peculiarly *civil* of civil wars. From what he could see in the records of Chancery and Exchequer, where he looked for evidence of deprivation and loss due to military actions, there was far less loss of life and damage to property than anyone should reasonably expect, particularly when compared with similar outbreaks of factional violence in continental Europe at the time.³⁸ This corroborated the contemporary opinion of Philippe de Commines, a man who knew perfectly well that the worst wars were those fought between countrymen. He wrote that the English were spared the extremes of civil strife.³⁹ The nobility, however, seemed to suffer disproportionately in that their aristocratic dignity did not protect them from other nobles who were likely to execute them out of an excess of political expediency. Nor did their financial value as prisoners spare them from quick deaths at the hands of ignoble soldiers.⁴⁰ Redstone's conclusion was that the over-representation of violence in the records was a consequence of a politicised approach to the past that imbued events with greater

³⁷ Griffiths, *Henry VI*, 144-47, *PROME XI*, 278-88. Those who took these oaths were documented by Chancery and they have become important sources on the otherwise obscure members of the upper-gentry: see G. Bogner, 'Knighthood in Lancastrian England: A Prosopographical Approach' (PhD thesis, Ohio University, 1997), and G. Bogner, 'The English Knights of 1434: A Prosopographical Approach', *Medieval Prosopography* 25 (2004), 178-215.

³⁸ Vincent B. Redstone, 'Social Condition of England during the Wars of the Roses', *TRHS* 16 (1902), 159-200. Of course, there were earlier writers who suggested similar revisions to the post-medieval stereotyping of the period (see A. J. Pollard, *The Wars of the Roses, British History in Perspective*, 3rd ed. (New York: Palgrave, 2013), 14-19).

³⁹ Commines was a cynical political outsider when he wrote his recollections in the 1490s and this coloured his views, making it difficult to know how events appeared to him in the moment (Antonia Gransden, *Historical Writing in England: c. 1307 to the Early Sixteenth Century* (Routledge, 1996), 299). See also M. A. Hicks, *The Wars of the Roses* (New Haven, CT: Yale, 2010), 9.

⁴⁰ Each of the set-piece battles of the Wars of the Roses had their own collection of executed elites, executions that were not always legally defensible (Wakefield, Towton, and Second St. Albans, for example). Edward, Prince of Wales, was killed at the age of 17 in the final moments of the battle at Tewkesbury, perhaps while fleeing (*Historie of the Arrivall of Edward IV [...]*, John Bruce, ed. (Camden Society, 1838), 30). The letter from the Duke of Clarence to Henry Vernon, written soon after the battle, states (perhaps too emphatically) that the prince died 'in playn bataill', unlike the Duke of Somerset who was executed (*First Report HMC*, (1888), 4). Prince Edward's fate is corroborated by other sources (Kingsford, *English Historical Literature*, 376-7).

significance than contemporaries would have acknowledged. C. L. Kingsford got the same impression from the Stonor letters, and this was supported by his search of private complaints to Chancery, where he found little evidence that the suffering and depredations were at all widespread. Kingsford's conclusion was that fellow historians should probably be a little more critical when reading the hyperbole of the chronicles, preambles to parliamentary statutes and petitions, and formulas granting letters to commissions of the peace, when making their judgements about the relative degree of order or disorder in the period.⁴¹

The influential K. B. McFarlane came to suspect, as Redstone and Kingsford had before him, that there was something more to the violence of the fifteenth century than petty greed and childlike sensitivity to insult or disrespect, and that quantitative studies in particular would ultimately tell us very little about its meaning or social significance.⁴² To make his point he revisited the foundations for the common assertion that most of the major noble families were depleted by battlefield violence or judicial murder during the Wars of the Roses, or its different phases between 1455 and 1485, making the Tudor monopolisation of regional authority possible.⁴³ The bare numbers did not support the claim of a decimated aristocracy. McFarlane did not argue that there was more or less violence in the period as compared to other times or places—the sources did not allow for such an argument one way or the other. Instead, McFarlane argued that it was the perception of that violence and how contemporaries reacted to it that was historically relevant.⁴⁴ Still, violence during the Wars of the Roses was comparatively easy to contextualise in terms of factionalism, administrative disorder, or greed and opportunism, if one did not worry too much about its social meaning. McFarlane did worry about meaning because he felt that historians too quickly removed agency from the actions of the gentry, making them little more than pawns in

⁴¹ C. L. Kingsford, *Prejudice and Promise in Fifteenth Century England*, 2nd ed. (Frank Cass & Co., 1962), 48-77.

⁴² G. L. Harris, 'Introduction', in K. B. McFarlane, *England in the Fifteenth Century: Collected Essays* (The Hambeldon Press, 1981), xx. On McFarlane's influence on the discipline, see Colin Richmond, 'After McFarlane', *History*, 68, no. 222 (1983): 46-60.

⁴³ K. B. McFarlane, 'The Rate of Extinction of Noble Families', in *Nobility, 172-76*, first presented as part of the 1953 University of Oxford Ford lectures.

⁴⁴ This was his goal in the essay, 'The Wars of the Roses', *Proceedings of the British Academy* 50 (1964), 87-119, republished in McFarlane, *England in the Fifteenth Century*, 231-61.

larger, magnate-centred narratives of political rivalry and greed.⁴⁵ The theory of bastard feudalism worked best when it was used to explain events by tracing connections through relationships of patronage, marriage, or indebtedness to the upper aristocracy, which was possible to do for almost any individual or event. At the same time, it removed individual agency from the actors in the middle, turning them into cogs in the bastard feudal machine.⁴⁶ Could they not have acted out of moral convictions, or could their local and locally important rivalries and conflicts produce violence without reference to wider political events?⁴⁷ If such questions were difficult if not impossible to answer from the sources, it was at least worth asking them. It could help us consider other explanations for the violence we find when the mechanistic explanations seem unconvincing.

Interpersonal violence during the post-Yorkist period is also called endemic, if less factional or political in motivation or purpose than what came before. Lawrence Stone suggested that the ‘great triumph of the Tudors’ was their successful monopoly on organised violence, resolving the problem of the ‘over-mighty subject’ and motivating a ‘social transformation’ that altered the place of violence amongst the elites and commons.⁴⁸ But the ‘special talent for despotism’ attributed to the Tudors has been questioned, along with the nature and scale of change.⁴⁹ More importantly, the general premise that the Tudors did anything so deliberate is debatable. Change did occur, if only by degrees and over long stretches of time. But it is often only recognisable by comparison with the distant past or recent history, and Stone based his analysis of

⁴⁵ See a recent summary of this, and related issues, in Malcolm Mercer, *The Medieval Gentry: Power, Leadership and Choice During the Wars of the Roses* (Continuum, 2010), 11-33, and Richmond, ‘After McFarlane’.

⁴⁶ See Michael Hicks, ‘Bastard Feudalism, Overmighty Subjects and Idols of the Multitude during the Wars of the Roses’, *History* 85, no. 279 (2000), 386-403.

⁴⁷ *Ibid.* Some of McFarlane’s contemporaries were incredulous at the suggestion that any of these men acted out of a sense of moral or political duty. R. L. Storey wrote that he found it ‘almost impossible’ to imagine how the magnate feuds, especially those in Devonshire, were not directly responsible for an escalation to civil war through the factionalism of York and Lancaster. Storey argued that England was essentially in a state of civil war as early as 1453 (*House of Lancaster*, 243 n5).

⁴⁸ Lawrence Stone, *The Crisis of the Aristocracy 1558-1641* (Oxford: OUP, 1965), 200. Stone is referencing the ‘Tudor revolution’ or perhaps ‘revolutions’, in government, first explored by G. R. Elton. That theory is more usually discussed in relation to political administration and the law rather than interpersonal uses of violence. See a summary of Elton in S. J. Gunn, *Early Tudor Government: 1485-1558* (Basingstoke: Macmillan, 1995), 3-8. The use of coercive violence in the Tudor judicial system and its implications for theories of evolving monopolies on state-sanctioned violence as well as the social and cultural implications of such change are discussed in detail by Andy Wood, ‘The Deep Roots of Albion’s Fatal Tree: The Tudor State and the Monopoly of Violence’, *History* 99, no. 336 (2014), 403-17.

⁴⁹ Jacob Burckhardt, *Judgements on History and Historians*, H. Zohn, trans. (Routledge, 2007), 85.

the decline in elite violence on a conception of violence that was potentially flawed. Not all historians felt that a flawed understanding of violence was a problem, since the later Renaissance was just as violent, if slightly more aesthetically interesting.⁵⁰ John Hale wrote at length on the apparent contradiction of humanist developments in post-medieval Europe and escalating brutality in the conduct of wars, the application of justice, and interpersonal disputes and self-interested aggression.⁵¹ There are a few sixteenth-century writers who argued that the elite pastime of hunting desensitised participants to violence and bloodshed, and that the public drama of the tournament and other militarised sports trivialised human lives and led to reckless and callous behaviour.⁵² The triviality of violence is near the core of G. R. Elton's approach, where 'a silly quarrel' could easily escalate 'into a proper battle in the streets of London.' This was possible, according to Elton, because Tudor England was still a 'rough, superstitious, excitable and volatile society,' which only a strict, state-controlled force could contain.⁵³

Clearly frustrated with the seemingly uninterrupted catalogue of petty violence in his sources, David Loades felt that the only explanation for the chronic 'irritability' of men and women was 'partly at least due to the constant pain and discomfort of undiagnosed and untreatable illness.' Poor health and diet, combined with the constant presence of arms in gentry homes—weapons owned and maintained in accord with legal obligations to defend the realm—made fatal violence

⁵⁰ J. D. Mackie, *The Earlier Tudors 1485-1558* (Oxford: Clarendon Press, 1966), 14-19.

⁵¹ John Hale, *The Civilization of Europe in the Renaissance*, 1st US. ed. (New York: Atheneum, 1994), 420-508.

⁵² Anti-hunting rhetoric, like all subjects of social history, is more complicated than it first seems, and the argument that anti-hunting sentiment was originally about the negative effect on hunters is a point of open debate. See Hannele Klemettilä, *Animals and Hunters in the Late Middle Ages: Evidence from the BnF MS Fr. 616 of the Livre de Chasse by Gaston Fébus* (Routledge, 2015), 196-98. The uncritical acceptance of the argument that hunting and animal husbandry desensitized Europeans to violence is best represented by the casual footnote to W. H. McNeill's popular textbook on military and political history. He states that 'habits of bloodshed were deep-seated, perennially fed' by the need to slaughter animals for food that could not be kept for breeding stock. 'Europeans living North of the Alps learned to take such bloodshed as a normal part of the year. This may have had a good deal to do with their remarkable readiness to shed human blood and think nothing of it.' (William H. McNeill, *The Pursuit of Power: Technology, Armed Force, and Society Since A.D. 1000* (Chicago: University of Chicago, 1982), 64).

⁵³ G. R. Elton, *Policy and Police: The Enforcement of the Reformation in the Age of Thomas Cromwell* (Oxford: OUP, 1972), 5, abstracting the undated deposition in STAC2/26/154. One 'Oystreche of Clifford's Inn' mentioned in the deposition could be the William Ostryche of Thavies Inn (1515-20): John H. Baker, *The Men of Court 1440 to 1550: A Prosopography of the Inns of Court and Chancery and the Courts of Law* (Selden Society, 2012), II, 1183.

inevitable.⁵⁴ People were violent not because they had rational or moral reasons for it, but because they were just unable to resist the temptation or to suppress the urges that their environment, and each other's company, provoked so easily or inadvertently. Loades is not unique in ascribing otherwise irrational violence to physical causes. Lawrence Stone said much the same about the 'ferocity, childishness, and lack of self-control' of the 'propertied class' and the poor.⁵⁵ 'Their nerves seem to have been perpetually on edge,' he wrote, 'possibly because they were nearly always ill.'⁵⁶ Marc Bloch, equally troubled by the irrationality of political behaviour in the Middle Ages, made a more involved argument that violence was largely a product of poor living conditions and ill health. Stephen D. White's criticism of Bloch's conceptualization violence and physiology was demanded by the need to explain violence, or irrational behaviour, in ways that are rational to us, and not to the historical actors themselves.⁵⁷

The violence of civilisation

Pinker's aforementioned study of violence and its decline in Western society points out additional problems with *problematized* violence. His use of historical sources is particularly troubling and his work has been criticised for its 'rampant essentialism, selective, and often distorted, use of historical evidence and the insistence on detachment, scientific objectivity and neutrality while in fact espousing a strong normative commitment.'⁵⁸ Historian Gregory Hanlon, while remarking positively on the vast range and depth of concepts that Pinker covers, warned that 'Historians will nevertheless harrumph when they check Pinker's sources, which, when combined with an

⁵⁴ D. M. Loades, *Politics and Nation: England, 1450-1660*, 5th ed. (Oxford: Blackwell, 1999), 109, first published as *Politics and the Nation: 1450-1660* (1992). Given that medical care for chronic ailments and the general quality of life experienced by most Europeans did not significantly improve from its early-modern state until the mid-eighteenth century—a period when interpersonal violence did measurably decline—does little to support this theory. However, it is worth considering that Loades may not have made this claim in all seriousness. That he suggested it at all, does say something about the difficulty historians have with violence and its meaning.

⁵⁵ Stone, *Crisis* (abr. ed. 1967), 108.

⁵⁶ Stone, *Crisis*, 224.

⁵⁷ Marc Bloch, *Feudal Society, I: The Growth of Ties of Dependence*, L. A. Manyon, trans. (Chicago: University of Chicago, 1962), 72-5; Stephen D. White, 'The Politics of Anger,' in *Anger's Past: The Social Uses of an Emotion in the Middle Ages*, Barbara H. Rosenwein, ed. (Ithaca, NY: Cornell, 1998), 127-52.

⁵⁸ Siniša Malešević and Kevin Ryan, 'The Disfigured Ontology of Figurational Sociology: Norbert Elias and the Question of Violence', *Critical Sociology* 39 (2013), 170, n. 3.

entertaining penchant for hyperbole and annoying reference to fairy tales and fiction in lieu of historical fact, result in wildly inaccurate claims.⁵⁹ Pinker has been brought back into the conversation because his is a mistake that any scholar can make, which is to take the meaning of violence as self-evident: destructive, disruptive, and irrational. He also permits us to bring in an earlier social scientist whose influence on the historical study of violence is subtly pervasive. Pinker based much of his work on the history of violence upon that of sociologist Norbert Elias, whom he confidently called ‘the most important thinker you have never heard of.’⁶⁰ He is not exactly a common name for historians, but his influence on the study of violence in its historical context has been deeply influential, particularly where it touches on England’s place in an ‘international courtly society with shared values.’⁶¹ Elias focused on court culture because he saw it as an incubator of civility, internal self-control, and restrained manners in social interaction. This, in turn, fit into a larger theoretical mechanism Elias developed to account for a perceived decline in interpersonal violence in the early modern period.⁶²

Although Elias was a sociologist by training, he shared the interests of contemporary political, legal, and constitutional historians and, like them, he was interested in the development of modern institutions and social norms—the progression of modern society from its medieval legal

⁵⁹ Hanlon, ‘Decline of Violence,’ 370.

⁶⁰ Pinker, *Better Angels*, 72.

⁶¹ Steven Gunn and Antheun Janse, ‘Introduction: New Histories of the Court’, in *The Court as a Stage: England and the Low Countries in the Later Middle Ages*, S. J. Gunn and A. Janse, eds. (Woodbridge: Boydell, 2006), 1-11. Significantly, historians of court culture are often just as critical or supportive of Elias as those who study violence, and they appear in roughly equal proportions. C. S. Jaeger argued that Elias ought to place the roots of civilizing court culture much earlier in European history than the sixteenth century (*The Origins of Courtliness: Civilizing Trends and the Formation of Courtly Ideals, 939-1210* (Philadelphia: University of Pennsylvania, 1985), 4-5), while Jorge Ardití believed that because Elias equates courtliness with restrained personal manners, he overlooks earlier developments of elite, privileged, court-based social groups (*A Genealogy of Manners: Transformations of Social Relations in France and England from the Fourteenth to the Eighteenth Century* (Chicago: University of Chicago, 1998), 1-4). Equally critical is John Gillingham (‘From Civilitas to Civility: Codes of Manners in Medieval and Early Modern England’, *TRHS* 12 (2002), 267-89), who evaluated Elias for the English context and likewise believed Elias overlooked the medieval precedents of court culture and behaviour. For a description of Elias’s innovations and criticism of his results, see Jeroen Duindam, ‘The Keen Observer versus the Grand-Theorist: Elias, Anthropology and the Early Modern Court’, in *Höfische Gesellschaft und Zivilisationsprozess: Norbert Elias’ Werk in kulturwissenschaftlicher Perspektive*, Claudia Opitz, ed. (Köln Weimar: Böhlau Verlag, 2005), 87-101.

⁶² This theory, which is a sub-theory within the *civilizing process*, was published on its own as *Die höfische Gesellschaft* (Darmstadt: Hermann Luchterhand Verlag, 1969) and reached a wider readership in translation as *The Court Society*, Edmund Jephcott, trans. (Oxford: Basil Blackwell, 1983).

and political structures and institutions towards their modern forms.⁶³ The result was a wide-ranging study of sixteenth- and seventeenth-century German and French court culture, which identified correlations between the development of ever more complex and codified customs of social interaction and self-presentation, with a steady increase in institutional monopolies on force and violence. Elias saw a link between absolutist governments and monopolies on power, and new social norms that brought those external restraints on individual emotions and drives, into the individual, making them more engaged and self-aware of taboos and rules of conduct. As Linklater and Mennell explained, Elias wanted to ‘understand how, over five centuries of development, Europeans came to the view that they were “civilized” while others were “barbaric” or languishing in a “savage” past.’⁶⁴

Elias was not trying to validate the Eurocentric chauvinism that imagined cultural and political history in Darwinian terms; rather, he tried to identify the underlying process that caused change. His methodologies were novel for the time, representing a sort of ‘historical psychology.’⁶⁵ The theory he created explained that ‘Europeans overcame the endemic interpersonal violence’ through a ‘psychosocial development of moderation based on Weberian rationalisation; as states monopolised legitimate force and economies were differentiated to the point that individuals relied upon networks of strangers for their survival,’ and therefore, ‘self-control became vital for social success.’⁶⁶ Elias identified this *civilizing process* at work in the decline of individual, interpersonal, violence and distaste for violent entertainment and crude physicality. Changing attitudes towards violence corresponded with new social norms that taught restraint, self-control, and concealment of bodily functions.

First published in 1939, *Über den Prozess der Zivilisation* did not influence European scholarship significantly until its English translation appeared—*The History of Manners*, in 1968,

⁶³ Duindam, ‘Keen Observer’, 88-9.

⁶⁴ Andrew Linklater and Stephen Mennell, ‘Norbert Elias, The Civilizing Process: Sociogenetic and Psychogenetic Investigations — An Overview and Assessment’, *History and Theory* 49, no. 3 (2010), 385.

⁶⁵ *Ibid.*, 386.

⁶⁶ Ethan H. Shagan, *The Rule of Moderation: Violence, Religion and the Politics of Restraint in Early Modern England* (New York: CUP, 2011), 18.

and *State Formation and Civilization*, in 1969.⁶⁷ The timing was auspicious, appearing just as new methods in the humanities were emerging, such as the *new historicists* of literary theory or the *cultural turn* in history.⁶⁸ Linking a decline in violence with a theory of increased self-restraint was attractive to scholars because it simplified otherwise complex correlations between contingent themes of social interaction and violence. It made things simpler to understand. For Pinker, this meant that as European elites learned better table manners and ate their meals with forks, they were in turn less keen to kill each other or participate in public cruelties for sport and entertainment.⁶⁹ Pinker does not dwell too long on how exactly the one followed from the other, but he is not alone in reading Elias in this way. E. H. Shagan added a little psychoanalysis to Elias's work, writing that his theory found 'the invention of a Freudian superego so that, according to the *civilizing process*, 'the decline in knife attacks in the streets was linked to such diverse phenomena as table manners, bathroom hygiene, and sexual taboos.'⁷⁰ Of course, restraining violence was never the central focus of the *civilizing process*, but simply one of its consequences.

Elias gathered most of his material on violence and changing norms of appropriate behaviour from conduct manuals and didactic literature on courtly behaviour, most of which spent considerable time teaching readers the value of restraint and self-awareness of gesture and action, particularly table-manners and hygiene. Few of these sources discussed violence itself, but since Elias saw violence as negative behaviour on the same spectrum as spitting or public nudity, he included it in the same evaluation of changing norms. Questions about violence were, therefore, deeply seated within his larger discussion of social change that extended to the political and institutional levels where power was consolidated within absolutist monarchies.⁷¹ This explains why Elias was not overly interested in questions about the initial causes of interpersonal violence,

⁶⁷ Published in two volumes as *The History of Manners*, trans. by Edmund Jephcott (Basil Blackwell, 1968), and *State Formation and Civilization*, Johan Goudsblom, trans. (Basil Blackwell, 1969). For a review of the publication history and their reception in the 1960s and 70s, see the contribution of the editor in the most recent combined edition: *The Civilizing Process: Sociogenetic and Psychogenetic Investigation*, rev. ed., Eric Dunning, ed., Edmund Jephcott, Johan Goudsblom, Stephen Mennell, trans. (Blackwell, 2000), xvii-xviii.

⁶⁸ See the collection of essays in *The New Historicism*, Aram H. Veesser, ed. (New York: Routledge, 1989).

⁶⁹ Pinker, *Better Angels*, 71-3. See also the summary in Gerd Schwerhoff, 'Criminalized Violence and the Process of Civilisation: A Reappraisal', *Crime, History & Societies* 6 (2002), 2-22.

⁷⁰ Shagan, *Moderation*, 18.

⁷¹ Linklater and Mennell, 'Norbert Elias,' 387.

or why violence was such a problem at all. He accepted that institutional violence in the form of state-sanctioned and organised warfare and judicial punishment remained unchanged or even increased in frequency and severity under certain circumstances, but he felt this violence had a fundamentally different character.⁷² It did not matter, in this theory of change and progress, what violence may have meant to its performers, victims, or witnesses, only that it was restrained and controlled by the process he identified. We are left with the impression that Elias, like Pinker, thought that social elites, and medieval society as a whole, were innately violent and that the only value in studying the social world was to identify the presence of violence and some of its (visceral, emotional) features before demonstrating its decline over time.⁷³ If violence was a disease, the only important topic to study was its treatment and cure.

Critics of Elias do not question his general claim that violence (defined generously) declined in frequency in Europe from the seventeenth century onwards, although he did not have the quantitative data to support this claim when he first wrote. Subsequent studies have supported the contention that there was a decline, although its specific causes are a separate issue.⁷⁴ Those who have trouble with Elias point out that the *civilizing process* and its effects are wholly untestable. It resists counterfactual argument because its initial premise is based on a concept of linear change that can easily account for contradictory evidence. Any example that goes against a trend of pacification is interpreted as an instance of ‘de-civilization’—a temporary regression of the process—that confirms the theory it seems to undermine.⁷⁵ This defence is possible because Elias cast such a broad net to catch instances of refined social behaviour or increased self-consciousness. If one accepts the basic structure of social constraint as the means of controlling violence, the increase in elite violence during the French duelling craze in the seventeenth century, studied by Stuart Carroll, or the jump in domestic violence recorded in the seventeenth-century coroners’

⁷² Ibid., 387-9.

⁷³ Malešević and Ryan, ‘The Disfigured Ontology,’ 165-81.

⁷⁴ On the theoretical and quantitative basis for the trend, see T. R. Gurr, ‘Historical Trends in Violent Crime: A Critical Review of the Evidence’, *Crime and Justice* 3 (1981), 295-353, Manuel Eisner, ‘Long-Term Historical Trends in Violent Crime’, *Crime and Justice* 30 (2003), 83-142, and Pinker, *Better Angels*, 61-71.

⁷⁵ For arguments that often turn the evidence against itself, see Pieter Spierenburg, ‘Democracy Came Too Early: A Tentative Explanation for the Problem of American Homicide’, *The American Historical Review* 111 (2006), 104-14, and Pieter Spierenburg, ‘Violence and the Civilizing Process: Does It Work?’, *Crime, History & Societies* 5 (2001), 87-105.

reports of East Anglia, studied by J. S. Cockburn, do not undermine the general and specific elements of the civilizing process, but can be twisted around to support it.⁷⁶

The fight against the attractive thesis of Elias has drawn attention to many overlooked aspects of historical violence and weaknesses in past methodologies, which is ultimately for the good. Gerd Schwerhoff has written persuasively against Elias and his conceptualisation of violence and its decline, arguing that a growing number of examples suggest that, under certain conditions, institutional monopolies and social integration can increase the incidence of interpersonal violence rather than constrain it.⁷⁷ Likewise, John Braithwaite has demonstrated that a flattening of social differentiation—which Elias sees as an important step in reducing interpersonal conflict by widening individual connections through empathy—can, under certain conditions, increase interpersonal friction, therefore facilitating violence. Flattening of social differences can seem threatening to the social self of individuals or groups that see this change as a loss of something special and valuable. Insecurity can lead to violence as a defence against change.⁷⁸ The theory also differentiates unlawful, interpersonal or private violence, from lawful, institutional, or privileged violence and by doing so, overlooks the ways that increased centralisation of powers and institutions can facilitate violence through greater organisation. Organisation is a marker of post-nomadic social communities, but as Siniša Malešević and Kevin Ryan point out, ‘civilization is the cradle of organized violence.’⁷⁹ Elias believed, as Hobbes did, that people were innately violent, and that only through organisation could social groups counteract aggressive instincts and establish a legal basis for maintaining order and restraining interpersonal violence. In this worldview, violence would always appear unrestrained in the absence of institutional organisation, and violence performed by the state was no violence at all. Malešević and Ryan, drawing from recent scholarship in contemporary anthropology, criminology, and the social sciences, realised that what Elias interpreted as uncivilised, instinctual behaviour, was actually a product of social organisation,

⁷⁶ Stuart Carroll, *Blood and Violence in Early Modern France* (Oxford: OUP, 2006), and *Crime in England 1550-1800*, J. S. Cockburn, ed. (Princeton, NJ: Princeton, 1977).

⁷⁷ Schwerhoff, ‘Criminalized Violence,’ 8-10, 14.

⁷⁸ John Braithwaite, ‘Shame and Modernity’, *British Journal of Criminology* 33 (1993), 1-18.

⁷⁹ Malešević and Ryan, ‘The Disfigured Ontology’, 175.

something that would not occur on its own. English history supplies the examples in the Revolt of 1381, Cade's Rebellion of 1450, and later Tudor revolts and uprisings, which made use of the existing logistical and organisational systems put in place by the Crown to raise, supply, and command their own men independently.⁸⁰

At the level of the individual, Elias and Hobbes never considered the difference between aggression and threats of violence motivated by self-preservation or defensiveness—behaviour that one could argue is a natural, instinctual part of human social interactions—versus violence that deliberately seeks to take lives. Modern scholars of both psychology and anthropology generally agree that while it is relatively easy to provoke people to aggressive behaviour it is not at all easy to make them kill each other.⁸¹ Medieval confrontations of aggression, tension, and fear, which escalate towards the use of force, are, like their modern counterparts, marked by 'incompetent violence' that lacks the focus and determination that seeks to kill the performer's target.⁸² Actual skill in combat, or knowledge of arms, does not remove this restraining influence on killing. Killing is not easy, and it is generally agreed that killing—as distinct from aggression or physical violence—does not come naturally to us.⁸³ Ultimately, much of the trouble for these theories comes from the common assumption that what violence meant to the scholar was the same as what it

⁸⁰ Eleanor Searle and Robert Burghart, 'The Defense of England and the Peasants' Revolt', *Viator* 3 (1972), 365-88, M Bohna, 'Armed Force and Civil Legitimacy in Jack Cade's Revolt, 1450', *EHR* 118, no. 477 (2003), 563-82, M. L. Bush, *The Pilgrimage of Grace: A Study of the Rebel Armies of October 1536* (Manchester: Manchester University, 1996).

⁸¹ An important early study into the motivation of violent actors, particularly soldiers and other armed combatants is S. L. A Marshall, *Men Against Fire: The Problem of Battle Command* (Norman, OK: University of Oklahoma, 1947/2000). While Marshall is now criticised for his statistical and methodological problems, his investigation into the conditions under which soldiers do or do not participate in sanctioned violence against others has prompted considerable study of the issue (Roger J. Spiller, 'S.L.A. Marshall and the Ratio of Fire', *The RUSI Journal* 133 (1988), 63-71). Building on this work, and demonstrating how 'unnatural' it is for most people to participate or perform acts of fatal violence, are studies by Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society* (Boston: Little, Brown, 1995), Joanna Bourke, *An Intimate History of Killing: Face-to-Face Killing in Twentieth-Century Warfare* (Granta, 1999), and most importantly for this thesis, Randall Collins, *Violence: A Micro-Sociological Theory* (Princeton, NJ: Princeton, 2008).

⁸² Collins, *Violence*, 39-58.

⁸³ This is still actively debated, but persuasive arguments against a natural inclination to violence are made in Collins, *Violence*, 66-70, and Grossman, *On Killing*, 5-36. The shared theme here is that violence, deliberately aimed at killing others, requires equally deliberate preparation and some form of moral, ideological, or contextually contingent criteria on which the performer is able to base their actions. In this way the choice of violence over other actions is culturally contingent and not instinctual. That is to say, 'culture truncates biology' (Joshua S. Goldstein, *War and Gender: How Gender Shapes the War System and Vice Versa* (Cambridge: CUP, 2001), 251).

meant to those he or she studied, and if they seemed to respond to violence differently, they must have lacked the compassion or sensitivity to recognise it as morally wrong. Elias was tone-deaf to satire, hyperbole, and poetic licence in the historical or literary accounts of violence that he studied. Jean de Bueil's celebration of the fraternity of European chivalry, its shared hardships, and the exhilaration of combat—not bloodlust, but pride in performing a rare and special skill and performing it well—becomes, in Elias's reading, another example of ruthless pleasure in destruction. That lack of contextual awareness meant that Elias never considered how changes in the social meaning of violence at different times and amongst different social groups could have influenced its decline by enabling the development of centralised law-enforcement or institutional monopolies on force, and not the other way around.

The problem with numbers

Fifteenth-century England was a very organised place, but not so organised as to give historians the sort of material they would need for comprehensive, quantitative studies of violence. Even if one had the full range of sources, a quantitative approach might not answer our questions. Philippa Maddern incorporated some quantitative methods in her study but clearly warned readers that, no matter how sophisticated the formulas or complete the records, such analysis had limited value.⁸⁴ Warren Brown felt that past efforts to understand historical violence, based on quantitative methods, had more of an influence on the sorts of questions historians chose to ask rather than using the strengths of the sources by asking different questions.⁸⁵ The past was more violent—however one wants to define *violence*—and this is a statement no one disputes, but the scale of violence does not help us to understand its meaning. For Brown, all of these quantitative studies missed the important distinction that the past was '*differently* violent' than the present.⁸⁶ This is most apparent in studies that tend to take all instances of violence as equivalent in meaning and significance. Collections of homicide rates compiled and compared to identify trends over time or

⁸⁴ Maddern, *Violence*, 5.

⁸⁵ Brown, *Violence*, 2-5.

⁸⁶ *Ibid.*, 5 (emphasis in the original).

across populations are then read as a measure of the general level of interpersonal violence in the subject group. The more homicides recorded in the files—so the reasoning goes—the more violent crime there should be elsewhere and, ultimately, there will be more violence of a lesser criminal variety prevalent amongst the same group. Increased violence also implies greater social instability, fear, and heightened stress, all leading to more outbreaks of violence. There is little interest in the social meaning of violence other than in the abstract. James Buchanan Given accepted that ‘even the most bizarre and apparently unmotivated murder [was] not without social meaning,’ but he looked for meaning only through statistical trends.⁸⁷ Pieter Spierenburg’s multiple studies of homicide in seventeenth-century Europe make explicit the correlation between frequency of murders and non-fatal, illicit violence and resist arguments to the contrary. He reasoned that homicides were a product of general levels of aggressiveness and therefore the experience of everyday violence must be proportionate to the people’s inclination to violence. Spierenburg argued that the circumstances of most homicides are not dependent on unique or uncommon conditions, but broader social or economic forces at play. He also felt that there was little difference between fatal and non-fatal violence, since the chance of death or survival was largely one of accident and not context.⁸⁸

Life was an uncertain thing and violence—with fatal intent—was therefore common, so one could count up robberies and assaults together with the homicides. There are significant problems with this approach, especially when one looks at the details of violence: when, where, and in what way it was performed (be it a simple display of threat, an armed trespass, a violent and physically damaging assault, a murder, or an organised and militarised affray between groups). Spierenburg is, as one would expect, a stubborn supporter of Elias and interprets violence as a failure of self-restraint, which leads to blanket applications of the statistical material. It is not, however, an approach shared by all historians of violence, anthropologists, criminologists, and

⁸⁷ Buchanan Given, *Society and Homicide*, 1.

⁸⁸ Pieter Spierenburg, *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present* (Cambridge: Polity, 2008), 15-28.

sociologists. Increasingly, scholarship is recognising that violence is best understood as something conditional, situational, and not easily generalised.⁸⁹

English historians grappled with the problem of quantitative methods and its limitations, and a series of papers published in the journal *Past and Present*, beginning with Lawrence Stone's 1983 essay, shows how stubborn the problems were.⁹⁰ Stone began with a critique of Alan MacFarlane's picture of a peaceful village environment in early-modern England, which he contrasted with the work of T. R. Gurr and P. E. H. Hair, who had made statistical studies of violent deaths over long periods of English history.⁹¹ Stone argued that these studies objectively proved that medieval England was violent, dangerous, and dramatically different from how it was described by MacFarlane. Stone went on to introduce his own theories to explain the decline in violence over time, seeing correlations between statistics and changes in the social and economic fabric of English society. Here he invoked Elias and the *civilizing process* as well as French scholar Yves Castan's study of emerging bourgeois materialism.⁹² J. A. Sharpe, a scholar whom Stone cited and criticised in his paper, responded by attacking Stone's generalisations drawn from incomplete sources.⁹³ For Sharpe, this was scholarship built on sand and he argued that what was really important was 'what lies behind the statistics, or what the social meaning of violence was in early modern England.'⁹⁴ Stone's 'rejoinder', published in the same issue as Sharpe's paper, contained Stone's fundamental issue with Sharpe. Stone called this approach 'sterile' and argued that the criticism of statistical methods and reasoning was simply 'unqualified scepticism.'⁹⁵ Sharpe had already discussed this problem in the research of crime, in some depth, but Stone felt that

⁸⁹ See Xavier Rousseaux, 'Crime, Justice and Society in Medieval and Early Modern Times: Thirty Years of Crime and Criminal Justice History', *Crime, History & Societies* 1 (1997), 87-118, and Bruno Abusson de Cavarlay, 'Les limites intrinsèques du calcul de taux d'homicide: À propos des nouveaux standards proposés par E. Monkkonen', *Crime, History & Societies* 5 (2001), 27-32.

⁹⁰ Lawrence Stone, 'Interpersonal Violence in English Society 1300-1980', *P&P* 101 (1983), 22-33.

⁹¹ Alan Macfarlane, *The Justice and the Mare's Ale: Law and Disorder in Seventeenth-Century England* (Oxford: Basil Blackwell, 1981). The papers Stone was responding to are T. R. Gurr, 'Historical Trends in Violent Crime,' and P. E. H. Hair, 'Deaths from Violence in Britain: A Tentative Secular Survey', *Population Studies* 25 (1971), 5-24

⁹² Stone, 'Interpersonal Violence,' 25-7, 31.

⁹³ *Ibid.*, 31.

⁹⁴ J. A. Sharpe, 'The History of Violence in England: Some Observations', *P&P* 108 (1985), 213, which followed the first edition of his *Crime in Early Modern England 1550-1750* (Longman, 1984). It remains a foundational work on the history of crime in post-medieval England.

⁹⁵ Lawrence Stone, 'A Rejoinder,' *P&P* 108 (1985), 217.

Sharpe's concern over quantitative methods was crippling to scholarship, since there was nothing else worth working with.⁹⁶ J. S. Cockburn's contribution to the debate attempted to show what all this meant to historians of violence by demonstrating the limits of quantitative analysis using more or less complete sets of legal records from a well-documented location and period. Cockburn stressed that there were so many possible causal factors at work behind incidents of interpersonal violence that, no matter how complete the numbers, they would fail to explain in any meaningful way what that violence meant or how and why it had occurred. Drawing equivalencies between the incidence of homicide and other forms of violent crime was, for Cockburn, a logical but inherently flawed use of the data.⁹⁷ The lesson here was that the value of this approach is only as good as the data it is built on but that most studies were being built on 'shifting sands of statistical uncertainty.'⁹⁸ Something as simple as population density, a data-set that is essential for calculating the relative frequency of violence per individual (and, by extension, the relative level of violence experienced or witnessed by those people) is extremely difficult to establish in most areas of medieval England but this does not prevent scholars from drawing conclusions about violence based on that formula.⁹⁹ The more narrowly focused the study of subcategories of violence, victims, or perpetrators, the greater the obstacles to quantitative study. Maddern was sensitive to this issue because even her neatly focused geographical and chronological subject, as well documented as it was, was not nearly complete enough to make comprehensive statistical analysis possible.¹⁰⁰ Even if one could make such an account of violence—to count with certainty all the acts of violence in a given place and time, knowing the population numbers, demographics, and other economic or social variables—we would once more have to ask if it meant anything to us historically.

⁹⁶ Ibid.

⁹⁷ J. S. Cockburn, 'Patterns of Violence in English Society: Homicide in Kent 1560-1985', *P&P* 130 (1991), 70-106.

⁹⁸ Ibid., 102.

⁹⁹ This point is made repeatedly by historians such as Brown (*Violence*, 5-12) and criminologists such as Monkkonen ('New Standards,' 20-6) and Schwerhoff ('Criminalized Violence,' 3-8). Maddern, *Violence*, 8-9, discussed the problem as it appears in Carl I. Hammer, 'Patterns of Homicide in a Medieval University Town: Fourteenth-Century Oxford', *P&P* 78 (1978), 3-23.

¹⁰⁰ Maddern, *Violence*, 9.

The problem with a quantitative approach is not just the incomplete nature of the records, but also the kinds of questions quantitative methods require, and what scholars attempt to do with the data they collect. Something as simple as the largely unchallengeable claim that most non-lethal violence was unreported before the modern era automatically means that any statistical survey can be said to underrepresent the actual numbers. This was the conclusion of Barbara Hanawalt and any dispute over rates was moot since more accurate sources would always increase those rates.¹⁰¹ What then is the value of quantitative studies if all they do is confirm what we already knew, or thought we knew—that the past was more violent than the present? Hanawalt, Stone, and Buchanan Given have used their statistics to give violence meaning as an indication of demographic, seasonal, or economic stresses and conflict.¹⁰² This is a logical application of the data but it does not avoid the problems Sharpe and Cockburn enumerated, namely that they avoid questions about the violence itself and its social place and meaning. Ultimately, we must make our questions clearer, rather than arguing what method is most appropriate to the material. This is what motivated Maddern to focus on qualitative questions about violence, which she demonstrated by searching through the hundreds of surviving Paston letters, covering several decades of the fifteenth century, seeking incidents of violence. She found:

a grand total of thirty-six references to violence involving the Pastons or their East Anglian neighbours, even including such trivialities as the injured hand sustained by John Paston II in a friendly tourney at Eltham. If we add the reports of battles, executions, and piracy which reached the Pastons from the rest of Britain and France, the total rises to seventy instances: but even this is not unduly alarming.¹⁰³

Colin Richmond wrote that Maddern's conclusion was 'also unchallengeable':

Who is going to search through 1,288 pages to discover that Dr Maddern has counted accurately? Moreover, what tally of violent incidents would alarm late-twentieth [century] historians, who inhabit a culture more menacing, more antagonistic, more casually brutal, and more seriously murderous than that of fifteenth-century England? Were more guns carried in Manchester in 1998 than knives in Norwich in 1448, when with daggers drawn John Wyndham and James Gloys traded insults in the street? How can that kind of

¹⁰¹ Barbara A. Hanawalt, 'Violent Death in Fourteenth- and Early Fifteenth-Century England', *Comparative Studies in Society and History* 18 (1976), 297-320.

¹⁰² In particular, Barbara A. Hanawalt, 'Economic Influences on the Pattern of Crime in England, 1300-1348', *AJLH* 18 (1974), 281-97, *Crime in East Anglia in the Fourteenth Century: Norfolk Gaol Delivery Rolls, 1307-1316* (Norwich: Norfolk Record Society, 1976), 'The Female Felon in Fourteenth Century England', *Viator* 5 (1975), 253-68, and 'Fur-Collar Crime: The Pattern of Crime among the Fourteenth-Century English Nobility', *Journal of Social History* 8 (1975), 1-17.

¹⁰³ Maddern, *Violence*, 5.

counting be done, and if it were done, whom would the results alarm? Cross-cultural and cross-temporal comparisons get us nowhere: Dr Maddern does not attempt them.¹⁰⁴

Richmond's point is that statistical comparisons over time or between cultural groups cannot tell us anything about the meaning of violence in its historical contexts. 'It has long been clear that the gentry got away with murder in fifteenth-century England, as they had been doing for centuries: [...] And they would continue to get away with it until the eighteenth century. How clear was it to contemporaries? In other words, how is the historian to sort out what was reckoned routine brutality from exceptional barbarity?'¹⁰⁵ We know English elites did violent things, and there may be some value in figuring out how often they did them, but it would do more good in the long run to know what that violence meant to them and to those who witnessed it.

Even if three generations of the Paston family had only a passing experience of violence, it is wrong to assume that they understood those experiences as we would have, or that violence was not a part of their lives in a more abstract way. Consider the role of physical pain, or the frequency of casual violence (non-destructive or injuring to the body), as constructive punishment.¹⁰⁶ Pinker saw the teacher's rejection of physical punishment of students as another sign of modern Western pacification because he placed thrashing a poor student of Latin on the same continuum as infanticide and murder.¹⁰⁷ But this equivalence is an anachronism that misses the social and moral meaning of corrective pain in the late-medieval world. Sharon Wright explained that 'patriarchs, even petty ones, were expected to govern their households actively' and governance included the

¹⁰⁴ Colin Richmond, *The Paston Family in the Fifteenth Century: Endings* (Manchester: Manchester University 2000), 201.

¹⁰⁵ Ibid.

¹⁰⁶ The 1458 list of 'errands' compiled by Agnes Paston (*PL I*, no.28) records her motherly concern for her son Clement's education and the quality of pedagogy provided by his new tutor in London. Her concern was that the tutor would be less strict (and less successful) than Clement's previous tutor in Cambridge by sparing him necessary correction. Correction in this context was universally understood to be a sound lashing with the traditional 'birch' or scourge-like stick and Agnes clearly understood and approved of its use on her son. See also Nicholas Orme, *Medieval Schools: From Roman Britain to Tudor England* (New Haven, CT: Yale, 2006), 144-7, and Ben Parsons, 'The Way of the Rod: The Functions of Beating in Late Medieval Pedagogy', *Modern Philology* 113, no.1 (2015), 1-26.

Pain was not supposed to be used with excess, but as part of a broad set of instructional strategies, incentives, and deterrents. Otherwise, it was simple cruelty and was seen as such by contemporary pedagogues. Battista Guarino, writing in 1459, demonstrated a dynamic understanding of pain as a tool of pedagogy when he warned that excessive use of beatings as correction was counterproductive. Instead, Guarino explained how fear of pain or humiliation is more motivating than the pain itself ('A Program of Teaching and Learning', in *Humanist Educational Treatises*, Craig W Kallendorf, ed. (Cambridge, MA.: Harvard, 2002), 265).

¹⁰⁷ Pinker, *Better Angels*, 428-42

physical correction of wives, children, and servants. But ‘what we would consider assault was understood as correction’, and for a husband ‘it was both a man’s duty and his right’ to use force in giving correction.¹⁰⁸ Legitimate violence as correction was still guided, and constrained, by social norms, and abusers who used this force excessively could find themselves subject to public ridicule or judicial punishment for this moral failing.¹⁰⁹ Here, our problem is one of semantics. Neil Whitehead wrote that ‘it is the intractable nature of the definitions and concepts we employ, rather than the impossibility of understanding violence as such, that is the major obstacle to better anthropological explanations.’¹¹⁰ We must, therefore, try to understand the semantic meaning of violence, for us and for our historical subjects, if we expect to ask the right questions of the sources.

¹⁰⁸ Sharon Wright, ‘Broken Cups, Men’s Wrath, and the Neighbours’ Revenge: The Case of Thomas and Alice Dey of Alverthorpe (1383)’, *Canadian Journal of History* 43, no.2 (2008), 243. For a discussion of the boundaries of private authority in the early-modern household, see Marianna Muravyeva, “‘A King in His Own Household’: Domestic Discipline and Family Violence in Early Modern Europe Reconsidered”, *The History of the Family* 18, no.3 (2013), 227-37.

¹⁰⁹ Emma Hawkes, ‘The “Reasonable” Laws of Domestic Violence in Late Medieval England,’ in *Domestic Violence in Medieval Texts*, Eve Salisbury, Georgiana Donavin and Merrall Llewelyn Price, eds. (Gainesville FL: University Press of Florida, 2002), 57-70, and in a wider European context, Hannah Skoda, ‘Violent Discipline or Disciplining Violence? Experience and Reception of Domestic Violence in Late Thirteenth- and Early Fourteenth-Century Paris and Picardy’, *Cultural and Social History* 6, no.1 (2009), 9-27.

¹¹⁰ Neil L. Whitehead, ‘The Poetics of Violence’, in *Violence*, James Currey, ed. (Santa Fe, NM: School of American Research, 2004), 56.

Chapter 2

The *Past and Present* debate may have left us with the impression that the study of English historical violence has only recently begun to ask questions about meaning or the place of violence in the past, but there are now several important studies of violence that see it exclusively through the lens of social history.¹ Of course, the ‘thick description’ and micro-history methods developed from the social sciences and adapted by historians are at risk of turning studies into catalogues of interesting anecdotes and exceptional curiosities rather than objective studies of causality and contingency.² John Bellamy’s work with late-medieval law, crime, and order sometimes create a disjointed or exaggerated view of the significance and frequency of criminal activity, but this is partly a product of the sources themselves. Often the most uncommon or exceptional events are the best documented and thus they take up more space in the historical narrative. In this way, trial-by-battle, jury intimidation, and casual violence amongst strangers seem far more commonplace than the less sensational sources would support. However, Bellamy’s interest in the social meaning of events meant that his discussions included more reflection on the social meaning of crime and violence. Bellamy concluded that the high incidence of acquittal by trial juries may have had more to do with local communities mitigating punishment of their members and the Crown’s need to maintain good relations with those communities than with external pressure on jurors, contempt for the rule of law, or a corrupt and easily manipulated judicial system. Even this measured interpretation went against the tide of opinion at the time, prompting one reviewer of his 1973 book, *Crime and Public Order in England in the Later Middle Ages*, to comment that Bellamy’s violent subjects ‘seemed too enlightened for the age.’³ Why seek rationality in the irrational?

¹ Lawrence Stone, ‘Prosopography’, *Dædalus* 100 (1971), 46-79.

² Perhaps the most successful example of this mixed methodology is the work of Carlo Ginzburg, *The Cheese and the Worms: The Cosmos of a Sixteenth-Century Miller* (Baltimore: Johns Hopkins, 1980). For ‘thick description’ and ‘micro-history’ methods adapted for historians, see Joseph G. Ponterotto, ‘Brief Note on the Origins, Evolution, and Meaning of the Qualitative Research Concept “Thick Description”’, *Qualitative Report* 11 (2006), 538-49, and John Brewer, ‘Microhistory and the Histories of Everyday Life’, *Cultural and Social History* 7 (2010), 87-109.

³ Quoting B. Lyon, ‘[Review] *Crime and Public Order in England in the Later Middle Ages*’, *The American Historical Review* 78, no.5 (1973), 1440. Bellamy’s principal works include *Crime and Public Order in*

Recently, historians with related interests in violence have come to see it in less overtly mechanistic or utilitarian terms, leading to more nuanced readings of the material. Examples include the work of Richard Kaeuper, Stuart Carroll, and Hannah Skoda. Each has studied European violence in different ways, but all focus on the social meaning of violent action, the importance of understanding individual agency, and the identification of context-specific factors at play, and each of them seek to find the messages embedded in the performance of violence for those who performed it or witnessed it as victims, judges, or bystanders. Kaeuper has focused on the way chivalric culture reconciled the violent behaviour it promoted amongst its adherents with the contradictory messages of passivity and subordination repeatedly made by the Church.⁴ For the men-at-arms and knights invested in chivalry, violence was their ‘privileged practice’ and its skilled performance, through the display of prowess, developed into a complex and deeply ingrained set of social and moral values such that it became almost a cult of its own: the ‘worship of the demi-god prowess.’⁵ Kaeuper’s work explains how chivalry managed to operate despite its internal contradictions, cynicism, moral relativism, and unreachable ideals. Pinker described chivalry as little more than ‘macho’ posturing ‘gussied up with words like *honor, valor, chivalry, glory, and gallantry* which made later generations forget they were bloodthirsty marauders.’⁶ While there is ample evidence of contemporary criticism of chivalry, and the dichotomy between ideal and practice was consciously recognised by adherents and critics, there is little to support the view that chivalry was a facade of self-justification—a lie that knights told everyone else but never believed themselves. Such an interpretation must overlook the ample evidence of fourteenth- and fifteenth-century chroniclers who treated fame and praiseworthy deeds as a social currency of immense value.⁷ It gave violence meaning, and those skilled at violence gained social status (however abstract and ephemeral) through its performance by those whose opinions mattered. That

England in the Later Middle Ages (Routledge & Kegan Paul, 1973), *Criminal Law and Society in Late Medieval and Tudor England* (New York: St. Martin’s Press, 1984) and most recently *Criminal Trial in Later Medieval England: Felony Before the Courts from Edward I to the Sixteenth Century* (Toronto: University of Toronto, 1998).

⁴ *Violence in Medieval Society*, Richard W. Kaeuper, ed. (Rochester, NY: Boydell, 2000); R. W. Kaeuper, *Holy Warriors: The Religious Ideology of Chivalry* (Philadelphia: University of Pennsylvania, 2009).

⁵ Kaeuper, *Chivalry and Violence*, 129.

⁶ Pinker, *Better Angels*, p. 67.

⁷ C. Given-Wilson, *Chronicles: The Writing of History in Medieval England* (Hambledon, 2004), 106-7.

exchange of violence for social gain was durable, surviving well beyond the medieval period. Stuart Carroll, blessed with a rich source of early-seventeenth century French pardons for homicide, showed that the craze for the duel evolved out of the gentrification of chivalric ideals within a more widely shared military culture, giving mid-rank elites a means of defending a tenuous hold within their social hierarchy.⁸ This was a mature and self-aware culture of honour and violence, not a short-sighted act of inhibition and irrationality. Hilla Zmora and Hannah Skoda have used mixed methodologies in their analysis of interpersonal violence and mechanisms of group and individual conflict in medieval and early-modern Europe, with important results for social historians.⁹ What makes these studies possible is that these scholars are aware that what violence means to us is almost certainly different from what it meant to those they study.

The meaning of *violence* and the problem of semantics

William Schinkel argued that most scholarship has treated violence in much the same way that Saint Augustine treated the conception of *time*; ‘so long as I don’t think about it, I know what it is.’¹⁰ Our understanding of violence is often ‘*pre-reflexive*’—based on a pre-existing set of criteria by which it is identified and thus understood. This is more than a social scientist’s debate on semantics of a sort familiar to undergraduate philosophers; it is a necessary acknowledgement that our present influences how we read the past and the way we understand the place of violence within it. We are rarely clear on what violence means to contemporaries, just as we rarely question what it means to ourselves, yet we study it with a confidence that suggests we all know what we are talking about. For Schinkel, ‘what is recognized as violence and what isn’t is a matter of violence itself, since it is a power to be able to use force without it being recognized as such.’¹¹ Put differently, ‘violence is always a matter of degree, intensity, and culturally competent judgement,

⁸ Carroll, *Blood and Violence*.

⁹ Hilla Zmora, *The Feud in Early Modern Germany* (Cambridge: CUP, 2011), Hannah Skoda, *Popular Violence in Late Thirteenth- and Early Fourteenth-Century France* (DPhil thesis, University of Oxford, 2008) and the book it produced: Hannah Skoda, *Medieval Violence: Physical Brutality in Northern France, 1270-1330* (Oxford: OUP, 2013).

¹⁰ Schinkel, *Aspects of Violence*, 5.

¹¹ *Ibid.*, 5.

which constructs such vehement actions as violent.’¹² Often this means that violence is defined (for the purposes of historical research) through reference to contemporary or historical legal criteria, without critical reflection, isolating violence from socially or culturally contingent features. In other words, it makes the context of violence artificially schematic, which is part of the problem with taking homicide rates and extrapolating rates of non-lethal forms of violence.¹³ Legal definitions of violence in the fifteenth century are not self-explanatory and do not always accurately reflect their social meaning. Also, legal definitions, like social ones, are not fixed or immutable, but the law often changes at a much slower and more inconsistent pace than does society. When these differences in meaning are acknowledged, there is a tendency to take that difference as evidence that medieval and early-modern people were more tolerant of violence, or were simply desensitized to it through frequent exposure, rather than to venture more nuanced interpretations of social value and meaning.¹⁴

Defining violence is difficult because the concept can become unworkably abstract. To identify something as *violent* is to identify it with a set of prearranged value judgements, typically destructive, disruptive, antisocial, illicit, immoral, cruel, or irrational.¹⁵ That judgement extends to violent persons and their motives for action, and it influences the methods employed in identifying those motives. This is how violence is differentiated from legitimate force, but the criteria have changed significantly over time, and with them the historical interpretation of violence in the past. It also overlooks the complexity of historical definitions, such as judicially mandated executions of convicted felons. According to one medieval legal commentary, the judge who passes lawful sentence against a felon with a spirit of malice and not ‘out of love for justice’ commits unlawful

¹² Whitehead, ‘The Poetics of Violence’, 63.

¹³ See Schwerhoff, ‘Criminalized Violence’, 3-8.

¹⁴ Theories that try to explain modern violence as a result of desensitizing exposure to violent images, literature, or events, which lower violent actors’ ability to feel empathy and offer aid to those in need, have been a popular approach to historical violence (Brad J. Bushman, Craig A. Anderson, ‘Comfortably Numb: Desensitizing Effects of Violent Media on Helping Others’, *Psychological Science* 20 (2009), 273-77). Elias and Pinker share this approach as well (Elias, *Civilizing Process*, 363-420, Pinker, *Better Angels*, 64-8). A point that Elias and Pinker missed concerning public depictions of suffering, particularly public executions, was the way observers were repeatedly told to see and understand what they saw, not as prurient entertainment but as salutary and restorative examples with moral and legal meaning (Cohen, *The Modulated Scream*, 25-51, and Groebner, *Defaced*, 87-124).

¹⁵ de Haan, ‘Violence as an Essentially Contested Concept’, 28-30.

homicide.¹⁶ The legal definitions of lawful violence were not always in agreement with the moral or ethical definitions, but both systems of value understood that violence was destructive and disruptive but also redemptive, purgative, and restorative, and thus unlawful or lawful, depending on context.¹⁷

Violence as legitimate force was an essential means of social control and stability; there was a moral obligation to use force to protect one's rights and to oppose injustice and disorder: 'he who intends to use force must be manfully resisted by force.'¹⁸ More significantly, violence could be aspirational, self-affirming, righteous, and virtuous, depending on the context of its performance and the identity, social value, and goals of its performers. Even now, legitimate violence is rarely called *violence*, which shows an awareness of the semantic power of defining words, and it is essential that we know why those forms of violence are identified differently. Where violence is concerned, we rarely find the schedule of values against which violence was judged and defined, but then, as now, what is or is not *violence* is contingent. Contingency gives violence its meaning. Counting up murders and assaults tells us very little about these contingencies. We can count up all the acts of criminality attributed to Sir Thomas Malory of Newbold Revel, the likely author of the *Morte Darthur*, but such a count will not explain why or to what purpose they were performed.¹⁹ If we take the legal definitions of violence along with their socially determined meanings where the definitions of violence are contingent, we begin to see a far greater range of meaning and means of justification. The same moral rationalisations for organised warfare in defence of the Church or to regain the lost sovereignty of the English Crown can, with little effort, apply to much smaller

¹⁶ *Fleta*, I, chpt 30-31. Completed around 1290, this anonymous collection of legal theory and practice, influenced by earlier treatises called *Glanville* (after Ranulf Glanville, c.1120s-1190) and *Bracton* (uncertainly attributed to Henry of Bratton, d.1268), is one of the more concise and representative collections of English legal experience of the period, much of which was still considered relevant by the start of the Tudors: David J. Seipp, 'Fleta, (fl. 1290-1300)', *ODNB* (2004).

¹⁷ *Fleta* reflects the canonists' definitions of corporeal and spiritual homicide, made possible by the Church's need to differentiate different levels of guilt and sin within its own disciplinary structure, which did not include the penalty of death (J. Shaw, 'Corporeal and Spiritual Homicide, the Sin of Wrath, and the "Pardon's Tale"', *Traditio* 38 (1982), 285-5).

¹⁸ *Fleta* IV, chpt 4.

¹⁹ Malory's criminal history has fascinated and frustrated historians and literary scholars since they discovered this particular Thomas Malory. Malory's criminality confronts scholars with irrational violence perpetrated by an otherwise rational, historical actor. The frustration in Christine Carpenter, 'Sir Thomas Malory and Fifteenth-Century Local Politics', *HR* 53, no. 127 (1980), 31-43, is palpable.

conflicts between landowners and family members. This is the semantic problem of violence: its meaning is never fixed; it is contingent and mutable.

Alternative methods: violence as a ‘communicative act’

For some social scientists and anthropologists, violence is a kind of communicative act.²⁰ L. J. Ray has written of a shared *vocabulary* of moral meaning within the social group in which violence is often performed. ‘Those who deploy power seek to be perceived as legitimate and for any action of violence to be regarded as just. Perpetrators of both “legitimate” and illegal violence will appeal to normative justifications through culturally available languages of justification.’²¹ Likewise, S. Blumenthal has stressed the ‘unconscious transaction’ between perpetrator, victim, and third parties that often reflects complex forces at work, such as humiliation, shame, and desire for retribution or the restoration of respect and external validation.²² Historians have been more comfortable with the emotional approach to abstract concepts such as humiliation (in the work of William Ian Miller) or anger (studied by Daniel Lord Smail and others), but many studies fall into the same traps that catch other disciplines, by seeking mechanistic or utilitarian explanations first and, if none can be found, dismissing the violence in a deterministic way as biologically conditioned or almost pathological.²³ Aspirational violence tells us what performers thought of themselves and where they should fit or hoped to fit within the social hierarchy based on their proclaimed rights and privileges.

A language of social norms is constructed from interconnected concepts that inform personal and collective identities, moral foundations of law and order, ideas of justice, fairness, and

²⁰ The concept is briefly described in Stephen Blumenthal, ‘Violence as Communication’, *Criminal Justice Matters*, 66 no. 1 (2006), 4-5, and in greater detail by Ray, *Violence*, 10-18.

²¹ Ray, *Violence*, 14. The concept of morally positive, or righteous violence is developed in Alan Page Fiske and Taze Shakti Rai, *Virtuous Violence: Hurting and Killing to Create, Sustain, End, and Honor Social Relationships* (Cambridge: CUP, 2015).

²² Blumenthal, ‘Violence as Communication’, 4.

²³ Well-developed studies of historical conflicts and emotional aspects include William Ian Miller, *Humiliation: And Other Essays on Honor, Social Discomfort, and Violence* (Ithaca: Cornell, 1993), and D. L. Smail, ‘Hatred as a Social Institution in Late-Medieval Society’, *Speculum*, 76 no. 1 (2001), 90-126. The ‘classical’ approaches to violence as either reactionary, utilitarian, or determinist is critically reviewed in Michel Wieviorka, ‘The Sociological Analysis of Violence: New Perspectives’, *The Sociological Review*, 62 (2014), 50-52.

these norms provide value structures and privileges determined by social and class hierarchies. This is also the language of social scientists and anthropologists but the material they use in constructing these moral landscapes for modern perpetrators of violence is present—fragmentary and obscure—in the medieval and early-modern periods. Those social norms shaped how elites behaved and how they understood their place in their world. It is fair to expect that those same norms would shape the way they performed violence, and those norms can tell us why they chose to be violent at all. Randall Collins has shown how modern performers of interpersonal violence follow these shared social norms so closely and so intuitively that they may act them out in circumstances where their social value is meaningless or where their messages go unrecognised.²⁴ Collins’ ‘micro-sociological’ focus on the situations where violence occurs, rather than on the perpetrators’ social or personal background, forces us to look at each instance of violence on its own terms without easy generalisations. Collins has been criticised for minimising the ‘subjectivity’ of violent performers in favour of the ‘dynamic of the situation’ they occupy, but the general approach has considerable value for historical violence.²⁵ Looking at the physicality of violent interactions (or the way those actions are described by others) shows us how socially conditioned actions, language, and material symbolism give those performances meaning without confusing that meaning by overemphasising wider social or political contexts for those acts.

Knowing the language of social norms is essential for interpreting the meaning of violent performances, and much of this meaning is communicated in our sources by third parties to violence.²⁶ Mark Cooney, in his study of modern interpersonal violence, calls third parties ‘all those who have knowledge of a conflict, actual or potential.’²⁷ In the fifteenth and sixteenth

²⁴ The best example is where armed confrontations between strangers escalate rapidly from the initial and often trivial point of conflict (such as ‘road-rage’ incidents), where the initial insult or humiliation has no audience and therefore carries no threat to one’s wider social-self (Collins, *Violence*, 227-8).

²⁵ Wieviorka, ‘Sociological Analysis of Violence’, 56.

²⁶ Here, and elsewhere, *third parties* is used more inclusively than David Riches’ tripartite system of perpetrator, victim, and witness (Riches, *Anthropology of Violence*) by including passive, or active bystanders to violence, local or distant communities and social groups with a stake in the violent act, officers or representatives of the legal system or more local or personal spheres of influence and power, or other perpetrators of victims of other violent events, whose observations determine the meaning of other violent events.

²⁷ Mark Cooney, *Warriors and Peacemakers: How Third Parties Shape Violence* (New York: New York University, 1998), 6.

centuries, these were judges and juries, but also non-violent participants, observers, and indirect witnesses to violence and its aftermath. 'Third parties shape conflict in different ways. Sometimes they promote violence by urging parties to fight (perhaps calling them cowards if they do not), or by providing moral support, or weaponry, or even joining the fray themselves.' But 'sometimes third parties act as peacemakers.' Cooney explains that 'the very same people who intensify conflict in one case can dampen it in another.'²⁸ In the case of historical violence, third parties also provide us almost all the documentation we have on such performances.

The significance of these invisible third parties is easy to miss. Elton's treatment of a 'silly quarrel over a pot of wine' is an example. Elton cites the case for its representation of the 'superstitious, excitable and volatile society' of the early Tudors.²⁹ That incident began with a simple breach of etiquette in a London tavern and escalated into a riot. The sparse narrative conceals the very relevant backdrop to events, which did not occur in a vacuum but rather before a diverse group of third parties who influenced the course of events. Even if they did not directly participate, third parties were essential to the events that were recorded. It was not the excitable character of the sixteenth-century Englishmen that caused the running battles between students of the Inns of Court and the locals, it was the volatile interaction of these groups, compounding tensions through overlapping and contradictory jurisdictions of lay and ecclesiastical authority. These groups could just as easily pacify as antagonise. The stage-dressing of a rambling street-fight from one London tavern to another conceals how modern this kind of multifaceted conflict really was, and Cooney provides several examples of this kind of escalating conflict leading to violence, involving significant third-party influence, from more recent times. There is no reason to believe that the underlying process is too different to apply in historical contexts, so long as the differences are identified and acknowledged.³⁰ Likewise, Collins breaks down several examples of interpersonal violence between small groups of antagonists who are influenced by the presence of

²⁸ *Ibid.*, 7.

²⁹ Elton, *Policy and Police*, 4-5 (and his example, STAC2/26/154).

³⁰ Elton's example contains areas of confrontation, and stages of escalation and de-escalation, the separation of parties, private escalation of tension and fear, conflict-seeking behaviour leading to outbreaks of violence, disproportionate to the initial point of conflict, threat, or insult, which is shared by many modern cases of group violence (Cooney, *Peacemakers*, 1-3, 67).

larger audiences, who are largely strangers to the conflict but form part of the ‘emotional attention space’ of conflicts.³¹ Third parties are also vital in determining how the law treats violence, particularly the people who form the juries of indictment and judgement. Thomas Green’s work on late-medieval jury trials shows how complex this influence was.³² Green saw most jury behaviour as antagonistic, pitting the institutions of the law against local interests, but this is an overly legalistic reading of jurors’ actions, and his approach tends to see third parties as segregated from the action itself, rather than (as Cooney would argue) participants in events and interpreters of social meaning.

Thinking of violence as a performance with meaning—a communicative act—is not a radical departure from familiar historical methods of fitting events into their social, physical, economic, or political contexts, or in the study of ritual gesture. To paraphrase Max Weber, ritual is a ‘legitimation process’ that uses familiar norms and gives its subject a sense of legality.³³ We usually think of ritual behaviour as codified and formal—self-conscious performances of special significance—acted outside the normal patterns of our lives. But as Phythian-Adams wrote, ritual belongs ‘to one extreme of a continuous spectrum of social behaviour’ and therefore ‘the isolation [of ritual from social history] is to some extent an artificial exercise.’³⁴ This means that descriptions of violent actions can tell us how witnesses, performers, and victims understood the meaning violence was thought to have, and how it was judged, justified, or condemned. We are already familiar with some of these performative messages. We expect gentry practitioners of violence to use weapons suitable to their social place, like swords, lances, or other militarised arms, rather than the knives and clubs used by non-elites. We expect this because we are told that the sword was a common item of public dress, but also because the sword was a mark of status and privilege. Dress

³¹ In most of these cases the violence was enabled or prevented through the influence of third parties, and only in a few instances was the behaviour of the audience irrelevant to outcomes. Collins, *Violence*, 413-29.

³² Thomas Andrew Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800* (Chicago: University of Chicago, 1988), 28-64.

³³ Quoting the summary of Weber’s conception of ritual from J. Burden, ‘Re-writing a Rite of Passage: The Peculiar Funeral of Edward II,’ in *Rites of Passage: Cultures of Transition in the Fourteenth Century*, Nicola McDonald and W. M. Ormrod, eds. (Woodbridge: York Medieval Press; Boydell, 2004), 13.

³⁴ C. V. Phythian-Adams, ‘Ritual Constructions of Society’, in *A Social History of England, 1200-1500*, Rosemary Horrox and Nicholas Orme, eds. (Cambridge: CUP, 2006), 370.

and gesture were part of social performances of status and ‘what a gentleman wore was always crucial in any definition, including self-definition.’³⁵

The choice of weapons and how they are used also says something important about the social meaning of the violence itself. Sometimes these are simply weapons of opportunity that tell us more about the place and time in which the event occurs than the intentions of perpetrators, but this is less often the case when the perpetrators are members of the social elite.³⁶ We know that medieval and early-modern gentry believed that swords were in some way special to them and therefore made their use special even if they were never formally restricted to elites.³⁷ Swords were a ‘symbol, metaphor, a mark of distinction but at the same time, a fatal object,’ an object that had contradictory values and meaning for different people.³⁸ Swords were ubiquitous and could be found at the hip of all manner of armed men, irrespective of social status, but culturally the sword retained its elite associations, especially outside the theatre of war.³⁹ Consider the way that weapons are depicted in non-gentry violence in the literature, as in Robin Hood’s use of a yeoman’s array of arms rather than those of a gentleman.⁴⁰ Most men who carried swords in the fifteenth and sixteenth centuries had or could be presumed to have had some informal instruction in their use because that statement of elite martial privilege was, at that time at least, also a statement

³⁵ Richmond, *Endings*, 67.

³⁶ Next to knives, common farming tools are the most common weapons named in cases studied by Buchanan Given (*Homicide*, pp. 188-9). Swords and staves were the most common arms cited in the felony trespasses studied by Maddern (*Violence*, 28-9) but she rightly points out that this is simply the form of the *vi et armis* charge, and not an accurate accounting of weapons at hand.

³⁷ This association of the sword with elites grew in prominence during the late sixteenth century, especially in the context of royal court display; *The Noble Art of the Sword: Fashion and Fencing in Renaissance Europe*, Tobias Capwell, ed. (Paul Holberton, 2012), 28-74.

³⁸ ‘Symbole, métaphore, signe de distinction et en même temps objet fatal,’ Pascal Briost, Hervé Drévilion and Pierre Serna, *Croiser le fer violence et culture de l’épée dans la France moderne, XVIe-XVIIIe siècle* (Orne: Champ Vallon, 2002), 10.

³⁹ In war it was the horse, not the sword, which distinguished the elite combatant from the common one. This is made explicit in some late-fourteenth century chivalric manuals where the ownership of horses is a key point in determining who or what counts in the chivalric economy. A battle scene in the Holkham picture Bible of c. 1340 (BL, ms Add.47682 f. 40r) depicts this distinction visually with two parallel images of elites and commoners fighting their fellows. Each group is similarly armed with swords and other weapons, but the elites fight from horseback while the rest fight on foot.

⁴⁰ M. H. Keen, ‘Robin Hood — Peasant or Gentleman?’, *P&P* 19 (1961), 7-15, Richmond, *Endings*, 72. An indication of the sword as signifier of social (and gender) status appears in the occasions when certain men were denied the right to carry them, such as students at Oxford and Cambridge (Karras, *From Boys to Men*, 99-100, 192) or young clerks from the Inns of Court (J. S. Burn, *The Star Chamber: Notices of the Court and Its Proceedings; with a Few Additional Notes of the High Commission* (J. R. Smith, 1870), 45, citing an ordinance of 5 May, 8 Hen. VIII).

of *potential*. That makes the source of threat more closely associated with the bearer rather than a property of the weapon itself.⁴¹ There is evidence from studies of modern interpersonal violence that actors, even those under the influence of narcotics or who act in reaction to threat or out of explosive anger, have the presence of mind to make deliberate decisions about how they will behave, how they will fight, what weapons they will use, and how they will use them.⁴² It is safe to presume that this decision-making process operated in the minds of medieval performers of violence, at least in abstract terms. This should be kept in mind when evaluating the meaning of arms as described in our sources.

The way weapons function also has implications for our reading of violent performances. In this period, only the bow and the rare gunpowder weapon had any chance of killing at a distance, but to use them would require a degree of determination beyond what the modern firearm would require.⁴³ Comparisons are often drawn between swords and other medieval arms on one hand and modern firearms on the other, but this is poor correlation because the social meaning of weapons

⁴¹ Like the question about wearing swords, any serious inquiry into the issue of skill in arms or lack thereof amongst late-medieval gentry encounters a serious lack of evidence to work with until one reaches the mid-fifteenth century. This problem is briefly touched upon in S. Anglo, 'How to Win at Tournaments: The Technique of Chivalric Combat', *The Antiquaries Journal* 68, no.2 (1988), 248-64. See also the heavily qualified discussion of the same in Mercer, *Medieval Gentry*, 35-64.

⁴² There are studies of modern interpersonal violence that show that weapon choice is not always incidental or opportunistic, even in unplanned or spontaneous acts violence (Roberto Catanesi and others, 'Psychopathology and Weapon Choice: A Study of 103 Perpetrators of Homicide or Attempted Homicide', *Forensic Science International* 209 (2011), 149-53). For the significance of deliberate targeting of the body in socially meaningful ways, see Martin Bauer and Dieter Patzelt, 'Intracranial Stab Injuries: Case Report and Case Study', *Forensic Science International*, 129 (2002), 122-27, Carmen Lange, 'Violence and the Face', in *Material Harm: Archaeological Studies of War and Violence*, John Carman, ed. (Glasgow: Cruithne Press, 1997), 169-73, and in the context of punishment, retributive or cathartic, performative justice, see Groebner, *Defaced*, and Mitchell B. Merback, *The Thief, the Cross, and the Wheel: Pain and the Spectacle of Punishment in Medieval and Renaissance Europe* (Chicago: University of Chicago, 1999).

Caution is still advised, not to read too far into the wounds we find, looking for socially meaningful action, particularly in studies of skeletal evidence of weapon trauma (see M. R. Geldof, "'And Describe the Shapes of the Dead...': Making Sense of the Archaeology of Armed Violence', in *Wounds and Wound Repair in Medieval Culture*, ed. by K. DeVries and L. Tracy (Leiden: Brill, 2015), 57-80).

⁴³ Bows were considered so common in the fifteenth century that they were habitually included in the fictional list of weapons that the *vi et armis* formula demanded of indictments or appeals of felony trespass, usually appearing right after swords and staves (*gladiis et baculis*). Writers of such indictments or appeals were careful to include arrows with the bows, as the bow itself was not a weapon unless arrows were present. It was also important to note the value of the projectile. The tedious attention to the value of weapons and any object involved in a death was partly legal formality to satisfy the *deodand* system which made the value of anything responsible for death payable to the Crown in recompense for its loss of a subject: Teresa Sutton, 'The Deodand and Responsibility for Death', *JLH* 18 no.3 (1997), 44-55. It was also important to have some value, accurate or not, as its absence would invalidate an indictment. This was adhered to even when the accused was not in custody and thus likely still in possession of the weapon, making valuation largely impossible.

has changed over place and time.⁴⁴ That equivalence is easy to make, given how the problem of American gun violence (be it the real or perceived problem depicted in public media) and the availability of guns in urban populations presents itself when one is reminded that ‘medieval society was an armed society.’⁴⁵ We are familiar with the English parliamentary legislation that made the ownership of arms mandatory—enforced by visiting commissions and the assize of arms—but to what extent men who owned swords wore them as a common item of dress is debatable or, at the very least, is a feature of social life that is not fully established.⁴⁶ Moreover, we must remember that guns, as tools that allow for the performance of violence and as socially significant objects, are fundamentally different than swords, just as swords are different socially and mechanically from common knives. Guns carry with them a *culture*—they are objects that represent a very specific potential for violence and their possession or display is a means of reordering power relationships in moments of threat or crisis. They are, like swords, a kind of fetish object, but they mean very different things to different social groups. Guns also require little or no skill to operate, less than even a knife or club, because they are not dependent on one’s physicality and they extend the reach of the attacker to act violently against others more spontaneously and at a greater (and safer) distance than other weapons. Physically and psychologically, guns make violence easier to perform in a way that swords do not.⁴⁷

The meaning of the sword is, to a large extent, dependent on who carries it and how it is used (or not used) in the performance of violence. This is not apparent when reading comparisons of medieval violence with modern examples where the differences in the social meaning of weapons, location, or details of performances are not recognised. The significance of these details

⁴⁴ For this equivalence, see Buchanan Given, *Homicide*, 189-90. The quote is from John France, *Western Warfare in the Age of the Crusades 1000-1300* (Ithaca, NY: Cornell, 1999), 66.

⁴⁵ Ideas about modern gun violence, like modern ideas about crime, order, and enforcement of the law, often appear in explicit comparisons with violence in the past, as in another review of Bellamy’s *Crime and Public Order* (R. H. Helmholz, ‘[Review] *Crime and Public Order*’, *Speculum* 50, no.4 (1975), 716-7).

⁴⁶ For the early history of these statutes, and their enforcement, see M. Powicke, *Military Obligation in Medieval England: A Study in Liberty and Duty* (Oxford: Clarendon Press, 1962), and chpt. 3, below.

⁴⁷ How guns can influence the decision-making processes of violent actors, and the special power of action firearms impart to their users, is detailed in Collins, *Violence*, 226-37. Of particular interest are ‘single gun’ confrontations where the difference in potential violence between the armed and unarmed is significantly more disproportionate than situations involving other weapons or where the threat is more balanced. The imbalance created by firearms alters the way violence is performed and how it is perceived by others.

becomes more evident in performances of violence where the weapon of the moment was not the common object of opportunity such as the ubiquitous knife or ‘staff,’ (identified with the even more generic *baculus* in Latin) with or without descriptive additions.⁴⁸ Knives, which can appear in militarised forms, were also common and indispensable tools carried by almost everyone during this period. For centuries they were as common a piece of personal wear as keys or mobile phones are now. Men, women, and children of any status could be expected to have a knife of some sort, and while they were usually small and non-threatening items of dress, they were necessary dangers.⁴⁹ Swords, by contrast, were carried only by men with the institutional or social right to do so. Even if swords and other dedicated weapons were as common as modern historians seem to think they were, it is significant that there is so little regulation of their ownership and wear, or at least very little discussion of such problems. Breaches of the peace in the royal courts or other high-stress gatherings were comparatively rare, and actual violence or deaths were even more uncommon. When they did occur, such incidents were considered sensational and exceptional.⁵⁰ A review of town ordinances shows that authorities were more interested in the maintenance of local defences or wider issues of military obligations or costs than control of individual behaviour or

⁴⁸ Buchanan Given’s survey of thirteenth century records, which should be considered representative in this regard for much of the medieval period, confirms our superficial impression that knives were the single most common item responsible for mortal injury. The close second is the equally ubiquitous ‘stick of some sort’ which could include scraps of wood, staffs and wooden shafts for tools, and other implements commonly found in the home or workplace or market (Buchanan Given, *Homicide*, 189). *Baculi* are part of the generic phrase for trespass with force and arms and is usually translated as ‘staves’ but it is used to refer to both manufactured objects and natural objects of wood like branches, pieces of firewood or other wooden objects and tools. Thus, we see additions describing *baculo* of crab-tree, ash, and hazel for indictments that required that degree of specificity: examples from a selection of examples in *Select Cases from the Coroner’s Rolls AD 1265-1413 with a Brief Account of the History of the Office of Coroner*, C. Gross, ed. (Bernard Quaritch, 1896), 11, 19.

⁴⁹ Buchanan Given (*Homicide*, 188) mentions children as young as nine carrying knives and fatally injuring each other and mentions the murder of William Geyser (9) by William Palfrey (11) in 1260 as an example of infant violence. The case is cited from W. M Palmer, *The Assizes Held at Cambridge A.D. 1260: Being a Condensed Translation of Assize Roll 82 in the Public Record Office* (Linton: Eagle Printing, 1930), 4, but in the primary source the case is less sensational. The account (JUST1/82 m29) states only that Palfrey ‘struck’ Geyser in the neck with a knife worth 3d, fled the scene, later returned, and was reported to the assizes by the sheriff of Wiltshire (the respective ages of perpetrator and victim added interlineally). The case may have been dismissed before advancing to trial, as there are no marginal notes indicating process or judgement.

⁵⁰ Westminster was an occasional place of violence during the fifteenth century, including affrays involving the Earl of Warwick, the Duke of Exeter, their followers, and one well-publicised attempt on the life of a rival by the Lancastrian archvillain, William Tailboys. These are certainly dramatic episodes in the chronicles but there was more threat and posture to these incidents than earnest combat. Given the precedents, the harsh treatment of John Davy, who allegedly struck a justice of the Bench in 1461, seems excessive and perhaps motivated by other goals than restorative justice (‘Vitellius A xvi’, 176).

possible interpersonal violence involving military arms. These rules tend to come into effect in times of local crisis and unrest where armed gathering was possible, or at times of political tension, particularly during sittings of parliament.⁵¹ For example, the sheriffs and keepers of the peace for Devon and Somerset were ordered to read out a proclamation prohibiting privately organised gathering of armed men or joining such gatherings in March 1456.⁵² On the whole, restrictions on the bearing of arms were usually temporary, geographically and situationally specific, and reactive rather than proactive, in response to political crisis, disorder, or fears of foreign invasion or organised rebellion.⁵³ Restrictions on carrying arms typically targeted specific types of weapons that were indicative of unlawful intent or prohibited bearing arms at certain times and places, but this does not seem to be very common. Wearing swords to the central courts of Westminster seems to have been accepted practice, unless specifically prohibited by special order of the Crown, and despite occasional outbreaks of violence amongst those waiting for their business to be heard.⁵⁴

Henry V, perhaps concerned over his personal safety at a sitting of King's Bench in November

⁵¹ The parliament that opened on 9 July 1455 at Westminster was accompanied by large, armed retinues representing the Duke of York and other magnates, which put the city on edge and resulted in a temporary prohibition against bearing of arms around Westminster (*PL* III, no. 1026, notes the proclamation made in the court of Chancery, 19 July 1455). Violence visited London during the second sitting of this parliament when an altercation between a Londoner and a foreign apprentice (over the wearing of a knife) escalated into large-scale violence against aliens ('Benet's Chronicle', 215-6, 'Vitellius A xvi', 166-7).

⁵² *CPR 1452-61*, 304-5.

⁵³ For urban ordinances see Randall Moffett, 'Military Equipment in the Town of Southampton During the Fourteenth and Fifteenth Centuries', *The Journal of Medieval Military History* ix (2011), 167-99. Ordinances for Leicester (1467), printed in A. R. Myers, *English Historical Documents, 1327-1485* (Eyre & Spottiswoode, 1969), 575. The *Statuta Civitatis Lond.* (13 Ed. I), passed in 1285, restricted the wear of arms in London after curfew and barred fencing schools, a measure likely taken out of concern over disorder of various sorts associated with the schools and their students. Regulations passed under Henry VIII (*Stat.* 33 Hen. VIII, c.6) restricted the ownership of firearms to those who held a certain value of land or goods, broadly similar to that which identified the middle gentry and above. This regulation also granted those authorised to own such weapons, the power to seize them from those who were not authorised. That power was also given to the Crown, which in turn could force legal owners of firearms to hand them over for the defence of the realm. The subtext here is one of hierarchy and 'national' interests rather than concerns over safety or threats of rebellion by owners of such weapons. This was also an easy way for the Crown to obtain firearms at no personal expense, although it is not clear if this privilege was ever exercised by the Crown. Prohibition of specific weapons, not just their use in certain circumstances, is perhaps unique to the *lancegay*, named in a 1383 statute (*Stat.* 7 Rich II, c.8). This is usually described as a type of double-ended lance or javelin (implying that it was light enough to be thrown effectively) with exotic origins and was associated with illegal and unlawful violence. (*OED* 'lancegay, n.' gives its derivation as Old French and its first appearance in the statute above. Later usage seems to imply a lighter version of the common lance used on horseback).

⁵⁴ These were rare but could be serious and deaths are recorded. A struggle between two men, waiting in line before the Bench to have their business heard, resulted in a fatal stabbing (Trin. 1336, KB27/305 *rex*17d, cited in Sayles, *King's Bench* III, lxxxii). Purse-cutting was a problem for waiting litigants as well (*ibid.*). A brawl ('contumelia') involving litigants, their servants, and by-standers, armed with swords and buckers, narrowly avoided causing fatalities (Trin. 1341, KB27/325 *rex*35, cited in Sayles, *King's Bench* VI, 11-12)

1413, did prohibit the wearing of arms within the boundaries of Westminster.⁵⁵ But this did not include swords worn by a 'lord or a knight' according to their 'degree and estate.' Henry's order empowered the marshal of the court or his deputy to arrest those who violated the rule, but the wording does not make it clear if this was only in effect for that particular sitting or for all occasions when the King was personally present in the court.⁵⁶ In 1524, Henry VIII issued a similar prohibition against wearing armour and carrying arms within the royal palace and the hall of Westminster, except for officers of the court, and it did not extend to the spaces outside the hall.⁵⁷ These regulations further reinforce the notion that swords were closely identified with social and legal qualities possessed by the wearer and acted as another mark of self-identification of elite status.⁵⁸ That the gentry would use swords in the performance of violence seems, at first glance, little different from the use of knives or other weapons of opportunity. But we should not assume that the drawing of a sword was an action that could be performed accidentally, at least we rarely see casual and careless handling of swords in the same way firearms are sometimes treated today.⁵⁹

⁵⁵ The term began on 9 October but the special ordinances regarding arms are dated 17 November (Sayles, *King's Bench* VII, 229), probably in response to the immediate threat of rebellion, fuelled by William Oldhall who had escaped from the custody of the Tower of London on 19 October (Jacob, *Fifteenth Century*, 130-1).

⁵⁶ We only know of this provision thanks to a personal appeal for assault entered in Hilary term, 1415. The plaintiff, Edmund Stoke, stated that Nicholas Holand, esquire, then marshal of the court, tried to disarm him during the Michaelmas term, 1413. Holand justified his actions by repeating the orders of the King, granting him the authority to disarm bearers of arms at Westminster. Stoke resisted Holand, and with help of his servants chased Holand outside Westminster Hall and its grounds. Eventually Stoke and the others were arrested and charged with assault. Stoke countered that Holand's attempt at arrest was unwarranted and was therefore trespass and assault but does not explain why. Holand eventually defaulted as defendant (KB 27/615 *plea* 65d, transcribed in Sayles, *King's Bench* VII, 229-30). Because Edmund was the appellant, the record does not include an addition to his name that would tell us his social status. Holand was a King's esquire and acted as Marshal in person, not by deputy. He was no longer Marshal in 1415, having transferred the office to Thomas Warde, another King's esquire, in March 1414 (*CPR 1413-16*, 164).

⁵⁷ *LPHE*, IV.i, 744 (18 October 1524). It seems the order was followed by simply leaving swords outside the hall or palace, in the keeping of servants.

⁵⁸ Few readers would insist on stronger documentation for this statement given its wide acceptance, but the lack of confidence once questioned is worth considering. It is difficult to establish with certainty that swords were a common and expected item of day-to-day wear by the social elite. Wearing swords in special circumstances such as formal events, military operations, holding assizes, or acting within the capacity of some office or in a position of legal authority is easier to establish. Daily wearing of swords is considered such a commonplace of medieval history that one can state it as bald fact, but one can only trace equally emphatic statements back through the literature for generations without finding solid grounds for it (see Kelly De Vries, Robert Douglas Smith, *Medieval Military Technology*, 2nd rev. ed. (Toronto: University of Toronto, 2012), 23).

⁵⁹ Dr. Steven Gunn and Dr Tomasz Gromelski, in their search for accidental deaths in the coroners' files of King's Bench have located only a handful of accidental deaths caused by non-antagonistic sword play in practice or public display, or through unsafe handling of weapons (KB9/450 m28, KB9/486 m46). Note that the men in these cases were not gentry, which reinforces the democratic nature of the sword in this period as an item available to just about anyone.

We know that contemporaries knew that gentle status came from more than just blood or land; it was recognised through the performance of gentility through dress, speech, and comportment. The presence of weapons and the way they are used alters the meaning of force, threat, and violence in the same way that clothing altered the social meaning of the wearer. John Paston II's 1467 letter uses the social meaning of martial dress and objects in this way, when he described two of William Yelverton's men, or 'kapteyns', who rode the country, intimidating locals with 'ther trossyng dowblettys, with bombardys and kanonys and chaseueleyns,' such that 'what so eyr they do wyth ther swordys they make it lawe.'⁶⁰ It was easy for John to analogise the sword to the rule of law, as force was an essential part of its maintenance and legitimacy, and in this case legitimacy was largely decided by force. We should not think of violence and elite social status in deterministic ways, but elite social status did carry with it a special relationship with violence, and the normative guidelines for elite violence was displayed in its performance. We can see this in action in the following example.

On 17 May 1448, James Gloys, Margaret Paston's young chaplain, was threatened by John Wyndham, a new gentleman of the town, and his men, Thomas Hawes and John Norwood, for a failure to show suitable deference when passing Wyndham's gate.⁶¹ Sharp words and gestures inevitably escalated to threats and onwards to armed confrontation, casting stones, and swinging swords and spears, and threats of death. In the brief chase and armed fight that followed, Gloys, wielding a 'tohand swerd,' wounded Hawes before other members of the Paston household successfully defused the situation. Margaret wrote to her son John Paston I, who was then in London, that she was sending Gloys to him for safety's sake. She was convinced that Wyndham

⁶⁰ *PL I*, no.325, line. 30-31.

⁶¹ 'Wyndham was nothing more (nor less) than the son of a Norwich businessman anxious to establish himself as a county gentleman. The occasion of the street fight is therefore of interest: Gloys kept his hat on as he walked past Wyndham standing at the gate of his house' (C. Richmond, *The Paston Family in the Fifteenth Century: The First Phase* (Cambridge: CUP, 1990), 14-15). Wyndham may have had some military experience, if the John Wyndam, archer, listed amongst Sir Thomas Gray's contingent for the standing force in Aquitaine, 1439 (E101/53/22 m6), are one and the same, which makes the violence that ensued and Gloys's reaction to it more serious, since Wyndham was no amateur at armed violence. One John Norwode, archer, appears amongst the men under Peter Davy, who indented to serve on the Duke of Somerset's 1443 French campaign, but it is not possible to establish that this is the same man who surved Wyndham (E101/54/5 m13).

would seek revenge against Gloys and anyone who got in his way.⁶² The story is usually told by historians to indicate the instability of the Paston family's claim to gentle status and the fragility of local social connections following the death of William Paston, which left his wife Agnes and their son John in charge of the recently established gentry household with several outstanding disputes over property rights yet unresolved.⁶³ But this episode introduces many of the themes that make up the concept of elite violence in this thesis. Gloys was a clerk, an educated man who identified himself as part of the lesser-gentry community. His ecclesiastical status was supposed to carry with it a nominal prohibition against the use of force, which was also supposed to protect those in holy orders from the violence of others. But for those living in the secular world, this distinction was considered more a burden than a privilege.⁶⁴ Clerks more readily identified with the gentry community they depended on for their livelihood and the maintenance of what was, at best, a marginal status as elite. Gloys's youth and masculine self-identity also made him sensitive to any threat to that status and the very public performance of the exchange of insults between these men made violence a very real possibility.⁶⁵ That Wyndham likely insulted Gloys's patrons, the Pastons, with the charge that they were once 'charles [churls] of Gemynham' was an accusation of unfree status, a profound insult to the Pastons and, by association, to Gloys himself. That insult

⁶² *PL I*, no. 129 (of 19 May 1448). The date of the incident and the names of those involved are confirmed by indictments of Wyndham and Howes for armed assault against Gloys, made at a session of the peace at Norwich, November 1449 (KB9/272 m2, 5).

⁶³ See Helen Castor, *Blood & Roses: The Paston Family in the Fifteenth Century* (Faber, 2005), 38-9.

⁶⁴ This was based partly on the Church's set of moral values for its servants and on the special social and legal status they held in relation to secular laws. This conflicted with the values associated with elite, masculine identity, especially for the educated and youthful. See Karras, *From Boys to Men*, chpt. 3, Daniel Thiery, *Polluting the Sacred: Violence, Faith, and the 'Civilizing' of Parishioners in Late Medieval England* (Leiden: Brill, 2009), and P. H. Cullum, 'Clergy, Masculinity and Transgression in Late Medieval England', in *Masculinity in Medieval Europe*, D. M. Hadley, ed. (New York: Wesley Longman, 1999), 178-96.

⁶⁵ We would be wrong to draw too much from this incident if it were the only one Gloys was involved in, but he had a history of getting his hands dirty or at least showing a willingness to do so. Gloys was amongst those that Margaret Paston bid don their 'jakkys' and 'salettys' during her armed defence of Gresham in 1448, an incident that Gloys describes with lightly concealed pride (*PL II*, no.443). Later, Gloys was the principal agent acting for the Pastons in the 1451 attempt to arrest a certain 'Bettes' at a local court session. This resulted in a tense and threatening confrontation with Simon Gunnor, an armed surveillance of Gunnor's refuge, and a morning chase that almost resulted in violence (*PL II*, no.473). Together, these incidents show that Gloys was part of the gentry's exercise of its legitimate and illegitimate rights to force. But to call Gloys the Paston family 'enforcer', as Daniel Thiery does (*Polluting the Sacred*, 161), goes too far. A man like John Pampyng, who acted in pacific and martial service to the family over twenty years, who fought the Duke of Norfolk's men at Caister, 1469 and who very likely accompanied the Paston brothers to Warwick's fatal defeat at Barnet in 1471, comes closer to the character if not the title of family enforcer (C. Richmond, *The Paston Family in the Fifteenth Century: Fastolf's Will* (Cambridge: CUP, 1996) 195, 233 n.63).

almost certainly (or inevitably) drove the confrontation closer to violence.⁶⁶ The deliberate choice of weapons—the swords and spear, fetched by Hawes for himself and Wyndham—followed the idiom of elite violence. Gloys’s possession of a two-hand sword is particularly notable since his clerical status, even if it was only minor, precluded him from any formal martial obligations, and if the sword was his personal property it indicates a financial and emotional or moral investment in elite martial culture.⁶⁷ The violence that ensued, and its resolution, was both enabled and limited by the presence of third parties who acted as the audience and as mediators, limiting the extent of violence while also participating in its recognition. There is nothing in this episode that does not conform to the models of third-party interaction in violence described by Cooney, or the public performances of honour or status violence described by Collins, and it neatly fits the crisis of status theory for violence in Braithwaite. These are the details of elite violence that have meaning, containing the messages that performers, victims, and observers communicated to each other.⁶⁸ All of these details help us to understand violence as something more than just a means to an end, a problem solving process, or an abstract expression of status.

⁶⁶ So great was that insult and so serious its threat to the family’s fortunes that the damaging words were partially excised from the letter that described the incident, likely by the recipient, John Paston I. See Caroline M. Barron, ‘Who Were the Pastons?’, *Journal of the Society of Archivists* 4, no.6 (1972), 530-35, and Richmond, *The First Phase*, 14-19.

⁶⁷ While an inventory of Gloys’s possessions dated to no later than 1473 does list a sword valued at 6s 8d, (*PL II*, no.732), the hesitation in stating that Gloys owned the sword used in this incident (a sword that could have belonged to any male dwelling in the same house) is deliberate if also slightly pedantic. Elsewhere, mention of ownership of weapons is meant as evidence that he (or any sword owner) knew how to use it better than the average man, or at least as well as was expected of someone who may be asked to render martial service (see the brief description of ‘fencible men’ in *Stonor*, no. 258). However, given Gloys’s later involvement in armed violence, his confidence in his duties that involved the possibility of force, and his obvious pride when, dressed in warlike-array, he and others defending Gresham made their visitors ‘wexe as pale as any herd’ (*PL II*, no.443, line 21-2), it seems likely that he had more than a superficial interest or familiarity with arms and their use, gathered from close contact with men with knowledge and experience.

⁶⁸ Richmond, *The First Phase*, 14. Richmond makes a digression in his discussion of this incident by exploring the issue of medieval Norwich geography and the location of the Paston and Wyndham homes. The letter describing the incident suggests (and Richmond’s sources support) the impression that both homes were close to each other and shared a route to the Pastons’ parish church. In an uncharacteristic failure of imagination, Richmond does not consider the possibility that no matter how close the homes were to each other, it does not automatically follow that one’s route to and from the parish church would bring someone past either of them. If the homes were not exactly ‘on the way’ to the parish church, then Gloys’s path past Wyndham’s home, and perhaps that act of passive disrespect he committed, were not accidental but deliberate, and deliberately provocative.

PART II: Historiography and Sources

‘During all this there prevails the general assumption that in England things were done *legally*, and this semblance of legality was then dragged on through the bloodiest times, with tragi-comic effect. Even the most palpable outrage comes with parchment and seal in its hands.’¹

In this study, the reliance on the written word is an unavoidable weakness. ‘We sin enough in having to favor literacy over talk,’ wrote Gary David Shaw, ‘but that at least is a sin of the trade rather than of my choice.’² But if we are right to see violence as a communicative act, that ‘all interpersonal violence involves drama, presentation and performance,’ then we should expect to read the unwritten messages of violent performers from descriptions of their actions.³ Our view of elite violence is necessarily restricted to what accounts survive in written form and this particular study restricts that view further (but not exclusively) by focusing on accounts found in the rolls of the Court of King’s Bench. It is important to know why these cases are representative of violence involving social elites, and we should know how they came to be recorded as this determined the form of the record. If we are to understand these records, we must know how the genre of legal recordkeeping shaped their contents as pragmatic texts.⁴ The records of King’s Bench provide us with examples of elite violence in ways that make it possible to draw links between violence and the social norms that governed its use and from which it derived meaning. But this is a picture we must construct from fragments, and close reading and attention to detail are essential, for as J. B.

¹ Burckhardt, *Judgements on History and Historians*, 86.

² David Gary Shaw, *Necessary Conjunctions: The Social Self in Medieval England* (New York: Palgrave Macmillan, 2005), 5. Methods used in other areas of the humanities hold some promise for readers of legal records, although when Colin Richmond described the ‘campaign to treat such documents as literary texts as downright silly,’ he was more voicing his concern that such an approach risked ‘cavalier’ treatments of many at the hands of non-specialists, unfamiliar with the origins of the material. One could profitably consider the products of clerical drudgery as a distinct genre and study it as such: Colin Richmond, ‘Mickey Mouse in Disneyland: How Did the Fifteenth Century Get That Way?’, *The Fifteenth Century V* (2005), 158.

³ Ray, *Violence*, 38, quoting Jeff Ferrell, Keith J. Hayward, Jock Young, *Cultural Criminology: An Invitation* (Sage, 2008), 8.

⁴ One example of many is the genre of natural sciences and related fields, as in William Eamon, *Science and the Secrets of Nature: Books of Secrets in Medieval and Early Modern Culture* (Princeton: Princeton University Press, 1994).

Post wrote, 'the terseness of the records can never be taken to indicate that there was no story to tell.'⁵

Part II will focus on the legal side of violence, the primary sources that provide our case studies, and the various genre conventions used in legal texts to record violent performances. It will also discuss the conceptual framework of violence and justice, how violence was judged to be criminal or lawful, and how that judgement was made by mediating the needs of local communities, elite interests, and the inflexible word of law. Justice is often hard to identify in this period because its administration seems, at times, arbitrary and random. This is largely because of the diffuse nature of legal authority, granted by the Crown through a hierarchy of lesser officers and offices, influenced by local and contextual forces. The chapter following will place that delegated authority into its gentry contexts which were not always in agreement with the law.

⁵ J. B. Post, 'Crime in Later Medieval England: Some Historiographical Limitations', *Continuity and Change* 2, no.2 (2008), 213.

Chapter 3

‘Mankyndys lyfe is mylitioun,
And she, thi wife, is named Militaunce,’¹

The Middle English adaptation of the late-Roman military *epitome* of Vegetius, composed sometime around 1458 by an anonymous English clerk from Calais, does more than render into verse a classic work of military tactics, strategy, and logistics.² It took the concept of war waged by the state, and personalised and sacralised it with the language of a pan-European chivalric culture that was still very much part of the lives of contemporary men and women of the social elite. Vegetius was writing at a time when the Empire’s armies still retained some of the structural formality of previous centuries, with its ranks, officers, terms of service, and a kind of corporate or institutional identity, peculiar to a standing army of citizens. None of that made much sense to the chivalric world in which the clerk of Calais worked. Something as simple as recruiting and rudimentary training had to be reimagined for readers who experienced military training as an organic part of their daily lives.³ This difference between the classical and medieval military has prompted some historians to state emphatically that before the late sixteenth century, medieval soldiers (riders and archers excepted) received no training at all.

The men who made up the bulk of English armies well into the sixteenth century, and particularly those who considered themselves part of the social elite (traditionally identified in the muster rolls as men-at-arms, regardless of their actual duties on campaign), usually learned about a life in arms before they were old enough to remember it.⁴ Learning how to handle arms, ride, and

¹ *Knyghthode*, lines 96-7.

² The first modern editors of the work do not hazard a guess at the author (*Knyghthode*, xxiii-xxiv), although scholars have suggested Robert Parker or John Neal as named sources (C. T. Allmand, *The De Re Militari of Vegetius: The Reception, Transmission and Legacy of a Roman Text in the Middle Ages* (Cambridge: CUP, 2011), 187). The date and authorship of the text is reviewed in Daniel Wakelin, ‘The Occasion, Author, and Readers of *Knyghthode* and *Bataile*’, *Medium Aevum* 73 (2004), 260-72. While certainly the most original, English edition of Vegetius, it was not the earliest. That was the prose translation prepared for Lord Berkley, around 1408: *The Earliest English Translation of Vegetius’ De Re Militari*, G. A. Lester ed. (Heidelberg: Carl Winter, Universitätsverlag, 1988).

³ *Knyghthode* line 208-256, 271-312.

⁴ Training in the use of personal arms (considered as a historiographical problem) is reviewed in Sydney Anglo, ‘How to Win at Tournaments’. See also Nicholas Orme, *From Childhood to Chivalry: The Education*

generally live with and interact with like-minded men must have been an intrinsic part of one's upbringing. Contemporaries thought as much, particularly given the time required to learn basic competence with something like the longbow: 'men shall never shoot well except that they be brought up in it.'⁵ Even the children of the nobility were wearing miniature suits of armour, belted with swords, and learning the play of combat almost as soon as they could handle the weight of the gear.⁶ An inventory of items in the Royal Armouries at the Tower of London made during the reign of Henry VI mentions eight swords 'made in wasters, some gretter and some smaller for to lerne the King to play in his tendre age' along with 'a lytyl harneys that the Erle of Warwyk made for the Kyng, or that he went over the see' for his 1431 coronation at Paris, when Henry was only nine.⁷ These were more than ceremonial as the *wasters* were training swords, commonly made of wood, to familiarise the user with weapon handling and the basics of movement, blows, defence, and decision making.⁸ Edward IV's detailed instructions directing his household for the education of his young sons allowed time in their closely supervised schedules for physical activity which likely included basic weapon handling, but also wrestling, riding, dancing, archery, and other suitable

of the English Kings and Aristocracy, 1066-1530 (Methuen, 1984), 181-210. Children of the social elites could begin training in arms, particularly riding, at the age of seven, and could learn the intellectual basis of martial sciences at fourteen (Tony Davenport, 'Abbreviation and the Education of the Hero in Chavalere Assigne', in *The Matter of Identity in Medieval Romance*, P. Hardman, ed. (Woodbridge: D. S. Brewer, 2002), 16).

⁵ Frank Tallett, *War and Society in Early-Modern Europe 1495-1715* (Routledge, 1992), 21-2, quoting Hugh Latimer, from a 1549 sermon read before Edward VI.

⁶ Swords made for children (but clearly not as toys) are not common, but an exceptional example from the thirteenth century is now in the Royal Armouries Museum, Leeds (Robert Woosnam-Savage, 'He's Armed Without That's Innocent Within. A Short Note on a Newly Acquired Medieval Sword for a Child', *Arms & Armour* 5, no. 1 (2008), 84-95).

⁷ Henry's English coronation was held in November 1429, followed by the Paris coronation at the end of a procession through his French lands, which began in April 1430 (Bertram Wolffe, *Henry VI*, new ed. (New Haven, CT: Yale, 2001), 48-9, 51-2, 59-64). The inventory, printed in *Archaeologia* 5, no. 16 (1812), 123. A slightly different version appears in *CPR 1453-61*, 247-8, where it is attached to letters of pardon for John Stanley the elder, esquire (20 May 1455). The inventory was likely compiled several years earlier, during an investigation into Stanley's work. An entry accounting for the little harness notes that it went to the Duke of Suffolk's son, and that 'a peyr of Curasses delyvered to the Lord Powys that last died' were not delivered or were lost (*ibid.*, 126). If the former is William de la Pole (spoken of as if he were still living) and the latter is Henry Grey (who was deceased, at the time the notation was made), then the inventory should date to after January but before May 1450.

⁸ *Wasters*, or training swords, of metal or wood, are difficult to document before the seventeenth century since they rarely survive as artefacts and had little monetary value (so were unlikely to appear in inventories or wills). The ones in the Tower inventory were likely made of metal and would look much like the German examples that survive from the sixteenth century. These are thin, flat edged, full-sized swords with a rounded tip. Stow mentions their continued use by youths and men in training and sportive combats in late sixteenth-century London (John Stow, *A Survey of London*, C. L. Kingsford, ed. (Oxford: The Clarendon Press, 1908), i, 95).

games of learning for noble youths.⁹ But the details are always lacking. It is hard to know why. When Christine de Pizan wrote her own manuals of noble education, heavily indebted to Vegetius, she briefly touched on the training of men-at-arms as it was done by the Romans and Greeks. She described how they practiced sword-swings and thrusts against a static target—the *pel* or pile—a pole the height of a man, fixed into the ground.¹⁰ Readers have often assumed that Pizan was describing something her audience would already recognise from experience, but the way she framed her discussion of the *pel* makes it seem like a novelty peculiar to the distant past. It is difficult to tell if Pizan was teaching her readers about the antiquity of this commonplace practice or if she was describing something new or unfamiliar.¹¹ Outside of direct translations or adaptations of Vegetius, Pizan is the only medieval writer to talk about the *pel*.¹²

The point behind this digression about the *pel* is to show how something fundamental to English social elites, such as martial education, can hide in the historical record. The way in which social elites learned the place of violence is likewise obscure, but we know it must be there because of its importance. Questions like these confront the deeply integrated values that made up the social norms of the English elites. They remind us how deeply integrated and constant was the education of elites in all respects. Martial culture was a *lived* culture, and the moral virtue of violence, war,

⁹ *The Household of Edward IV*, A. R. Myers, ed. (Manchester: Manchester, 1959), 126-7, C. D. Ross, *Edward IV*, new ed. (New Haven, CT: Yale, 1997), 7-8. Books on the education of the young exhibit little need to promote instruction in physical prowess, since boys and young men were eager to do so, without prompting. Pedagogues took pains to explain why their young charges must pause from time to time to learn the arts of peace, which is the opening advice for Fortescue in his ‘In Praise of the Laws of England’ (Fortescue, *On the Laws and Governance of England*, 3-4).

¹⁰ Christine de Pizan, *The Book of Deeds of Arms and of Chivalry*, Sumner Willard and Charity Cannon Willard, eds. (University Park, PA: Pennsylvania State, 1999), 31.

¹¹ Military training and the possible influence of Vegetius on instruction is discussed in Mercer, *Medieval Gentry*, 36-56, and Helen Nicholson, *Medieval Warfare: Theory and Practice of War in Europe 300-1500* (New York: Palgrave Macmillan, 2004), 11-12, 57-9, 113-17.

¹² The *pel* is mentioned only in editions of Vegetius or in direct reference to that work. As an element of illustration it is exclusive to editions of Vegetius created by or copied from a specific scribal workshop in Paris, of which there are only four known examples (R. Rouse and M. Rouse, ‘Early Manuscripts of Jean de Meun’s Translation of Vegetius’, in *The Medieval Book: Glosses From Friends and Colleagues of Christopher de Hamel*, J. H. Marrow, R. A. Linenthal, and W. Noel, eds. (Houton: Hes & De Graaf, 2010), 59-74). By contrast, other training tools and practices such as archery butts, blunted arrows for hunting birds, moving targets for riders to practice with lance or bow, depictions of wrestling, acrobatics, and innumerable other equally commonplace activities, labours, pastimes, entertainments, irritations, pleasures, and pains appear in rich abundance and diversity in decorated manuscripts. But there are only these four instances of a man practicing with a sword against a stake. In fact, swordsmen engaged in combat with giant snails are better attested to in illustrations than the use of the *pel*. Sadly, there is no etymological link between the *pel* and any words for snails in French or Latin, which dispenses with one attractive theory to explain the rarity of one illustration and the profusion of the other.

and coercive force were inseparable concepts within the construct of elite social norms.

Occasionally, they could speak of it in some isolation by calling it justice or chivalry, or the art or science of arms, but it was never as discrete and distinct a thing in the historical record as a post the height of a man, fixed into the ground in a courtyard.

English elites as ‘violence specialists’

It is perhaps better to think of the place of violence in elite identity the way that socio-economists North, Wallis, and Weingast have thought of it. Their study of pre-democratic social structures identified a group of individuals they called ‘violence specialists,’ who functioned as the decentralised source of order and control in ‘natural state’ societies that lacked the centralised, institutionalised structures of government we associate with modern democracies.¹³ Violence specialists are individuals who exercise a privileged access to violence as a means of defending their own rights and those of their equals or superiors in a system of reciprocal support and constraint that aims to maintain stability and preserve the hierarchical structure of the group. As an economic model, order maintained by violence specialists ensures stability only when the violence specialists assert and exercise their right to violence. If they do not, they fall prey to those who are not reluctant.¹⁴ What is interesting about this theory of the natural state society is that it manages to account for violence without falling into moral or ethical traps that treat violence as a problem that contemporaries were struggling to solve. In this model, violence is controlled by violence, granted legitimacy by the elites who perform it. There is no need, therefore, of a ‘civilizing process’ that moves a natural state society towards the ‘open access’ society with which it is contrasted. North, Wallis, and Weingast treat violence as something inseparable from the culture, economy, and politics of the place and time.¹⁵ Violence—manifested as judicial punishment, military action, or

¹³ D. C. North, J. J. Wallis, and B. R. Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* (Cambridge: CUP, 2009), 18.

¹⁴ *Ibid.*, 18-21.

¹⁵ That point about the integration of economies, politics, and social hierarchies is, for some readers, the most important socio-political argument in the study, as it explains why modern humanitarian reforms often fail because they are ignorant of the holistic nature of ‘natural state’ societies (Mitja Stefancic, ‘[review] *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*’, *Review of Social Economy* 69, no.3 (2011), 395-99).

individual displays of martial authority and power—was treated holistically by medieval and early-modern elites just as their special social status was part of a complex structure of social norms and material signifiers. Elites’ access to violence and coercive force was protected as much as it was regulated by the English constitutional framework. Twelfth-century legal texts were confident that private violence was a right of lordship.¹⁶ ‘Medieval rights were rarely annihilated and if, as we are told, Edward III still “condoned” the nobles’ “right to defiance” in principle, it may be that what he denied in his Statute of Treasons was not the right but the exercise of that right in England, a distinction not as pointless as it may at first seem.’¹⁷ Elite violence was not something that the Crown had to suppress or overpower before order and justice could prevail; rather ‘law and order under the Crown’ was ‘a dialectical composition of the two powers, royal sovereignty and aristocratic lordship.’¹⁸ The point here is not to invent some new definition for the English social elites but to see them as, among other things, ‘violence specialists’ who were granted access to privileged coercive force, and who were intent on maintaining their exclusive rights, demonstrates more fully how violence fit into the structure of power in this period.

Nevertheless, *being violent* did not make one part of the social elite. Members of elite society who engaged in performances of threat, violence, or coercive force were expected to do so in a way that conformed to the same social norms that regulated other behaviour. Anyone intent on using violence for some purpose had to follow the rules or face the consequences. Virtually all aspects of life were governed by rules, and conformity to expectations was visible in the performance of public life. The children of gentry families were taught that social status was something you could *see*, not just in the garments people wore, but in their physical behaviour. Spitting or eating noisily was the behaviour of non-nobles, and was therefore a mark of low social and moral status, and thus the way force was used also reflected social and moral status.¹⁹ Violence as part of social control and correction was controlled by social norms, extending into the

¹⁶ Kaminsky, ‘Noble Feud’, 76.

¹⁷ Ibid. Kaminsky quotes M. H. Keen, *The Laws of War in the Late Middle Ages* (Routledge & K. Paul, 1965), 232.

¹⁸ Kaminsky, ‘Noble Feud’, 76.

¹⁹ Merridee L. Bailey, *Socialising the Child in Late Medieval England, C. 1400-1600* (Woodbridge: York Medieval Press, 2012), 21-5.

household of elites and non-elites alike. When fathers, husbands, or tutors disciplined their children, wives, or students, they did so with a degree of force that was thought appropriate to their status and role. Excess was the mark of a moral (and social) weakness. Combative talents carried social meaning. Monks and clerics in major orders, who would not otherwise be able to bear arms or participate in wider martial culture, could still learn unarmed combat and some monks were notoriously talented wrestlers. Stories, plays, and lyrics concerning Robin Hood, which were popular with some of the gentry, reflected Robin's yeoman status in his preference for the bow and staff, and when he and his men used swords, they were employed in distinctly 'sub-knightly' warfare.²⁰ The social hierarchy of violence was partly at work in the way that martial skill made its way into text. The earliest didactic works on arms focused on the specialised skills of swordsmanship and riding, not the more fundamental, but clearly less socially segregated, skills of unarmed combat and wrestling.²¹ What is important here is that we remain conscious of how the *quality* of the violence identified the social status or the social aspirations of the performer.

It is worth digressing on the subject of 'trial by battle', which occupies a larger space in the historiography of legally sanctioned violence than it really deserves, but remains an important indication of how social norms governing violence and the law combined in its performance. 'Wager of battle' was available to defendants against private appeals of felony, or in cases involving land before the common law courts, through a 'writ of right' which usually involved champions of a sort who fought on behalf of the legal disputants. Battle was also available in

²⁰ For monks skilled in wrestling, see Anglo, 'How to Win at Tournaments', 248-50, citing the example from Antoine de la Sale's *Jehan de Santré* (15c). On Robin Hood as a 'sub-knightly' model of chivalric behaviour, see Kaeuper, *Chivalry and Violence*, 115-6, and Keen, 'Robin Hood — Peasant or Gentleman?'. On weapons in Robin Hood see J. C. Holt, *Robin Hood*, 2nd ed. (New York: Thames & Hudson, 1989), 136-8, 167-9, and Richmond, *Endings*, 65-7. On wrestling as sport and public performance see John McClelland, *Body and Mind: Sport in Europe from the Roman Empire to the Renaissance* (Routledge, 2007), 47-8. Wrestling matches, as public entertainment in London, were still popular in the fifteenth century and respectable enough entertainment to include the mayor as a spectator ('Bale's Chronicle', *Six Town Chronicles*, 140, and Shannon McSheffrey, 'Detective Fiction in the Archives: Court Records and the Uses of Law in Late Medieval England', *History Workshop Journal* 65, no.1 (2008), 67).

²¹ There are, of course, other technical and pedagogical obstacles encountered in the textualisation of martial skill that are distinct from these social factors, but the motivation to transfer this knowledge into text was primarily the deliberate association of certain skills and certain practitioners with learned and socially elite society: M. R. Geldof, 'De Herte De Fote De Eye to Accorde: Procedural Writing and Three Middle English Manuscripts of Martial Instruction' (MA thesis, University of Saskatchewan, 2011); M. R. Geldof, 'Fighting on Paper: New Perspectives on the Transmission of Martial Knowledge in Renaissance England', *Mars & Clío* 36 (2013), 29-36.

appeals of treason where there was only one witness and where the charge did not directly touch the King's safety.²² The literature gives the impression that battle was more often threatened than carried out, and the courts were aware that the offer of battle was more properly an attempt to force the plaintiff to seek remedy by some other method, or as an act of desperation by a defendant who was unlikely to find favourable jurors or witnesses for his defence.²³ As *Fleta* explained, 'resort may not lightly be had to battle,' and defendants who called on battle as a defence were certain to have their cases examined diligently.²⁴ This scrutiny was perhaps more of a threat to the plaintiff than the possible battle itself since a significant number of cases where battle was offered were resolved by other means.²⁵ By the fifteenth century, wager of battle was 'virtually obsolete' and was normally 'proffered as a strategic manoeuvre' to motivate parties to arbitration or some other means of resolution.²⁶ For all the attention that wager of battle draws from historians of the law, and the place of violence in its operation, battle was always rare in England and only a handful of examples can be proven for the fifteenth century. However, the notion that almost anyone (women, infants, the lame, or elderly excluded) could appeal to naked force to defend their rights or answer accusations of wrong remained a powerful example of how violence could be made virtuous, constructive, and morally defensible. It is worth looking at these few cases as they show how the meaning of violence and its place within the social hierarchy could be demonstrated through its presentation and performance.

Only three combats over appeals of felony were fought (or documented) after 1420 and only one combat was fought over an appeal of treason. On 24 May 1422, William Okele, Yeoman, was convicted of felony theft and turned King's approver. He subsequently accused John

²² Bellamy (*The Law of Treason*, 143), explains more fully that if 'on an appeal of treason there was insufficient evidence to prove the case, if it was one man's unsupported word against another's and if they were both of good repute and not outlawed or indicted of felony, then trial by battle might result.' KB27/565 *rex4* (Trin. 1402) records an appeal of treason made by an approver. Battle was joined and the approver won. The approver was pardoned for his previous convictions (transcribed in Sayles *King's Bench VII*, 126-8).

²³ Bellamy, *Crime and Public Order*, 128-32.

²⁴ *Fleta I*, c32, (83-5).

²⁵ Bracton's collection of cases from 1217-40 records only thirteen incidents where the battle was actually fought, of which only three concerned felony, the rest being 'writ of right' actions between champions or 'free men of their liberty' (*Bracton's Note Book*, cases. 147, 164, 185, 328, 363, 400, 551, 815, 1159, 1336, 1459, 1447, 1469, 1675). Maitland's *Select Pleas of the Crown* (Bernard Quaritch, 1888) contains cases from 1200-25, lists 18 wagers of battle, although only two have any record of being fought (cases 190, 197).

²⁶ *Spelman II*, 116.

Claryngdon (or Clarendon) as an accessory in the crime, to which he pled not guilty and gave wager of battle against the approver. The arrangements for the combat placed the focus of dignity and solemnity on the justices and not the combatants, emphasising the subordinate position of the defendant and approver as supplicants to the court. The two men fought with distinctly unheroic clubs, and when the approver was wounded and overpowered, he asked the justices for mercy. The justices insisted that he continue to fight (presumably until the allotted time expired or until he or the defendant were incapacitated). He refused to fight further and was taken away and hanged for his original confessed felony. Clarendon was cleared of the approver's charge but was returned to the Marshalsea to await results of the King's suit, although this was largely a formality and he was soon released.²⁷ Another approver accused two men as accessories in his crime in 1441. Like the earlier case, the men fought with clubs not swords, but the outcome was reversed. The first defendant was unable to continue the fight and was executed as a convicted accomplice. However, the court dispensed with any additional combats between the approver and the second defendant and proceeded to the execution of the approver (as a confessed felon) and tried the second accessory by jury.²⁸

The last combat by an approver, richly (and perhaps fictionally) described in 'Gregory's Chronicle,' is said to have occurred in 1456.²⁹ Thomas Whitehorne was a notorious approver who had lived for three years on the King's wages in the prison at Winchester and had accused several others as accomplices, most of whom were condemned, fined heavily, or kept in prison. Whitehorne's reputation discouraged any of them from answering his charges with battle until he appealed one James Fisher. Fisher chose to wage battle and the chronicler recorded the proceedings in great detail. Fisher was counselled at length to reconsider his defence, given Whitehorne's

²⁷ Described in Yale, Harvard Law School MS14 ff. 115v-117r, and abstracted from the yearbooks in Seipp 1422.019rog. This is tentatively identified with KB27/664 *rex*9, from which this description takes the date and names.

²⁸ The case is described in William Rastell, *A Collection of Entrees, [...] (Jane Yetsweirt, 1596)*, f.41v, and is likely the battle mentioned in 'Cleopatra C IV', 148 (for Rastall see Seipp 1440.092). This case is tentatively identified with KB27/718 *rex*2.

²⁹ Edited in Davies, *Historical Collections*, 199-202. The entry for this year was likely composed in 1468 by an author who did not have a legal background. That this episode is a pastiche of overheard stories and moralising commentary is in keeping with the pronounced literary style and a laconic sense of humour evident in the final continuator of the chronicle (Kingsford, *English Historical Literature*, 96-9).

physical superiority, and the justices reminded Fisher that if he killed Whitehorne in combat, he could be charged as a murderer anyway.³⁰ The combat itself was as undignified and unheroic as it could be. The combatants were dressed in close-fitting garments made of leather and armed with impractical clubs with points of iron and horn.³¹ They were expected to fight until one or the other was defeated or until daybreak. During this time they were not allowed to leave the field or have any aid (even water) other than brief periods of rest in the muddy field in which they fought. Naturally, Whitehorne and Fisher promptly broke their clubs after a few blows and they had to continue with fists and feet. The fight concluded when Fisher fixed his teeth on Whitehorne's nose and wedged his thumb in his eye. Whitehorne cried mercy and refused to fight further, and he was condemned to be hanged forthwith. The chronicler clearly felt that this was a just end to Whitehorne, the 'fals trayter' and further added that Fisher, overwhelmed by his providential escape, became a hermit but died soon after.³²

Combats arranged between parties in accusations of treason are, by contrast, more dignified affairs, befitting of the dignity of the subject in question. In appeals of treason the

³⁰ 'Gregory's Chronicle', 201. Russell, ('Trial by Battle', 154) called this allegation 'extraordinary' and it is not mentioned in any other discussion of approver's battles. Commentary on related legal issues clearly assumed that participants in battle over appeals could be killed and that those deaths would not be punished (*Readings and Moots* II, 275-6). The *Mirror of Justices*, a late thirteenth-century legal compendium attributed to Andrew Horn (for whom trial by battle held great interest), stated directly that a death during a battle was not considered homicide (*The Mirror of Justices*, W. J. Whittaker, ed. (Selden Society, 1903), 110).

³¹ The chronicler named one Master Michael Skilling as counsel for the accused and is credited for determining the manner of combat ('Gregory's Chronicle', 200-1). Skilling was an active member of local and regional commissions of the peace and of array (*CPR 1452-61*, 170, 307, 400, 408, 558, 613, 614).

³² 'Gregory's Chronicle', 199-202. It is worth considering that this story may be a construct or pastiche, created by the chronicler as a criticism of the legal system and of legalised violence. King's Bench (or the King's court) asserted its jurisdiction over trial by combat as early as the thirteenth century, and all other combats involving charges of felony in this century were fought near Westminster (*Select Pleas of the Crown*, case 190, and *Bracton's Note Book*, case 1159, where battle was waged at a Hundred Court, for which unauthorised act the justices were placed in mercy). The arrangements for the combatants, particularly their garments, have no close parallel in other English accounts but they do resemble fifteenth-century practice (or illustrations of that practice) for combats in the German lands (as in Munich, BSB Hss Cod. icon. 394a, reproduced in *Le Combat Médiéval À Travers Le Duel Judiciaire: Traité D'escrime 1443-1459-1467*, ed. by Gustave Hergsell and Olivier Gaurin, Paris: Budo Editions, 2005). Horn, in his *Mirror of Justices*, states that combatants should be bare-headed and 'armed with leather' (*armez de quir*) and that their weapons should consist of a leather shield and a 'horned baton,' which is generally consistent with the combat described here (112). However, Horn's work was obscure, and was likely unknown to Skilling or his colleagues and was an unlikely guide for the time. Attempts were made to wager battle in later cases, but only as a strategic tactic to force other action from the court and not in earnest (*Spelman* II, 116, n.6, KB27/960 *just*.61. See also *Dyer's Reports*, I, 212, n.2, the last cited being an instance where parties agreed to a compromise before the assigned day, but the justices and combatants gathered anyway for the sake of the show).

defendant hoped to prove his loyalty and his accuser fought for the Crown against his perceived enemies. Very few appeals of treason progressed to actual blows but the court of the Constable and Marshal provided the parties, and the Crown itself, an opportunity to exercise privileged access to violence and public displays of status. The records of this court do not survive but a few letters and warrants from the office of the Privy Seal give us some idea of how combats would have been performed.³³ In 1446 the Constable's court made preparations for two combats over accusations of treason, assigning 'counsel' to each participant, including armourers and trainers, and organising the construction of barriers and viewing stands for the judges and the Crown. The first case concerned an armourer's apprentice who appealed his master of treason, while the second involved a Prior of Kilmainham, a Knight of the order of St John, who accused the Earl of Ormond of treason.³⁴ The combats would be staged in Smithfield, where tournaments and other public deeds of arms were performed, and the parties were given time and freedom to train before the day. The master and apprentice did fight their duel (the master being killed on the field) but at the last moment, the King intervened in the Ormond case, leaving the prior to wait impatiently in harness for his opponent to arrive.³⁵

In May 1453, John Lyalton (or Layton) accused Robert Norres of treason, which brought them before the court of the Constable and Marshal, and we have detailed records of the arrangements required in setting up the combat. 'Lyalton' is very likely John Halton, esquire, implicated in John Wilkin's revolt in April 1452.³⁶ Halton accused Norres (or Noreys) of treason,

³³ The records of the Court of the Marshal and Constable were not kept with the central courts of King's Bench, Chancery, or Common Pleas and are now largely lost or broken up into different collections, often as copies of originals (G. D. Squibb, *The High Court of Chivalry: A Study of the Civil Law in England* (Oxford: Clarendon Press, 1959), 225-6).

³⁴ This was John Davy, apprentice, and William Catour, his master (*POPC* VI, 55-9, 'Gregory's Chronicle', p. 187, 'Benet's Chronicle', 192, 'Cleopatra C IV', 156, 'MS Rawlinson B 355', 104-5, Bellamy, *The Law of Treason*, 146-7, and *Crime and Public Order*, 133-4).

³⁵ Davy and Catour did fight, and Catour was killed. Some accounts of the event show that public sympathy was with the master ('Bale's Chronicle', *Six Town Chronicles*, 120, calls the master 'a good man of werr'). The fight between Ormond and the friar was stopped by the king at the last moment (*Fabyan*, 618), although one source has the Earl waiting at Smithfield instead of the Prior (Cambridge, Trinity College ms O9.1, in *Brut*, II, 488).

³⁶ *POPC*, VI, 129. Samuel Bently (*Excerpta Historica* (London: 1831), 391), who pre-dates the *POPC* ed. of documents, read the name as 'Halton', and came to the same conclusion as to his identity. Likewise, did Francis Henry Cripps-Day (*The History of the Tournament in England and in France* (B. Quaritch, 1918),

and the two agreed to decide the issue by battle. We are ignorant of the charges themselves, but the court did conclude that battle was the only way to decide the outcome. Unlike Whitehorne and Fisher, Lyalton and Norres were expected to fight as good men-at-arms and were allowed a considerable freedom in choosing how they would fight, asking to use short-swords and glaives, rather than the longswords typically employed. They were also supplied with counsel, trainers, and armourers and the necessities of arms and gear were provided from the stocks of the Tower of London.³⁷ The two participants eventually asked for more time to prepare as their equipment was slow in reaching them. In Norres' letters, he felt comfortable calling the impending battle 'feates of armes.'³⁸ The arrangements followed the guidelines established for duels fought under the law of arms, established at the end of the previous century, and more familiar from the literature of

71), independent of Bently, it seems. This was unknown to Bellamy, when he came to discuss the case (*The Law of Treason*, 146-7).

Halton was indicted on 13 May 1452, at Dartford (KB9/48 m9, transcribed in R. Virgoe, 'Some Ancient Indictments in the King's Bench Referring to Kent', *Kent Records* 18 (1964), 260), and identified with Cade and Wilkins in William Oldhall's petition to parliament (*PRoME* XII, 307). A John Halton, 'traitor', was transported to Westminster in December 1452 'who, in the King's cause, appealed Robert Noreys' (*Issues of the Exchequer*, 474, 477, likely being extracts from E403/791-2, and 795-6). The Halton named in the indictment appeared before KB in the Michalmas term, 1454, and following several continuances was acquitted by a jury of 24 in Trin. 1455 (KB27/774 *rex*35d). He had died by 1465 when his son William was in charge of his former properties (*CCR Edw. IV*, I, 316). Robert Noreys has eluded identification, although he may be related to John Noreys, King's esquire and unpopular courtier, named by Cade's rebels (Harris, *Reign of Henry VI*, 340-1, Wedgwood, *Biographies*, 637-8).

³⁷ Letters concerning the 1447 and 1453 duels, direct John Stanley, 'sergeant of our armury' and King's esquire, to provide the necessary equipment for the combatants (*POPC* VI, 55, and 133, where he is called 'Jenkyn').

³⁸ *POPC* VI, 137. Counsel for the combatants included Sir John Ashley (or Astley), who was knighted after a deed of arms at Smithfield in 1441 ('Cleopatra C IV', 150), squires of the body, Thomas Meryng and John Stanley (*LP Wars*, I, 515) and several specialists brought in as armourers, painters, and trainers, including one Philip 'Treher' (or Trehern, Trehere or Treherne), a London fishmonger. Treher was assigned as council before the combats of the Prior of Kilmainham, apprentice John Davy, and John Lyalton/Halton (who, given the wording in the letter regarding his case, may have asked for Treher by name). Fencing historian J. D. Aylward made much of Treher's working-class status (*The English Master of Arms from the Twelfth to the Twentieth Century* (Routledge & Paul, 1956), 14) but his title identified a financially secure urban merchant, rather than a menial seller of fish. In the fifteenth century London had 12 mayors and 22 sheriffs from the fishmongers (C. M. Barron, *London in the Later Middle Ages: Government and People 1200-1500* (Oxford: OUP, 2004), 336-48). In 1451 Treher stood *mainprise* on a bond of £100, for a sheriff of Cornwall (*CCR 1447-54*, 263), and he was brought before King's Bench the same year, along with a former sheriff of London, on an appeal of conspiracy to maintain false quarrels. He was still living in 1461 when he appeared again to enter a pardon for outlawry on that case, having failed to pay the fine (KB27/762 *just.*60). Social rank was, however, still relevant to the participants in these combats and those who handled the arrangements, and it is likely that those of lesser rank such as an esquire, an armourer's apprentice, or a cleric in minor orders would have a trainer of equal or lesser social status. A talented fishmonger would fit the appropriate hierarchy.

chivalric romance and histories.³⁹ Originally planned for 25 June 1453, delays pushed it to 23 July. Only one contemporary mentions the battle, but it appears that it was either stopped before it came to blows or it was interrupted by the Crown as soon as it began, since ‘no victory was decided.’⁴⁰

Naturally, the legally sanctioned violence of judicial punishment was expected to conform to social norms of propriety and dignity. Those subject to capital punishment were hanged unless they committed exceptional crimes such as treason or heresy, which were each given their own carefully proscribed process of execution.⁴¹ Deviation from these rules was seen as a violation of both the law and socially defined norms. John Tiptoft, Earl of Worcester, in his capacity as Constable of England, acted within the rights of his office when, in 1470, he condemned several of the Earl of Warwick’s sailors as traitors, but the method of their execution—impalement—was an innovation of the ‘law padowe.’⁴² The treatment of traitors was supposed to be cruel, but it was also supposed to conform to the order of the law, and violating that order was just as shocking to contemporaries as the violence itself. There was an order to all things, even the most severe forms of judicial violence, and members of the social elite based their understanding of their world and their actions on that system of ordered values.

Christopher Allmand wrote that ‘it was through literature that society thought aloud,’ and while it is a privileged and learned voice we hear in the literature of the fifteenth and sixteenth

³⁹ At least two guides for arranging combats over treason were drafted for Richard II (by the Duke of Gloucester) and Henry V (by John Hill, armourer to the king), copies of which were owned by Sir John Astley (New York, Pierpont Morgan Library, MS M.775, excerpted in H. A. Lee Dillon, ‘On a MS. Collection of Ordinances of Chivalry of the Fifteenth Century, Belonging to Lord Hastings’, *Archaeologia* 57, no.1 (1900), 29-70). Like most late-medieval guides to formal combats, they reflect the influence of the 1306 ordinances of Philip the Fair (Malcolm Vale, ‘Aristocratic Violence: Trial by Battle in the Later Middle Ages’, in *Violence in Medieval Society*, 165).

⁴⁰ ‘Benet’s Chronicle’, 210. The editors did not make the connection with the case described in *POPC VI*, (129, 137) but the dates match. The cases mentioned above are all that can be documented for the period following Henry V.

⁴¹ Bellamy, *The Law of Treason*, 225-31.

⁴² Bellamy (ibid., 161), suggests that this criticism was ill-informed, based on the chronicler’s unfamiliarity with the legal background of treason trials and the Constable’s court. This reference to Worcester’s foreign learning is made by Warkworth in his description of the 1465 trial of the Earl of Oxford, and his use of the ‘law of padowe.’ However, it is more the form of the executions that followed the 1465 and 1470 trials that offended Warkworth and his contemporaries, rather than the structure of the trials themselves. Both events saw innovations in the executions of traitors which seemed to overstep the boundaries of just violence (John Warkworth, *A Chronicle of the First Thirteen Years of the Reign of King Edward the Fourth*, J. O. Halliwell-Phillipps, ed. (Camden Society, 1839), 5, 9).

centuries, it is at least the voice that English elites would have found familiar.⁴³ English elite society learned about the ‘privileged practice of violence’ and their right to force from their literature, their laws, and their past.⁴⁴ ‘Everyone read *De Regimine Principum*, at any rate every gentleman’, wrote Richmond without hyperbole.⁴⁵ Quite a few gentlemen read Christine de Pizan’s *Le Livre des faits d’armes et de chevalerie* well before William Caxton printed it in English.⁴⁶ Those who had the means and the learning could read adaptations of Vegetius’ *Epitoma rei militaris* or extracts from it, in Latin or French, along with romantic histories of the Homeric Greeks, Romans, and semi-fictional heroes of the chivalric past.⁴⁷ The ‘mirror of princes’ was never the exclusive genre of princely readers. They were popular amongst nobles and the lesser gentry who read them as guides to their own behaviour and values, and less as works of political theory. To these were added the histories and romances that had elite characters as their focus and which were read as much for education as entertainment. Finally there were the chivalric biographies of kings and notable knights, who were historical exemplars of lives lived close by the performance of virtuous violence.⁴⁸

Defining the English ‘elite’

The compiler of *Fleta* gives a straightforward definition of elite status by comparing divine concepts of equality with the reality of temporal inequality before the law. ‘With God there is no acceptance of any man whomesoever, but with men differences are recognised, because some rule in

⁴³ Christopher Allmand, *The Hundred Years War: England and France at War c.1300 – c.1450*, rev. ed. (Cambridge: CUP, 2001), 151.

⁴⁴ The evocative phrase is that of Kaeuper, *Chivalry and Violence*, 143.

⁴⁵ Richmond, *Endings*, 18. Hoccleve’s adaptation of the fourteenth-century Giles of Rome was owned and read (or listened to) by many gentry and other elite readers in the fifteenth century (Raluca Radulescu, *The Gentry Context for Malory’s Morte Darthur* (Woodbridge: D.S. Brewer, 2003), 50-8).

⁴⁶ Dominique T. Hoche, *The Reception of Christine de Pizan’s Fais d’Armes in Fifteenth-Century England: Chivalric Self-Fashioning* (Lewiston, NY: Edwin Mellen, 2007).

⁴⁷ Allmand, *Hundred Years War*, 151-2. Vegetius was just as popular with ecclesiastics for the originality of the Latin, which was probably its appeal to John Hovyngham, Archdeacon of Durham, and Doctor of canon law, who listed a copy of Vegetius in his will of 1417 (S. H. Cavanaugh, ‘A Study of Books Privately Owned in England: 1300 - 1450’ (PhD dissertation, University of Pennsylvania, 1980), 446).

⁴⁸ Allmand, *Hundred Years War*, 152-6; Kaeuper, *Chivalry and Violence*, 107-120.

spiritual things and some in temporal.’⁴⁹ This makes the point about the diversity of temporal law (in its canon and civil variants) but also the inequality of the law’s subjects. Some possess lordship while others do not. Broadly defined, lordship represents legal authority over persons through land or through familial (or professional) connections. We often think of ‘domanial lordship’ as an essential feature of English elites, from the landed nobility to the lowest levels of the rural gentry, but power over others through land was not the only means of accessing lordship. Lordship was something every adult male could claim as patriarch, so long as he had a wife, children, servants, or workers who were his legal and social responsibility. There were other opportunities to gain some measure of lordship beyond the household through membership in religious guilds, craft mysteries, urban charities, or by occupying minor offices within parish and manorial administrations, or through charities such as hospitals and chantries, where they could actively participate in the social regulation of the community.⁵⁰ But this did not, by itself, make these people members of an elite social group.

Defining elites below the titled ranks of the upper aristocracy was a problem for heralds well before it was a problem for historians, and the gentry has always been an unfortunate but necessary construct. However, seeing both lordship and exclusionary social conventions as defining aspects of elite status gets around the unstable economic or political criteria to identify what was becoming an increasingly heterogeneous group of people in the fifteenth century. Raluca Radulescu and Alison Truelove explained that the relevant question to ask is one of contemporary definitions of elite status created and enforced by elites themselves. ‘Indeed, did they even regard themselves as belonging to a distinct, privileged sector of society, and if so, how was this status exhibited?’⁵¹ While the ownership of land, a certain level of material wealth, or less concrete rights

⁴⁹ ‘Hominum autem quorumcumque nulla est apud Deum acceptio set apud homines habetur differentia, eo quod quidam in spritualibus imperant et quidam in temporalibus.’ (*Fleta*, I, c.5). Richardson and Sayles chose to translate *acceptio* (from *accep/tio*), with the somewhat obscure ‘acception’ (to single out) rather than the less nuanced, but more familiar, ‘exception’ (to treat differently or exclude). Generally, the meaning *Fleta* intends is that while God treats all men equally (or sees them all as equal in his judgement) men are less egalitarian with each other.

⁵⁰ Shaw, *Necessary Conjunctions*, 31-45.

⁵¹ R. Radulescu, A. Truelove, ‘Introduction’, in *Gentry Culture in Late Medieval England*, Raluca Radulescu and Alison Truelove, eds. (Manchester: Manchester University, 2005), 1. Stone and Stone *An Open Elite*, (6-8) argue that by the 1590s there was a distinct cultural and social difference between the upper and lower

to lordship and authority were traits recognised as indicating elite status, it was also clear at the time that these were not exclusive to elites and therefore not sufficient proof of elite status. One must act the part that was expected of the elite before the rest of the community recognised it, and that performance could be learned from the literature of elite conduct.⁵² Contemporary moralists were aware ‘that they were living in a world where social barriers were not immutable.’⁵³ It was important, therefore, that elite society maintain and protect its self-identification with a shared and exclusive set of social values, norms of behaviour, and modes of expression, and it is these traits combined with lordship (no matter how petty) that identified the medieval and early-modern English elite.

In the fourteenth century, military service was a traditional prerequisite for knighthood, but this was unsustainable as England’s opportunities to deploy the gentry for war declined. Knighthood through service became increasingly common after the 1430s as a means of social advancement.⁵⁴ Service in offices at the shire, county, or higher levels of the Crown’s diverse landholdings was available to those with the merit or social connections to obtain them.⁵⁵ As Christine Carpenter wrote, ‘the hierarchy of status did not necessarily reflect the hierarchy of wealth and territorial power.’⁵⁶ The gentry of service—lawyers and secular clerics—who may have lacked the heritage that local communities still expected from its elites, nevertheless gained admission into elite society through the consent of those above them who valued their skills and

ranks of the landed gentry (called the ‘parish’ and ‘county’ gentry), in addition to an economic difference. There is little reason to suspect a similar difference, worth keeping track of, in the period between 1450 and 1560. This is discussed in more detail in chapters 5 and 6.

⁵² The heraldic visitations that are recorded from the middle of the sixteenth century were necessary partly to see who was liable for distraint of knighthood and thus owed income to the Crown. Secondly heraldic visitations acted as a means of social control and sanction. See J. W. Armstrong, ‘The Development of the Office of Arms of England c.1413-1485’, in *The Herald in Late Medieval Europe*, ed. by Katie Stevenson (Woodbridge: Boydell Press, 2009), 9-28. On the social definition of the gentry, see Peter Coss, ‘An Age of Deference’, in *A Social History of England, 1200-1500*, 51-6; Coss, *Origins of the English Gentry*, 6-12; and Radulescu and Truelove, ‘Introduction’, 1-6.

⁵³ Rosemary Horrox, ‘Service’, *Fifteenth-Century Attitudes*, 62.

⁵⁴ Christine Carpenter, *Locality and Polity: A Study of Warwickshire Landed Society, 1401-1499* (Cambridge: CUP, 1992), 85-6. Those who obtained knighthood through service in war are occasionally referred to as ‘belted’ knights (*milites gladio cinctos*) to distinguish them from ‘parliamentary’ knights or knights of the shire, which was more a title of office than a personal mark of rank and status.

⁵⁵ Horrox, ‘Service’, 68-78; Carpenter, *Locality and Polity*, 85-90.

⁵⁶ Carpenter, *Locality and Polity*, 49.

learning.⁵⁷ Elite social status ‘transcends status derived from service or personal association, on the one hand, and the authority derived from mere landlordship, on the other.’⁵⁸ Not all English elites shared the same economic, political, or territorial traits but what they did share was a ‘collective identity and collective interests which necessitate the existence of some forum, or interlocking fora, for their articulation.’⁵⁹ That included the social spaces provided by courts of justice, market squares, the steps of churches, roadways, and private homes. It included reading material of didactic, devotional, and romantic themes; the material manifestations of elite dress; the performance of elite behaviour and gestures; manners of interaction; terms of address; public and private interactions; and of course, acts of violence conforming to the expectations of communities of elites. The gentry and nobility learned these expectations as children and they often grew up in the households of their social superiors, where they learned the value of service and the rules of personal and public interaction, and developed and practiced their ‘social-self’ as members of elite society.

‘Historians can no longer doubt the deep penetration of literary culture throughout later medieval England,’ and elite culture was profoundly textualised.⁶⁰ Men, women, and children read or were read to from conduct books and other forms of literature which reinforced the lessons that as elites, they should be recognisably so, through their comportment, speech, and personal bearing. These sources also taught them that they were fundamentally different than non-elites and that difference could and should be performed and proclaimed through words and actions.⁶¹ If that performance was convincing, then gentle status was accepted as fact, even if there was little else to support the claim. A personification of Love in Chaucer’s ‘Romaunt of the Rose’ spoke common knowledge, saying that ‘by his dedis a cherl is seyn’ but that ‘whoso is vertuous, / and in his port nought outrageous [...] though he be not gentill born,’ could be considered so. ‘That he is gentil by

⁵⁷ Ibid., 72-9, 92-5.

⁵⁸ Coss, *Origins of the English Gentry*, 11.

⁵⁹ Ibid., 11.

⁶⁰ Shaw, *Necessary Conjunctions*, 22.

⁶¹ Children from the lesser gentry up to the heirs of major aristocratic families frequently lived with the households of other important elites as part of a complex of service relationships, informal patronage. On conduct literature for educating the young, see Bailey, *Socialising the Child*, 14-26, 43-78.

cause he doth / As longeth to gentilman.’⁶² Of course it was a familiar trope in romance literature that dishwashers and woodcutters who behaved as gentlemen always turn out to have some concealed noble lineage, but the point was that gentle status was granted and protected through the convincing performance of elite behaviour.⁶³

In the chivalric and romance literature of the fifteenth century, the notion of virtue was increasingly valued over the nobility of blood, and skill in arms was taken as proof of the performer’s moral virtue. In theory, if not always in practice, skilled violence could ennoble the performer.⁶⁴ Receiving knighthood from the Crown was, in England at least, an acceptable and honourable foundation for a gentry family, and so too was gentle status gained through ownership of land and the rights of lordship associated with it. A fifteenth-century heraldic manual called these ‘gentlemen of cotearmure’ meaning that personal arms and gentry status came together through land and lordship. However, the writer had direct grants from the Crown in mind, and not lordship through purchase of lands by those who could afford it.⁶⁵ Acknowledgement of traditional roots of gentle status such as blood descent from ancient families could be created from mixing fact and fiction and then applying this discovery of gentle blood retroactively. It was another legal fiction that contemporaries understood and accepted but to which they avoided drawing attention.

If one’s assertion of elite social status was to some degree based on the successful performance of that status, there were few performances more deliberate and more popular than the tournament. It may at one time have had a practical purpose in the training of mounted men for combat and managing a household on a ‘war footing,’ but training was never its sole purpose.⁶⁶

⁶² *Riverside Chaucer*, 710, lines 2182, 2192-3, 2196-7. See also P. Maddern, ‘Gentility’, in *Gentry Culture*, 27,

⁶³ Elspeth Kennedy, ‘The Quest for Identity and the Importance of Lineage in Thirteenth-Century French Prose Romance’ in *The Ideals and Practice of Medieval Knighthood II: Papers From the Third Strawberry Hill Conference*, C. Harper-Bill and R. Harvey, eds. (Woodbridge: Boydell, 1988), 70-86; and M. H. Keen, ‘Some Late Medieval Ideas About Nobility’, in *Nobles, Knights, and Men-at-Arms in the Middle Ages* (Hambledon Press, 1996), 187-208.

⁶⁴ Richard W. Kaeuper, ‘Chivalry and the “Civilizing Process”’, *Violence in Medieval Society*, 21-35.

⁶⁵ J. Denton, ‘Image, Identity and Gentility: The Woodford Experience’, *The Fifteenth Century XII* (2005), 10, citing *The Boke of St Albans*, a compilation of hawking, hunting, and heraldic material printed first in 1486.

⁶⁶ N. Denholm-Young, ‘The Tournament in the Thirteenth Century’, in *Studies in Medieval History: Presented to Frederick Maurice Powicke*, R. W. Hunt, W. A. Pantin, R. W. Southern, eds. (Oxford: Clarendon, 1948), 241n.

Tournaments helped to reinforce the social codes and values of fighting men, to cement group cohesion and foster an aggressive spirit—essential traits for any organised group of combatants.⁶⁷

Increasingly in the fourteenth century, the tournament became a means for conspicuous public display with other elite men and women as the central audience.⁶⁸ The impracticality of late-medieval formal jousts and barrier combats made them, counterintuitively, more attractive as a stage for elite self-presentation and display. Armour was allowed the luxury of opulent decoration and visibility while also insulating the wearer from risk. The combats themselves had less to do with practical battlefield skill than with a display of grace, noble bearing, and the projection of presence and personality to the audience which was increasingly part of the ritual itself.⁶⁹

Tournaments were also a means of establishing one's place in the upper social circles. English tournaments of the fifteenth and sixteenth centuries were often fought before a royal audience in major centres and these were followed keenly by contemporaries.⁷⁰ Seeing and being seen in this company was hugely desirable and potentially beneficial to men of gentle status. When Hugh Vaughn, a gentleman usher to Henry VII, asked to participate in a tournament at Sheen in 1492, the aristocratic participants objected. They did not question Vaughn's ability to fight in the style of the time, or the fitness of his harness, horse, or comportment. They questioned the legitimacy of his grant of arms from the Garter King of Arms. The King confirmed the grant, but to be sure there

⁶⁷ On the value of the tournament as a means of establishing these bonds between fighting men (and not just the physical or tactical aspects of combat), see Sébastien Nadot, *Le spectacle des joutes: sport et courtoisie à la fin du Moyen Âge* (Rennes: Presses Universitaires de Rennes, 2012), 129-88.

⁶⁸ There is a growing awareness that only the earliest form of melee tournament had any similarity to contemporary warfare and therefore functioned primarily as training for mounted troops. There was a movement away from the melee format as early as the thirteenth century, partly for logistical reasons but also because the melee was not friendly to spectators. The enduring value of tournament was in teaching and practicing more abstract aspects of close-combat, leadership, aggression, willingness to take risks, to provide mutual support and encouragement. The increasing presence of an audience only added to that aspect of social maintenance and support (Nadot, *spectacle des joutes*, 87-102).

⁶⁹ S. Anglo, 'The Barriers: From Combat to Dance (Almost)', *Dance Research* 25 (2007), 91-106.

⁷⁰ London chroniclers often made some small reference to tournaments in their short reviews of yearly events, such as the 1442 combat at Smithfield where Henry VI knighted 'John Asshley, squyer of the kynges house' following a dramatic combat with a knight of Arragon, Sir Philip Boyle ('Cleopatra C IV', 150, and *Issues of the Exchequer*, 442, which records a gratuity from the Crown to Sir Philip). Asshley (or Astley) had a long career in arms and was made a knight of the Garter in 1461 and lived to 1486. He never forgot this episode of youthful prowess, and in the early 1470s he included an illustration of the scene in his personal commonplace book of heraldic, martial, and chivalric literature (New York, Pierpont Morgan Library, MS m.775). On Astley, see Catherine Nall, *Reading and War in Fifteenth-Century England: From Lydgate to Malory* (Cambridge: D.S. Brewer, 2012), 29-30; and Caroline Barron, 'Chivalry, Pageantry, and Merchant Culture in Medieval London', in *Heraldry, Pageantry and Social Display in Medieval England*, P. R. Coss and M. Keen, eds. (Woodbridge: Boydell, 2003), 222.

was no further debate, he personally affirmed Vaughn's gentle status by reaffirming his grant of arms in the presence of the other combatants.⁷¹

To call hunting, like the tournament, a *pastime* for social elites is to trivialise activities which were deeply meaningful performances of status, privilege, and moral virtue. Hunting was almost a class obligation, mandated by status and the demands of public displays of largess and noble action. When members of the elite joined a hunt, they were simulating battle in a technical aspect (riding over difficult terrain, engaging in coordinated group action, identifying and exploiting tactical advantages or weaknesses in and exercising rapid problem-solving skills) but also abstract concepts, valued by martial culture (endurance, bravery, acceptance of risk, social courtesy, respect, and leadership).⁷² Hunting was closely identified with desirable masculine traits, and the gentry could exhibit this through their skill with riding or shooting (or weapon handling, if hunting boar).⁷³ Medieval English laws protected certain animals and geographical spaces (legally defined forests) as a resource for hunters of elite social status, and poachers were severely punished for violating rights exclusive to their superiors.⁷⁴ The right to declare land a forest or park was closely guarded by the Crown and it was a keenly attractive mark of social status for the gentry to have their own park for hunting fox or hare.⁷⁵ So attractive was hunting as a forum for masculine expression that the poacher of sub-gentle status often went out of his way to display his skills in tracking and dressing game, or to mock the privileges of the nobility, at great personal risk. It was

⁷¹ Tragically, Vaughn's first combat with lances fatally wounded his opponent, Sir James Parker, who may have been at fault for having a 'false helmet', which likely meant that it had a structural flaw or was improperly secured for this type of combat ('Vitellius A xvi', 197).

In his work on the judicial duel, Russell ('Trial by Battle in the Court of Chivalry', *JLH* 29, no. 3 (2008), 335-57) misread this episode, and thought it was a combat over a personal appeal of treason. This interpretation was aggravated by the documents in SP1/73, abstracted in *LPHE*, V, 774-7, which recall the disputed grant of arms at the 1492 tournament as part of a long argument between Garter king of arms and Clarencieux king of arms as to which of them held seniority over the other, and misdates the event itself. The herald's dispute is described in detail in Anthony Richard Wagner, *Heralds & Heraldry in the Middle Ages: An Inquiry into the Growth of the Armorial Function of Heraldry*, 2nd ed. (Oxford: OUP, 1956), 79-80.

⁷² Thomas Elyot, in *The boke named the gouernour* of 1531, called hunting 'the very imitation of battle' which likely meant that the situational awareness, skill in riding, and ability to work with others in a coordinated way were the same in the hunt as in war (quoted in Nicholas Orme, *Medieval Children* (New Haven, CT: Yale, 2003), 182).

⁷³ The boar hunt was, in the literature, a kind of moral test of martial value for the hunter (Anne Rooney, *Hunting in Middle English Literature* (Woodbridge: Boydell & Brewer, 1993), 78-81).

⁷⁴ Bruce M. S. Campbell, 'The Land', in *A Social History of England, 1200-1500*, 199.

⁷⁵ *Ibid.*, The Plumpton family maintained a park for fox and hare near Knaresborough, which was the subject of a long legal battle with the Duchy of Lancaster in the 1470s (mentioned in TNA, DL5/1 f. 98, and likely one of the issues discussed in *Plumpton Letters*, 46-53.)

hardly worth the monetary value of the meat or hides poachers collected, which is testament to the social value of the hunt for men of all ranks.⁷⁶ For the gentry who could not afford to participate in the hunt, there were the less financially taxing but socially exclusive pastimes of hawking and smaller-scale hunts with trained hounds. The aristocratic hunt was also a common feature of romantic literature as another forum where characters exhibited the social traits of their class and performed acts of prowess, courtesy, and generosity.⁷⁷

Even the urban gentry and merchant class, if unable to hunt in private or royal parks or keep hawks, could still enjoy martial pastimes such as competitive archery. Later in the sixteenth century, urban elites could entertain themselves with the public ‘plays’ of scholars of defence, who fought test-bouts to gain qualifications to teach in London’s newly legalised schools of swordsmanship. Most of the participants in these groups were only marginal members of elite society, but most of their students came from the gentry, and thus they gained some social advancement by association.⁷⁸ Martial culture was an activity worth investing in. London Grocer Cristofer Lacy made a note in his will of 1518 regarding his bows and arrows which he left to his wife to distribute amongst his friends at her discretion.⁷⁹ Few of the gentry students of the London fencing schools were learning their art for the battlefield. Rather, this was a part of the visual performance of gentle status. Men who were unlikely to be called on to render military service

⁷⁶ See Barbara A. Hanawalt, ‘Men’s Games, King’s Deer: Poaching in Medieval England’, *Journal of Medieval and Renaissance Studies* 2, no. 18 (1988), 175-93, and Roger B. Manning, *Hunters and Poachers: A Social and Cultural History of Unlawful Hunting in England, 1485-1640* (Oxford: Clarendon Press, 1993).

⁷⁷ Rooney, *Hunting*, 21-50.

⁷⁸ On competitive archery in London see Jim Ellis, ‘Archery and Social Memory in Sixteenth-Century London’, *Huntington Library Quarterly* 79, no. 1 (2016), 21-40. On the London masters of defence, see Berry Herbert, *The Noble Science: A Study and Transcription of Sloane Ms. 2530, Papers of the Masters of Defence of London, Temp. Henry VIII to 1590* (Newark: University of Delaware, 1991). These non-noble performances of public prowess are better documented in the Elizabethan period. Mary McElroy and Kent Cartwright, ‘Public Fencing Contests on the Elizabethan Stage’, *Journal of Sport History* 13, no. 3 (1986), 193-211; Ian Borden and P. Menzer, ‘The Blackfriars Gladiators: Masters of Fence, Playing a Prize, and the Elizabethan and Stuart Theatre’, in *Inside Shakespeare: Essays on the Blackfriars Stage* (Selinsgrove, PA: Sesquehanna, 2006).

⁷⁹ *North Country Wills: 1383-1558*, J. W. Clay, ed. (Andrews and Co., 1908), 94-5 (transcribed from PROB11/19/101).

might still own arms of a military style. In 1520, Humphrey Browne, a career lawyer and later sergeant at law, owned a bow, arrows, a bill, sallet, gorget, and a brigandine in his Essex home.⁸⁰

The right to bear heraldic arms was an essential mark of elite status, perhaps the most basic assertion of gentility, and it was a privilege that the elites carefully maintained. Gentlemen who never had, and never would, wear arms in battle, wore their heraldic arms wherever they could. English heralds represent the knotted association of elite social practice and the international culture of chivalry with the practice of war. Nicholas Upton's *Studio Militari*, written around 1447 and dedicated to Humphrey, Duke of Gloucester, and William de la Pole, Duke of Suffolk, explained the role of the herald as battlefield messenger, chronicler, and arbiter of points of honour, precedent, and the criteria for gentle and noble status. Upton's herald was also learned in the symbolism of heraldic representation and the logistics of military management. At times it is difficult to differentiate the duties of the herald's role in jousts of peace from those in the pitched battles between antagonistic armies.⁸¹ The tournament was, according to Geoffrey de Charny, at one end of the moral continuum of chivalric violence, with war and crusade at the other. But there was also room within this schedule of values for deeds of arms independent of any wider political or spiritual context. Fighting well, and being seen to fight well, was valued for its own sake.⁸²

Elites who never found their way into combat, through lack of opportunity, interest, or aptitude, displayed an affinity to martial culture in conspicuous ways. Final testaments were emphatic that commemorations accurately depict the subject's 'degree.' Knights and armigerous gentry were invariably depicted on their memorial brasses clad in armour of the day, irrespective of any military experience.⁸³ The commemoration of the dead was also a public performance of status through the rich visual language of monuments in places of worship. Heraldic arms proclaimed

⁸⁰ *Year Books of Henry VIII: 12-14 Henry VIII, 1520-1523*, J. H. Baker, ed. (Selden Society, 2002), 49, 53. The inventories list a 'pair of' brigandine, singular and plural, but this likely refers to a single brigandine in the same way one may refer to a 'pair' of trousers as a single item.

⁸¹ A. Brown and C. Walker, 'Upton, Nicholas (c.1400-1457)', *ODNB* (2001). Upton's work survives in several Latin manuscript editions and a single English translation of c. 1520 (Oxford, Bodleian Library, ms Eng. Misc. D 227). The Latin text was imperfectly printed as *Nicolai Vptoni De Studio Militari Libri Quatuor. [...]* (Rogeri Norton, Johannis Martin, & Jacobi Allestrye, 1654).

⁸² *The Book of Chivalry of Geoffroi de Charny: Text, Context, and Translation*, Richard W. Kaeuper and Elspeth Kennedy, eds. (Philadelphia: University of Pennsylvania, 1996), 85-96.

⁸³ Nigel Saul, 'Bold as Brass: Secular Display in English Medieval Brasses', *Heraldry, Pageantry and Social Display*, 169-94.

gentle status and demonstrated gentry associations through marriage and descent. Armour (real or *costume* versions, made of wood) featured in funeral ceremony and might be hung over the monument. Edward Stanley, Lord Monteagle (c. 1460-1523), appropriately proud of his military career under the Tudors, instructed his executors to place his helmet and arms over his funerary slab.⁸⁴ Sir Godfrey Foljambe, variously esquire to the body for Henry VIII and sheriff of Derby, was proud enough of his brief military service in France in 1513 that his will of 1540 instructed his executors that ‘my swerde, helmet with the beest [the *chatloup* or cat-wolf, from his arms] upon the hedd of yt, and my cote armure to be hanged over my tombe [...] for ever.’⁸⁵ Richard Blount, who was educated in the law at Lincolns Inn, left a copy of Froissart’s *Chronicles* in his will when he died in 1506, and was depicted in armour on his memorial brass despite lacking any obvious military experience.⁸⁶ Occasionally, the martial and the civil were mixed, as represented by Sir William Yelverton’s memorial brass of the late 1470s. Yelverton was as close to a career civil servant as one can find in the period, working as a sergeant at law, King’s attorney, and justice. If he ever had contact with the more violent ends of his office or his social group, he did so only by proxy.⁸⁷ And yet, ‘incongruously’ his likeness wears the robes of a justice over the full-plate of a strenuous knight.⁸⁸

These visual tropes, signs of elite social status, ‘combine to establish the honourable reputation of the subject in life, death’ and in living memory.⁸⁹ This was incentive enough for many

⁸⁴ *North Country Wills*, 111-2 (transcribed from PROB11/21/407).

⁸⁵ *Ibid.*, 176, (transcribed from PROB11/29/44, where his name is rendered as ‘Fohambe’). He was named among the ‘servants of the petty captains of the King’s guard’ in the rearward deployment of Henry’s 1513-14 expedition to France and led a retinue of around 100 men (*LPHE* I, 4242, 4314).

⁸⁶ He did act as Justice of the Peace and Sheriff would have given him opportunities to participate in the mustering of arms and other military activity which, one suspects, was justification for such a monument (Baker, *Men of Court*, 326).

⁸⁷ *PL* I, no. 325, described Yelverton’s men riding armed and intimidating the locals but Yelverton’s presence is more in name than body. Depending on the reading of *PL* II, nos. 548, 705, William Wormegay or Wyrmegey (killed at Beeston, Norfolk, in 1455) was either Yelverton’s man or his victim (Richmond, *Endings*, 202-3). On Yelverton’s career see E. W. Ives, ‘Yelverton, Sir William (d.1477?)’, *ODNB*, (2004).

⁸⁸ Quoting Ives, ‘Yelverton’. The brass at Rougham, Norfolk, shows Yelverton with his wife, the inscription now lost. In addition to the armour and robes, he wears a collar of roses and stars in reference to his service to Edward IV. Rubbing reproduced in *Monumental brasses*, M. W. Norris, ed. (Monumental Brass Society, 1988), no. 200.

⁸⁹ Nigel Llewellyn, ‘Honour in Life, Death and in the Memory: Funeral Monuments in Early Modern England’, *TRHS* 6 (1996), 192. On armour in funeral ceremony, see Nigel Llewellyn, *The Art of Death: Visual Culture in the English Death Ritual c.1500-c.1800* (Victoria and Albert Museum, 1991), 65-8. F. H. Cripps-Day, ‘On Armour Preserved in English Churches’, in G. F. Larking, *A Record of European Armour*

to accept the risk to life, property, and future fortunes by participating in military service, but also through pushing the rules for dress and the wearing of arms. So powerful was the public association of the sword with elite status and masculine dignity that clerics in orders, country priests, and university students—often men of elite family origins—risked punishment for wearing swords against the rules of their office or community.⁹⁰ The desire to exhibit skill, bravery, and confidence appealed to the yeomanry as well, who might make impromptu demonstrations with swords and bucklers, staves, or wrestling moves and grapples to disarm or immobilise opponents. But this was serious play and, as noted above, accidents could be fatal.

For the landed gentry and nobility with the means, they could even proclaim their martial identity through architecture, obtaining licences to fortify their manor houses. The Wars of the Roses, and the brief periods of large-scale internal strife under the Tudors, saw very little siege warfare, which was the predominant experience of wars on the continent.⁹¹ There were the notable exceptions in the border regions and at strategic points along the southern coast, since these areas still depended on fortified strong-points to control lines of communication, but not all cities were walled, and those that were walled were spared the fate of their French counterparts. Still, for the elites, walls, towers, and crenellations were an attractive and highly visible statement of martial strength and the powers of lordship. Sometimes this decoration was superficial, like the crenellated Oxford colleges, but for the gentry in the North or in coastal areas that were vulnerable to the occasional raid from the sea, it had a practical purpose.⁹²

and Arms Through Seven Centuries (Bell and Sons, 1920), V, 151-273, lists a surprising number of helmets from the fifteenth and sixteenth century which were still on public display in parish churches and chapels. Helmets now in private or institutional collections and once used as memorial pieces rarely retain their associations or have provenance that is undocumented or fictional (Larking, *Record of European Armour*, II, 103-118).

⁹⁰ Thiery, 'Plowshares and Swords', 201-22.

⁹¹ The exceptions include Harlech in south Wales, which was held by Lancastrians until 1468, and several castles in the North such as Berwick, Bamburgh, Dunstanburgh, and Alnwick, which changed hands several times, between 1461 and 1471, not always by force (Anthony Goodman, *The Wars of the Roses: Military Activity and English Society, 1452-97* (Routledge, 1990), 58, 221-3). The Tower of London was the object of attacks in 1460 and 1471, but neither lasted very long, limiting the damage to the surrounding city (Barron, *London in the Later Middle Ages*, 18).

⁹² Andy King, 'Fortresses and Fashion Statements: Gentry Castles in Fourteenth-Century Northumberland', *Journal of Medieval History* 33 no. 4 (2007), 372-97; Charles Coulson, 'Freedom To Crenellate By Licence: An Historiographical Revision', *Nottingham Medieval Studies* 38 (1994), 86-137.

By 1562, Sir Thomas Smith felt safe in revealing the open secret that most gentile pedigrees were largely fictions, invented by ‘gentlemen of the first head,’ but so long as these men were also talented, ‘who studieth the lawes of the realm,’ and who ‘can live idly and without manual labour’, they ought to be recognised as gentle.⁹³ But social mobility had to remain within acceptable limits. Hierarchies maintained stability by limiting the movement of their members and ensuring that everyone knew (or could know) where they stood in relation to others. Too much movement up the ladder would break the economy of social gradation. As one poet explained, ‘many gentyllmen’, means ‘few pages’ and even if clothes and training in the law made one look the part, it did nothing for the inner moral nobility of blood:

Wyde gownys, and large sleveys;
Wele besene, and strong thevys;
Moch bost of there clothys,
But wele I wot they lake none othys.⁹⁴

Still, elite status *was* a performance, and if that performance was convincing, that elite status was acknowledged and recognised by others. It was about having lordship and formal authority over others who acknowledged and reflected that lordship and authority. In other words, ‘social success was getting other people to act out your honor.’⁹⁵ The fiction of gentility by descent was partly the reason behind the various heraldic ‘visitations’ of the sixteenth century, made by officers from the College of Heralds, who compiled lengthy, and occasionally artificial, pedigrees to establish valid genealogical credentials for the contemporaries’ elite status.⁹⁶ To question the background of a gentleman, even a very minor gentleman, was a serious insult, and it could be answered with

⁹³ Smith’s *De Republica Anglorum*, composed between 1562 and 1565, but was not published until 1583. He is quoted here from J. F. R. Day, ‘Primers of Honor: Heraldry, Heraldry Books, and English Renaissance Literature’, *The Sixteenth Century Journal* 21, no. 1 (1990), 94.

⁹⁴ Oxford, Corpus Christi College, ms237 f.236v, transcribed in *Political Poems and Songs Relating to English History [...] II*, Thomas Wright, ed. (Longman, Green Longman, and Roberts, 1859), 253.

⁹⁵ Shaw, *Necessary Conjunctions*, 34.

⁹⁶ The formal granting (or confirmation) of arms, by English heralds, began around 1430. Prior to that, arms were granted directly by the Crown, as gestures of favour and ennoblement (Adrian Ailes, ‘Royal Grants of Arms in England Before 1484’, in *Soldiers, Nobles and Gentlemen: Essays in Honour of Maurice Keen*, P. R. Coss and C. Tyerman, eds. (Woodbridge: Boydell, 2009), 85-96). The relationship between gentility granted or recognised through the performance of service and prowess and the philosophy or gentility as an innate moral quality of blood and heritage was as complex a subject for contemporaries as it is for modern historians. On this see the work of M. Keen, ‘Chivalry, Heraldry, and History’, in *Nobles, Knights, and Men-at-Arms in the Middle Ages*, (Hambledon Press, 1996), 21-42, and his frustratingly scarce, *Origins of the English Gentleman: Heraldry, Chivalry, and Gentility in Medieval England, C. 1300-C. 1500* (Stroud: Tempus, 2002).

violence.⁹⁷ ‘No one is more bound to the tyranny of a hegemonic idea than the hegemon, be he or she prince, prelate or academic.’⁹⁸

⁹⁷ Horrox, ‘Service’, 62, gives the example of William Packington, man-at-arms and controller of the English garrison at Bayeux, who killed a fellow English soldier, Thomas Southern (*Souderne*), in 1433. Southern had questioned Packington’s lineage: ‘vous, monsieur du Londes, sauf vostre grace, vous avez menti.’ The insult was made in the company of other English soldiers at a public tavern, which made violence almost inevitable (*Actes de la chancellerie d’Henri VI concernant la Normandie sous la domination anglaise (1422-1435)*, Paul Casimir Noël Marie Joseph Le Cacheux, eds. (Rouen: A. Lestringant, 1908), 279-82, quoting 281).

⁹⁸ Shaw, *Necessary Conjunctions*, 22.

Chapter 4

‘In so far as the medieval aristocracy can be said to have had a profession,’ Rees Davies wrote, ‘it was the profession of arms.’¹ This was certainly true of English elites during the thirteenth and fourteenth centuries, but following the loss of English Normandy and other footholds in continental Europe, there were few viable opportunities for English elites to build and maintain dedicated military careers.² For those who did have the opportunity or motivation to seek fortune in a life lived in harness, breaking even was as much as many could realistically hope for. The financial benefits were attractive but never certain. Most Englishmen fought in the wars abroad for pay, and pay was commensurate with status. However, those near the top had correspondingly higher costs in wages to their own retainers. The Duke of Somerset’s 1443 expedition was delayed, in part, by the Duke’s insistence in securing payment for his expenses in advance as well as provision of lands and offices, yet to be won.³ Amongst the various complaints made by the Duke of York against Henry VI’s council was the ‘financial embarrassment’ he suffered in paying his men from his own resources without compensation from the Crown, during his service in Normandy and Ireland.⁴

Martial culture and social advancement, 1450-1560

The financial rewards of warfare came from material plunder, the grant of lands and offices abroad, or the ransoming of elite prisoners for cash. Prisoners were treated as something of a commodity in the fifteenth century. Most men-at-arms or archers from the lesser gentry who were fortunate enough to capture a valuable prisoner were rarely capable of keeping such prisoners in conditions

¹ R. R. Davies, *Lords and Lordship in the British Isles in the Late Middle Ages*, Brendan Smith, ed. (Oxford: OUP, 2009), 116.

² The financial appeal, or lack thereof, for service in the English wars against France was demonstrated in K. B. McFarlane, ‘The Investment of Sir John Fastolf’s Profits of War’, *TRHS* 7 (1957), 91-116 and his ‘War, the Economy and Social Change: England and the Hundred Years War’, *P&P* 22 (1962), 3-18. See also the studies of English military careers in Adrian Bell, *War and the Soldier in the Fourteenth Century* (Woodbridge: Boydell Press, 2004), and G. Bogner, ‘Knighthood in Lancastrian England.’

³ Wolffe, *Henry VI*, 164.

⁴ Watts, *Henry VI*, 266.

commensurate with their status, preferring to sell their rights to the prisoner to those who could afford to negotiate the ransoms.⁵ Richard Musgrave's 1456 indenture of life service in peace and war to Richard Neville, later Earl of Warwick, contains instructions on the division of spoils obtained in war, and especially by ransom. It provided that 'if eny captaign or man of estate bee taken by [Musgrave] or by eny of his men [...] the same Erl shal have [the prisinor] doying to the taker resounable rewarde' and that Musgrave further agreed to give the Earl a third of all other 'wynnynges of were' that he or his men might find during their service.⁶ John Cornwall, a soldier of middle-gentry rank, shared in the ransom derived from the capture of Louis de Bourbon at Agincourt. Cornwall married well and was ennobled as Lord Fanhope by Henry VI. But his wars were costly, taking his only legitimate son at the siege of Meaux in 1421.⁷ Capture was a risk for English elites as well. John Talbot, later Earl of Shrewsbury, was captured at the battle of Patay in 1429 and had to seek a loan from the Crown to pay his captor.⁸ Status and family connections did not help Robert Hungerford, Lord Moleyns, who was burdened with a £6,000 ransom after his capture in Gascony in 1453, a misfortune that crippled his family. Men of lesser status suffered more. Sir William Peyto of Staffordshire, who had a special talent for recruiting and was very nearly a career soldier, was captured in 1443. It was a financial disaster that also cost him control over his own future and that of his family.⁹

The opportunities for martial service and its possible gains diminished during the second half of the fifteenth century, and the various episodes of open warfare during the Wars of the Roses

⁵ For example, see the 1454 petition of two soldiers who captured a French knight who was subsequently taken without compensation by the Duke of Somerset (*LP Wars*, II.ii, 497-500). See also A. Rogers, 'Hoton Versus Shakell: A Ransom Case in the Court of Chivalry, 1390-5', *Nottingham Mediaeval Studies* 6 (1962), 74-108.

⁶ Cumbria Record Office, D/Mus/H 123 (transcribed in 'Private Indentures for Life Service in Peace and War 1278-1476', M. Jones and S. Walker, eds. *Camden Miscellany* 32 (1994), 162).

⁷ S. J. Payling, 'Cornwall, John, Baron Fanhope (d.1443)', *ODNB* (2004). On the history of ransoms in the Hundred Years War, see Rémy Ambühl, *Prisoners of War in the Hundred Years War: Ransom Culture in the Late Middle Ages* (Cambridge: CUP, 2013).

⁸ Talbot blamed John Fastolf for his capture despite the tactical wisdom Fastolf exhibited (see below). William de la Pole, Earl of Suffolk (later Duke of Suffolk), was captured following the collapse of the English siege of Orléans, but upon learning that his captor was only a squire, Suffolk knighted him on the spot. So international was the culture of Chivalry, that this was not considered extraordinary (Kelly DeVries, *Joan of Arc: A Military Leader* (Stroud: Sutton, 1999), 106).

⁹ On Talbot, Molyens, and Peyto see Michael Prestwich, 'The Enterprise of war', in *A Social History of England*, 82, 86. Peyto raised a retinue of 572 men for Edmund Beaufort's 1449 campaign, amongst others. Adrian R. Bell et al., *The Soldier in Later Medieval England* (Oxford: OUP, 2013), 87.

made poor material for acts of prowess and heroism that was not burdened by potentially harmful factional baggage. Just as serious were the limited chances for plunder or ransoms in an English civil war.¹⁰ The towns you wrested from enemy control were those of your own county or shire, and the men you captured were people you knew, from county sessions of the peace, or the courts of Westminster.¹¹ Fortunately for all involved, this civil war lacked the deeper regional and social factionalism of wars on the continent, or English experiences during the Wars of the Three Kingdoms in Ireland or Scotland.¹² Neither did the Wars of the Roses create such bitterness between participants that the violence became self-sustaining. Some of the gentry and nobility took the opportunity to settle old scores or take personal revenge on those who had wronged them before or during the conflict, but these were rare and always drew a judgemental comment from the chroniclers of the time.¹³

Supporting the winning side in a civil war could bring material rewards other than battlefield plunder, but it came with new risks and new responsibilities. The English law of treason took the lives of traitors and their lands, but it also took the lands from their descendants. Attainder could free up titles and property for strategic redistribution to reward loyalty, secure bonds with the less energetically loyal, or repair old wounds with those whose support was desired or needed. But it was never easy or safe to take from one English aristocratic family and give to another. Those closest to the Crown, either personally or by virtue of their status, could hope for rewards drawn from the estates of attainted rebels. Attainders during the Wars of the Roses were more comprehensive and wide-reaching than their predecessors and this gave the Crown an

¹⁰ While there were examples of ransoms paid by coercion, there was nothing like the formal system, familiar to other wars (Kingsford, *Prejudice and Promise*, 58-67).

¹¹ Kingsford (*ibid.*) cites a few cases found in the Chancery proceedings that he felt were linked to the exigencies of war, but all of them exhibit an element of deeper rivalry between known participants rather than random acts of theft and destruction typical of the wars abroad. A. Goodman (*The Wars of the Roses: The Soldiers' Experience* (Stroud: Tempus, 2006), 58-60), reviews the limited evidence for plunder during the campaigns.

¹² Sarah Covington, "'Realms so Barbarous and Cruell': Writing Violence in Early Modern Ireland and England", *History* 99, no. 336 (2014), 487-504.

¹³ The execution of William, Lord Harrington, and his son-in-law, William Bonville, the only legitimate son of William, Lord Bonville, following the 1460 battle of Wakefield is often explained as a consequence of the long feud between the Courtenay family and the Bonvilles. Thomas, fourteenth Earl of Devon, was among the victorious Lancastrians at the battle. The death of York's second son, the Earl of Rutland, at Wakefield has been styled an act of revenge by John, Lord Clifford, over the death of his own father at First St Albans (Griffiths, *Henry VI*, 870).

unprecedented freedom to reward but also to control, since anything given could be easily taken away.¹⁴ But even grants once held by dead rebels were still vulnerable to reversion to surviving, and politically desirable, heirs.¹⁵ Edward IV amassed a considerable quantity of lands, offices, and liberties from the estates of dead and attainted Lancastrians, and he used them strategically to repair relationships, build new allies and power bases, and to reward the faithful or persuade the noncommittal. Yet this caused its own problems. Sir William Herbert, whom T. B. Pugh called a ‘grossly ambitious and grasping Welsh country squire,’ did not enjoy his earldom of Pembroke for very long, dying at Edgecote in 1469.¹⁶ Humphrey Stafford of Southwick took over the Earldom of Devon from the Courtenays, providing a more stable and reliable basis of Yorkist supervision in the South-West. Like Herbert, Stafford met his end at Edgecote, or soon after, lynched by the commons of Somerset on 17 August.¹⁷ John Neville, the youngest brother of Richard Neville, Earl Warwick, and arguably the most capable military commander of the period, who had remained faithful to Edward even against his own family and followers, could not long endure the indignity of seeing his Earldom of Northumberland returned to the Percy family.¹⁸ The rewards distributed amongst the Woodville family of Edward’s queen, are an example of the double-edged nature of social advancement through the spoils of a civil war.¹⁹ Perhaps the safest rewards were the smallest. Henry VII was far more restrained in his grants of confiscated lands and offices, and he was more successful in his choices of patronage, but even supporters from the ranks of the lesser gentry could still hope for respectable and stable rewards for winning the gamble for a Tudor

¹⁴ Michael Hicks, ‘Attainder, Resumption and Coercion 1461–1529’, *Parliamentary History*, vol. 3, no. 1 (1984), 17-23.

¹⁵ The terms of some grants made possible reversion to the Crown, or another grantee, explicit in the charters and patents (*ibid.*, 27).

¹⁶ T. B. Pugh, ‘The Magnates, Knights and Gentry’, in *Fifteenth-Century England 1399-1509: Studies in Politics and Society*, S. B. Chrimes, C. D. Ross, and R. A. Griffiths, eds. (New York: Manchester, 1972), 92. See also N. P. Sil, ‘Herbert, William, First Earl of Pembroke (c.1423-1469)’, *ODNB* (2009).

¹⁷ M. A. Hicks, ‘Stafford, Humphrey, Earl of Devon (c.1439–1469)’, *ODNB* (2008).

¹⁸ Ross, *Edward IV*, 72, 155, 137, 144-5; R. Horrox, ‘Neville, John Marquess Montagu (c.1431-1471)’, *ODNB* (2004); Scofield, *Edward the Fourth I*, 490-1, 504-6. Technically, the rank of Marquess gave Neville and his successors precedence over the Percy Earl, but this was a distinction of no real value in the context (H. Kleineke, *Edward IV* (Routledge, 2009), 108).

¹⁹ The degree to which the Woodvilles actively sought preferment, or to what extent they antagonised contemporaries by rising so quickly, is a point of dispute even now. They certainly did attract the enmity of Lancastrian sympathisers and were often convenient scapegoats for more complex problems. See J. R. Lander, ‘Marriage and Politics in the Fifteenth Century: The Nevilles and the Wydevilles’, *HR* 36, no. 94 (1963), 119-52.

monarchy.²⁰ Only a desperate heir of an attainted rebel would seek revenge over a lost patrimony at this level.

Social elites were, of course, a minority amongst the men who fought the wars of medieval and early-modern Europe. English recruiting efforts could be exploitative of the poor or the criminal and while the scale of recruitment by pardon was always small, the association of the common soldier with the criminal vagabond was a powerful image to fear.²¹ War had always been a business and a lifestyle for elites, but during the early sixteenth century, war became increasingly the business of ‘artisans’ and professionals, not gentry-amateurs. Business was best for the international military entrepreneurs who fought for whoever was paying the contract, and these were predominantly non-noble in origin. These were men like Martin Schwarz, who led a contingent of *Landsknechte* against Henry VII on behalf of his clients, the supporters of Lambert Simnel, at the 1487 battle of Stoke.²² War was becoming *democratised* in ways that diminished the value of the elites as combatants, forcing them to transform their martial identities into recruiters and leaders in armies.²³

‘The demi-god prowess’: Skilled violence and gallantry as a moral virtue

The historiography tells us that the martial interests and tendencies of the nobility and social elite atrophied in response to the increasing professionalization of European warfare, the diminishing opportunities for personal enrichment through the share of booty, official rewards from the Crown through the grant of offices, lands, or rights. Lawrence Stone and Jeremy Goring saw the declining military service of English aristocrats in the foreign and domestic actions of the later Tudors as

²⁰ Pugh, ‘Magnates, Knights and Gentry’, 115.

²¹ L. J. A. Villalon, “‘Taking the King’s Shilling’ to Avoid “the Wages of Sin”: Royal Pardons for Military Malefactors During the Hundred Years War’, in *The Hundred Years War Part III: Further Considerations*, L. J. A. Villalon, Donald J. Kagay, eds. (Leiden: Brill, 2013), 357-436.

²² David Parrott, *The Business of War* (Cambridge: CUP, 2012), 57.

²³ Sixteenth-century armies still relied on nobles and other powerful men to raise armies, while at the same time retaining a nucleus of military specialists like engineers and gunners, creating a semi-feudal system of temporary service and small permanent forces: Steven Gunn, ‘War and the State in Western Europe, 1350-1600’, in *European Warfare, 1350-1750*, Frank Tallett, D. J. B. Trim, eds. (Cambridge: CUP, 2010), 56-61.

proof of demilitarised nobility.²⁴ But more recent scholarship does not support the claim that early Tudor England experienced a serious decline in martial spirit amongst the nobility and gentry.²⁵ Certainly, Richard III had to contend with a few conscientious objectors during his brief reign, but on the whole the English gentry and parliamentary peerage were just as willing to serve Henry VII and his son as they were to serve Edward III and his son. For the Tudors, the problem was that the old system, which built armies out of the affinities of magnates and wealthy or influential nobles and knights, was inefficient. There was also a growing official discomfort with the notion that the greatest nobles had easy access to private and potentially rebellious armies. But whatever the truth for the arguments over a demilitarised English elite, there is no corresponding trend towards pacification in other respects. Rather, the impression from Stone is that interpersonal violence was on the rise during the sixteenth century. Certainly, the appeal of legitimate outlets for aggressiveness, such as hunting and tournaments, did not decline appreciably during the sixteenth century. By the start of Elizabeth's reign, English nobles, esquires, and gentlemen could explore the opportunities of a law of honour, neatly codified in continental handbooks and treated ambiguously in the courts, with an undercurrent of potential violence, ever-present in their lives.

Our mistake is to equate the *militarisation* of a certain group or society—and therefore its interest in martial culture—with that group's *militancy*, or degree of participation in warfare. This misconception is understandable given that the historiography separates the formal and legitimate violence of warfare from the illegitimate and criminal violence of personal conflict, but this is an anachronistic division of values. We are also too quick to dismiss motivations that appear too abstract or too immaterial to be considered relevant, because they seem, to the modern eye, frivolous or morally hollow. It seems rational to attribute the decline of English military service amongst the nobility and gentry to a corresponding decline in the material value of that service.

²⁴ Stone, *Crisis*, abr. ed., 99-107, Jeremy Goring, 'Social Change and Military Decline in Tudor England', *History* 60, no. 199 (1975), 185-97.

²⁵ Works such as James Raymond, *Henry VIII's Military Revolution: The Armies of Sixteenth-Century Britain and Europe* (Tauris, 2007) and David Eltis, *The Military Revolution in Sixteenth-Century Europe* (I.B. Tauris, 1998), revise the view of a declining martial ethos of the Tudors, argued in Stone and Goring. The enduring appeal of military service amongst gentry youth and supernumerary sons is well documented in Roger B. Manning, *Swordsmen: The Martial Ethos in the Three Kingdoms* (Oxford: OUP, 2003).

These are reasons historians can understand, and certainly historical actors were to some degree motivated by these same interests, but this is a ‘poverty of motivation’ so far as the historians are concerned.²⁶ We can understand how one could rationalise violence in pursuit of ‘good governance, peace, prosperity, and even altruism,’ and at the same time, pursue ‘self-interest, self-preservation, and self-advancement,’ but we struggle to explain violence in circumstances where such motivations are impossible to identify.²⁷ Sir John Fastolf’s military career is easy to understand because it was to an extent a business venture, while the career of Anthony Woodville, Lord Rivers, is often viewed through the lens of an outdated chivalric ethos and an overdeveloped sense of duty.²⁸ The criminal career of Sir Thomas Malory of Newbold Revel is understood either as an extension of regional factionalism or, when that fails, as the actions of a man born three generations too late to fight in the war that could have made a hero of a charismatic sociopath.²⁹ But what about those who fought for the sake of it?

It may take the imagination of an artist such as Borges to get across the appeal of fighting for the sake of fighting in a way historians can understand. In one of his essays (itself an exercise in creative historical empathy) he has re-cast gang-violence as just, heroic, and noble:

A hundred or more heroes, none quite resembling the mug shot probably fading at that very moment in the mug books; a hundred heroes reeking of cigar smoke and alcohol; a hundred heroes in straw boaters with bright-colored bands; a hundred heroes, all suffering to a greater or lesser degree from shameful diseases, tooth decay, respiratory ailments, or problems with their kidneys; a hundred heroes as insignificant or splendid as those of Troy or Junin—those were the men that fought that black deed of arms in the shadow of the elevated train.³⁰

If we ignore the anachronisms, this could describe the men defending Caister in 1469, or those who gathered ‘in warlike manner’ around Lord Bonville or the Earl of Devon and fought a miniature

²⁶ The phrase is Roger Virgoe’s, from a review in *EHR* 95 (1995), 171.

²⁷ M. A. Hicks, ‘Idealism in Late Medieval English Politics’, in *Richard III and His Rivals: Magnates and Their Motives in the Wars of the Roses* (Hambledon, 1991), 41-2.

²⁸ On the moral landscape of military service in the time of John Fastolf, the Earl of Worcester, and others, see C. Richmond, ‘Identity and Morality: Power and Politics During the Wars of the Roses’, in *Power and Identity in the Middle Ages: Essays in Memory of Rees Davies*, Huw Pryce, John Watts, eds. (Oxford: OUP, 2007), 226-41.

²⁹ On Malory as pawn in magnate disputes, see Carpenter ‘Sir Thomas Malory’, and Richmond, *Endings*, 132-3.

³⁰ Jorge Luis Borges, ‘Monk Eastman, Purveyor of Iniquities’, in *Collected Fictions*, Andrew Hurley, ed. (New York: Viking, 1998), 28.

battle at Clyst in 1455.³¹ Perhaps the men that seized Katherine Peyto's property at Sibbertoft, 'arraid as fere of werre' thought of themselves as good men-at-arms, engaged in the legitimate use of force to recover rights and property.³² Their leader certainly did. Sir Thomas Malory of Newbold Revel 'was a dreamer with the mind of a shop-lifter,' but he was also 'an acute critic of his times, his woefully out-of-joint times. [...] It is an obvious point, although one not universally true, that the best soldiers are the worst criminals.'³³ War, as a revelatory experience that granted participants special knowledge about themselves and about the world, may be a product of the age of enlightenment but the notion that men who fought became—by virtue of the experience—special in some intangible but socially powerful way, is ancient.³⁴ The difference between Ernst Jünger's euphoric experience of war in the trenches and Jean de Bueil's naked affection for that 'joyous thing,' is largely one of vocabulary and literary topoi.³⁵ But the men with literary pretensions come closer to explaining this appeal than the historians. In 1580, Philip Sidney told his brother Robert that if he had the opportunity to fight in any 'good wars' he should, since it was 'the field where all cases of manhood [were] determined.'³⁶ Perhaps this attitude is expected of the upper elites such as Sidney, but the least gentle of the gentry could share this sense of moral strength through the adversity of violence. Fame and the 'ennobling power of violence' was something anyone could aspire to and it need not manifest itself in public, and permanent, depictions of prowess.³⁷ It was enough to share the feeling of privileged virtue with equals. Modern war correspondents seem to have grasped some of this more readily than the historians. Chris Hedges wrote that 'the enduring

³¹ The episode was the subject of a special commission of the peace to Cornwall, sent the following year, and while the surviving indictment (KB9/16 m65) list a heroic collection of weapons, guns, and men from the Earl's retinue, there are no deaths recorded. The Indictment is simply for gathering armed, contrary to the King's peace.

³² C1/15/78. The date of this event is uncertain, but P. J. C. Field (*The Life and Times of Sir Thomas Malory* (Woodbridge: Boydell & Brewer, 1999), 91-3), argues that it was sometime between July 1452 and March 1454.

³³ Richmond, *Endings*, 132.

³⁴ This is the central argument of Yuval Noah Harari, *The Ultimate Experience: Battlefield Revelations and the Making of Modern War Culture, 1450-2000* (New York: Palgrave Macmillan, 2008).

³⁵ Ernst Jünger, *Storm of Steel*, Michael Hofmann, trans. (New York: Penguin, 2003), first published in 1920. Jean de Bueil's *Le Jouvencel*, (c.1461) quoted in Elias, *The Civilizing Process*, 165.

³⁶ Quoted in Keith Thomas *The Ends of Life: Roads to Fulfilment in Early Modern England* (Oxford: OUP, 2010), 60.

³⁷ The evocative phrase is that of M. D. Meyerson, D. Thiery, and O. Falk, 'introduction', in *A Great Effusion of Blood?: Interpreting Medieval Violence*, M. D. Meyerson, D. Thiery, O. Falk, eds. (Toronto: University of Toronto, 2004), 11.

attraction of war is this: Even with its destruction and carnage it can give us what we long for in life. It can give us purpose, meaning, a reason for living. Only when we are in the midst of conflict does the shallowness and vapidness of much of our lives become apparent.³⁸

William Worcester wrote in a similar way in his *Boke of Noblesse*, as did Thomas Hoccleve in his eulogising of Henry V. But, as A. J. Pollard wrote, ‘for whom exactly did Worcester speak? For no-one, bar a small group of passé ultra-conservatives, is one answer.’³⁹ Pollard argued that even when there were opportunities for the English gentry to participate in wars abroad, they were far from enthusiastic supporters. Worcester’s age had become that ‘of the gentleman bureaucrat seeking advancement not through profession of arms but the professions of law and accountancy.’⁴⁰ This may be true of the broader political message that Worcester was arguing for but, as Pollard knew, chivalric and martial culture never lost its place in the reading and entertainments of the gentry. Chivalry had its critics, but martial virtue was too powerful and valuable to dismiss along with the romantic fantasy of wasteful dress and vain posturing. These were also reminders to readers from elite society that the real purpose of war was to maintain peace: ‘power causeth pease finally.’⁴¹ War was a part of God’s order for the world and for the English. Without ‘war outward’ there was little hope for an inward peace.⁴² War, Richmond explained, ‘whether it was the Agincourt war or the war in the Somme, simplified life and not only for soldiers.’⁴³ This was a mode of elite thinking about the world, and the place of violence in that world.

For Richmond, the ‘morality of war is not a difficult idea to grasp’; harder to understand ‘is the appeal of war to young men. Or rather, not hard to understand: hard to accept.’ This is a modern problem just as much as it is a historical one and it speaks to the social and moral value of martial culture, service and self-sacrifice, normative masculinity, and the economies of honour and violence that still influence the thinking of modern Western societies. Norbert Elias never paused

³⁸ Chris Hedges, *War Is a Force That Gives Us Meaning* (New York: Anchor, 2003), 3.

³⁹ Pollard, *The Wars of the Roses*, 71.

⁴⁰ *Ibid.*

⁴¹ From the anonymous work, c. 1436, ‘The Libel of English Policy’, in *Political Poems II*, 202.

⁴² These themes are introduced in Nall, *Reading and War*, 1-10.

⁴³ Richmond, *Endings*, 132.

to consider probably the most difficult question to ask of historical violence: what was its enduring appeal, if it was not simply for material gain or a psychosis or compulsion? Richmond does ask the question if only to make the point that we are unlikely to find a truly satisfying answer that does not compromise historical methods.⁴⁴

Post-modern cynicism makes it difficult to see the constructive side of violence, a side that the Paston brothers understood, having experienced the paradox of losing battles and property but winning (or at least retaining) respect, worship, and, in their own eyes if not in the eyes of others, fame and the blessing of the ‘demi-god prowess.’ Chivalry was something people *did*; it was a verb, and you could not be *chivalrous* passively. Prowess was the virtuous performance of chivalric acts, mostly acts of skilled violence or the endurance of dangers, threats, and suffering. In one way it was a secularised version of the monastic philosophy that sacralised labour, austerity, and self-denial.⁴⁵ Chivalry was itself a hybrid of religious and secular which reached its extreme interpretations in the religious orders such as the Knights of St John. On a smaller scale, this mixture of values meant that prowess was a measure of one’s virtue, and therefore the skilled man-at-arms was also a virtuous man-at-arms. But the reverse was equally true. A hapless man-at-arms was not just unlucky, he was morally compromised. Equating skill in arms with moral worth—the worship of prowess—made it possible to justify violence that was otherwise illegitimate or patently self-destructive so long as it met the standards of a militarised social code of values. Fear of losing the respect of one’s peer group was then, as it still is now, one of the most powerful means of controlling and directing the actions of others, both in peaceful or violent situations.⁴⁶ Chivalry, as a mechanism of normative social guidance and as a set of shared values for elite society, was far

⁴⁴ Ibid., 138.

⁴⁵ Chivalry as a militarised form of asceticism and piety appears in many forms, and persists, from the twelfth to the sixteenth century (Kaeuper, *Holy Warriors*, 120-130, 137-155). Military experiences have never lost their special moral or revelatory properties and have to some degree enhanced these traits in the post-Napoleonic West (Harari, *The Ultimate Experience*, 197-239).

⁴⁶ Even modern legal regulations of national armed services evoke the language and values of a martial culture through its means of disciplinary action against nonconformity (Paul Robinson, *Military Honour and the Conduct of War: From Ancient Greece to Iraq* (Routledge, 2006), 170-5). At the level of the individual soldier, informal social pressures are essential in maintaining cohesion and convincing individuals to take risks they would otherwise avoid (Leo Braudy, *From Chivalry to Terrorism: War and the Changing Nature of Masculinity* (New York: Vintage, 2003), 233-65).

more than an ornate lie told by its followers to justify their actions.⁴⁷ Even if it was a lie that everyone was careful not to spoil, what does it mean when those same men hold to it even at the cost of their own lives?

There were contemporary critics of martial culture and the social conventions of chivalry, particularly from scholastics and clergy, who wrote commentaries focused on the greed, impiety, and empty boasting of knights at court. John of Salisbury, writing in the thirteenth century, stigmatised the boastful knight at court as a private coward. But Salisbury was part of a different community of elites, and the knights who ‘talked of arms and warfare “in the way one does”’, were not doing so to impress him. They spoke for an audience of other knights and men-at-arms.⁴⁸ The value of prowess, and the power of a communal sense of identity and solidarity, created and maintained by the culture of chivalry has a continuity that is often overlooked or underrated by historians. Being called a coward in the twelfth century was just as painful to masculine identity and sense of self as it was in the twentieth century. The terminology, and the means of testing one’s masculine qualities, may change over time but the principal value remains constant. Dramatists and historians alike began to paint the portrait of Richard III—within living memory of his reign—as a self-serving, morally unrestrained nihilist, but no one called him a coward, at least not in battle. He was in reality, as well as myth, a devout worshiper of the demigod prowess. He showed energy and willingness to risk himself in reclaiming the English Crown for his brother at Tewkesbury and Barnet, or later in the operations in the North and in the abortive renewal of war against France. He did not participate in tournaments or dramatic deeds of arms, but he cultivated a reputation as a soldier’s soldier.⁴⁹ Henry VIII sought opportunities to show his worship of prowess as a

⁴⁷ This is Pinker’s unobvious judgement of Chivalry (*Better Angels*, 67).

⁴⁸ Andrew Taylor, ‘Chivalric Conversation and the Denial of Male Fear’, in *Conflicted Identities and Multiple Masculinities: Men in the Medieval West*, Jacqueline Murray, ed. (New York: Garland, 1999), 170-1, quoting a phrase from Jean Froissart.

⁴⁹ Richard’s role at the battle of Tewkesbury is unclear and may have been very minor, but several members of his retinue were killed, suggesting that he and his men were actively engaged in combat. Richard was certainly a commander in Edward’s forces at Barnet (C. Ross, *Richard III* new ed. (New Haven: Yale, 1999), 19-22). Hicks is a dissenting voice (M. Hicks, *Richard III* (Stroud: The History Press, 2003, reprint of 1991 ed.), 99-103). Richard’s personal copy of Vegetius, an edition of the 1408 prose text, survives in the royal collection (BL, Royal MS18 AXII).

manifestation of his regal virtue.⁵⁰ The attraction of war for the socially conscious was intoxicating, and the respect it could earn was incredibly durable.

The death of chivalry? Revival, reform, or reinvention of English martial culture

Some historians have located the modernisation of chivalry in the distinctly ‘un-chivalric’ pragmatism of Richard, Earl of Warwick or the cold ruthlessness of John Tiptoft, Earl of Worcester. This was, at any rate, the argument that Arthur Ferguson made while tracing the decline of the traditional concept of chivalry from its creation in the thirteenth century up to its destruction through irrelevance in the late fifteenth century.⁵¹ Ferguson saw Warwick as a political realist, distinct from the irrational and blindly romantic ‘outdated archetypes.’⁵² But chivalric culture had always maintained and accommodated two contradictory sets of guiding principles, and Warwick’s contemporaries could still identify him as a chivalric ‘lodesterre’ while also recognising his willingness to subvert the norms he otherwise represented.⁵³ This was possible because, for Warwick and other adherents of martial culture, war was at once noble and ruthlessly amoral. Chroniclers could praise knights for sparing towns from destruction just as easily as they could glory in the righteous burning of the next village down the road.⁵⁴ If someone as influential in the literature of chivalry as Geoffrey de Charny was prepared to break a truce and seize enemy fortifications with bribes, then anyone could, so long as it worked.⁵⁵ But bending the rules like this was not done without risk to personal honour, and contemporaries were not shy about criticising

⁵⁰ On Henry’s martial interests and its influence on his foreign and domestic policy, see Steven Gunn, ‘War, Dynasty and Public Opinion in Early Tudor England’, in *Authority and Consent in Tudor England: Essays Presented to C. S. L. Davies*, G. W. Bernard, S. J. Gunn, eds. (Aldershot: Ashgate, 2002), 131–49, and James Williams, ‘Hunting and the Royal Image of Henry VIII’, *Sport in History* 25, no. 1 (2005), 41–59.

⁵¹ Arthur B. Ferguson, *The Indian Summer of English Chivalry: Studies in the Decline and Transformation of Chivalric Idealism* (Durham, NC.: Duke, 1960), 41-3, 198-202.

⁵² Quoting Carpenter, *Locality and Polity*, 48.

⁵³ ‘A Political Retrospect’, in *Political Poems II*, 270 (extracted from London, Soc. of Antiq. ms101, ff.98, anonymous verse composed circa 1462-3).

⁵⁴ This occurs in the Chandos Herald’s biography of the Black Prince (Patricia DeMarco, ‘Inscribing the Body with Meaning: Chivalric Culture and the Norms of Violence in the Vows of the Heron’, in *Inscribing the Hundred Years’ War in French and English Cultures*, Denise N. Baker, ed. (New York: SUNY, 2000), 30-1).

⁵⁵ This was Charny’s strategy to re-take Calais from Edward III in 1349. If Charny felt any shame for his actions it was almost certainly because they failed, not because they were inherently un-chivalrous (*The Book of Chivalry of Geoffroi de Charny*, 10-14).

unchivalrous pragmatism. John Talbot was captured by the French following the 1429 battle at Patay and he blamed John Fastolf for his misfortune. Talbot accused him of cowardice for abandoning his fellows, behaviour unbecoming of a Knight of the Garter. Fastolf in fact managed to extract his own force from a perilous and tactically weak situation, something far more strategically useful than Talbot's stubborn decision to stand and fight. It is unlikely that Talbot felt this way because he thought Fastolf had cost him a victory; it was his injured honour that offended him for so long.⁵⁶ Even the most experienced and unsentimental soldiers believed that the rules of chivalry were more than superficial or trivial. Still, it is difficult to understand how powerful the concept of honour was, even when the literature tries to spell it out for us. It may have been just as confusing for its adherents who, to modern eyes, seemed to cling to martial honour as 'the last refuge in secular thought for a bewildered and bedevilled aristocracy.'⁵⁷

When chroniclers recorded their praise for noble knights and gallant men-at-arms, they did so in reference to prowess, steadfastness of spirit, and their daring, intelligence, or originality of strategy or action.⁵⁸ But one had to *perform* prowess. It was not enough to be brave, willing, or able (although this changed in the seventeenth century, if not earlier). During the later years of our period, there is a subtle shift away from emphasis on individual prowess in favour of praiseworthy acts of loyalty, service, and endurance. The anecdotes scattered throughout Edward Hall's description of the 1513 battle of Flodden, which is otherwise opaque on tactical details, still give space to acts of individual bravery, loyalty, and sacrifice, as well as prowess and skill. Hall's depiction of Sir Edmund Howard's command of the right-hand wing of the English formation during the battle could have come from the pen of Jean Joinville, three centuries earlier. 'Edmonde thre tymes fell to the grounde, and left alone sauynge his standarde berar, and two of hys

⁵⁶ Hugh Collins, 'Sir John Fastolf, John Lord Talbot and the Dispute over Patay: Ambition and Chivalry in the Fifteenth Century', in *War and Society in Medieval and Early Modern Britain*, D. Dunn, ed. (Liverpool: Liverpool, 2000), 114-40. On the military situation of Patay, Fastolf's tactical decision making, and the battle's wider context, see De Vries, *Joan of Arc*, 97-121.

⁵⁷ Ferguson, *Indian Summer*, 32.

⁵⁸ Chivalric literature finds it easier to celebrate physical prowess through dramatic prose than intellectual ability, but it was a trait worthy of praise and comment, such as the 'sotule poynte of werre' that secured St. Michael's Mount for John De Vere, Earl of Oxford, in 1473 (Ross, *John De Vere*, 72, quoting *Warkworth's Chronicle*).

seruauntes,' isolated by the footmen of the Scots.⁵⁹ Howard was the third son of the Earl of Surrey and a companion of Henry VIII, and so his service is largely what one would expect of someone of his station, but the focus on his personal skill and bravery was worth singling out. One could still earn a durable reputation as loyal soldier in the less-than-virtuous years of the early Tudors. Sir Thomas Lovell, 'one of the inner ring of Henry VII's council' and considered more of an administrator than a member of a martial elite, still chose to decorate his home with 'tapestries of St. George and the nine worthies.' His funeral was based on the 1463 ceremonies for Richard, Earl of Salisbury.⁶⁰ William Herbert, Earl of Pembroke (d.1570), began his military career as a fugitive in France, having fled after he killed a man in an affray at Bristol in 1527. His aggressive spirit endeared him to his superiors, who were quicker to forgive a youthful mistake when the performer was clearly a man of some value, and he was pardoned in 1529. How much of Pembroke's personality was a product of chivalric ideals and how much was innate is impossible to know, but it may not matter since it was the social construct of martial culture that gave his behaviour meaning. He is said to have proclaimed to the councillors of Lady Jane, in 1553, that 'eyther this sword shall make Mary Quene, or Ile lose my life,' and this enthusiasm never failed him.⁶¹ In 1560, he was still close enough to the action at a St. George's day tournament to have lance splinters fly at his face.⁶² Pembroke was certainly a flamboyant example of a post-medieval worshiper of prowess, but he was not unique.⁶³ The lesser gentry were still acting out medieval deeds of arms—made familiar to readers of histories and romances from incidents during the Hundred Years War—by arranging combats with their French enemies at the siege of Boulogne and elsewhere, well into the 1540s.⁶⁴

⁵⁹ Edward Hall, *Hall's Chronicle: Containing the History of England* (Printed for J. Johnson [etc.], 1809), 562.

⁶⁰ Steven Gunn, 'Chivalry and the Politics of the Early Tudor Court', in *Chivalry in the Renaissance*, S. Anglo, ed. (Woodbridge: Boydell, 1990), 119.

⁶¹ S. J. Gunn, W. R. B. Robinson, 'The Early Life of William Herbert, Earl of Pembroke (d.1570)', *Welsh History Review* 18 (1997), 509-10, 517, quoting 517.

⁶² N. P. Sil, 'Herbert, William, first earl of Pembroke (1506/7-1570)', *ODNB* (2009).

⁶³ While rarely flamboyant, military service was still expected of men with responsibility and some administrative skill, particularly under the Tudors (See Gunn, *Henry VII's New Men*, 6-9, 12-15, 103-110).

⁶⁴ D. J. B. Trim, "'Knights of Christ?' Chivalric Culture in England, c. 1400-1550', in *Cross, Crown & Community: Religion, Government, and Culture in Early Modern England 1400-1800*, D. J. B. Trim, P. J. Balderstone, H. Leonard, eds. (Oxford: Peter Lang, 2004), 96.

In modern terms, English martial culture taught its subjects the value of aggressiveness and assertiveness, and also gave violence and force moral legitimacy. Repeated exposure to violence does not desensitize observers, despite the arguments to the contrary. Rather it is the depiction of violence as something legitimate, morally defensible, and socially beneficial that makes it tolerable or even attractive: this is the ‘socialization for aggression.’⁶⁵ Exposure to violence is not an essential criterion for making people violent; they must be taught that the violence they are seeing or hearing about has a purpose and value or can be justified in relation to established social norms. The scenes of violence, sexual assault, torture, and painful punishments, found even in the grammar readings of adolescents learning Latin, were more than prurient entertainment (if it ever was intended to entertain); it was memorable because it could shock and it could teach valuable lessons about honour, pride, and the proper behaviour of the social elite.⁶⁶ Edward III’s wars with France built a rich and detailed culture around martial skill, aggressiveness, and virtuous violence, and generations of English gentlemen and nobles were raised on a diet of romance literature, chronicles, and laws that taught them how to be aggressive and enthusiastic users of right force. The argument that the violence of the Wars of the Roses was a consequence of failed opportunities abroad seems unnecessary. Violence at home was, perhaps, inevitable. The English elite were raised to fight, and everything was worth fighting for.

Inequality, violence, and the law

By the early fourteenth century the gentry had defined murder, rape, and theft as non-gentry crimes; the typical violence of the typical fourteenth-century gentleman (and justice of the peace)—brutal sexual assault, highway robbery, murder in street brawls—lay outside those definitions.⁶⁷

The conclusion to be drawn from the story is this: since no subject knows the laws, since all are compelled to trust the interpretation of the laws proposed by the nobility, then in

⁶⁵ Carol R. Ember, Melvin Ember, ‘War, Socialization, and Interpersonal Violence: A Cross-Cultural Study’, *Journal of Conflict Resolution* 38, no. 4 (1994), 620-46.

⁶⁶ See the discussion of violent imagery in romance literature by Jean E. Jost, ‘Why Is Middle English Romance So Violent? The Literary and Aesthetic Purposes of Violence’, in *Violence in Medieval Courtly Literature: A Casebook*, Albrecht Classen, ed. (New York: Routledge, 2004), 241-67. Jost’s interpretation of the role this imagery has for the social conditioning of readers is, however, somewhat different than the one given here.

⁶⁷ C. L. Richmond, ‘The Murder of Thomas Denys,’ *Common Knowledge* 2, no. 1 (1993), 85-6.

effect, if any law exists, it can only be whatever the nobles decide it is, for the sole visible and indubitable law imposed upon us is the will of the nobility.⁶⁸

Colin Richmond was certainly right about the mutability of medieval English law: ‘the law is not justice, the law is not morality, it is a mutant, it is whatever shape lawyers care to make it, one day this, another that, plastic and pliable, like this for one client, like that for another.’⁶⁹ Richmond heaps his venom on the lawyers but he could have spared some for any pair of hands that enjoyed the power of lordship found the law equally malleable. The law as written was distinct from the law as practiced. Slavoj Žižek’s point was that the arbitrariness of the law creates the impression that the law was never really based on fixed concepts of justice and reason at all; rather its basis is the caprice of the elites who determined what laws meant in any given situation.⁷⁰ It neatly mirrors Schinkel, quoted in the introduction, that ‘it is a power to be able to use force without it being recognized as such.’⁷¹

But this is, at least, an ‘iterative’ conception of the law where the people who supervise its enforcement and those who seek remedies from it work together to accept or reject interpretations of lawful and unlawful, as context and contingency require. This was something contemporaries understood, especially when the illusion of legitimacy failed to convince everyone just as William Yelverton’s men failed to convince John Paston II, who wrote that ‘what so euyr they do wyth ther swordys they make it lawe.’⁷² But John Paston II did not expect nor did he demand equality for himself or others before the law. One expected to be treated in accordance with one’s status, station, and degree of public fame. Members of the titled nobility did not consider themselves as apart from or above the law, but rather they saw themselves as an essential and inseparable part of the law, which gave them both a right and obligation to involve themselves in the disputes, as arbitrators, peacemakers, or (more cynically) opportunists. When John Neville, Lord Montague, wrote to Sir John Mauleverer regarding complaints against two of his men who ‘dayly threaten to

⁶⁸ Slavoj Žižek, *Living in the End Times*, rev. ed. (Verso, 2011), 179.

⁶⁹ Richmond, *Endings*, 198.

⁷⁰ Žižek, *Living in the End Times*, 179, where he analyses a story within Franz Kafka’s novel *The Trial*.

⁷¹ Schinkel, *Aspects of Violence*, 5.

⁷² *PL I*, no. 325.

beat and slay' the servants of Sir William Plumpton, he did so as someone entitled, by virtue of his rank and station (without formal office or direction), to intervene in the dispute and offer 'such a remedy as shall accord with reason.'⁷³ Intervention or interference in disputes from those higher on the ladder of hierarchy was expected, even anticipated, but this was often a source of new conflict and strain amongst the gentry and titled nobility. Naturally, this confused the informal but legitimate means of private dispute resolution with the formal institutional methods. Still, equality before the law was not a feature of the medieval worldview, nor was it considered an obvious ideal. But this does not mean that the English legal system was fundamentally corrupt or susceptible to manipulation by outside interests. There is little evidence that the Court of King's Bench ever gave judgements based on outside pressure (other than pressure from the King), and even in situations where judicial discretion was severely constrained, there were ways for the court to pass on such business to others.⁷⁴

The exercise of justice without favour was justice exercised arbitrarily. The hierarchy of class and status expected to find itself mirrored in a hierarchy of justice, delivered unequally—but proportionately. Women had few rights available to exercise through the law, even those who were married to respectable gentlemen or nobles, and their rights were often treated as extensions of the rights of men associated with them either as husbands, sons, fathers, or brothers. A widow had the right to bring civil appeals of murder against her husband's killers but only within a certain time-limit and she lost that right if she remarried; and if she did bring action, she could not remarry until it was resolved.⁷⁵ For most people who sought justice from the formal offices of the law, however, the single greatest obstacle was simply financial. Persons who felt wronged and sought remedy from the courts were confronted by fees and potential fines at almost every stage of the process, and it was also costly for those who had to defend themselves through the courts. Both the desire to

⁷³ *Plumpton Letters*, 43-44.

⁷⁴ Few justices of the peace seemed to worry about possible conflicts of interest. William Yelverton, justice of the peace, held sessions in June 1454, in which a Norfolk jury indicted John Kyng, labourer, for trespass with force and arms, breaking into a home, and assaulting Yelverton's own servants (KB9/274 m43).

⁷⁵ Additionally, a widow had no right to an appeal for the death of her husband if he had a brother, or if the couple had a male child (in which case these direct heirs would have the right to appeal). However, a husband had no right to appeal the death of his wife (*Spelman I*, 58, 62-3).

avoid fees, and the court's desire to find new sources of them, shaped the law and practice as much as legal theory itself.⁷⁶ The financial burdens and risks could discourage many from seeking justice legitimately and could be an incentive for those tempted to violate abuse the law. The tendency among historians is to see the negative manifestations of this mutability without fully acknowledging its necessity. For example, for a killing to qualify as felony murder, the jury had to believe (or be convinced by the justices) that the accused either 'lay in wait' for the victim or attacked with 'malice aforethought.' The accused could plead not guilty and present in evidence that he or she had only acted in self-defence (which, not being a plea, did not need to satisfy the legal test for self-defence) or that the death occurred during a spontaneous and unplanned affray, without planning or malice. Since the jury was asked to give judgement as to the specific charge (did the accused commit felony murder) and not whether the accused was responsible for the death at all, they could not give judgement for a lesser offence such as manslaughter but would have to acquit the accused.

The law was, in its written form, both inflexible and ambiguous, which left the justices to decide who was worthy of merciful readings of the law and who was deserving of an unyielding application of its harshness.⁷⁷ But Colin Richmond was not thinking of the violence of English judicial punishment. Rather, he was critical of the apparent ease with which some of the English gentry and nobility perpetrated acts of overt criminality without reprisal and clearly felt no fear of its threat.⁷⁸ This does not look like simple contempt or disregard for the law. And yet there is a sense amongst historians that something protected certain perpetrators of unlawful violence (usually perpetrators with elite social status) from legal punishment and that this was known and recognised by them. This gave them confidence to continue acting in this way, and much of the historical treatment of violence amongst the social elites depends on the validity of this premise.

⁷⁶ The 'Bill of Middlesex' is one of the more popular fictions in King's Bench (Baker, *IELH*, 41-2). On the financial costs of litigating appeals, see Christopher Whittick, 'The Role of the Criminal Appeal in the Fifteenth Century', in *Law and Social Change in British History: Papers Presented to the Bristol Legal History Conference, 14-17 July 1981*, H. G. Beale, J. A. Guy, John Alexander, eds. (Royal Historical Society, 1984), 65-72.

⁷⁷ Baker, *OHLE VI*, 511-2.

⁷⁸ This is the core of Richmond's discussion of William de la Pole, Duke of Suffolk (*Endings*, 234-7, and more generally in Richmond, 'Identity and Morality', 226-41).

Not all elite perpetrators of violence went unpunished by virtue of their gentle birth, but if anyone was going to receive a light treatment by the courts it was the gentleman or esquire, and not the yeoman or labourer. Few members of the middle or upper gentry who found themselves convicted of felony claimed the privilege of clergy, given the contradictions such a claim would create, and the abuse of this mitigating strategy is often overstated by critics of late-medieval and early-modern criminal jurisprudence. However, the success or failure of these strategies was often dependant on the social status of the participants, and those who were of good repute and gentle background were more likely to find success (or avoid the harshest punishments) than those of lesser social status or reputation. The benefit of clergy was the most familiar means of avoiding secular punishments, and one that was open to considerable abuse, but social status of a more abstract sort played an important role.⁷⁹

When the course of justice deviates from the norm, it is difficult to know where the pressure comes from, given the flexibility and unpredictability of judicial process and opinion in applying the law.⁸⁰ Social status was certainly a variable at work for or against the parties involved, but the courts' treatment of social status was not consistent or intuitive. Perhaps the best approach is to ask whether the English gentry believed that what they were doing was at all *wrong*, regardless of what the law said, when they resorted to violent self-help. It is hard to think that they did not, given how clearly their victims felt abused, and how dearly they held the chance for redress from the institutions of the law. As we have seen already, the legitimate operation of the law was often indistinguishable from unauthorised use of force using the colour of the law by those who had the means to enforce their rights or to remedy their perceived wrongs using their own resources and men. Was the English nobility simply more assertive in enforcing their rights in ways they knew were illegal but morally legitimate? Were the local gentry too impatient with the central courts to await formal authority to enforce local order or serve retributive justice? Agreeing on any

⁷⁹ On personal fame as a mitigating circumstance in criminal matters, see Bellamy, *Criminal Trial*, 47, and his example from KB9/262 m98. On the benefit of clergy, see Baker, *IELH*, 128, 513-5, and Cockburn, *Assizes*, 128-9.

⁸⁰ On the practical independence of judicial decisions, see *Spelman II*, 137-42. Abuses were more likely and to some degree expected at the lesser courts and within the jurisdictions of more powerful, well-connected, or grasping holders of lordship (see Gunn, *Henry VII's New Men*, 175-9).

distinction between these interpretations may be impossible and it may not matter all that much in the end. But it is, at least, worth articulating the questions to better understand what it is we still do not know.

Chapter 5

Law enforcement in the fifteenth century and the mechanics of diffuse authority

To the modern lawyer, ‘History is his drudge: the lay brother who may serve but never teach.’⁸¹ Legal historians thrive on ‘jurisprudential content,’ the sort of case law that records how the law was interpreted and how it changed over time. Criminal proceedings rarely make this sort of contribution to legal history and so felony and violence is uncommon in the *year books*, compiled for legal professionals in the fifteenth and sixteenth centuries.⁸² The private reports and notebooks of attorneys and justices add more, but rarely do they contain the discussions on points of law or procedure that other matters produce. Criminal actions were concerned with establishing guilt and did not normally make for good case law.⁸³ Legal historians tended to use the records of King’s Bench in a similar fashion, and when they extracted from the felony cases they did so because they furnish trivial details of medieval lives rather than legal opinions.⁸⁴ Beyond this, there is a more fundamental problem for social historians who seek material in the legal records, which is the challenge in understanding the conceptual foundation of criminal law and more abstract concepts of justice and order, in the pre-modern period, which determined what was and was not included in the record of a given act of criminal violence. Understanding how English criminal law worked or was expected to work helps us understand the contents of the records, how they came to be

⁸¹ J. Goebel, jr., *Felony and Misdemeanor: A Study in the History of Criminal Law* (Philadelphia: University of Pennsylvania Press, 1976), xxxiii.

⁸² D. J. Seipp of the College of Law, Boston University, compiled a searchable database of yearbook entries (collecting reports from the earliest manuscript collections and the printed editions that appeared from 1535 and into the seventeenth century). Cases from this database are cited here by law term, regnal year, reign, plea number (pl.), and ending with the Seipp database number.

An informal search through the 2,096 cases reported in the yearbooks from 1450-81 identified 126 of felony before King’s Bench, Common Pleas, and the court of the Exchequer. Amongst these, the majority concerned issues of jurisdiction or hypotheticals. Few entries directly concerned cases involving violence. This reflected the interests of the law reporters and the kinds of problems they thought were worth recording, and criminal actions did not often supply that sort of content (e.g. *YB Pasch.* 13, Edw. 4, pl.4 / Seipp: 1473.004, a discussion of the jurisdiction of corporations, including the pursuit and arrest of those found in the act of riot, trespass, or other felony).

⁸³ Criminal law is an equally uncommon topic of interest in private notebooks kept by attorneys and justices—Sir John Spelman (c.1480-1546), justice of King’s Bench, being an exception.

⁸⁴ Sayles found ‘concealed within the hard rind of legal history’ (Maitland’s phrase), was nothing less than immutable human nature which ‘reminds us that, whatever else may change, it remains throughout the centuries unchangeable’ (Sayles, *King’s Bench II*, xcvi-xcviii-xcix).

recorded in this way, and what they do or do not tell us about the meaning of the violence they describe.

For late-medieval English elites, justice and order were defined by a nested system of overlapping responsibilities and hierarchies, rather than an institution separate from and in opposition to other systems of authority, power, and order. As Susan Amussen explained:

The political and social theory of the period described a society in which each self-governing part fit into a larger unit. Thus the household was run by its (male) head, villages were run by propertied heads of household, counties by justices of the peace, and the country by the king with the assistance of his council and Parliament. Society was composed of a series of reciprocal hierarchical relationships in which protection and care were exchanged for deference and obedience.⁸⁵

Law and order was a communal process that was predominantly complaint-based. The system relied on the victims of crime, or those who lived in the locality and were aware of wrongdoing, to report such events to royal officials who had the power to proceed against the accused. As Anthony Musson wrote, ‘the identification of offenders was left mainly to the wronged individual and the local community.’⁸⁶ In the thirteenth and fourteenth centuries, the most powerful local officials were the sheriff and his staff who represented the closest period analogue to a modern police force. By the 1450s sheriffs had to share their considerable local authority over legal matters with justices of the peace, who theoretically acted as a check against abuse by local officers, sheriffs, and their regional lords. But, ‘the sheriff’ and the justice of the peace ‘was nothing more than a local knight or esquire temporarily vested with office,’ and bound more closely to their local social connections and hierarchical norms than to the rule of law or statute.⁸⁷

These men (and they were always men) saw themselves as members of a vaguely defined elite society that had the rural and urban gentry as its lowest layer, and at its peak, the titled nobility who may not have held lesser offices such as sheriff but were often named to commissions of the peace and of array where they rarely contributed more than their names. Instead, the work of

⁸⁵ Susan Dwyer Amussen, ‘Punishment, Discipline, and Power; The Social Meanings of Violence in Early Modern England’, *Journal of British Studies* 34, no.1 (1995), 4.

⁸⁶ Anthony Musson, *Public Order and Law Enforcement: Local Administration of Criminal Justice, 1294-1350* (Woodbridge: Boydell, 2001), 169.

⁸⁷ Bellamy, *Crime and Public Order*, 93. See also Baker, *IEHL*, 24-5, Lander, *English Justices of the Peace*, 1-12.

commissions was conducted by the local gentlemen with legal experience or training.⁸⁸ Informally, elites from the titled nobility and below influenced the application of justice within their local spheres of interest to the extent that they were able. This was not seen as counterproductive to law and order but a necessary part of its maintenance. Patronage and influence is seen as part of that ‘bastard feudal contract,’ but it was also seen as an essential part of a lord’s social and moral obligations to his subjects, dependants, and equals.⁸⁹ The English Crown, and its justice system, was enabled and supported by this ‘managerial elite’ drawn from a secular clerical gentry that could be professional administrators and lawyers, landowners who dabbled in international trade and diplomacy, or men of gentle birth but limited means who spent their lives in the service of superiors.⁹⁰ And this system seemed to work, or at least it satisfied the expectations of contemporaries. The system struggled only when an individual or an association of individuals held excessive influence such that they threatened the interests of other elites or unsettled the balance of formal and informal power in a locality. Maintaining stability, peace, and the prevailing social order was the principal goal of communities but this was not always possible by following the rule of law too closely.

Historians have typically thought of this system as inherently unstable, unreliable, and ultimately powerless in the face of organised or large-scale violations. This is particularly apparent in studies of militarised violence involving magnates and their retainers who practiced ‘the noble feud.’ Howard Kaminsky wrote that historians ‘take noble warfare as simply the violation of peace rather than as part of a system of peace different from that of the central state.’⁹¹ This is exactly what Elias did with violence in the later Renaissance, and it is a habit of historians of the Wars of

⁸⁸ For example, Richard, Earl of Warwick, was named to commissions of the peace for Derbyshire, Cumberland, Kent, and Lincolnshire in separate warrants all dated 10 May 1461 (*CPR 1461-67*, 559, 561, 565, 566). There was no expectation that Warwick would sit on any of these in person. The high representation of local gentry in commissions continued well into the Tudor period (Gunn, *Early Tudor Government*, 28-9).

⁸⁹ M. A. Hicks, ‘Restraint, Mediation and Private Justice: George, Duke of Clarence as “Good Lord”’, *JLH* 4, no.2 (1983), 56-60.

⁹⁰ For ‘managerial elite’, see Richmond, *Fastolf’s Will*, 77, and the example of the semi-professional administrator, John Throckmorton: Colin Richmond, ‘Ruling Classes and Agents of the State: Formal and Informal Networks of Power’, *Journal of Historical Sociology* 10, no.1 (1997), 1-26. See also the detailed study of this sub-group of the social elite in S. J. Gunn, *Henry VII’s New Men and the Making of Tudor England* (Oxford: OUP, 2016).

⁹¹ Kaminsky, ‘Noble Feud’, 56.

the Roses and the early Tudors. Simon Payling explained it this way: ‘For the Crown, success in containing disorder was to be measured, not by the punishment of landed felons, but by the fostering of local conditions favourable to the reconciliation of disputants and unfavourable to the escalation of private feuds.’⁹² Enforcement was clearly something everyone had an obligation to uphold—especially the gentry and titled nobility. Justice was possible only by the participation of the community; it was never seen as a service that the Crown was expected to provide in all circumstances. The Crown may have claimed for itself the moral basis for order and justice, but ‘since it is impossible that the king alone should suffice to determine all things, therefore he must of necessity have the aid of justices and sheriffs and other ministers, wise and god-fearing men, in whose words there is truth, so that by dividing the burden the labour will be lighter for each.’⁹³

This limited self-help was loosely defined and largely dependent on context. Also important for studies of violence and its social place is that local customary law or ‘communal justice’ was rarely seen as an obstacle to more centralised systems of order, with the possible exception of land use and rights. The 1285 statutes of Winchester codified some of the local responsibilities for law enforcement, emphasising the importance of reporting crime and apprehending offenders. An essential duty of those who lived in the locality was to honour the ‘hue and cry’ which empowered witnesses or victims of crime to call on others for help in apprehending offenders.⁹⁴ Failure to respect the hue and cry—to make false use of it or to ignore it when made—was a punishable offence in and of itself.⁹⁵ These formal obligations also protected those who, without any other formal warrant for their actions, caused injury, damage, or deaths in the course of apprehending suspected offenders.⁹⁶ All of this built on a long history of informal and customary rights to personal self-help at the local and individual level—rights with which the Crown was careful to associate itself without overreaching its authority. It is significant and not at all

⁹² S. J. Payling, ‘Murder, Motive and Punishment in Fifteenth-Century England: Two Gentry Case-Studies’, *EHR* 113, no.450 (1998), 2.

⁹³ *Fleta*, I, c.17.

⁹⁴ Peter Coss, *The Origins of the English Gentry* (Cambridge: CUP, 2003), 181-200.

⁹⁵ Baker, *IELH*, 503; Samantha Sagui, ‘The Hue and Cry in Medieval English Towns’, *HR* 87, no.236 (2014), 179-93.

⁹⁶ The death of a suspected felon, in the course or arrest or escape, was generally considered excusable homicide: *Spelman* II, 314-5.

accidental that the statutes repeating these obligations for the keeping of peace and order are near statutes describing the military obligations of citizens of the realm.⁹⁷

This was, at its core, a complaint-based system of justice and correction. The Crown was there to provide justice but was not expected to seek out wrongdoing or to exact punishment without explicit consent of the people it ruled. As John Watts explained, contemporary political theory (to use an anachronistic phrase) felt that the Crown had two primary functions: ‘defence of the realm and the provision of justice.’ These powers were tempered by the belief that ‘in theory at least, they were to be exercised in response to demand: defence was only justified by external attack, whilst kings who went out actively to sit in judgement where there was no serious disorder’ conjured memories of merciless administration of royal authority.⁹⁸ Such a diffuse system of authority, with little supervision, was a necessity but was also prone to external influence that could be contrary to the letter and spirit of the law, though this was rarely against the shared interests and intent of the Crown. Furthermore, the relationship between the central and regional courts and their officers was never as dysfunctional or antagonistic as earlier historians have claimed.⁹⁹ Simon Walker has demonstrated that most of the contemporary complaints about the abuse of the law or its failure to deliver justice constitute proof of how much faith communities had in the law as a means of obtaining justice and protecting their rights. They did not argue for equality before the law, but ‘justice with favour’: it was tacitly accepted that the law could be abused, so long as it was done for the litigant’s good.¹⁰⁰ Theoretically, English statute law (‘the law of man’) was supplemented by the ‘law eternal’, the ‘law of reason’ and the ‘law of God’ which gave many alternative paths of action to those willing to press their case.¹⁰¹ There is a kind of cynical but

⁹⁷ Baker, *IEHL*, 3-4, 8-9.

⁹⁸ John Watts, *Henry VI and the Politics of Kingship* (Cambridge: CUP, 1999), 21-2. Watts also points out the contradictory position of the Crown as font of justice (in that it gives law its authority) while at the same time subject to the rule of law and spirit of justice created by the philosophy of rule, current at that time (*ibid.*, 20-1).

⁹⁹ Coss, *Origins*, 181-2, shows how this contrast between the central authority and local interests is an illusion caused by a focus on structures rather than people, as in Bertha Putnam’s study of the early keepers of the peace.

¹⁰⁰ Simon Walker, ‘Order and Law’, in *A Social History of England, 1200-1500*, 102.

¹⁰¹ These four laws are described as such in the 1523 dialogue of Christopher St. German (*St. German’s Doctor and Student*, F. T. Plucknett and J. L. Barton, eds. (Selden Society, 1974), 9-31). Fortescue ‘in Praise of the Laws of England’ (chapter xv), describes only three: the law eternal, customary law, and statute law

pragmatic reasoning in this logic that respected the institutions of the law courts without rejecting illicit alternatives.

Violence was an important part of the administration of justice, literally and figuratively. Just violence was legitimised by the universally accepted moral structure of Christian doctrine and philosophy that made the infliction of pain retributive punishment, or symbolic and visible acts of compensation. Violence was an act with a deep moral purpose.¹⁰² ‘For penalties are devised to control men, so that those whom the fear of God will not turn from evil may at least be restrained from wrongdoing by a temporal penalty,’ was the straightforward explanation in *Fleta*.¹⁰³ What constituted legitimate and lawful actions and what was illegal and morally questionable was never really something that the law could define and it rarely attempted to do so. Context was everything, as the thirteenth-century author of *Fleta* explained in his discussion of breaking the king’s peace:

Force is the assault of a greater body which cannot be resisted, and there is force whenever anyone demands what he thinks is his, otherwise than by judgement of the court [...] Whether force be armed or unarmed, it will not in every instance be wrongful, because some arms are for protection, and what one has done for the protection of his Body or his right is deemed to have been done lawfully.¹⁰⁴

The identification of lawful force, however, was complicated and legal theory was often self-contradictory. If there were no clear barriers between the formal, institutional structures of justice and its informal, local, and self-regulating elements (such as local participation in arresting suspected felons, detaining property, goods, or occupying land, enabling arbitration or enforcing the judgements of the courts), then it is reasonable to expect that violence could occupy a similar place and carry similar meaning amongst individuals with no formal legal authority. The notion of justice (restorative or retributive) and its maintenance was organic to the conception of English communal values. It was influenced by the idea of the ‘social body’ that placed individuals within

(John Fortescue, *On the Laws and Governance of England*, Shelley Lockwood, ed. (Cambridge: CUP, 1997), 24).

¹⁰² Historians have long acknowledged the use of violence by medieval ‘state’ authorities, often as examples of an ‘arbitrary and irrational’ system of coercive control, but this is usually interpreted within an institutional context rather than a social one. See the discussion of violence used in early Carolingian legal codes in Patrick Geary, ‘Judicial Violence and Torture in the Carolingian Empire,’ in *Law and the Illicit in Medieval Europe*, Ruth Mazo Karras, Joel Kaye, E. Ann Matter, eds. (Philadelphia: University of Pennsylvania, 2009), 79-88, quoting 79.

¹⁰³ *Fleta*, I, c.16.

¹⁰⁴ *Fleta*, IV, c.4.

an interconnected and interdependent unity of purpose and morality. The metaphor has deep roots in devotional literature and popular didactic entertainments which tend to describe crime and disorder in ways that mix the moral with the physical. Disorder and vice had a physical aspect that made them potentially contagious, like an infection, and treatment could be equally physical, through amputation of the problem (community) member with force. This made everyone part of the same organic system of moral and legal maintenance, supplementary to written law and the courts.¹⁰⁵ Violence was, therefore, part of the formal and informal systems of justice, the mechanisms of social interaction, and in the maintenance of identity, hierarchy, and authority.

Clearly, this does not lend itself to neat capsule summaries of procedures for the use of violence or its description in the legal records.¹⁰⁶ It is important, however, to have some idea of how the system worked or was expected to work because that influences the way the records were created and why criminal violence was described by the courts. It is also important to explain, as best one can, how the records of criminal violence were created, how the criminal process tended to work in cases of elite violence, and how that system reflected the social norms of its participants, how those changed over time, and how the records themselves record some of that change.

Torrential ambiguity: Violence in the Court of King's Bench

When first reading the records of England's central criminal court, one is confronted by what can best be described as their 'torrential ambiguity.' To the unaccustomed, these records can read like something produced mechanically through the random combination of words and stock phrases, arranged through some apparatus imagined by Ramon Llull, which takes collections of seemingly meaningless words and phrases and combines them at random, occasionally producing something

¹⁰⁵ This concept, as it regards the urban communities of late-medieval England, is explained in M. James, 'Ritual, Drama, and the Social Body in the Late Medieval English Town', in *Society, Politics and Culture*, 16-47.

¹⁰⁶ The complexity of the system, and the basis for its development and implementation (as well as its distinctly different conception of order and the function of the law, as compared to the modern approach), is best explained in Baker, *IEHL*, 500-2, 558-61.

coherent.¹⁰⁷ This is not to exaggerate the challenge of the sources; the point is that the meaning of these records is not always obvious or intuitive because they were never intended to provide narrative accounts of events for readers outside the legal system. Rather, they are the products of a process that created its own genre with its own conventions. Thankfully, anyone who studies violence will develop a considerable tolerance for torrential ambiguity, and it is a constant companion in the rolls of the Court of King's Bench, in the files of coroners' returns, petitions to Chancery, within the complaints, questions, and answers—inconsistently preserved—from the Court of Star Chamber. We do not expect the records of legal processes to speak unambiguously; it is a familiar aspect of juridical language to direct itself to an audience familiar with a controlled and deliberately 'technical' language. The resulting records are also very impersonal, even bloodless.

When confronted with this sort of material it is tempting to simply count heads, since the records do not seem to tell us much about their contents. But this technical formalism has rules, and knowing these rules, and how the language of legal description conforms to or violates them, helps us understand what they were trying to say and what that meant for the meaning of violence.¹⁰⁸ Legal records were created in a very context-specific way for specific purposes: to preserve particular but still subjective information that has a certain legal value using a set of phrases, constructions, and terms with juridical meaning. The misuse or absence of such terms and phrases could potentially invalidate the legal action that they record, and the formal rules of the law limited

¹⁰⁷ This is the description of Lull's *Ars magna* (c.1305) in Jorge Louise Borges' article 'Ramón Lull's Thinking Machine,' in *The Total Library*, Eliot Weinberger, Esther Allen, and Suzanne Jill Levine, eds. (Penguin, 2001), 155-59.

¹⁰⁸ The 'tactical indictment' was used by appellants to force the subject of the appeal into formal or informal arbitration or to influence their behaviour with threats of legal action. However, the threat was often simply a bluff since many such actions were withdrawn by plaintiffs while they still had the chance to do so without cost. Cases brought to the court in this way were often legally flawed and were withdrawn as soon as they were entered, leaving the case for the King's attorney to prosecute (Edward Powell, 'Jury Trial at Gaol Delivery in the Late Middle Ages: The Midland Circuit, 1400-1429', in *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800*, J. S. Cockburn and Thomas A. Green, eds. (Princeton, NJ: Princeton, 1988), 112, and Joseph Biancalana, 'The Legal Framework for Arbitration in Fifteenth-Century England', *AJLH* 47, no.4 (2005), 351-58). There is evidence that the courts themselves counselled parties to withdraw actions and seek arbitration rather than pursue formal prosecution following appeal or indictment. However, arbitration is just as poorly documented as informal pleading before justices (Derek Roebuck, *Mediation and Arbitration in the Middle Ages: England 1154-1558* (Oxford: Holo Books, The Arbitration Press, 2013), 98-9, and his example from KB27/663 *rex*55).

what could be discussed in these documents. Imprecision in the phrasing of court documents—lack of specificity about the time of day that a crime occurred, or failing to identify a victim of an assault or owner of stolen goods—could jeopardise a case.¹⁰⁹ As Justice Broke explained in 1523, ‘forms must be kept up and used, or else everything will be confused and orderless.’¹¹⁰ Compounding this tendency towards minimalist text was the practice of cautious attorneys and court clerks who had the freedom to choose to record as little as possible in an effort to reduce the chance of mistakes entering the text, but also making for very dry and uninspiring generic accounts.¹¹¹ This was a genre characterised by a ‘pragmatic literacy.’¹¹²

Unlike many of the documents that survive from the Court of Star Chamber, Chancery, and other conciliar courts, the records of King’s Bench were not written to persuade a reading audience. Still, these are not and may never have been objective accounts of what actually happened at the time and place specified. Rather, the record often tells us what its contributors—jurors, coroners, judges, victims, perpetrators, or clerks of the court—*decided* was appropriate to say, claim, or admit to those around them based on how they felt about the events as they actually transpired or how they felt the law should respond to events. We know that justices, coroners, and even jurors participated in a process of interview, examination, and debate with victims, accused, and witnesses, but those discussions are rarely part of the record, particularly in criminal matters.¹¹³ The lack of exposition, especially in cases of acquittal, can be frustrating, but it is all we can expect

¹⁰⁹ In Hil. 1490, justices of King’s Bench felt that ‘around the hour of mid-day in the night,’ a phrase found in an indictment of felony burglary (KB9/379 m48) was ‘repugnant in itself’ and because the same indictment did not expressly state to whom the stolen goods belonged (only presumed, in this case, that the home owner also owned the goods), that the indictment was insufficient to sustain the King’s suit, although they had the power to alter the record on this technicality or ignore it. Judicial discretion often balanced on the reputation of the accused when technicalities presented themselves (KB29/119 *rot.6d*, but cited as KB27 in *Caryll’s Reports* II, 22-3).

¹¹⁰ *Year Books, Henry VIII: 12-14 Henry VIII 1520-1523*, J. H. Baker, ed. (Selden Soc., 2003), 183.

¹¹¹ An argument made on a technicality in a charge of homicide failed because the judges felt that the ‘ill fame’ of the accused was enough to compensate for the indictment’s failure to properly name the victim (who was an alien to the kingdom). Conversely, an indictment for assault against a ‘certain Lombard’ was held to be insufficient to convict where the defendant was otherwise inoffensive to the court (Marjorie Blatcher, *The Court of King’s Bench, 1450-1550: A Study in Self-Help* (Athlone Press, 1978), 53).

¹¹² So-called, in M. T. Clanchy, *From Memory to Written Record: England, 1066-1307*, 3rd ed. (Wiley-Blackwell, 2013), 238.

¹¹³ The reasons for the general neglect of criminal law are explained in more detail in Baker, *IEHL*, 500-503. It is also important to recall how much variation was possible in the process of the law given how differences in legal knowledge, familiarity with the case, and the general feeling of the jurors could and did influence the process (see, Powell, ‘Jury Trial’, 105-15).

from the system since jurors did not need to justify the actions of those they acquitted. Their only task was to determine guilt or innocence over the ‘general issue’ in the appeal or indictment. Only when these details or legal discussions were relevant to the ultimate course of the case would they appear in the formal record. Some notable cases may be preserved in the private notes or circulating reports within the community, and these have been used here, where relevant.¹¹⁴ The rolls are also filled with entries that have no obvious resolution and we are left to assume that neither victim nor the Crown felt they could pursue the case any further, or some informal arbitration concluded the dispute in a way that could not be recorded, and this could and did happen in cases involving violent assaults and death.¹¹⁵

Pardons for violent crime are little help where the formal record is lacking in detail.¹¹⁶ General pardons, such as those issued with regularity by Henry VI and his successors, were not supposed to extend to homicide but the wording often embraced all felony including homicide, and there are many instances of accused killers successfully obtaining release from outstanding charges through the simple expedient of paying for inclusion in the pardon list.¹¹⁷ The limited details of context and circumstance make it easy for modern readers to conclude that pardons were obtained with the help of corruption and intimidation but the reality was that such tactics were not necessary since the law provided for lawful ways to get the same result.

The impression that the working of justice was plagued with corruption and outside influence is more a result of the terse recording of legal processes. Lists of those covered by

¹¹⁴ For example, Hugh Weston, Rector of Lincoln College, Oxford, was indicted for the beating and subsequent death of Thomas Flaxney. Weston challenged the sufficiency of the indictment on two points, namely that the phrasing of the indictment was not clear in describing the victim’s time of death and Weston’s addition of ‘scholar’ (rather than *Master*) was an error. The court accepted the challenge of the date of death but upheld the addition. The record only describes the first challenge and not the second (KB27/1099 *rex*3). Only the survival of private notes taken on the case provide the additional details (*Spelman* I, 103-4).

¹¹⁵ Baker, *IEHL*, 76-78, 501, and 522. Some of the complexities of pleading in criminal charges, which do not normally appear in the formal record, are discussed in *Spelman*, II, 299-303.

¹¹⁶ By contrast, French pardons for homicide issued in the seventeenth century are rich in detail, as they often contain the ornate self-justifications of accused and the reasoning behind successful grants of clemency. This material has been used with significant results for scholars of the duel in Carroll, *Blood and Violence*.

¹¹⁷ See Storey, *House of Lancaster*, appendix III, 210-16, who takes this line of argument. Pardons for lesser offences, which were grantable *de facto*, by the courts had to satisfy specific legal requirements but these were not always articulated in the pardon as enrolled (Naomi D. Hurnard, *The King’s Pardon for Homicide Before A.D. 1307* (Oxford: Clarendon, 1969), 327-38).

general pardons do not specify what each individual was absolved from or on what grounds the pardon was granted and there was no requirement that they do so. Pardons often appear as duplicate entries, attached to the relevant cases in the rolls of King's Bench, but these do not record anything more than the fact of the pardon's legitimacy.¹¹⁸ Legislation starting with the early Tudors added to the list of felonies excluded from general pardons but this did not limit the discretion of the Crown to grant specific pardons whenever it wished so long as the wording for the pardon was sufficiently specific.¹¹⁹ There was some refinement of the law concerning justifiable homicide and manslaughter early in the sixteenth century, but the language was always unclear regarding felony murder, and discussions in the records or by men learned in the law illustrate the complexity of interpretation rather than clarifying the intent of the law itself.¹²⁰ Deaths caused by mischance or accident (and without malice) were still considered a trespass against the Crown but were often pardoned *de cursu*, 'of course'. Alternatively, jurors may have chosen to simply acquit those who were accused of felony violence on the grounds that it was justified and thus not criminal, thereby avoiding the cost and discomfort of trial and detention prior to the issue of a pardon, and such a judgement may not appear in the record in so many words.¹²¹

All of this inconsistency of the law and its application to violent acts was partly the fault of the inflexibility of felony law itself. The punishment for all indictable felony was death. Murder was an indictable felony as was theft (or larceny) of goods or chattels worth as little as 12d. If theft was committed against the person, it was also felony, regardless of the value of the item taken: 'Note that if a man takes something from my person, even if it is only a penny, this is robbery and he shall be hanged.'¹²² Likewise burglary ('where the thing is done in the night'), where a thief

¹¹⁸ Sir John Paston II, John Paston III, and several of the men named in the two civil appeals over deaths at Caister, 1469, availed themselves of Edward IV's general pardon in July 1471, enrolled the following February (Richmond, *Fastolf's Will*, 233n, and Davis *PL I*, 566-7). That pardon would not protect them in the civil appeal, but it did stop any suit on the part of the Crown.

¹¹⁹ On this issue, and the freedom of English monarchs in granting pardons, see K. J. Kesselring, *Mercy and Authority in the Tudor State* (Cambridge: CUP, 2003), 74-7.

¹²⁰ Baker, *OHLE VI*, 553-62.

¹²¹ Kesselring, *Mercy*, 91-97, and Green, *Verdict*, 65-97.

¹²² *Reports Henry VIII*, I, 182.

breaks into a home or into private property, was felony even if nothing was taken.¹²³ Even repeated misdemeanours could result in sentence of death if the convict was considered unredeemable.¹²⁴

Contemporaries took this problem of punishment seriously and ‘miscarriages of justice were regarded with particular horror.’¹²⁵ In 1540 Sir Humphrey Browne, a justice of assize, told a jury considering a charge of murder that ‘If you be in doubt, lean rather to life than to death.’¹²⁶ As Baker points out, the royal pardon was an essential tool for mitigating an otherwise inflexible judicial system and an appeal for pardon often acted as an informal appeal of judgement where a formal one was unavailable.¹²⁷ Finally, the pardon did not protect the accused from the results of civil appeals for damages or cases brought before Star Chamber.¹²⁸ Pardons spared life and limb, but not lands or chattels.

Searching for case studies in the rolls of King’s Bench: KB 27

G. O. Sayles, who edited seven volumes of excerpts from the KB rolls, wrote that ‘those who have become thoroughly conversant with legal records never abandon the pleasure of reading them. For there is no doubt about their fascination, a fascination which in its variety cannot be rivalled by that of any other group of mediaeval records.’¹²⁹ Sayles’s enthusiasm also reminds us that legal historians are, in Edward Powell’s words, ‘a strange breed.’¹³⁰ Historians with even the most devoted antiquarian tastes will struggle with them, not because they are complicated or obscurely composed, or that the Latin is notoriously opaque, but because they are so tediously technical and

¹²³ Ibid., 183, and Baker, *OHLE VI*, 571-2.

¹²⁴ As explained in the legal text called *Britton* (c. 1300) *Britton: An English Translation and Notes*, F. M. Nicols, ed. (Washington, DC.: John Burn & Co., 1901), 52, bk I, c.24.

¹²⁵ Baker, *OHLE VI*, 511. Baker points to a case heard by Justice Spelman wherein a bailiff obtained false testimony from a 12-year-old child against the child’s father on a charge of murder, resulting in execution. The bailiff was sentenced to ‘perpetual imprisonment for this horrible act’ (*Spelman*, I, 60).

¹²⁶ Baker, *OHLE VI*, 512, citing Elton, *Policy and Police*, 320. The case is *R. v Bengier*, which became the subject of a process in Star Chamber that recorded the words of the justices in greater detail than did the records of the assize (STAC2/24/163).

¹²⁷ Baker, *IELH*, 515-7.

¹²⁸ Kesselring, *Mercy*, 74.

¹²⁹ Sayles, *King’s Bench III*, xc.

¹³⁰ Powell wrote with authority, being a legal historian himself (‘Law and Justice’, in *Fifteenth-Century Attitudes: Perceptions of Society in Late Medieval England*, Rosemary Horrox, ed. (Cambridge: CUP, 1994), 29).

repetitive and thus ‘it is easy to mistake the routine for the trivial.’¹³¹ The controlled and bloodless language of the legal record works to conceal the lived experiences they describe and the fatigued reader may miss the important details hidden in the mass of formulas and forms. The result is that few historians are prepared to delve into the records to any depth and instead write good history through the ‘skeleton-like reports’ in the yearbooks and contemporary notebooks, commentaries, chronicles, or moots given in the Inns of Court which abstract or distil the raw content of the records into something more digestible.¹³² For this reason, the thirteenth century is well represented in modern editions of extracts. However, Sayles’ labours ended with the final year of Henry V, the point at which his seventeenth-century predecessor, Arthur Agarde, had decided to end his struggles. Thus we are left to search the records of the court beyond 1421 for instances of elite violence with only indirect assistance.¹³³ Historians of the Tudors have editions of Star Chamber records in profusion, but they are often selections by county or of the highlights, and much remains unpublished from the extant files.¹³⁴ The current digital catalogue for the National Archives reproduces much of the earlier printed calendars and abstracts, making these sources much more accessible, but these abstracts are poor stand-ins for the documents themselves.¹³⁵ Finding the case

¹³¹ M. Burger, ‘Sending, Joining, Writing, and Speaking in the Diocesan Administration of Thirteenth-Century Lincoln’, *Mediaeval Studies* 55 (1993), 151.

¹³² W. R. Vance, ‘Law in Action in Medieval England’, *Virginia Law Review* 17, no.1 (1930), 1. See, for example, J. M. Russell’s body of work treating the judicial duel (beginning with his doctoral thesis, *Trial by Battle*, University of London, 1977), which was written entirely from printed yearbooks, the calendars of rolls, and abstracts of cases in other publications.

¹³³ That labour, wrote Agarde, ‘had become wearisome to the mind and harmful to body’ (Sayles, *King’s Bench V, v*) spread over three decades. Sayles describes how Agarde grew weary of his task well before he finally stopped with the last rolls of Henry V, a fatigue evident from the steady shrinkage of the abstracts, in proportion to the growing volume of source material (Sayles, *King’s Bench III*, xc). Agarde had to work with the rolls in the poor conditions of the Chancery at Westminster, while Sayles worked in the reading rooms of The Public Record Office then at Chancery Lane. Thanks to the efforts of the Anglo-American Legal Tradition project, run by the University of Houston (www.aalt.law.uh.edu), the modern student may now consult the rolls as digital images. AALT has scanned the entirety of KB27 and KB29 from which the bulk of the present study of the rolls is compiled. Chronologically, those rolls match the numerical arrangement by the archives, but the files of coroner’s and justice’s returns to King’s Bench (KB9), which (as of April 2017) AALT has scanned from KB9/1 to KB9/588/1, are only roughly chronological, and several files in the 1000 range have not been scanned. Still, this is logistically a major improvement over the calendars and access through the archives in person. However, it remains unclear if prolonged exposure to the KB rolls is any less harmful to mind than they once were to body.

¹³⁴ J. A. Guy, *The Court of Star Chamber and Its Records to the Reign of Elizabeth I*, Public Record Office Handbooks 21 (HMSO, 1985).

¹³⁵ Ryan Rowberry, ‘Violence and Affray in Herefordshire During the Early Tudor Period (1485-1547)’, *Transactions of the Woolhope Naturalists’ Field Club* 51 (2006), 51-70, is a quantitative study of STAC cases using only the calendared abstracts found in the online database. Rowberry’s paper has the trivial

studies for this thesis still required a great deal of hands-on work with the KB rolls and associated collections of raw material, and these were consulted wherever possible. Although it can take some time to develop the eye for the ‘pothooks and hangers’ of medieval court hand, the hand was very resistant to change over time, so palaeography is not a serious challenge.¹³⁶

The rolls of King’s Bench (which are not strictly speaking, *rolls* of continuous sheets of vellum, but rather bundles of membranes called *rotuli*, individually abbreviated as *rot.*) were collected into a single bundle for each term, which were subdivided into four separately numbered parts: ‘the plea rolls,’ or ‘rolls of the pleas side [...] the rolls of estreats of fines and amercements [...] the “Rex rolls” of the Crown side [...] and the rolls of warrants of attorney.’¹³⁷ These rolls, identified by the National Archives series designation KB 27, provide the majority of the case studies described below. The court kept a form of index or docket roll for all its business (designated IND by the Archives) and a separate docket roll, called the *controlment* roll (KB 29), recording a similar index of only Crown pleas. The division of the rolls in KB 27 reflects the division of business heard before the court. The plea side contained cases where the Crown was not the principal appellant; therefore, cases brought by private parties that touched on the interests of the Crown appeared here. The *rex* side collected cases where the King acted as appellant, often in an abstract or symbolic way, which is how prosecution by indictment was understood. Following the practice of Marjorie Blatcher, cases from the plea side of the roll are cited as *Just*, while the Crown pleas are cited as *rex*.¹³⁸

Most cases involving violence reached King’s Bench by indictments made before coroner’s inquests, Sessions of the Peace, or Commissions of *Oyer* and *Terminer*, who were

distinction of appearing in one of the most obscurely titled journals encountered in the course of writing this thesis.

¹³⁶ Quoting William Maitland, in Sayles, *King’s Bench* III, xc. The most notable change in the KB rolls, between 1450 and 1650 is the layout of the parts of cases themselves. Otherwise, the hand is largely consistent, and the Latin varies only in the degree of abbreviation used.

¹³⁷ Baker, *OHLE VI*, 149-50. For the sake of consistency this thesis will cite the respective parts of the rolls with the following notation: following the TNA division and item designations, individual *rotuli* are identified by their numeration within the roll. Cases from the obverse are identified by ‘d’ for dorse. When a case spilled over onto additional *rotuli*, they were not numbered, and are identified here by lower-case roman numerals.

¹³⁸ Blatcher explained her system in this way: ‘Since the chief justice’s name appears in the heading of the first *rotulet* of the civil pleas, I have referred to this section as the justice’s roll, and as the word Rex heads the indictments I have called this section the rex roll’ (*Court of King’s Bench*, [xv]).

unwilling or unable to hear charges and give judgement or felt that the case was better handled at King's Bench. Cases of felony also came to King's Bench directly by private appeal or bill of complaint made by individuals legally entitled to do so, and whatever the course of events with these cases, they invariably generated a corresponding suit on behalf of the Crown.¹³⁹ There is evidence from the thirteenth and fourteenth centuries that the courts encouraged appeals by private parties 'for which there was no authority in either common or statute law,' so that they could transform into the King's suit, prosecuted on the *rex* side.¹⁴⁰ Parties risked punishment for bringing cases for which they had no right of appeal, into court. But this was often excused 'because [the accuser] sued for the preservation of the peace.'¹⁴¹ King's Bench also had the power to call in cases from the lesser courts, usually through appeals to Chancery by parties to the matter, which was accomplished by a writ of *certiorari*. The court also heard cases after judgement by appeals by writ of error made by parties to the case. These had to turn on questions of process rather than of evidence.¹⁴² King's Bench did act as its own court of first instance in cases of felony violence if it occurred within the boundary of Westminster or Middlesex or other jurisdictions of the Crown, and there are records of gaol delivery in the plea rolls from justices of KB who travelled on circuit.¹⁴³ Occasionally King's Bench acted as a place of record for agreements through arbitration and of agreements to keep the peace, to abide by judgements, or to ensure that certain parties conformed to judgements made there and elsewhere.¹⁴⁴ Complicating matters is the *nisi prius* and *assize* system which allowed for the judgement of felony cases outside King's Bench. *Nisi prius* writs issued by King's Bench commanded local sheriffs or bailiffs to assemble juries to hear certain

¹³⁹ Baker, *OHLE VI*, 151-7, Bellamy, *Criminal Trial*, 19-49.

¹⁴⁰ Sayles, *King's Bench II*, lxxxv, *Spelman I*, 64.

¹⁴¹ Sayles, *King's Bench II*, lxxxiv.

¹⁴² Writs of error over felony cases are not common, but an example is KB27/1080 *rex*27 (Trin. 1531), which reversed an outlawry on the grounds that the proclamation was not returned by the sheriff (to confirm execution of the order) which was against the statute of 6 Hen. 8, c.4 (*Spelman I*, 302).

¹⁴³ Examples encountered in this study include delivery of the prison of the Marshalsea in KB27/798 *rex*39 and KB27/838 *rex*7. There is a gaol delivery for the King's castle at Oxford, before William Hody, knight and Thomas Tremeale, justice of gaol delivery, in KB27/937 *rex*5.

¹⁴⁴ Examples found during this survey include duplicate entries of sureties and their releases (KB27/1117 *rex*7), complaints against the abuse of legal powers in ecclesiastical liberties (KB27/754 *rex*1, recording irregularities in a local court of the Abbot of Burton-on-Trent, 1446), or the right interpretation of a hereditary claim of office (KB27/818 *rex*42, concerning John Mowbray, 4th Duke of Norfolk's claim as hereditary marshal of England).

cases in the locality as part of business heard on the *assize* circuit.¹⁴⁵ Because these cases were initially referred to King's Bench, their conclusions were entered in the rolls, but after 1485, the *assize* circuit took over the majority of criminal actions entirely and much of their work never found its way into the KB rolls.¹⁴⁶ *Assize* courts visited their circuits two or three times a year and were staffed by justices drawn from the central courts, including King's Bench. Their warrants authorised them to hear and determine judgement over felony cases independently.¹⁴⁷ Regrettably, the rolls before 1554 kept for the circuits no longer survive, other than in the occasional entries in the plea rolls or supplementary files (such as KB 9 and the JUST series).¹⁴⁸ One will also find entries of gaol delivery and pleas of the Crown overseen by KB justices on the *assize* circuit, as well as indictments made before coroners and commissions of the peace that were sent directly into KB for prosecution.¹⁴⁹

The chronological scope of this thesis makes anything more than a sample of incidents of elite violence from the rolls impractical. Therefore, the case studies discussed here were located through a search of the *rex* sides of the rolls for the Michaelmas terms at five-year intervals. Of the four terms in which King's Bench sat each year, Michaelmas is the most consistent in its start and end dates and duration. It is also one of the longest terms and follows the longest vacation between terms, and therefore is likely to contain the widest variety of business.¹⁵⁰ The hope is that this method of sampling will not over-represent cases already studied in secondary literature or make too much of cases already familiar to historians through chronicles, petitions to parliament, and

¹⁴⁵ These writs explained that jurors were expected to appear at Westminster unless an authorised court of *assize* appeared locally, a phrasing that gave the process and its writs their name (Baker, *IELH*, 20-1).

¹⁴⁶ Entries on gaol delivery are the most common duplicate record in the KB rolls, and they can appear on the *just.* or *rex* sides, depending on the nature of the business heard by the commission (eg: KB27/798 *just.*23, 30).

¹⁴⁷ J. S. Cockburn, *A History of English Assizes, 1558-1714* (Cambridge: CUP, 1972), 18-22.

¹⁴⁸ *Ibid.*, 333-36.

¹⁴⁹ *Ibid.*, 17; Baker, *IELH*, 20-1.

¹⁵⁰ The term usually began on or around 6 October and ended about 1 December (P. Brand, 'Lawyers' Time in the Later Middle Ages', in *Time in the Medieval World*, Chris Humphrey and W. M. Ormrod, eds. (Woodbridge: Boydell & Brewer, 2001), 74-5).

period correspondence. Given the scope of the study and the number of cases that the sample represents, it is felt that this gives a representative selection of elite violence from the period.¹⁵¹

To supplement the material from King's Bench, a search was made of other collections that contain accounts of gentry and elite conflict. The Court of Star Chamber did not have jurisdiction to hear most criminal cases but it could and did hear cases that contained accounts of violence and threatening behaviour and language, particularly cases alleging riot and organised force.¹⁵²

Surviving Star Chamber records consist of 'bills, answers, depositions, and other proceedings but the decrees and orders'—the judgements of the court—'have not survived.'¹⁵³ The value of Star Chamber for social historians is that, unlike King's Bench, the records contain pleadings and answers produced by the parties involved, and occasional *interrogatories*—records of interviews conducted by the court, with plaintiffs and defendants—which often contain details that other courts would not consider legally relevant or necessary for the formal record. Of course, any document created by plaintiffs, defendants, or their legal representatives will try to persuade or convince readers in ways that a formal record of the court would not.¹⁵⁴ Charles Phythian-Adams studied the language of conflict recorded in depositions and showed how complementary an interdisciplinary approach can be to their contents.¹⁵⁵ Few cases from Star Chamber can match the richness and detail of the depositions concerning the 1504 affray between the fifth Earl of Northumberland and the Archbishop of York (or rather their respective retainers) which Richard Hoyle studied.¹⁵⁶ More usual is the fragmentary 1520 complaint of Agnes Clayton, widow of Hugh Clayton, and the answers to the court composed by the defendants.¹⁵⁷ We do not have the original complaint by the widow Clayton so we can only speculate on the grounds of her argument, but the

¹⁵¹ This survey began with KB27/758, (Mich., 29 Henry VI) and ended with KB27/1196 (Mich., 2/3 Elizabeth).

¹⁵² Baker, *IELH*, 105; Gunn, *Early Tudor Government*, 81-5.

¹⁵³ M. S. Giuseppi, *Guide to the Contents of the Public Record Office Vol. 1*, rev. ed., (HMSO, 1969), 149. The decisions we do have from the court are recorded elsewhere, as in the Year Books, when they contain information contemporaries felt was important. The records we do have are on occasion in poor condition, as the example cited by Elton in the introduction demonstrates.

¹⁵⁴ See Guy, *The Court of Star Chamber*, 117-9.

¹⁵⁵ Phythian-Adams, 'Rituals of Personal Confrontation'.

¹⁵⁶ R. W. Hoyle, 'The Earl, the Archbishop and the Council: The Affray at Fulford, May 1504', in *Rulers and Ruled in Late Medieval England*, Rowena E. Archer and Simon Walker, eds. (Hambeldon, 1995), 235-56.

¹⁵⁷ STAC2/17/73. The case relates to a civil appeal at King's Bench, brought by Agnes Clayton against the same parties in the death of her husband (KB27/1036 *just*.35).

answer has important insight into the normative standards of force and violence used by the gentry-officers of the law and, by extension, normative standards of elite behaviour.¹⁵⁸ Despite their rich potential, cases from Star Chamber rarely appear in wider studies of elite English interpersonal violence and they have only been sampled here.

There remains, of course, an unknowable quantity of interpersonal violence of a sort that would have pushed at the edges of normative standards of behaviour but did not cross the threshold into recorded action. Petty assault, what a sixteenth-century borough record called a ‘blooding,’ did not demand the attention of King’s Bench or even itinerant justices, but could be resolved by fines at the local level of the manor or village with little need to record details of events.¹⁵⁹ Parish and county records have furnished detailed material for some studies into crime, interpersonal violence, gender, and social or economic structures, but these sources have been excluded from the following study for the sake of time and space. Occasionally these records contain extensive narratives of confrontations and violence, exchanges of insults, and reported speech, but social elites rarely appear.¹⁶⁰ However, we must remember that what we find in King’s Bench is often the most extreme examples of elites using violence illegitimately and there is a risk of overstating its meaning or significance within wider social or historical contexts. The advantage of studying the extremes—cases within the legal system that are catalogues of violations of social norms and examples from correspondence, literature, chronicles, and elsewhere, contrasted with the literature that represents the socially approved and praiseworthy performances of legitimate violence—is that we can more clearly identify change and continuity between those sources and their treatment of violence over time. What was once condemned may be condoned in later years or in different circumstances.

¹⁵⁸ The case before King’s Bench was notable for the defendant’s claim that the court did not have jurisdiction outside the Principality of Wales. While the defence did not hold, the case was dismissed following Agnes Clayton’s failure to appear at subsequent hearings (*Reports of Henry VIII*, I, 36-7, although Baker does not cross-reference to STAC2/17/73, since it may not have contributed much to the specific issue taken before King’s Bench).

¹⁵⁹ *Calendar of the Court Books of the Borough of Witney: 1538-1610*, James L. Bolton and M. M. Maslen, eds. (Gloucester: Alan Sutton, 1985), 4, 6, and 181, which records only three identifiable cases of assault, heard before the local assembly (two of which are called a ‘blooding’ between two parties). There are no other details in these records other than the value of fines levied against the perpetrators.

¹⁶⁰ See in particular Karen Jones, *Gender and Petty Crime in Late Medieval England: The Local Courts in Kent, 1460-1560* (Woodbridge: Boydell, 2006).

Knowing how cases came to King's Bench and how they were recorded is one thing, while understanding the actual descriptions and what they mean for social history is another. We can be neither too trusting nor too suspicious of what we read here and it is well to remember what J. B. Post wrote: 'in a developing discipline it may be hard for scepticism to stand against enthusiasm, and the prophet of caution may have to risk unpopularity in preaching a necessary message.'¹⁶¹ Some elements in the legal record were self-conscious fictions, included because the form of the statute or the requirements of a felony accusation made such insertions necessary, even if they were clearly false. For instance, what made felony trespass a *felony* was the assertion that it was committed with force and arms, and such force could be entirely abstract and implied. Without force, a trespass was not actionable through King's Bench and could only go as far as the Court of Common Pleas, or a lesser court, as a misdemeanour.¹⁶² Complainants and judges often read 'force and arms' as synonymous with 'coercion' of some form or another but the details were rarely important for the record, which is often represented by the repetitive construction of a particular form of the charge.¹⁶³ Where there was real threat and force, composers of indictments would add relevant detail, altering the usual formula to emphasise the reality of that part of the charge.

While these records were never composed as tools of persuasion, they are still products of subjective processes and they reflect the mood and opinion of the court in their choice of language within the limited range the genre allowed. Knowing this, we can read these texts with an eye to how they were created, what forces may have influenced creators in their choices of words, and what they felt needed to be concealed or illuminated.

¹⁶¹ Post, 'Crime in Later Medieval England', 211.

¹⁶² The reason for this fiction is not always explained in the period literature, but it was understood firstly as a violation of a right by actual or implied threat or force, and therefore an abuse of power and breach of the King's peace. It is described in this way in the mid-sixteenth century by St. German, *Doctor and Student*, 298-9. See also J. H. Baker, *The Law's Two Bodies: Some Evidential Problems in English Legal History* (Oxford: OUP, 2001), 41-4.

¹⁶³ An indictment for felony trespass, which did not include the phrase *vi et armis*, was considered valid in the 1520s, since felony trespass presumed force and arms and breaking of the peace (*Reports of Henry VIII*, I, 97).

The violent few

While the chronological scope of this study is long, the number of cases discussed in detail is comparatively small, and not all come from the *rex*-side sample-survey. In the first place, violence involving social elites makes up a very small proportion of the business in the rolls. Many of these cases are also simply too thin on details to allow for any useful analysis outside a quantitative approach. Some of the cases were tracked down from the records of court process in the sample rolls, which pointed to the roll where the case was entered in full. The 1454 murder of John Hoye, discussed in chapter 6, is such a case. Writs of arrest for Hoye's assailants were found amongst the 76 cases in the *rex*-side of the 1455 roll, which included 13 cases naming elite perpetrators with some hint of force or violence.¹⁶⁴ The 1460 roll gives us some of the complicated stages in the Pierpoint-Greene affray (also discussed in Chapter 6), along with more than a dozen entries repeating charges against various defenders of the Tower of London who were tried before a special commission held by Earl Warwick following his occupation of the city in July 1460.¹⁶⁵ Some cases alleging violence, no matter how fascinating, are ultimately little more than anecdotes, such as the improbable charge of trespass with force and arms, *in the manner of war*, entered against Joanna Brocas, widow, and others, who broke into a home and stole various goods. They were charged in 1443-4, and the case concluded in 1460.¹⁶⁶

The rolls from 1465-75 give us only eight cases involving elite performers, but none of these have proven to be a suitable case study, although material from the *justice* side of the rolls for these years features in chapter 8.¹⁶⁷ Likewise, the material concerning the siege of Caister in 1469, and the large affray at Nibley Green in 1470, has come from the *controlment* rolls and the *justice* side of the KB rolls. There is a handful of interesting but unrewarding cases from the rolls up to

¹⁶⁴ The first roll sampled (KB27/758) contained 32 cases, but none were suitable for detailed study. Hoye appears in KB27/778, where most cases date from the 1440s, and three cases with gentry participants involved William Tailboys, and another three gentlemen appear on charges relating to Cade's Rebellion.

¹⁶⁵ The garrison appears at KB27/798 *rex*2d, 3d, 4d, 5, 6, 7, 8d, 26d, 30, 30d, 35, which covers almost everyone convicted by the commission (KB9/75). The cases are entered here to enrol the pardons issued that October.

¹⁶⁶ KB27/798 *rex*6.

¹⁶⁷ These are KB27/818 *rex*2d (William Tailboys again), 4d (John Godewyn, gent.), 9 (William Reynolds, Stephen and Elmer Tregasowe, gents.), KB27/838 *rex*4d (Richard Beauchamp, esquire), 5d (Peter Steynford, gent.), KB27/857 *rex*3d (John Multon, gent.).

1500, including the 1477 murder of Giles Thornton by Thomas Lumley, son of George Lumley (from 1485, Lord Lumley), committed within the royal verge at Windsor Castle. The murder, often described as a duel and occasionally credited to George himself, concluded with a royal pardon in October 1480, but this thesis can offer no additional insight into its circumstances.¹⁶⁸ Starting around 1490-95, charges describing armed trespass on disputed lands begin to take on a more threatening tone. The tone comes not from the assailants, but from the court itself which seems to be increasingly uncomfortable with organised and armed acts of illegality involving the gentry or sub-gentry perpetrators.¹⁶⁹ Consistent across the entire survey is the observation that fatal violence was always uncommon (when compared to the frequency of non-violent confrontations or criminal activity), no matter who was involved.¹⁷⁰

A scattering of cases involving social elites found in the rolls from 1500-1530 give the impression that there was a steady movement away from large-scale, public, and organised displays of armed force. It was increasingly difficult to make such displays without being seen as a threat to the political or religious order and the royal courts, and the gentry at large were sensitive to this. For this reason, and others discussed in chapter 9 and 10, interpersonal violence became *privatised* just as martial culture became more democratised.¹⁷¹ There are more cases in this period that resemble what we would call *domestic* violence involving close family members, motivated by personal animosities or dysfunctional relationships, rather than in defence of their public-self, perceptions of honour, or even disputes over rights and lands (although these can be compounding

¹⁶⁸ KB27/876 *rex*8. The incident is mentioned by the antiquarian Leland (Leland, *Itinerary* V, 118), but is undated.

¹⁶⁹ In particular, KB27/937 *rex*8 (armed trespass, 'in the manner of war' by Sir John Hastings of Babthorpe, who had a long-standing dispute over property with William Babthorpe), *rex*15 (trespass by Sir Richard Shelton, Sir John Paston and others, in distraint of livestock, described in very militarised terms). There are also some interesting cases in these later rolls such as the three entries on Edward Redmane, gent., of Yorkshire (KB27/937 *rex*9d). These include one charge of trespass and assault made before a commission of the peace from 20 Edward IV, headed by the young Duke of Gloucester, which may explain why he was chosen to act as one of his Northern transplants during his reign (R. Horrox, *Richard III: A Study of Service* (Cambridge: CUP, 1991), 51, 58, 156, 192).

¹⁷⁰ Violent elites in the 1495 roll are KB27/937 *rex*11 (Thomas Neville, esq. of Holt, for assault of Robert Perwych, 10 Henry VII), 11d (Alex Highmore, gent., charged with murder), and 5d (Sir Thomas Oxenbrigge, charged with the abduction and rape of Johanna Reynolds, daughter of Alice Reynolds).

¹⁷¹ KB27/997 *rex*5, charging Thomas Sharnbourn (or Sherbourne) gent., of Norfolk, for gathering armed, and assaulting three deputies of Robert Le Strange (who may have been acting on a commission of the peace or assize, at the time), in August 1508.

circumstances).¹⁷² These personal, or private, acts of violence are characterised (in the accounts prepared for the court, if not in their actual performances) by a lack of organisation and a lack of premeditation, where violence was not overtly expected or intended.¹⁷³ Two cases discussed in the final chapters fall into this category of personal, private violence, in that the motivating factors (so far as one can determine) concerned threats to the perpetrator's public and private-self, rather than their wider spheres of influence, rights to land, office, or authority.¹⁷⁴

¹⁷² KB27/957 *rex*3, charged Alex Neville (gentleman of South Leverton), and one yeoman, with the murder of Roger Cave, killed by blows from a staff and a 'hegyngbyll' (15 Henry VII). This is the only 'pastoral' violence with elite participants in the sampled rolls.

¹⁷³ Examples include KB27/977 *rex*14 (William Kyngston, gent. of Westminster, and others, for assaulting William Savell and Thomas Moleyns in their home), KB27/997 *rex*5d (Edward Lancaster, gent., accused of killing Thomas Salkeld at Boston, 23, Henry VII).

¹⁷⁴ This is the 1532 affray between Sir William Pennington and Richard Southwell, which was a very public event at Westminster during term, in chapter 9, and the murder of Fulk Cole by his half-brother Robert in 1555, in chapter 10.

PART III: Case Studies to 1485

1 April 1454 was a Sunday. Late in the evening, three gentlemen— William Denys of Combe Raleigh, Nicholas Whiting, and John Pymage (sometimes called ‘Bonevile Bastard’), both from Shute, and a dozen yeomen and husbandmen—arrived at the village of Cullompton, Devon.¹ They were armed to the teeth and they were looking for John Hoye of Buckerell. Hoye was styled ‘yeoman’ in the court records but he had occupied the office of bailiff for Thomas Courtenay, thirteenth Earl of Devon, in his Hundred of Hayridge, which made Hoye marginal gentry.² Denys and his men, ‘around the hour of twelve’ forced their way into the home where they had found Hoye, and there ‘horribly and feloniously killed and murdered’ him.³ They took no goods, and if anyone else was hurt in the incident, it was not worth the attention of the authorities. This narrative was established by the jury who sat at the coroner’s inquest held by John Kyrton the following Tuesday.⁴ Kyrton sent the indictment to Westminster, from which returned writs empowering the sheriff of Devon and his deputies to arrest those named, and to present them before the Court of

¹ The following narrative is constructed from the records in the King’s Bench roll (KB27/774 *rex*1), and the coroner’s indictment in the King’s Bench return file (KB9/274 m36). The indictment was repeated at KB27/774 *rex*14d, apparently by mistake, when two of the accused appeared later in the term to enter pleas (the clerks marked the entry as *vacat* and *alibi*, indicating that the case was already entered somewhere else in the roll). The men of lesser rank, who accompanied Denys were (in the order entered in the indictment) Richard Troughton, Richard Waryner (or Warner), and Henry Strete, all of Shute, Oto Stone and John Hunte, both of Combe Raleigh, Thomas Hugynsson of Axminster, William Langham, *jr.* of Shute, Robert Bykelegh of Ottery St. Mary, Richard Chancellor, of Combe Raleigh, John Brode of Ottery St. Mary, all yeomen, William Foundyng, Freemason, of the parish of St. Sacardos, outside the East gate of Exeter, and John Heyne, *souter* (cobbler), of Exeter, and Thomas Leynton, another cobbler, from the parish of St. Trinity, Exeter. An interlinear note on KB9/274 m36, indicates which of those named passed through the administrative hands of the Marshalsea, and Richard Chancellor is so noted, however, he does not appear with the others in entries found in KB27 or KB29, which is not explained.

² Hoye is given no addition in the indictment, but elsewhere he is referred to as ‘yeoman’ or ‘baily.’ He was co-bailiff with John Garlond in 1452 and was likely still in the office at his death (KB9/15/2 m6.3, and Cherry, ‘Struggle for Power’, 143, citing Devon Record Office, Exeter, CR523).

³ KB9/274 m36, ‘circa horam duodecimus,’ and ‘horribilitus et felonius interfecerunt et murdurawit.’

⁴ Kyrton was coroner for Devon from 1437 until his death in 1461 (*The Chancery Case Between Nicholas Radford and Thomas Tremayne: the Exeter Depositions of 1439*, Hannes Kleineke, ed. (Exeter: Devon & Cornwall Record Society, 2013), lxiii).

King's Bench. The indictment reached the courts in early July, and the writs were issued within the month.⁵

Denys and his co-accused appeared in court to answer the charges that October and there were several answers available to them.⁶ They could give a general denial of guilt, and 'defend' themselves against the charge. This produced the 'general issue': the question that the jury would be asked to decide. Alternatively, they could challenge the legality of the charge (or 'take exception'), usually based on a failure of the court to frame the charge correctly. They could also make a 'general traverse,' denying all facts asserted in the charge (which would also produce the general issue for the jury to decide), or they could enter a special traverse, which denied one fact in the charge while accepting the rest. This special issue had to be resolved in its own way before the court could proceed to questions of guilt or innocence. They could enter a *demurrer*, which admitted to the facts but argued that these did not constitute a charge against the defendants. Finally, they had the option of admitting the facts, but by entering new facts, argue that this did not constitute a charge against the defendants (a strategy referred to as 'confession and avoidance').⁷ Typically, defendants chose the simplest route by entering pleas of 'not guilty,' since some of the other approaches would make subsequent pleading a self-contradiction if the first strategy failed.⁸ That is not to say that pleas or challenges were not tested before the justices to see what was likely to succeed, but we usually only know what was ultimately the successful approach.⁹ There was a possible challenge open to Denys and his co-defendants, in that the indictment did not contain the

⁵ The indictment was received by King's Bench in the 'octaves of St. John,' or the first week of July (KB9/274 m36d). The writs of *capias* addressed to Kyrton were issued on 25 July (KB9/274 m37).

⁶ The formula that describes the defendants as having 'presented themselves, in their own person' distinguishes voluntary appearance from arrest and presentation in the custody of a sheriff or other officer (see the presentation of Nicholas Philip into KB, by the keeper of the Tower of London: KB27/785 *rex*9d). Voluntary appearance often improved the chances of obtaining release on bail or *mainprise*, while appearance in the custody of an officer of the law was more prejudicial. Presentation while in custody also transformed the defendant into a prisoner of the court which meant that any failure to appear at a later stage could lead to conviction in *absentia*, rather than the customary outlawry for failure to appear (*Spelman I*, 105).

⁷ On the stages of pleading see Baker, *IELH*, 76-7, *Spelman II*, 92-5, Baker, *OHLE VI*, 335-50.

⁸ These options form a kind of logic-tree that is not accessible from all branches, since they could become self-contradictory and very often the best course of action was for the defendant to simply plead 'not guilty' and leave the issue to the justices and the jury (*Spelman II*, 92-5, 152-6).

⁹ Baker, *OHLE VI*, 386-9, called 'tentative pleading' and it can be recorded in the yearbooks, moots, or notebooks.

formula that identified each principal with a wound and that ‘the deceased would have died from it if not from the others.’¹⁰ There is no record of any objection, either because it was thought unlikely to succeed or because a general denial of guilt would have the same effect in the long run. Denys and his men answered that they were ‘in no way culpable’ in Hoye’s death and that they were willing to ‘place themselves on the country, for good or ill.’¹¹ Having heard their plea, the court released the accused on *mainprise* pending trial. Assurance of their return was given by William Denys, esquire, Denys’ father, John Bonville of Shute, esquire, (likely the son of Thomas Bonville, younger brother of William, Lord Bonville, and therefore first cousin to Pymage, who was Lord Bonville’s illegitimate son), and Andrew Hillersdon, esquire, another important Devonshire man.¹²

Gathering a jury of ‘good and lawful men’ from the regions around Cullompton, who also met the financial and moral standards of the court, and were willing to make the trip to Westminster or some other place designated by the court for what was very likely twenty minutes

¹⁰ The laws were not entirely clear on this point but judicial opinion in the fifteenth century was that in any appeal or indictment for a killing, there must be a statement attributing a fatal wound to some person or action (*Spelman II*, 308, *Readings and Moots*, II, 274) and that without such information, the charge is expected to fail. This omission was not challenged in the indictment, nor was it challenged in the later civil appeal.

¹¹ Starting appeals that had little chance of success was an expedient that the courts actively supported, and King’s Bench rarely punished those who brought appeals in this way, unless it was clearly malicious: Whittick, ‘Criminal Appeal’, 65-72, Sayles, *King’s Bench II*, lxxxi-lxxxvi.

¹² William Denys senior was a regular visitor to Westminster in 1453-4, at a time when he was supposed to be with Sir John Lysle (possibly Viscount Lisle, who was collecting men to re-enforce the Earl Shrewsbury’s forces in Guyenne, *PRoME*, XII, 211). Denys’ letters of protection for travel abroad were revoked in May 1453 (*CPR 1452-61*, 69), because he ‘tarried’ in Westminster. Later, he was sheriff of Devon (1466, *CFR*, v. 20, 191). A writ of *diem clausit extremum* concerning his property was issued 4 May 1479 (*CFR* v. 21, 173, and C140/72/67).

Bonville’s extended family is discussed in more detail below (see also ‘Bonville, Sir William II (1392-1461), of Chewton-Mendip, Som. and Shute, Devon’, *HoC 1386-1421*, II, 284-8). *IPM Hen VII*, II, 179-80, identifies John Pymage’s mother as ‘Isabel (Esebelle) Kyrkeby.’ William Pole, *Collections Towards a Description of the County of Devon* (J. Nichols, 1791), 319, indelicately called her Lord Bonville’s ‘concubine’, an exotic alternative to ‘mistress.’ The ‘Pymage’ surname only appears in the records relating to Hoye’s death.

Andrew Hillersdon was sheriff for Devon from November 1455, and a landowner around Cullompton (*CFR 1452-61*, p. 144, *IPM Hen VII*, II, p. 228, Wedgwood, *Biographies*, 455-6).

The practical purpose of bail was to allow the accused the opportunity to seek pardon in person. Those confined would have to find friends or other representatives to seek pardon on their behalf, which was less certain and more costly (Hurnard, *King’s Pardon*, 34-6). Seventeenth-century jurist, Matthew Hale (*Historia Placitorum Coronae*, 124-29), wrote that early statutes under Edward III removed the possibility of bail or *mainprise* for those accused of all homicide except self-defence, but this did not apply to cases heard by King’s Bench, which was free to bail anyone, ‘even in high treason or murder’ since it stood in place of the Crown.

of trial, was going to take time.¹³ During that time William Denys senior and junior, John ‘Bonevyle’, esquire of Clopton, Somerset (likely the same John who was cousin to Pymage) and John Pymage himself (addressed here as John Bonville, of Shute), entered into a recognisance of 100 marks, dated 17 August 1454, on the condition that they appear at a specific time before Chancery.¹⁴ If this appearance was not in relation to pardons, it may have related to a pending civil appeal over Hoye’s death and any preliminary attempts at arranging arbitration.¹⁵

A civil appeal of homicide was entered by Hoye’s widow, Cecilia, to King’s Bench, in April 1455.¹⁶ Her motives for bringing the appeal while the indictment was already before King’s Bench may have come from her suspicion that the accused were going to secure pardons.¹⁷ This generated another set of writs instructing the sheriff of Devon to collect the defendants and present them once more to the court at the following term, but they did not come at the first calling, or the second. Cecilia had to appear before the justices at Westminster twice more to hear the charges read out, without answer from the accused, costing her the fees for additional sets of writs of *capias*

¹³ Quoting Fortescue, ‘In Praise of the Laws of England’, in *On the Laws and Governance of England*, 39. On the composition of fifteenth-century juries, and the problems of gathering them, see Bellamy, *Bastard Feudalism*, 27-33, and *Spelman II*, 104-7.

The brevity of trials has always suggested a lack of care and due process, but this was compensated for by the self-informing nature of the jury and the court officers, who would have been familiar with the case, and the evidence for or against judgement, well in advance of trial. R. B. Pugh, ‘The Duration of Criminal Trials in Medieval England’, in *Law, Litigants and the Legal Profession*, ed. by E. W. Ives and A. H. Manchester (Royal Historical Society, 1983), 104–15. If juries or justices felt they were not sufficiently informed in a case, they were far more likely to acquit, based on ignorance of the facts, than to convict (B. W. McLane, ‘Juror Attitudes Toward Local Disorder: The Evidence of the 1328 Lincolnshire Trailbaston Proceedings’, in *Twelve Good Men and True*, 36–64).

¹⁴ *CCR 1447-54*, 516-7. The purpose of this order is unclear, but the roll later indicates that the conditions were met. It may relate to initial steps in seeking pardons from Chancery or preliminary moves for arbitration.

¹⁵ Because arbitration was rarely documented, it is difficult to know at what stage in the legal process it was likely to begin but it was possible to resolve a case in this way at almost any stage before judgement was made, especially if arbitration was done with the assistance of the court itself: Roebuck, *Mediation and Arbitration*, 96-105.

¹⁶ KB27/776 *just*, 39d, is not very legible near the end, so the details are not clear. There are no marginal notes concluding the case, beyond the last entry of the defendant’s *mainprise*. Cecilia’s pledges for her appeal were John Talbot, esquire of Tiverton, and Thomas Wellwrought, gentleman of Colyford. Pledges were often fictitious, but pledges for appeals of felony, ‘are usually genuine’ (*Spelman II*, 89, n.3) and Cecilia’s pledges are certainly real. Wellwrought (or Welywrought) was household steward for the Earl of Devon in the 1430s (*Chancery Case*, lxxxv), and a regular litigant and pledge at Westminster in the 1450s. Convenience, rather than social connections, recommended Wellwrought as a pledge since he was present at Westminster on unrelated business in the same term, and regularly appeared thereafter (KB29/85 *rot.* 29d, 31, where he appears in other cases as pledge or as *mainprise*).

¹⁷ Whittick, ‘Criminal Appeal’, 63-5.

to the sheriffs.¹⁸ If Cecilia went through this process once more, without answer, the court could outlaw the defendants for failure to appear, but this would not constitute a conviction on her appeal and she would not have any claim to their forfeited goods and chattels.¹⁹ Failure to appear was contempt of the court, not an admission of guilt on the charge, and outlawry on these grounds was routinely reversed by pardon.²⁰

Denys and the rest finally appeared to answer Cecilia on the third reading of the charge in Michaelmas term, 1455. They told the court that they were in no way guilty of the charge and asked for judgement by jury. They were again released on *mainprise* to appear when called.²¹ The court assigned the case to the Trinity term, 1456, when a jury would hear the evidence and give judgement, but this was postponed repeatedly into 1458, where its conclusion is ambiguous.²² The civil appeal had the effect of delaying the king's suit, since the practice of the court (until 1488) was to grant any civil appeal of felony priority over the Crown's case.²³ This gave the defendants more time to look for pardons and several were obtained in early 1456 (likely the general pardon announced on the final day of the July parliament of 1455).²⁴ These pardons were recorded on the case in the Easter term at Westminster, 1456, freeing Denys, Whiting, and ten other defendants,

¹⁸ Ibid., 333, *Spelman II*, 90-1. Only in 1488 were plaintiffs in appeals of death, allowed to appear by attorney at subsequent sittings of the court (Whittick, 'Criminal Appeal', 56). KB27/779 *rex*14d, appears to be the final writ issued in the case, which came just before the appearance of the defendants in the same term.

¹⁹ This outlawry was for contempt of the court for failure to appear and was not considered proof of guilt in the case itself. Judgements by default were possible in cases at common pleas, but not for felony. Following outlawry, the appellant could make a request to the court for an *exigent*, against the accused for recovery of goods or compensation, but this was only possible in certain circumstances and could be reversed following pardon and acquittal (*Spelman II*, 90-1).

²⁰ Baker, *OHLE VI*, 330-4; *Spelman II*, 90-92.

²¹ KB27/776 *just*.39d. The defendants were *mainprised* by William Courtney of Coker, Devon, armiger, John Boneville of Boxgrove, Sussex, esquire (likely the cousin to Pymage, once again), Walter Raleigh of 'Whychwood', esquire (MP for Devon in the 1453 parliament, whom the editors of *PRoME XII*, called 'a close adherent to the Earl of Devon' 222), and Robert Cape, esquire.

²² Entries relating to *mainprise*, and writs of arrest appear in KB27/782 *just*.26, but there are no further entries in the *controlment* roll beyond this date.

²³ Baker, *OHLE VI*, 514.

²⁴ Pardons were often obtained individually from Chancery and these 'special pardons' were enrolled in the patent roll but none of these men appear in the calendared volumes. It is more likely that they took advantage of this general pardon of 31 July which also covered felonies including murder, committed before 9 July 1455 (*PRoME XII*, 329, 346-7). Those named in this pardon were enrolled on the supplementary rolls (likely C67/41, 1454-56) which have not been calendared. Given that the accused appeared on the civil appeal in the term following the announcement of the pardon, it is likely that they did so knowing they had pardons on the way. Storey (*House of Lancaster*, 216) gives the total figure of 2,057 individuals named in the pardon. On the wording of general pardons see Kesselring, *Mercy*, 56-7.

from prosecution on the King's suit.²⁵ That left six defendants, including John Pymage, to stand trial on the original indictment. That trial finally occurred at the assize sessions for the Oxford circuit in late 1456. Chief Justice of the King's Bench, John Fortescue, held the assize by *nisi prius* and a jury drawn from Devon found the defendants 'in no way culpable' of Hoye's death.²⁶

There is nothing unorthodox or unexpected in this case that suggests inappropriate behaviour, abuses of the system, or the influence of external forces. The system may have worked poorly, but it still worked as intended, and it seems an unlikely study with which to challenge the historiography of violence in mid-fifteenth century Devon. But its orthodoxy is what makes it such a useful point of comparison with other cases from the period. The jurors who made their indictment before the coroner, and the corpse of the recently killed John Hoye, had no intention of telling us exactly what they thought led to his death, but through their choice of words, and through their choice of details to record or withhold, they reveal something of the social and moral meaning of the violence they were called to witness. Comparing Hoye's case with others from the period and region makes these messages about the social place of violence discernible. There is no evidence to argue that Hoye's murderers went unpunished because they abused the legal process, or forced jurors or officers to do as they wished; rather, it seems that Denys and his men acted within acceptable—if still illegal—normative guidelines for the use of force by the gentry and nobility. This chapter will argue that Hoye's murder was more an act of local peacekeeping and retributive justice than it was an extension of some larger political or factional conflict, or petty criminality. It is entirely possible, and probable, that the community in which Hoye and Denys lived condoned the events that occurred on that Sunday in April 1454.

²⁵ Those entering pardons were also required to provide sureties to keep the peace, following their entry of pardons, since the civil appeal was still outstanding (KB27/774 *rex*1-1d, and KB29/85 *rot*.7).

²⁶ KB27/774 *rex*1d. This acquittal also covered the alleged flight from justice following the murder. One could be found guilty of flight, but not guilty of the offence from which one was said to flee, thus defendants would sometimes deny the felony, and flight, as if they were separate charges (*Port's Notebook*, 121).

Chapter 6

William Denys and John Hoyer

The indictment for the death of John Hoyer is typical of the genre. The accused were named, given appropriate additions of status or profession, and further identified by locality. The indictment was careful to arrange the accused in their proper social order, which also reflected the relative importance or culpability in the act itself. The description of events follows the usual order, but the level of detail is inconsistent. It begins with the description of Denys' men 'falsely, rebelliously, against good order and in disturbance of the King's peace, unlawfully gathered in the manner of war [*in modo guerrino*] and insurrection.'²⁷

While dramatic, the terms are the usual 'indiscriminate' collection that identifies unlawful assembly with some intent to do wrong.²⁸ English law was ambiguous in its definition of misdemeanour and felony trespass and, so far as gathering was concerned, what terms were needed to differentiate one from the other. There was an accepted distinction between 'riot', which implied a group of individuals committing individual unlawful acts, and 'unlawful assembly', which implied a single intention (that of the group leader) to commit an offence. Unlawful assembly was also considered an offence by itself, even if nothing else was done beyond the gathering. Gathering 'in the manner of war' was not, by itself, a phrase that held legal weight, but could be combined with specific reference to statutes prohibiting such activity done without the permission of a commission of array or direct mandate from the Crown.²⁹ Of course, the word choices in the indictments are only a partial reflection of the jurors' perception of events. They also reflect the

²⁷ KB9/274 m36.

²⁸ Baker, *OHLE VI*, 591.

²⁹ Some indictments made against followers of Courtenay and the Duke of York who participated in the Dartford gathering in 1452 (KB9/15/1 m23, 34), state only that the offence was 'contrary to the statutes and ordinances of the realm,' and while that provides an explicit statement of criminality, it does not state specifically which statute or ordinance this actually violates. The jury and justices at the time may not have known exactly which statute was violated; only that one could confidently state that the behaviour was illegal. The justices likely meant *Stat. 20, Ric. II, c11*, (against riding armed by day or night, without license by office or by warrant).

habits of the coroner or clerks. The specific legal meanings of the terms were always dependent on the discretion of the judges who later heard and interpreted the charges.³⁰

Depending on the context, a gathering of two or three men (armed or not) could be considered a ‘riot.’³¹ But as an adjective for Denys’ men it was certainly apt. They were ‘armed and arrayed and with force and arms, that is to say, with swords, staves, daggers, bows, arrows, deployed defensibly with *lorica*, sallets secured as for war, brigandines, cuirasses, long pikes, *chapel-de-fer*, and other arms defensible, [done] with malicious intent.’³² The swept-back sallets, with moveable visors, were ‘secured for war’, likely meaning that they were worn either with the visors down and fixed in place, or worn with the separate chin defences, or *bevor*. The *chapel-de-fer* was a kind of ‘pot-helm’ with a brim, and without a visor. These were simple helmets worn by the average foot-soldier.³³ Similar degrees of specificity are used to describe other defences, calling one type of body-armour *lorica* to distinguish them from the *cuirass*, differences likely of value or style, known to contemporaries. Others wore brigandines, another type of body defence, consisting of a leather or canvas coat lined with small iron plates. And they had the arms to go with the armour. This was a sixteen-man army that walked into Cullompton to kill John Hoye. It was also a description far beyond what was legally required for the indictment.³⁴

While it may not be strictly true in its details, we should accept it as broadly true, since there was no legal value in asserting that Denys’ men were armed in this way, or some like combination of dedicated military arms and trappings. The jurors felt that it was important to depict

³⁰ Baker, *OHLE VI*, 590-2.

³¹ *Ibid.*, 591, n92, 592, n93.

³² KB9/274 m36. This particular string of terms was popular with the clerks in Devon, as it is repeated in most of the indictments for gathering armed found in the KB9/15/1 return file (commissions of *oyer* and *terminer*, for Devon, 30-31, Hen. VI).

³³ Contemporary chroniclers occasionally mention instances of combatants, or tournament participants, fighting with the visor up, which was considered irresponsible, irreverent, or symptomatic of over confidence, by the wearer. It also implies that wearing it down meant business. Either interpretation could apply to the behaviour of Anthony Woodville who fought the Bastard of Burgundy on the second day of the 1467 tournament at Smithfield, ‘with his visern opyn; which was thought *jeperdous*.’ (BL Lansdown MS 285, transcribed in Bentley, *Excerpta Historica*, 211).

³⁴ The phrase invoking the charge of felony trespass with force and arms required the addition of at least one ‘arm’, usually ‘swords and staves, etc.’, or even just ‘staves’ (eg.: KB27/798 *rex1*). If there was concern that the defendant could challenge the claim of force, the indictment could be more specific by adding other weapons or arms (such as ‘pytcheforkys’ KB27/838 *rex5d*) or by using a different formula entirely (such as ‘bows, arrows, glaves, and staves,’ KB27/818 *rex9*).

the accused as having appeared ‘armed, in the manner of war’ because it fit the attitude they carried in the performance of the act. That intention was translated into the familiar forms of the indictment genre in a Devon clerk’s idiosyncratic way.

We would expect that jurors should have described the manner of Hoye’s death in equal detail: who gave his fatal wounds, what weapons were used, and their values if known. Details were important since the wounds needed to show that they were the direct cause of the victim’s death. This was a ritual of phrasing that identified the principals in the murder who would be tried first and, if convicted, largely ensure the conviction of their secondary accomplices, who, having been present at the killing, were counted as principals of a different sort. But this description and attribution of fatal wounds does not appear. As we have seen, there is no evidence that the accused entered challenges based on this point, nor did the justices of KB make any mention of it, but contemporary legal opinion would seem to consider this omission to be fatal to the indictment.³⁵ That this omission passed the Coroner, the justices of King’s Bench, and Hoye’s widow without comment is hard to explain, but it is equally difficult to see how this was an accidental oversight. The jurors did take care to note the time of day when the event occurred, since the late hour excused the locals from attempts to detain the felons or identify where they went. However, the darkness and the face-obscuring armour did not conceal the perpetrators’ identities, which suggests that the locals knew more than they were required to admit.³⁶ Finally, the jurors did say that Hoye was killed feloniously, but they did not claim that it was done with ‘malice aforethought’ or that the perpetrators lay in wait for their victim, which were terms of art to identify the most serious forms

³⁵ The formula was fixed as early as the thirteenth century (*Fleta*, I, c.25), and it was considered necessary in personal appeals of homicide, if there was no earlier indictment containing such details (*Fleta*, I, c. 31, see also Hunnisett, *Medieval Coroner*, 19-22). A reading at the Inns of Court in 1493 explained that everyone present at a homicide, no matter who gave the killing blow, was counted a principal but the appeal (or indictment) still had to implicate at least one person as having given the fatal blow since the charge also had to state explicitly that the victim died as a result of this action, and none other (*Readings and Moots*, II, 273-4). Justice Spelman gave examples of challenges to indictments on technical errors such as errors in dates, places, names of participants, their additions, or any omissions of this type, but nothing like the omission of wounds, or attributions for said wounds, which implies that its necessity was self-evident (*Spelman I*, 96-105). Likewise, Matthew Hale, writing in the mid-seventeenth century, considered that any indictment of felony homicide must contain formulae for the ‘stroke’ and the fatal wounds, although he is not clear if its omission would invalidate the charge (*Historia Placitorum Coronae [...] Vol. II* (Nutt & Gosling, 1734), 174-94).

³⁶ Hunnisett, *Medieval Coroner*, 23, mentions that jurors in Oxford often reported that felons fled at night, since they could be fined for failing to apprehend or locate those who fled in daylight.

of unlawful killing.³⁷ They may have armed themselves for unlawful reasons, but that spoke more to the legality of their gathering and not the acts themselves. Based on the jurors' choice of words, Denys and his men came to Cullompton in an organised and orderly manner, killed Hoye without any attempt to conceal the fact, and did so entirely unopposed. Of course, the nature of the legal record would have meant that even if Denys' men were opposed, or if they engaged in a prolonged affray with Hoye and other armed men, the resulting indictment could have been identical to the one we have. The only relevant legal issue for the coroner and jury was the killing of Hoye.³⁸

But how do we know that this was not simply an act of proxy violence between two Devon magnates, since that is what colours most of the violence in the period? Hoye's office in the Earl's Hundred of Hayridge, and the presence of John Pymage (Lord Bonville's illegitimate son) among the killers, was enough for Martin Cherry to make the connection with the Courtenay-Bonville feud.³⁹ The notion that Pymage was acting for Lord Bonville is attractive, given that he was certainly on good terms with his father. He had received 100 marks per annum out of rents from Lord Bonville's lands and he held the estate at Ivybridge near Plymouth while Lord Bonville was alive. Later he inherited other lands when their terms of use expired.⁴⁰ However, he does not appear in any other incident involving Courtenay or Bonville conflicts, before or after this incident. Also, John Kyrton's jury treated William Denys as the leader of the little army, placing him first among

³⁷ There appears to have been some uncertainty whether such terms were required, or if they were simply implied by *murdravit* or *interfecit*. A legal opinion from 1526 states that in any indictment where these terms appeared, one should presume that *malicia praecogitata* was present, even if the phrase is not used. The reverse was expected of pardons for murder, which had to include the phrase, or it was thought invalid (*Reports of Henry VIII*, I, 57). This does suggest that legal opinions on this point had not always agreed.

³⁸ Self-defence, or defence based on the principle of 'necessity' had to have a 'retreat prior to retaliation', unless the attack was made against the defendant in his own home (although the law was never very clear on the exact legal test of such a defence). Opinion varied as to other circumstances where one could use deadly force in defence of one's person, household, wife, or goods. Judicial discretion and context would direct the interpretation one way or another. Someone who killed in self-defence was still liable to forfeiture unless they received pardon on the King's suit. In 1532, legislation removed this final obstacle in cases where the accused killed an attempted felon on the highway or in a dwelling (*Stat. 24 Hen. VIII*, c.5). Eventually, Coroners or other indicting sessions could release the accused, after finding self-defence, without awaiting the formal pardon from the Crown (*Spelman II*, 314-5).

³⁹ Cherry, 'Struggle for Power', 143. Hayridge stretches to the East and West, irregularly, from Collumpton at its centre (Oswald Beichel, 'The Hundred of Sulfretona or Hairidge in Early Times', *RTDA*, xli (1910), 215-57).

⁴⁰ W. Pengelly, 'Prince's Worthies of Devon and the Dictionary of National Biography: Part II', *RTDA* xviii (1886), 334-6. Lord Bonville also gave the manor of Little Modbury and land at Windsor, for term of life, with the remainder passing to 'John Bonvyle, son of Isabel (Esebelle) Kyrkeby,' and John's wife Alice, daughter of William Denys. John Bonville died in May 1499 (*IPM Hen VII*, II, 179-80). This John Bonville also established a chantry for the care of the Denys' family, the year before he died (*CPR 1494-1509*, 136).

the three gentlemen in the indictment but like Pymage, Denys has no record of violence before or after the death of Hoye. Denys junior had appeared as a juror at Sir John Stourton's session of the peace at Exeter in the summer of 1452, as part of a special commission looking into violence in the March of Wales, which is his only other recorded contact with violence.⁴¹ His relationship with Pymage was not made through Lord Bonville but through closer family connections. Pymage was married to Alice Denys, William's sister, in 1453.⁴² William Denys senior was an active member of the local community, which brought him into close contact with Bonville and Courtenay.⁴³ In June 1454, he was named to a commission of array for Devon, alongside Sir William Bourghcher of Fitzwaren, Sir John Denham, Sir Baldwin Fulford, and Nicholas Radford.⁴⁴ Nicholas Whiting was a young man at the time but later rose to some local prominence and would sit in parliament during Edward IV's reign.⁴⁵ While the jury that indicted them did call attention to Pymage's lineage, it was not a key part of their narrative. Also, if the jurors felt strongly that the accused had acted with the consent or counsel of others not present (implying Bonville), they could have said so in the indictment. Jurors hearing indictments before Lionel de Welles, at sessions of the peace for Lincoln in 1449, made sure to indicate who amongst the indicted were also servants of William Tailboys, esquire. This linked Tailboys to the crimes in a way that made it possible to treat him as one of the perpetrators and not just as an accessory.⁴⁶

⁴¹ A William Denys (without addition), is listed with other jurors in KB9/15/1 m24, and in the list of jurors selected from the Hundred of Hemyock, Devon (KB9/15/2 m6.iv). William Denys senior (with the addition *armiger*) appears in a list of jurors from a different Hundred in Devon (KB9/15/2 m6.12), and as a juror on KB9/15/1 m33. Stourton's authority came through a commission of *oyer* and *terminer* of July 6, 1452, with the Duke of Buckingham and Somerset, the earls of Warwick, Wiltshire, Worcester, and others (*CPR 1446-52*, 580-1).

⁴² H. Kleineke, 'Some Observations on the Household and Circle of Humphrey Stafford, Lord Stafford of Southwick and Earl of Devon: The Last Will of Roger Bekensawe', *The Fifteenth Century XIV* (2015), 122.

⁴³ He had served in France as a man-at-arms in the retinue of John Bouchier, 1441 (E101/63/33 m8), and he was expected to serve overseas again in 1453, when his letters of protection were revoked because he 'tarried in Westminster' (*CPR 1452-61*, 69). He was a frequent visitor to the courts, entering into a recognisance over the manor of Widecombe, Devon, in May 1453, and in January 1454, he was a witness for a land transfer (*CCR 1447-54*, 434-5, 488).

⁴⁴ *CPR 1452-61*, 171. Denys was again on a commission of array 1461, along with Sir Phillip Courtenay of Powderham, and John Whityng, among others (*CPR 1461-67*, 37).

⁴⁵ He was MP for Tavistock, 1478 (Wedgewood, *Biographies*, 942) and may have been a victim of violence, murdered by his servant around 1500 (Baker, *Men of Court*, II, 1669). His relationship with Lord Bonville is ambiguous, being charged with debt in the Court of Common Pleas, 1460 (CP40/769 *rot*.253d).

⁴⁶ Several indictments of Tailboys, and his men, indicate which of them were servants or tenants, in addition to their usual mark of rank or calling (KB27/758 *rex*1d, KB27/774 *rex*28). A similar example is the April

And what do we know about John Hoye? Based on the King's Bench return files, plea and Crown rolls, and other sources, he was certainly no stranger to militarised violence. 'John Hoye late of Bokerell in the county of Devon, bailly,' was named with two others in a warrant for commissioners of the peace for Devon in April 1452 to investigate felonies, trespasses, riots, routs, and 'false allegiances.'⁴⁷ Hoye was also among those indicted in July 1452 before sessions of the peace supervised by the Duke of Somerset at sittings in Exeter and Bridgewater. In one of those indictments, Hoye and others were accused of gathering armed at Tiverton, Collumpton, and Ottery St Mary, on 10 February 1452, where their actions included 'compassing the destruction' of the royal person and other language that came very close to a charge of treason. The indictments are, of course, stripped of their original contexts and do not mention that these gatherings were likely part of the support for the Duke of York and his confrontation with the Crown circle at Dartford, although two indictments against Hoye for similar armed gathering at Kingston and Yeovil, Somerset, between 19 and 21 September 1451, tie their crimes to the Earl of Devon and his campaign against Lord Bonville.⁴⁸ The indictments made before Sir James de Audeley at Exeter in March 1453 named only eight men, including Hoye, for gathering 'rebelliously in the manner of war' and then spreading seditious rumours against the King and his advisors.⁴⁹ William Denys, jr. was one of the indicting jurors.⁵⁰

Sessions of the peace held in Exeter the previous July named Hoye and more than twenty others in indictments for unlawful gathering in support of the Earl, and William Denys senior, was

1456, indictment of servants of Henry Inglose for the killing of 'Robert Symmys' (KB9/281 m11, cited in Richmond, *Endings*, 202).

⁴⁷ Commission of *oyer* and *terminer* to William Bourghchier, knight, and others, dated 6 April 1452, which named Hoye along with Reynold Parker of 'Colcombe,' 'parker', and Edward Clerke of Colyton, 'holywaterclerke' as suspected felons (*CPR 1446-52*, 541).

⁴⁸ KB27/767 *rex*9. Some but not all of these charges have been located in the corresponding indictment files (KB9/15/1 m24, 33). For the Taunton 'campaign' of autumn, 1451 see Storey, *House of Lancaster*, 84-92, and Griffiths, *Reign of King Henry VI*, 697-9.

⁴⁹ KB9/15/1 m33.

⁵⁰ *Ibid.* A William Denys (without addition) appears on a list of jurors drawn up from the Hundred of Hemyock, Devon, as part of this commission (KB9/15/2 m6,iv). He also appears amongst jurors on KB9/15/1 m24. A William Denys, armiger, appears on a different list of jurors compiled for this commission, which differentiates the two Denys found in these indictments (KB9/15/2 m6,ix).

among the jurors once more.⁵¹ It is worth comparing the wording here with the indictment of Denys' men. The unlawful gathering at Ottery St. Mary and Cullompton, 20 February 1452, described Hoye and the others as armed in much the same manner as Denys' men but their intentions are described in more powerfully negative language.⁵² Denys and his men gathered in breach of the peace, but Hoye and his co-accused gathered to denounce the 'false counsellors' of the king, who contributed to the loss of English possessions in France, which was a reference to the Yorkist claims against the Duke of Somerset.⁵³ In this way, the threat of violence was politicised and made more threatening as it was directed at the fundamental basis of English hierarchical order.⁵⁴ It is difficult to know how much of this condemnatory language is the product of the commissioners or of the jurors, but it was at least locally created and not drafted by King's Bench.⁵⁵ Hoye can safely be counted among the Courtenay affinity's muscle in Devon, and he may have been an important enforcer of Courtenay interests in the area. A recognisance, likely from 1452-3, commanded the Earl of Devon to keep the peace towards Lord Bonville, and to deliver himself, Hoye, and several others to Chancery, 'to answe're to the premises and suche other things as shalbe opened and declared unto you at youre commyng.'⁵⁶ Hoye obtained a pardon for the 1452 indictments fairly quickly, in early 1453, clearing him of five outstanding charges for theft, unlawful gathering, and rebellious behaviour, stemming from the Dartford uprisings.⁵⁷ Several of

⁵¹ KB9/15/1 m24. (There are about a dozen names among the accused that the scribe has crossed through without comment).

⁵² KB27/767 *rex9*.

⁵³ *Ibid.*, (the exact wording of this passage is not clear, not for palaeographic reasons but from the weakness of the present reader's Latin).

⁵⁴ KB9/15/1 m33, and Griffiths, *Henry VI*, 696-8.

⁵⁵ Indictments generated in this way are usually begin with the formula 'is to be inquired for the king whether [list of accused and statement of the case]' (which is the form of KB9/15/1 m24) as opposed to the usual formula: 'Indictment made before [justices or keepers of the peace, at —, followed by the jurors who state that...]' (as in KB9/270 m34).

⁵⁶ *POPC V*, (408), which is a transcription from Thomas Rymer's notebooks (BL Add. MS4611). The editors dated this item to the early 1440s, but R. L. Storey dates it to sometime in early June 1454, which is plausible. Storey identified a draft copy of this recognisance in TNA E28/84 (*House of Lancaster*, 166, 255). The others named with Hoye were Thomas Philip, Thomas Davy, William Appulton, Thomas Ingland (or Yngland) and John Knoweston.

⁵⁷ Like the pardons for Denys and his men, the pardon for Hoye is not found amongst those calendared in *CPR*. Interlinear notes in KB9/15/1 m24, 33, record that only Hoye's pardon was noted by the clerks on the returns.

Hoye's co-accused were either pardoned or outlawed and very few, it seems, suffered serious judicial punishment for their offences.⁵⁸

However, it is difficult to sort out the variables that connected members of the local gentry community with each other and with those higher up the social ladder, and nothing has yet appeared that connects Hoye to a personal dispute with Denys or any of his men other than the indirect conflicts that his participation in Earl Courtenay's activities may have caused locally. They probably cannot be separated neatly, but individual agency is too easily overshadowed by the factionalism that historians have sought to identify and understand in this place and at this time. Knowing Hoye's place in local disorders makes it possible to argue that his death was an act of 'private peacekeeping,' rather than opportunistic criminality or violence between magnates, acted out through proxies. If this is so, it should be possible to find examples where violence is more clearly condemned because it harmed rather than preserved local order and safety. The murder of Hoye demonstrates how complicated these interconnections are, and it is worth comparing these features with a more notorious and more overly politicised act of violence in Devon: the murder of Nicholas Radford. However, Radford's murder and the rivalry between Thomas Courtenay and William Bonville are inseparable and we must explore this relationship further before we move on.

Private warfare, or private peacekeeping?

The years leading up to the first phase of the Wars of the Roses are distinguished, in most histories, by the magnate feuding in the Northern, and South-Western counties at the periphery of royal authority, making it the nursery for the civil war. This prompted R. L. Storey to comment that these disorders 'in the more outlying parts of the kingdom attained the proportions of private wars.'⁵⁹

Within Devon, the nucleus of violence had Thomas Courtenay, thirteenth Earl of Devon, and

⁵⁸ Of the six men, indicted with Hoye, in KB9/15/1 m33, four were pardoned without entering pleas, one made fine. Entries of indicted persons, including Hoye, in KB29/83 rot.36r-d, indicate that well over half of them were pardoned at some point with the rest being outlawed. Thomas Davy, named in the 1452-3, Privy Council order, entered his pardon on the record in Westminster on 20 or 23 October 1455 (KB27/778 rex4). He was outlawed again in 4 Edward IV, for failure to appear on new indictments, although his ultimate fate is unclear (KB29/86 rot.29).

⁵⁹ For Yorkshire, Northumbria and other border regions, see Griffiths, 'Local Rivalries', Storey, *House of Lancaster*, 8.

William Bonville, first Baron Bonville, at its centre. Bonville (1392-1461) was a soldier in his youth but was also familiar with the use of illicit force in peace-time, appearing before sessions of the peace for trespass as early as 1427. His second wife (from 1430) was the Earl of Devon's aunt, which bound them together through ties of family and property.⁶⁰ Courtenay (1414-1458), several years Bonville's junior, was the heir of a well-established but financially insecure title, which he hoped to re-establish.⁶¹ The two were also part of a nexus of unscrupulous men, like James Ormond, 'none too law-abiding by nature,' and Leicestershire's artless parallel of Thomas Malory: 'William Tailboys, Suffolk's henchman' who was, by 1446, Lord Bonville's son-in-law.⁶²

In 1437, an administrative blunder by the Crown gave a single office within the administration of the Duchy of Cornwall to both Bonville and Courtenay, sparking a bitter and protracted conflict between the insecure Earl and the striving local knight.⁶³ The two were forced into arbitration and peace was achieved by their separation when Bonville left for France on military service.⁶⁴ Violence flared again in 1450-51 when the Earl and Lord Bonville (recently made first Baron of Chewton) engaged in small-scale warfare in Cornwall, Devon, and Somerset, culminating in Courtenay's investment of the castle of Taunton, defended by Bonville. The Duke of York intervened in September 1451 before things could get any worse, but there was little confidence that a lasting peace between the two magnates was likely or even possible.⁶⁵ In the meantime, Courtenay was caught up by the growing factionalism between York and the court

⁶⁰ 'Bonville, Sir William II', *HoC 1386-1421*, II, 284-8, Griffiths, *Henry VI*, 574-6.

⁶¹ M. Cherry, 'Courtenay, Thomas', *ODNB* (2004).

⁶² For Ormond, see Griffiths, *Henry VI*, 579. Both Griffiths (*ibid.*) and Storey, *House of Lancaster*, 89, refer to Tailboys as 'henchman'. On Tailboys' marriage see R. Virgoe, 'William Tailboys and Lord Cromwell: Crime and Politics in Lancastrian England', *BJRUL* 55, no. 2 (1973), 459-82, reprinted in Roger Virgoe, *East Anglian Society and the Political Community of Late Medieval England: Selected Papers of Roger Virgoe*, Caroline M. Barron, Carole Rawcliffe, Joel T. Rosenthal, eds. (Norwich: Centre of East Anglian Studies, University of East Anglia, 1997), 287-307, citing 288.

⁶³ Griffiths (*Henry VI*, 575), notes that the first phase of violence between Courtenay and Bonville, many have been the fault of a third party against Bonville over local land disputes.

⁶⁴ Bonville was in Gascony from 1443 to sometime before 1449, where he saw enough action to receive life-threatening wounds (*CPR 1441-46*, 424). He received his first summons as a parliamentary Lord in 1449 (Griffiths, *ibid.*, 576). On the ineffectual management of the conflict, by the court, see Watts, *Henry VI*, 146-7, 239-40.

⁶⁵ Storey, *House of Lancaster*, 91-2, Griffiths, *Henry VI*, 576-7. The siege lasted only three days and ended as soon as the Duke of York arrived, if not sooner, when Courtenay was aware of his coming. Courtenay

circle, which led to his participation in York's stand-off at Dartford in 1452.⁶⁶ In 1454, Bonville and Courtenay were at each other's throats again, and a large group of men identified with Courtenay were charged with a string of offences in the city of Exeter, including the theft of a substantial mass of arms and the abuse of the mayor and his officers.⁶⁷ Both men entered into recognisances to maintain the peace and to appear before the King in Council in February 1455, which they honoured.⁶⁸

Courtenay seemed to enjoy the tolerance, if not the favour, of the regime and was present amongst the supporters of the King at St. Albans, where he was possibly wounded.⁶⁹ Lord Bonville was absent, but his personal *poursuivant* was present among the King's retinue.⁷⁰ Courtenay renewed his attacks that October when men led by Sir Thomas Courtenay, the Earl's first son, committed what Storey called 'the most notorious private crime of the century' by murdering Nicholas Radford, an elderly lawyer closely associated with Lord Bonville.⁷¹ The Crown's failure to bring Radford's killers to justice is seen as one more piece of evidence that the Lancastrian regime could not (or would not) enforce the rule of law in the disputes of rival magnates.⁷² From 1 November, Earl Courtenay and his men made their headquarters in Exeter, making forays against Philip Courtenay at Powderham, allegedly robbing the City cathedral and ambushing an attempt by

⁶⁶ Courtenay was indicted for treason, and resisting Lord Cobham, a charge that was sent to Parliament, but his peers acquitted him at the February 1454 sitting (Bellamy, *Law of Treason*, 136, *PROME* XII, 223, 275). As John Watts explains, both Courtenay and Bonville were, at stages, 'backed by the centre,' making their places within the factional struggle ambiguous (*Henry VI*, 239).

⁶⁷ KB9/275 m137, KB27/774 rex31 (which do not name the Courtenays at all). Cherry, 'Struggle for Power', 134, seems to confuse this incident with one involving the Earl's son, Thomas, who led a group of men to prevent Bonville from collecting taxes of tonnage and poundage in April 1455 (KB9/16 m76).

⁶⁸ *CCR 1447-54*, 512.

⁶⁹ *PL*, III, no. 1023.

⁷⁰ Cherry, 'Struggle for Power', 134-5, C. A. J. Armstrong, 'Politics and the Battle of St. Albans, 1455', *HR* 33, no.87 (1960), 22, 24. *Poursuivant* 'Joyeux' and the Duke of Buckingham's herald, brought messages from the King's retinue, during negotiations with the Duke of York (*ibid.*, 30, 65-7). That a minor figure recently elevated to the nobility would have a personal heraldic officer may seem strange, but Bonville would have had men such as this in his service while abroad and in command of garrisons and deployments on campaign. Sir John Fastolf employed a *poursuivant* while he was in France and kept one on staff even in his retirement (*ibid.*, 3-4, James, *Society, Politics, and Culture*, 329).

⁷¹ Storey, *House of Lancaster*, 167. The editors of *PROME* XII, felt similarly, writing that Radford's murder 'has been regarded as the most notorious crime of the decade, if not the century' (331). See also Mary Anne Kowaleski, 'Radford, Nicholas (d.1455)', *ODNB* (2008) and 'Radford, Nicholas', *HoC 1386-1421* IV, 168-70.

⁷² The significance of Radford's murder for York's second protectorate is argued in depth by J. R. Lander, 'Henry VI and the Duke of York's Second Protectorate 1455-1456', *BJRUL* 43, no.1 (1960), 63-9.

Bonville to relieve his besieged supporter.⁷³ The Earl's intentions were unclear but his interactions with the city fathers gives the impression that he felt himself a protector of the city, persecuted by the vindictive Lord Bonville who, with his own force of followers, had encamped outside Exeter by late November.⁷⁴

The two magnates exchanged formally worded (and formally disrespectful) letters in which Lord Bonville challenged the Earl to single combat (unless it displeased the King), to which Courtenay answered that such a confrontation would happen at a time and place of his choosing (barring the King's intervention). Both letters spoke in the abstract and there was no mention of Radford's murder or specific acts of violence committed by Courtenay's men, instead focusing on public protestations against wrongs, and justifications for violent self-help.⁷⁵ Eventually, the Earl and Lord Bonville met in some form of action outside the city walls on 15 December with armies complete with banners and guns.⁷⁶ It is hard to know how much actual fighting took place, and the records do not give us any victims to name, but the result was Bonville's undignified flight into

⁷³ According to the chronology in G. H. Radford, 'The Fight at Clyst in 1455', *Report and Transactions of the Devonshire Association* 44 (1912), 252–65, Courtenay occupied Exeter from 3-22 November, and again from 13-21 December. The robberies and assaults at the Cathedral supposedly occurred on 12 and 22, November (KB9/16 m66). Earl Courtenay attacked Powderham in force on 15 November (KB9/16 m65) while Henry Courtenay (the Earl's second son) led the ambush against Bonville supporters on 19 November, resulting in two deaths (KB9/16 m68).

⁷⁴ Earl Courtenay's exchange with the mayor and council of 21 November, suggests that Bonville was in the area but was not a serious threat. On 5 December the Earls of Arundel and Wiltshire and others (including Bonville) were commissioned by Protector York to suppress disorder in Devon, Cornwall, and Somerset, but Courtenay is not singled out as a source of trouble (*POPC* VI, 267-70). An undated petition from the commons was submitted around this time, calling for the arrest of Courtenay and Bonville (*Rot. Parl.* V, 332), but this was likely made after the above commission but before the conclusion of the second session on 13 December. When they sat again on 14 January, Courtenay was already in custody.

⁷⁵ Two transcripts of the letters survive. BL Add. MS48031 A, f.185r-v (previously; Yelverton MS25) has been printed in Hicks 'Idealism and Late Medieval English Politics', 48-9, and *John Vale's Book*, 262-3. San Marino, CA, Huntington Library, Battle abbey 32 no.937/1-2, has not been printed. They receive no mention by Storey, while Cherry ('Struggle for Power', 123) considered them as weak attempts at making self-serving criminality sound chivalric. Hicks thought them sincere manifestations of the moral temperament of the authors. Bonville's letter is addressed from 'Bisshippis Clisse' (the manor of Bishop's Clyst, East of Exeter), with Earl Courtenay's reply addressed from 'the cite of Excestre.'

⁷⁶ Griffiths (*Henry VI*, 770, n. 212) dated the letters to 22 November, likely because of the correspondence with Courtenay's request for aid from the city. However, the Earl was able to leave Exeter, with most of his men, the same day, joining the siege of Powderham to the South (Radford, 'The Fight at Clyst', 261). The Earl returned to Exeter, unopposed, on 13 December, making his foray against Bonville at Clyst, two days later. If Bonville was at Westminster on 5 December, he could have written his letter to Courtenay sometime after arriving with his men, and with the authority of the commission from the Protector just before, or after, Courtenay returned to Exeter. For Clyst, and the wider political context, see Storey, *House of Lancaster*, 165-75, and Griffiths, *Henry VI*, 755-7.

refuge with the King.⁷⁷ Courtenay remained at large until submitting to the Duke of York later that month.

Meanwhile, parliament reconvened in November and disorder in the North and West was a major issue for the commons, who heard a petition from Radford's executor, 'which shocked even the hardened sensibilities of the age.'⁷⁸ The commons called for the arrest of both Courtenay and Bonville, and both were detained for a short time, but only Courtenay was singled out for prosecution.⁷⁹ All of this seriously undermined the credibility of York's second protectorate, although Courtenay and Bonville were far less active in the following year.⁸⁰ Over the summer of 1456, a special commission was arranged to deal with the problems in Devon, and in August, the commission and its jury heard several indictments charging the Earl, his two sons, and many of his supporters with various offences over the previous year. The indictments describe a systematic

⁷⁷ On the question of casualties, the chroniclers wrote that 'it was seid, moche people wer slayn,' ('Vitellius A XVI', 166) and that 'moch peple slayn on either side' ('Bale's Chronicle', 143). One chronicler claimed that twelve of Bonville's men were killed, and many hurt ('Benet's Chronicle', 216). 'Rawlinson B335', 109, mention no casualties at all. The surviving indictment, returned by the August 1456 special commission (KB9/16 m65), does not list any deaths. The mayoral rolls of Exeter do not give the impression of a city terrorised by the Earl or Bonville and they were able to hold meetings to choose a replacement for Radford as City Recorder on 20 December (Radford, 'The Fight at Clyst', 63-4). The records confirm that Courtenay and Bonville met in some sort of military action at Clyst on 15 December and notes only that some men on each side were injured. The city allowed the Earl to re-enter a few days later, and paid for his welcome (Radford, 'The Fight at Clyst', 258-63). The claim that the Earl and Lord Bonville met at Clyst for single combat is, it seems, an invention of a Victorian antiquary who may have had the idea from the letters of challenge (*ibid.*, 263).

If anyone was killed at Clyst, one would expect to find appeals for homicide in the KB rolls during the following year, but a search of the *just.* and *rex* sides to the end of 1457 found nothing identifiably related to this event, or other violence in Devon (besides the murder of Nicholas Radford). Of the three men killed at Caister, in 1469, two appeared as private appeals at KB and at least three victims of the 1470 fight at Nibley Green, generated appeals of homicide (see chpt. 8, below).

⁷⁸ Martin Cherry, 'Courtenay, Thomas, thirteenth earl of Devon (1414-1458)', *ODNB* (2004).

⁷⁹ Bonville is supposed to have fled to 'Grenewiche to the kyng', who sent him on to the Duke of York ('Vitellius A XVI', 166). The Earl travelled to Westminster after 23 December, and was held in the Tower of London, with his two sons, by 7 January (confirmed by a writ issued to the keeper of the Tower, out of KB, directing him to deliver the three prisoners to the justices: KB145/6/34, unnumbered item).

⁸⁰ The Earl remained in the custody of the Tower until his final appearance before KB in Pasc. (KB27/779 *just.* 80iii, likely 18, April). The Earl, his two sons, and several other accused, appeared before KB in Trin. (KB27/781 *just.* 33-33iii), entering pleas on several more charges that later appear in the commission's indictments. The Earl may have been released following this appearance and his sons, Thomas and Henry, were no longer in the keeping of the Tower by September 1456, according to returns from the deputy keeper who was fined for failing to deliver them in Mich. (KB27/782 *just.* 94-94ii d). In Mich. 1457 the Courtenays entered into recognisances to keep the peace, to the value of £100 for the Earl, and £1000 for Thomas (KB27/786 *rex* 43, KB29/87 *rot.* 4).

abuse of force by the Courtenays, but little seems to have come from these investigations and the following year the Earl and his sons were pardoned.⁸¹

It is natural to expect that much of the violence in the region stemmed from this long dispute between influential magnates, but the scale of the violence and its implications for local lawlessness are often overstated. R. L. Storey pointed to King's Bench return files, bulging with indictments from Devonshire and Cornwall during these years, as evidence for a distinct lack of order in the region, rife with 'murder, abduction, or seizure of lands, by unusually large bands of armed men.'⁸² Likewise, contemporaries were keen to emphasise these problems because it suited their political agendas, but it may not reflect the reality.⁸³ It is also easy to explain violence in the border regions through emphasis on the remoteness from central authority and the traditional customs of feud and private violence. They are described as inherently violent and unstable, brutalised and callous, from decades of unrelenting cross-border warfare or from a lack of integration into a law-abiding society. Hannes Kleineke makes a more nuanced argument along these lines than did Storey, but the place of violence in this conception is still seen as symptomatic of lawlessness and contempt of order.⁸⁴ Storey felt that Courtenay and Bonville had turned

⁸¹ The theft of Radford's cash, given for safe-keeping to the Cathedral of Exeter, appears first in the August 1456 indictments (KB9/16 m66). G. H. Radford ('Nicholas Radford') did not find these episodes in any of the Exeter city archives she consulted (or if she did, she did not cite them in her paper). The letters of pardon for Courtenay (CPR 1452-61, 358), dated 10 April 1457, cleared the Earl, his sons Thomas and Henry Courtenay, and Thomas Carrewe, esquire (named only in the indictment, and not the petition), of the death of Radford, any outstanding charges related to it and other offences in Devon. In addition, only John Brynmore, gentleman of Tiverton (named in the indictment but not the petition), obtained pardon for the Radford murder (CPR 1452-61, 364, dated 17 July 1457). Eighteen men named in the appeal appeared before KB and were acquitted (KB27/780 *rex*26) and three were executed (KB27/785 *rex*9d, KB27/786 *rex*8d, KB27/809 *rex*2), who are discussed in greater detail below.

⁸² Storey, *House of Lancaster*, 85. The selective survival of records is misleading, since three files of writs and returns represent the work of two special commissions for Devon in 1452-3 and 1456 (KB9/15/1, 2, and KB9/16). An unsystematic check of more typical return files show that Devon was not over-represented at this level, contributing 2 in 82 indictments for Trin. 1445 (KB9/250), 1 in 32 for Trin. 1454 (KB9/274). No returns from Devon appear in the files for Mich. 1454 (KB9/275). If one based an assessment of the state of disorder in the counties from these three files, Middlesex (55 items), and Suffolk (20 items) would seem to be the nucleus of violence and criminality.

⁸³ See Hicks, *Wars of the Roses*, 98-9, 105-116, Lander, 'Henry VI and the Duke of York's Second Protectorate'.

⁸⁴ H. Kleineke, 'Why the West Was Wild: Law and Disorder in Fifteenth-Century Cornwall and Devon', *Fifteenth Century Studies III* (2003), 75-93, but see similar approaches to violence in the border areas in Cynthia Neville, 'Border Law in Late Medieval England', *JLH* 9, no.3 (1988), 335-56, and Ailsa Herbert, 'Herefordshire, 1413-61: Some Aspects of Society and Public Order', in *Patronage the Crown and the Provinces*, R. A. Griffiths, ed. (Gloucester: Alan Sutton, 1981), 103-22.

Devonshire into a place ‘where brutal outrage was the common coin of daily life.’⁸⁵ To make any sense of this violence, Storey felt compelled to place it within a political and factional context. Cherry, seeing Hoye’s connection with Courtenay and the presence of Bonville’s illegitimate son, made the connection between the two magnates and their feud without any trouble. This made some sense but not all violence could link up with the wider narrative in this way, and while Storey did think that it was possible that some of the violence between retainers sprang from local and personal disputes, compounded by perceived threats to their social and economic status, he nevertheless felt that such evaluation placed ‘too high an assessment on fifteenth-century rationality.’ So far as Storey was concerned, ‘these people were violently emotional [...] all men carried arms, and hot words soon led to their use.’⁸⁶ Why waste time and space looking for anything more?

If the gentry of Devonshire felt contempt for the central courts in Westminster—and they may very well have—it does not automatically follow that they held the notions of justice, order, and peace in contempt as well. A failure to appeal to the authorised institutions when seeking redress for wrongs or to enforce order and peace does not make them amoral nihilists but the contrary. Disorder in Devon was remarkably orderly. The armed trespasses, assaults, thefts, and murders were not the work of nameless, landless, disorganised *others*; they were esquires, gentlemen, and yeomen, and they performed their acts of coercive force, dressed in their best kit, turned out as if they were responding to an array of arms. As Philippa Maddern explained, the use of ‘right violence, whether in the form of just war, or simply just punishment of the guilty’ was not easily defended legally, but it could, and did, gain legitimacy when it conformed to the normative expectations of the community in which it occurred.⁸⁷ Violence as ‘social control’ is the principal means by which communities enforce social norms, maintain their hierarchy, and correct or punish members that violate those norms.⁸⁸ A roughly contemporary case, similar in certain ways to that of

⁸⁵ Storey, *House of Lancaster*, 84-5.

⁸⁶ *Ibid.*, 86.

⁸⁷ Maddern, *Violence*, 228.

⁸⁸ Roberta Senechal de la Roche, ‘Collective Violence as Social Control’, *Sociological Forum* 11, no.1 (1996), 97-128. Because ‘social control’ is usually allied with the rule of law and authorised, institutional,

Denys and Hoye, involves an affray and two deaths (one on each side) that, based on the legal and social outcome for the participants, seems to have been considered a ‘fair fight.’⁸⁹ On 21 July 1457, two groups of armed gentlemen and yeoman, represented on the one side by John Greene, Sir William Plumpton’s brother-in-law, and on the other, Henry Pierpoint of Holme Pierpoint, Nottinghamshire, esquire, met somewhere in Nottinghamshire or the West Riding, and in the ensuing affray both Greene and Pierpoint were killed.⁹⁰ Both parties had agreed to arbitration over a long-standing land dispute, which may have precipitated this flash of violence, and they returned to arbitration afterwards. Despite these deaths, the community and the central courts felt a resolution through amicable arbitration was preferable to formal prosecution.⁹¹ Order and amicable peace was not always possible through the strict enforcement of the law but the imprecise language of the law could, in these circumstances, turn to the advantage of the Crown and its local interests.⁹² The response to the murder of Nicholas Radford demonstrates how violating these norms could initiate an active and aggressive response by the community and the institutions of the law.

use of force, it is conceptually in opposition to ‘violence’ which creates some difficult semantic traps in the historiography.

⁸⁹ The incident is given context within a wider ranging series of disputes between the Pierpoints and their neighbours, in Simon Payling, *Political Society in Lancastrian England: The Greater Gentry of Nottinghamshire* (Oxford: Clarendon, 1991), 200-1.

⁹⁰ KB9/289 m19, 20, KB9/290 m10, and KB27/798 *rex*1d. Each indictment gives a different place for the event (Papplewick, Nott., Kyrkby Overblow, and Pannal, West Riding). Payling questioned the official chronology, given that Pannal, where Grene was killed is around ‘sixty-five limes north of Papplewick’ (Payling, *Political Society*, 201), but it seems more likely that Pannal was chosen because it placed the event within the William Plumpton’s jurisdiction as a justice of the peace for the North Riding.

⁹¹ Payling, *Political Society*, 201. Some of this process is documented in the *recorda* bundle from King’s Bench (KB145/6/38), including material found in the Plumpton ‘coucher book’ (appendix ii, Stapleton, *Plumpton*, 257, appendix ii, item 22).

⁹² Further examples of arbitration and formal court process, in cases where violence was felt to have a low risk of escalation, are discussed in Payling, ‘Murder, Motive and Punishment’.

Chapter 7

‘On which murders, by the way, I must observe, that in one respect they have had an ill effect, by making the connoisseur in murder very fastidious in his taste, and dissatisfied by anything that has been since done in that line. All other murders look pale by the deep crimson of his; and, as an amateur once said to me in a querulous tone, *there has been absolutely nothing doing since his time, or nothing that’s worth speaking of.*’¹

David Gary Shaw voiced the warning that ‘eager for details, historians sometimes rely too much on the extraordinary survival.’² Shaw had Margery Kemp in mind. Historians of the Wars of the Roses have the 1455 murder of Nicholas Radford ‘oon of the moost notable and famous apprentices’ of the law.³ We are told that ‘three contemporary accounts of the murder survive’, which sounds like a diversity of contemporary perspective that should reassure sceptics, who can use all three to compare and evaluate various details to determine what is true.⁴ Historians of violence will find Radford’s death interesting because those three accounts form a catalogue of violated social norms, performed under the supervision of members of the social elite. Readers of even the most formal and functional legal records will expect some fictions to creep into any accounts of criminal events, but the Radford case is special in that the fictions cannot be easily or confidently separated from the facts. Legal fictions were a requirement of the process and are therefore somewhat easier to locate and exclude, but the accounts of Radford’s death were not a product of that genre. They were not written by and for the offices of the criminal courts but by interested third parties who constructed a narrative built out of the concerns and insecurities of social elites as a work of persuasion.

The narrative that describes Radford’s death makes the actions of his killers entirely indefensible; it was an act of violence that fell entirely outside the norms of elite society, and parliament and the Court of King’s Bench could not possibly deny remedy. It certainly forced the Crown and the courts to act, although what action was hoped for we cannot know. It is doubtful

¹ x y z [Thomas De Quincey], ‘On The Knocking At The Gate, In Macbeth’, *The London Magazine* (1823), 353 (punctuation has been altered from the original).

² Shaw, *Necessary Conjunctions*, 5.

³ SC8/138/6864.

⁴ Cherry, ‘Struggle for Power’, 143, n81.

that it worked as intended. Later historians have used the inept handling of the case as evidence of growing insecurity in the counties and a declining confidence in Henry VI's administration.⁵ Even if the details of Radford's death were a fiction, written on the road between Exeter and Westminster, his death is remarkable simply because it occurred at all.⁶ From this episode, we can learn two important things not otherwise acknowledged by historians. The first is that one can find *rational* circumstances for Radford's murder without reference to the Courtenay/Bonville conflict. The second is that the narrative—fictional or not—tells us what an illegitimate use of violence by social elites would have looked like if social elites were asked to describe it.

Nicholas Radford, man of law

In 1455, Nicholas Radford was in his early seventies: financially secure, widely respected in Exeter and Devon, and a familiar enough name at Westminster that he could be mentioned in a letter between men he was unacquainted with simply as 'Radford' without further addition. Despite his age, he was still active in local and regional matters of law. He sat on a session of gaol delivery for the city of Exeter in March 1454 and on a special commission of the peace over the theft of cargo from ships at Plymouth.⁷ Radford may have begun to feel his age by February 1455, and his work as receiver of Exeter was likely performed by a deputy.⁸ He had no children and he had begun to make arrangements for the distribution of his lands and property in advance so that nothing was left to the uncertain service of executors.⁹ Radford had maintained a long professional relationship with William, Lord Bonville, and Bonville was among those who entered into agreements over the

⁵ Ross, *Edward IV*, 390-1.

⁶ R. Horrox, 'An Invisible Man: John Prince and the Dispute over Gregories Manor', in *Much Heaving and Shoving: Essays for Colin Richmond*, M. Aston and R. Horrox, eds. (Suffolk: Lavenham, 2005), 67, which echoes Maddern, *Violence*, 5.

⁷ Gaol delivery: *CPR 1452-61*, 174. Radford was named to several commissions regarding shipping, duties and fees, and maritime piracy, well into 1453-55 (*ibid.*, 178, 257, 258, and 305). See also KB9/277 m27, where Radford appears a justice at an inquiry into thefts from shipping). A clerical mistake added his name to a commission warranted in mid-1456 (*CPR 1452-61*, 664)

⁸ Radford was appointed receiver in 1441 (*HoC 1386-1421*, IV, 168-70). John More of Cullompton was elected receiver on 20 December 1455, amidst Earl Courtenay's occupation (Radford, 'The Fight at Clyst', 263).

⁹ An entry in the rolls of Common Pleas indicates that this process started as early as 1454 (CP25/1/89 m270).

distribution of his lands.¹⁰ By October Radford and his wife, Thomasine (bedridden, it seems, having never fully recovered from a riding accident in 1448), lived in a home with a gatehouse at Upcott, Cheriton Fitzpaine, a few kilometres South-West of Tiverton.¹¹ It was at Upcott that Radford was murdered, late in the evening of 23 October 1455.

We first hear of Radford's murder in a letter from James Gresham addressed to John Paston II, dated 28 October.¹² Gresham's letter updated Paston on several legal actions and local news and rumour, such as the dire preaching of one 'Doktour Grene,' who warned of impending disasters and battle.¹³ Gresham also commented on the disputes of magnates: 'Also *ther* is gret varyance by-twene *the* Erl of Deuenshire *and the* Lord Bonvyle, as hath be many day.'¹⁴ Gresham was at Westminster palace on legal business and it was there that he heard of Radford's dramatic assault and murder, as it was read out loud in the court of the Chancellor, which conducted its business in the same crowded hall where the courts of Common Pleas and King's Bench also sat.¹⁵ This was not some overheard conversation or gossip delivered with a stage whisper but a reading of a complaint of a petitioner to the court of Chancery.¹⁶ Gresham described Radford's murder in remarkable narrative detail: Late in the evening of 23 October, Sir Thomas Courtenay, son and heir of the Earl, along with sixty 'men of armes' came to Radford's home and contrived to draw him out by starting a fire in one of his out-buildings.¹⁷ Courtenay's men acted as if the fire was

¹⁰ Radford's grant and *quitclaim* included William Bonville and a distant cousin, John Radford (spelled Radeford), including provisions for his wife, if he predeceased her. Following Radford's death, some of his property fell to his sister, Joan, wife of Roger Prous (Pole, *Collections*, 219).

¹¹ *Letters and Papers of John Shillingford Mayor of Exeter 1447-50*, Stuart A. Moore, ed. (Camden society, 1871), 61, mentions Thomasine's accident in a 1448 letter but not its circumstances. *HoC 1386-1421*, IV, 170, dates the accident to 1453, but cites the same source. The present manor that occupies the site, now called Upcott Barton, dates to the sixteenth century.

¹² *PL* II, no. 534, pp. 125-7, (BL Add. ms43491, f.2).

¹³ *PL* II, no. 534, line. 12-18.

¹⁴ *Ibid.*, line 20-1.

¹⁵ See the description of this arrangement in Stow, *Survey of London*, II, 118-9. Michaelmas term started on 9 October 1455. C. A. J. Armstrong ('Some Examples of the Distribution and Speed of News in England at the Time of the Wars of the Roses', *Studies in Medieval History*, 429-54), figured that four days was the minimum travel time, without riders in relay, from the region around Exeter to Westminster. Appearances by the mayor of Exeter, in 1447 and 1448, in Chancery, each took four days. Therefore, the report Gresham heard read to the chancellor must have left no later than the morning of 24 October.

¹⁶ On the structure and duties of Chancery, see Baker, *IELH*, 101-5. The petition would have asked for writs of arrest into King's Bench, Exchequer, or warrants for a commission of *oyer* and *terminer* to look into the case specifically, which was done in one of the cases charging John Hoye, and others, with armed gathering in April 1452 (*CPR 1446-52*, 541).

¹⁷ *Ibid.*, line 22-6.

accidental, justifying their entry into Radford's grounds in an effort to extinguish the flames. Courtenay called for Radford to come out and speak to him, 'promyntyng hym that he shuld no bodyly harm have.'¹⁸ Radford played the tolerant host, and while Courtenay kept him occupied with small talk, his men comprehensively robbed the place of cash and movable goods and 'caryed it away on [Radford's] own hors.'¹⁹ Courtenay then told Radford he would have to come and speak with the Earl, but finding that his horses were already gone, Radford asked the young Courtenay to give him a horse to ride, 'for I am old *and* may not go.'²⁰ He was told to walk. The slow-moving party had gone no more than 'a flyte shote' from the house when Courtenay parted company, giving Radford assurances of his safety.²¹ As soon as Courtenay was out of sight, nine men turned on Radford. One 'smot hym in *the* hed' felling him to the ground, where another 'kyt his throte.'²² Gresham ended his letter with news of growing uncertainty and tension at Westminster and hinted that the King's illness of 1453-4 had returned.

We do not know who it was that Gresham heard addressing the court of Chancery and it may not matter since there were no clear rules on who could or could not present complaints to the Chancellor. Of course, the Court of Chancery did not have jurisdiction over matters of felony, but such complaints fell within its wider powers of equity. Under the rules of appeals, only Radford's widow could bring an action against her husband's killers in King's Bench, but anyone could bring a complaint to Chancery since that court had the power to warrant a commission of inquiry into the case, which could bring indictments into King's Bench.²³ There is no record that Chancery took

¹⁸ Ibid., line 29-30.

¹⁹ Ibid., line 32-34.

²⁰ Ibid., line 39.

²¹ Gresham's letter is damaged, and some text is missing, but the narrative follows that of the petition so closely that the lost text is certainly this parting promise to Radford.

²² Ibid., line 40-4. Incidentally, if one counts the names and aliases of the first named group in the petition, before the order of status re-sets with Henry Thryng, gent., there are nine names (excluding Thomas Courtenay and an alternate spelling of Avery), which is the number of killers Gresham counted later in his account. It may be that the petition, as read to Chancery, named only Sir Thomas Courtenay and the first seven men (Nicholas Philip, *alias* Gye, Thomas Philip, John Amore, *alias* Penyale, John Briggeham, William Layn, Hugh Lucas, and Thomas Avery / Amery), from which Gresham came up with his nine killers.

²³ It was through a complaint to Chancery that a commission was sent to Devon investigating accusations against John Hoye, and others, for unlawful gathering and breach of the peace (*CPR 1446-52*, 541). Indictments generated by these commissions are identifiable by the use of the opening formula 'it is to be inquired for the King' (*inquiratur pro domino rege*) rather than 'the jurors present' (*juratores presentant*), to distinguish the basis of the initial accusation (see Virgoe, 'Some Ancient Indictments', 214). For a similar

any independent action on this petition, but at some stage it was decided that justice, or the interests of the Yorkist party, would be better served if the petition was revised and submitted to parliament. The receivers and triers of petitions, appointed for the July 1455 parliament, were still acting in their respective roles during the recess, and when parliament reconvened on 12 November, the petition was ready.²⁴

Law and order was a major talking point in this session, and the Duke of York was keen to advance his demand for a second protectorate (irrespective of the capacity or incapacity of the King). This agenda was supported by the Commons in the person of veteran member William Burley. Burley addressed the Lords on 13 and 17 November, repeating a long list of concerns, including the recent spate of violence in the South-West, specifically naming Earl Devon and Lord Bonville as culprits. It is unclear when the Radford petition was read to the Commons or Lords, but it was a natural accompaniment for Burley.²⁵ The petition, presented in the name of John Radford,

example of criminal matters passing through Chancery, see James Ross, 'Mischievously Slew: John, Lord Scrope, the Dukes of Norfolk and Suffolk, and the Murder of Henry Howard in 1446', *Fifteenth Century X* (2011), 75–96. On the scope of Chancery's jurisdiction, see Baker, *IELH*, 101-116, 339.

An alternative approach was through an appeal of homicide in King's Bench, but this would have necessitated Thomasine's appearance in Westminster, which (according to the later petition) was not feasible, hence the complaint to Chancery. Under certain circumstances, one's heir could bring an appeal of homicide, but in this instance, with the widow still living but unable to travel to Westminster in person, there may have been no other option but to approach Chancery and seek a writ for a commission of inquiry. An appeal of homicide did lie with the 'next heir male of the whole blood' but this rarely seems to have applied to appellants more distant than younger brothers, uncles, or grandchildren, and it is not at all clear if a living widow, without direct male issue, could waive her right to appeal in favour of a more distant heir (quoting a commentary on c.34, circa 1520: *Selections, Magna Carta*, 185).

²⁴ Receivers and triers, appointed in July 1455 (*PRoME XII*, 335), included Thomas Kirkby, Keeper of the Rolls of Chancery (*CPR 1452-61*, 439) and Robert Kirkham, chief Prothonotary of Chancery (*Ibid.*, 216, 380), as receivers. The Duke of York, and Fortescue, Chief Justice of King's Bench (*PRoME XII*, 335-6) were amongst the triers. Receivers were the point of first contact for private petitions addressed to the Lords, and their role was to weed out requests that could be handled without parliamentary appeal. The triers were representatives of the Lords, who did not usually evaluate petitions alone, but as a committee acting for the Lords. Private petitions addressed to the Commons passed through the parliamentary clerk and into the house that way (Dodd, *Justice and Grace*, 156-170).

²⁵ *PRoME XII*, 331, 343-50. While one enrolment of the petition in KB does not specifically record when the petition was first read to the commons or Lords, but it does record that royal assent was granted on 22 November (KB27/780 *rex*26-26i).

John Radford was third cousin (his great-great-grandfather being the great-grandfather of Nicholas Radford, according to the petition). A 'John Radeford, the younger, gentleman of Devon,' appears on a commitment for land in Cornwall, 2 November 1453 (*CFR 1452-61*, 15). A John Radeford entered into a covenant for Nicholas Radford's manors and lands in Devon, Hil. 1453 (CP40/776 *rot.*44d). These same lands were distributed through a *quitclaim*, wherein Nicholas Radford transferred much of his real-estate holdings to William Bonville and others, in exchange for £400, dated 5 February 1455 (CP25/1/89 m270). Wedgewood (*Biographies*, 706-7), lists John Radford senior (d.1460) and *jr.* (d.1478) as MPs for Plymouth (1450-1) and Barnstaple (1455). It is not clear which Radford was involved in the appeal, but if the claim to being heir is correct, it would necessarily be John senior. However, Wedgewood calls John *sr.* 'second

gentleman of London, who is described as a distant relative of Nicholas, presents a scene largely identical to that recalled by Gresham.²⁶ The petition allowed the writer to name all the malefactors (numbering almost one hundred individuals) and add a description of the mock coroners' inquest held at Radford's chapel at Upcott on the following Monday (27 October).²⁷ Henry Courtenay, the Earl's second son, accompanied by many of the 'misdoers' who had robbed and killed Radford a few days before, took it upon themselves to act as the coroner and jury, deciding that 'they shuld endite the seid Nicholas Radford of his owne dethe.'²⁸ This mock inquest has been interpreted by several historians as a serious attempt by the Courtenays to clear themselves of Radford's murder but it is difficult to see how this could have worked.²⁹ The petitioner is careful to explain that those assembled by Henry used false names, and this incident (and the spurious conclusion of the jury) was known only by second-hand reports. This satisfied the requirement that petitions explain how justice could not be obtained otherwise than through the action of parliament. The manner of Radford's burial also implied that a proper view of his body was now impossible and that an indictment could not be obtained this way. It was also explained that the petition was necessary because Radford's widow was unable to appear at Westminster in person and thus could not bring an appeal of murder in the accepted manner.

cousin' to Nicholas, which does not match the petition. Both Johns were engaged in a dispute over Nicholas Radford's lands, against Radford's sister, Joan (Wedgewood mistakenly calls her 'Thomassine') in 1456 (ibid.). A John Radford 'executor of the will of Nicholas Radford, late Recorder' was in receipt of his pension of 100s, 20 August 1456 (*Report of the Records of the City of Exeter* (HMSO, 1916), 56). Curiously, KB continued to identify John Radford, gentleman, as 'cousin of Nicholas Radford, late of the county of Devon, gentleman, lately one of the most notable, famous apprentices of the King's laws in your realm of England...' as late as 1473 (from the warrant of attorney of Robert Patrick, KB27/849 att.1, and see Baker, *Men of Court* II, 1287). John jr. died before December 1478 (*CFR 1471-85*, 151, C140/67/41).

²⁶ SC8/138/6864. The petition is incompletely transcribed in Radford, 'Nicholas Radford', 264-68, where only seven of the perpetrators are named (Hugh Lucas is omitted and Thomas Avery is read as 'Overy'). The transcription ends with the narrative at line 32, although the petition continues for another 25 lines, detailing the conditions the petitioner hopes will gain approval. The National Archives catalogue mistakenly locates a transcription in W. M. Ormrod, 'Who Was Alice Perrers?', *The Chaucer Review* 40, no.3 (2006), 219-29, but this is SC8/119/5917 and SC8/119/5932, and not the Radford petition.

It is perhaps surprising, or at least worth considering, how the parliamentary petition could follow the earlier Chancery petition so closely, especially given how much time there was to make the story complete and accurate. It may have been difficult to alter that narrative in any significant way, knowing that it had become public knowledge before Parliament became involved; safer, therefore, to simply add to it and leave the rest alone.

²⁷ The entry of the case at KB27/780 *rex*26d, gives 30, instead of 27 October.

²⁸ SC8/138/6864, line 28.

²⁹ Storey, *House of Lancaster*, 169; Carpenter, *The Wars of the Roses*, 139.

The petition concluded with a long and complex set of requests for the prosecution of the wrongdoers, most of which are borrowed verbatim from a 1450 petition to parliament of the widow of William Tresham, former speaker of the commons and associate of the Duke of York.³⁰ This included a request for writs of proclamation and arrest to issue from Chancery, directing the sheriff to make the charges known in Devon and to collect and forward the accused to Westminster for trial. There were requests that limited the availability of bail or *mainprise* for the accused and several provisions limited the possible challenges open to the defendants, including the dramatic but unnecessary exclusion of ‘wager of battle’ against the plaintiff—a method of defence that was only remotely possible at this time.³¹ This was a dense hybrid of requests that also referenced ordinances and legislation protecting members of the commons from assault and for the prosecution of treasons. Much of this was of dubious legality, particularly the provision that if the accused did not appear at the first call, the court would consider them attainted in the same felony.³² Those questions were temporarily swept away by the consent of the King and parliament, granted on the 22 or 28 November, which ‘would be considered warrant enough for the court to conduct proceedings.’³³

³⁰ *PROME* XII, 167, 175-9. Tresham was speaker of the commons in 1449 and, like Burley, was considered an active Yorkist. Not all accounts of Tresham’s death are sympathetic. One London chronicler called him ‘an extorcioner’ (‘John Piggot’s Memoranda’, in *English Historical Literature*, 372). The petition, and the initial approval and writs, are repeated in KB27/759 *just.*51-51i. It is not clear how far Tresham’s case progressed through KB, beyond writs of arrest (J. S. Roskell ‘William Tresham of Sywell’, in *Parliament and Politics in Late Medieval England, II* (Hambledon, 1981), 137-151)

³¹ The exclusion of battle, in this petition, was likely included to avoid possible problems stemming from its resemblance to a civil appeal of homicide which had, in the past, been answerable by wager of battle (Baker, *IELH*, 506-7).

³² Elements were taken from the 1437 petition of Isabel, widow of Sir John Boteler, against William Pulle, gentleman (SC8/27/1305), and the 1450 petition by the widow of William Tresham, (*PROME* XII, 167, 175-9, Roskell ‘William Tresham of Sywell’, 149-151). Radford’s petition seems to be the first to ask that non-appearance would result in conviction on the appeal, and provision that anyone, proven to have sheltered the accused or helped them in any way (even those who, having knowledge of their whereabouts, did not act to arrest them), should be considered as amongst those accused, *retroactively*. Therefore, they would be considered as having failed to appear to answer the charges and were automatically attainted of the same felony. This was a distortion of usual procedure deservedly called Kafkaesque.

³³ KB27/779 *just.*88ii (28 November), KB27/780 *rex*26i (22 November), and quoting Sayles, *King’s Bench* II, lxxxix, which refers to the workings of Chancery but would apply to any court addressed in the approved petition. KB27/779 *just.*88iiid, records the date approval was given and the first issue of writs on 1 December. A writ of arrest for Earl Courtenay and his two sons was issued out of KB by Justice Fortescue, 8 January 1456 (KB145/6/34 [unnumbered item]). A writ from chancery, citing the parliamentary approval of the petition (partly transcribed in Radford, ‘Nicholas Radford’, 278), is dated 23 January. Radford’s source came from Arundel Castle MS475 (a sixteenth-century legal commonplace book) and was likely copied from the version in the KB roll, which is identical (see also *PROME* XII, 331, 343-50). Presumably, the choice of

Radford's murder is described for a third time in the indictment approved by the jury called before the special commission that sat in Devon in August 1456.³⁴ It appears that this indictment was prepared for the commission in advance by clerks of KB or Chancery, who worked from an earlier Latin adaptation which was first entered into the Easter term, 1456, KB roll as the King's suit against seventeen men named in the petition.³⁵ By August, Courtenay's band of miscreants had suffered some attrition, dwindling to twenty-five named individuals but otherwise the changes were of a genre-specific variety, intended to reshape parts of the petition into the form and vocabulary of a formal indictment. This included the value of the arms used to kill Radford and a few legally important phrases that framed the charge of felony murder. In this version, the narrative is unchanged and carries over many of the superfluous but arresting phrases from the petition.³⁶ However, it does add the anecdote that on the day of Henry Courtenay's mock inquest, he and his men compelled Radford's servants to sing an insulting song rather than pious hymns when they bore the corpse from Upcott to the place of burial at the church in Cheriton Fitzpaine, a short distance south of the manor.³⁷

The more significant changes were made by a clerk of the special commission who erased, added, or substituted, some of the names of participants. Significantly, Henry Courtenay's name is erased from the indictment and his role of mock-coroner was granted to Nicholas Philip. Thomas Phillip was replaced as one of Radford's killers by John Helygnan and Richard Bertelot was inserted at several points in the indictment, boosting his significance in the ordeal.³⁸ That this

enrolment on the justice side of the KB roll (rather than *rex*), was based on the resemblance of the petition to a private appeal of homicide, but one brought by a private party before parliament.

³⁴ KB9/16 m50, transcribed imperfectly in Radford, 'Nicholas Radford', 273-78.

³⁵ KB27/780 *rex*26-26id. Versions of the petition appearing earlier in the KB rolls (KB27/779 *just.*77-77ii, 80-80ii, 81-81ii), are direct translations of the English petition into Latin, without emendation or adjustment to conform to legal genres. KB27/779 *just.*88-88iiid, includes the petition in English.

³⁶ These include the elaborate identification of Nicholas Radford, the disjointed account of the theft and collection of Radford's goods, the description of the distance Radford was led from the manor before he was killed, and the lengthy conditions requested in the petition.

³⁷ Their likely destination was the church of St Matthew, which was less than 1km from Radford's manor. The song is identified in the indictment (KB9/16 m50) as 'thre men song', which was a 'song for the vices that unites a well-known tune of the period with a non-dramatic (but suitably off-color) lyric' (David Klausner, "'blowe up, mynstrall": Musical Problems in Vernacular Drama', *ROMARD*, 51 (2012), 5). The song is not mentioned in the first Latin version of the King's suit (KB27/780 *rex*26id).

³⁸ Other changes or additions include the movement of John Helygan and John A'Chamber from their previous place at the end of the names in the petition, into the first group of names, which included the

indictment was prepared in advance of the commission, directly from a version of the charge in KB, is not common but there are precedents.³⁹ Commissions sent out to deal with incidents during Cade's Rebellion and the Duke of Exeter's uprising were supplied with specific and detailed indictments as well as the briefer sort that simply directed the inquiry into a reported crime, and it was the politically motivated crimes that received the most detailed indictments in advance.⁴⁰ Letters patent for the commission were issued on 20 July.⁴¹

Confusion over the course of events in the case has been caused by a letter written from Westminster on 9 February. This reported that the Earl's appearance in King's Bench was anticipated but had been 'countermaundid.' Historians have read this as the dismissal of the case, and release of the Earl and his sons.⁴² Whatever 'countermanded' was supposed to mean, it did not mean the case was dismissed and the Earl set free. Earl Courtenay and his sons were taken into the custody of the Tower of London sometime in late December 1455, and they all appeared before the justices of King's Bench on the first appearance day of Hilary term following.⁴³ The charge was read and the Earl entered his plea of not guilty and two specific challenges to the appeal itself. The first was a reasonable claim that because he was a peer of the realm, the Earl should be tried before his peers in parliament and not before the Court of King's Bench.⁴⁴ He also challenged the

Philips and Amore. Richard Bertelot, John A'Chamber were added to the list of those who escorted Radford to where he was killed. Improbably, John Helygan secured letters of pardon for this and other offences, in 37 Henry VI (KB29/87 rot.5). Alan Holme appears on the indictment, although he was already in the custody of King's Bench as of Hil. 1456 (KB27/780 rex26id).

³⁹ The marginal note 'sonde', found on several of the indictments in this return file (KB9/16 m50, 67, and 68), supports this claim. William Sonde was a chief clerk of King's Bench, 1434-58 (*Spelman* II, 363), and his name appears at the foot of the *rotulus* that first records the Radford petition, the answer from parliament, and the first entry of the Latin version of the petition, re-phrased as an appeal by John Radford. He may have been involved in drafting the petition initially, as clerks regularly acted as legal consultants in addition to their administrative work (Sayles, *King's Bench* I, lxxxi-ii).

⁴⁰ Storey (*House of Lancaster*, 144-5, 250), noted that the most incriminating indictments against the Duke of Exeter for his gathering of supporters at Spofforth, were written by a single Chancery clerk, recognisable by his distinct hand.

⁴¹ *CPR 1452-61*, 310.

⁴² *PL* III, no. 1029 (John Bokking to Sir John Fastolf), Storey (*House of Lancaster*, 173, Griffiths, *Henry VI*, 756, Cherry, 'Struggle for Power', 138). 9 February was the first appearance day in the third 'return day' in Hilary, and since the practice of the court clerks was to omit adjournments of cases within the term to other 'return days' this alternate appearance (or its expectation) is not noted in the roll (C. R. Cheney, M. Jones, *A Handbook of Dates for Students of British History*, new ed. (Cambridge: CUP, 2000), 101).

⁴³ KB27/779 just.80iid. The accused were escorted to KB, by the keeper of the prison in the Tower, and transferred into the care of KB, on the first return 'day' in the term (23-29 January).

⁴⁴ This argument is briefly noted in an abridged yearbook attributed to one 'Statham,' compiled in the 1470s and first printed by R. Pynson, 1490. The note is dated to Easter term, 34 Henry VI (see also Seipp

legitimacy of John Radford's legal standing as appellant given his lack of sufficient 'consanguinity.'⁴⁵ The Earl's son Thomas entered similar arguments and pleaded innocence, as did Henry Courtenay.⁴⁶ The case was not dismissed, only deferred to the following term, when the justices would make their opinions known. Earl Courtenay and his two sons were transferred back into the custody of the Tower to await the court's findings.⁴⁷ At the Easter sessions, King's Bench answered the Earl's challenges with some elegant legal devices. The case was not a civil appeal by John Radford but an act of parliament delegating responsibility for providing remedy to the petitioner by the court and its justices. Any question about John Radford's consanguinity was therefore irrelevant. Further, Earl Courtenay had not been indicted *by* parliament, only referred to King's Bench by petition *through* parliament, and therefore his request to trial by his peers was dismissed.⁴⁸ Trial by jury was set for the following term and the Earl and his sons were once more returned to the Tower. It is unclear exactly how Radford's case was expected to progress beyond this point, or what manner of outcome was legally possible given the complexity of its route to court, but the Earl's challenges were probably the easiest problems for the court to solve. It was the long list of requests in the petition that concealed so many legal traps.⁴⁹

1456.106abr), which corresponds with the scheduled trial of the Earl, and the last entry in the case at KB27/779 *just.*80iii.

⁴⁵ The specific protest may have been that the elder John Radford ought to be plaintiff, and not the younger (KB27/779 *just.*80iid).

⁴⁶ KB27/779 *just.*80iii.

⁴⁷ KB27/779 *just.*88.iid, records their appearance before KB where the justices came to a conclusion regarding the Earl's challenges. KB27/782 *just.*94-94d, records the chain of custody for the Earl and his sons, including a fine against the deputy keeper of the Tower for failure to deliver the prisoners to the King and council in September and October that year.

⁴⁸ KB27/779 *just.*80iid. This was taken as a precedent by Sir James Dyer (d.1582), for the trial of the Duke of Norfolk, although as Baker explains, it was a poor precedent (*Dyer's Reports* I, lvii, n.93). The special treatment of the case also introduced some unexpected innovations to the standard procedures in a civil appeal of homicide such as allowed process to commence by attorney (KB27/782 *just.*48d, where writs are issued to the sheriff of Devon, at the request of John Radford, through his attorney Walter Raleigh).

Earl Courtenay's argument was based on one interpretation of *Magna Carta* c. 29, although contemporary opinion was divided, or contradictory (*Selected Readings and Commentaries on Magna Carta, 1400-1604*, J. H. Baker, ed. (Selden Society, 2015), 247-64).

⁴⁹ These same conditions appeared, almost verbatim, in two petitions presented to the 1472 parliament where they received royal approval (Williamson, SC8/27/1334, Vivian, SC8/29/1443-5), but at a later sitting of the same parliament, several of those accused in the petitions entered their own petitions. Thomas Farnell, accused in the Williamson petition, argued that as an accessory his detention without bail or *mainprise* was cruel and unlawful (*PRO ME* XIV, 111-2) and Thomas Trethewy, former Coroner of Cornwall, named in Vivian's petition, challenged the punitive measures taken to convict for non-appearance without due process (*ibid.*, 114-9). Parliament agreed to release Farnell (*ibid.*, 112), they overturned any attainders made for non-

During the Earl's absence from his county, Devon appeared peaceful, save for the alleged obstruction of the Easter assizes at Exeter when the Earl's youngest son John (then no more than 21) allegedly gathered several hundred men to menace the populace and threaten the justices for a week before 8 April, when Courtenay's forces poured into the city, preventing commissioners from reading the proclamation against Radford's killers.⁵⁰ Since the Earl was still in custody at the time (he made another appearance before King's Bench no earlier than 15 April), young John could have been acting on his own initiative. However, the indictment names only this Courtenay and a handful of men, all of whom come from the Radford murder charges, which does not instil much confidence in the charge.⁵¹ The special commission was authorised in July and arrived in Exeter in August, and over the nine days it held sessions from 3-17 August, it returned more than one hundred indictments to King's Bench. Many of them dealt with outstanding charges over the past years and not just those associated with the Courtenays.⁵² The jurors who gave their approval to the significant Courtenay charges were, naturally, familiar names from the local gentry and many had close ties with Lord Bonville or had no great love for the Earl or his men.⁵³ Earl Courtenay was also indicted for his participation in the obscure encounter at Clyst along with many men who can be found in the Radford petition.⁵⁴

appearance of those named in the Vivian petition, and dismissed all previous and outstanding charges, generated by the petition (*ibid.*, 117).

⁵⁰ KB9/16 m64, Storey, *House of Lancaster*, 173.

⁵¹ KB9/16 m64. The credibility of the charge is undermined by the evidence that some of the *nisi prius* business assigned to this session was conducted successfully, as noted by several entries in the earlier processes indicating the failure of defendants to appear before the justices at the Exeter sessions (eg: KB27/780 *rex*26i). The inclusion of Thomas Davy of Honyton in the petition and indictment supports the theory that these charges were seen as an opportunity to catch up as many problems in the same net as possible. Davy came to Westminster in the octaves of St. Michaelmas (12-15 October) to enter a pardon for past outlawries, and he remained in custody of the Marshalsea until 17 November when he presented sureties for the peace for future good behaviour (KB27/778 *rex*4, KB29/85 *rot.*10d).

⁵² Indictments without any connection with the events of 1455 include KB9/16 m5, 6, (relate to incidents in 18 Henry VI), m10, 21 (charging William Chamber, 'Scholemaster' with various thefts from 29, 31, Hen. vi). The commission also investigated incidents where Earl Courtenay was the victim, returning two indictments against men who stole goods from the Earl's property in early November 1455 (m49).

⁵³ The jury that approved the indictment of Radford's killers (KB9/16 m50d) included William Denys, esq. (father of the accused ring-leader in John Hoyer's death) Walter Raleigh, esq. (associate of Bonville, and one of the victims of Courtenay's men) Nicholas Whiting (co-accused in the Hoyer murder) and John Bonville, esq. (Lord Bonville's nephew).

⁵⁴ KB9/16 m65, which repeats the names of almost all those named in the Radford petition and adds charges of theft from Bonville's property in Clyst.

Securing this indictment for the Radford murder would have simplified the process in King's Bench, but by this point it seems that attention had drifted away to other more pressing concerns of state. Those who had been caught in the first net of arrests stemming from the petition languished in the care of KB, likely due to the complexity of the case or the difficulty of its resolution.⁵⁵ After securing their pardons the Courtenays were compelled to enter into recognisances to keep the peace, and they seem to have restrained themselves (or their followers) for the time being.⁵⁶ The Earl made concerted attempts to regain some semblance of favour with the Crown, and the affinity of Henry VI brokered the 1457 marriage of his eldest son to Marie of Anjou, illegitimate daughter of Charles, count of Maine, and lady in waiting to the Queen.⁵⁷ The Earl's sudden death in 1458 passed the title to Sir Thomas who became an unambiguous supporter of the Lancastrian regime.⁵⁸ He was present at the battle of Wakefield and managed to survive the battle of Towton, but only until 3 April, when he was executed at York for his treason against the new king Edward IV.⁵⁹

In 1456, Bonville's fortunes with the Crown were uncertain, but by 1460 he was compelled to take sides as a Yorkist. Lord Bonville's only legitimate son and heir, and his grandson, were both killed or executed by Lancastrians following the battle of Wakefield. Lord Bonville himself survived until another battle and another execution following the Second Battle of St Albans. Bonville, now in his late sixties, was captured with another old soldier, Sir Thomas Kyriel, while guarding Henry VI, whom Warwick's men had abandoned in their flight.⁶⁰ Despite King Henry's

⁵⁵ Ten men arraigned in *Pasc.* 1456 were acquitted by a jury in *Mich.* 1457 (KB27/779 *just.*77ii). Sixteen men arraigned in *Pasc.* 1456 were tried in *Trin.* and William Batyn was convicted, while the rest acquitted. There is no indication that Batyn's execution was carried out, and there are several continuances in the record (KB27/779 *just.*81ii). Thomas Hoper (named only in the KB9/16 indictment) entered a pardon on his outlawry in 6 Edward IV (KB27/849 *rex*7d). This gives some indication of how long the case remained an active issue for some of those it named.

⁵⁶ *CPR 1452-61*, 393. For the recognisances, see KB27/786 *rex*43.

⁵⁷ Griffiths, *Henry VI*, 802, 841.

⁵⁸ A London chronicler, writing in the 1470s, claimed that the Earl was 'poysened, as men sayde,' (*An English Chronicle of the Reigns of Richard II, Henry IV, Henry V, and Henry VI [...]*, J. S. Davies, ed. (J. R. Nichols and Sons, 1856), 75), a claim which Griffiths (*Henry VI*, 841), considered 'hard to swallow.'

⁵⁹ Cherry, 'Courtenay,' *ODNB*.

⁶⁰ Philip A. Haigh, *The Military Campaigns of the Wars of the Roses* (Stroud: A. Sutton, 1995), 46-54.

assurances, the two old soldiers were executed as traitors after a grotesque pantomime of regal power orchestrated by Queen Margaret. Sentence was pronounced by the young Prince of Wales.⁶¹

Some of the men accused in Radford's death were punished to the full extent of the law, but they were men that would not be missed by the likes of the Courtenays. Nicholas Philip, the most active participant in Radford's death and a familiar name from indictments coming out of Devon between 1451 and 1456, was finally brought before King's Bench in June 1457. He appeared in the custody of the sheriff of Coventry who had removed him from the sanctuary of the church of St. Michael.⁶² The legality of the sheriff's action is debatable but so too was Philip's claim to sanctuary in the first place.⁶³ As a formality, the court asked Philip why he should not lose his life as an attainted felon, and, uncommonly, the court recorded his answer verbatim (or very close to it): 'y was not gilty of the mannes deth and that y am a clerk and aske my clergyse and the right of the church as y was wrongfully and with wrong born oute of the chirche with force.' If there was any deliberation by the justices on this plea, it was not noted by the clerk, and Nicholas Philip was hanged.⁶⁴ John Amore, tailor of Exe Island, who once warranted the grand title of 'capitanus' for leading a group of men that occupied Exeter in April 1454, was brought before King's Bench by the sheriff of Oxford in Michaelmas term 1457.⁶⁵ This time, KB called a jury to hear the charges against Amore and thus his execution appears to follow some form of due process.

⁶¹ Ibid., 53, Cherry, 'Bonville', *ODNB*. The episode is recalled in several contemporary chronicles, and while the cruelty of the Queen is often noted, none seem to question her judgement in bringing the seven year old prince and heir, within such proximity to combat. George Neville, then Bishop of Exeter, described the battle in a letter to the legate Coppini, dated 7 April 1461, (translated from the Latin in *CSP Milan*, 61). With some affection and regret, he called Bonville a 'strenuous cavalier' and Kyriel (spelled Bryel, in this edition) as a 'spirited and valiant knight.' Bonville and Kyriel were executed along with one William Gower, 'banner bearer', (Scofield, *Edward the Fourth*, I, 144). This is likely the William Gower, listed as an attendant esquire to the Henry VI, in the 1454 household ordinances (*POPC VI*, 223).

⁶² KB27/785 rex9d.

⁶³ Accused felons and outlaws were often returned to sanctuary, so long as the plea of clergy was successful or the place claiming privilege of sanctuary was legitimate (Sayles, *King's Bench V*, 5-8). It is possible that Philip had been convicted on another charge at some time, but escaped, which disqualified him from claiming clergy or sanctuary (in a similar case, see *Port's Notebook*, 33-4, 40).

⁶⁴ Nicholas and Thomas Philip, named together in almost all of the Radford cases, were likely brothers and it may be the same Thomas 'Phelipp' or 'Phelip' mariner, former crewmember of the *Edward*, suspected of various felonies in 1450-53 (*CPR 1446-52*, 312, 444, and KB27/778 rex28d). He is almost certainly the same Thomas Philip, named with John Hoye, as a servant of the Earl of Devon (*POPC V*, 408, and above, chpt. 6.ii).

⁶⁵ KB27/786 rex8d. Amore's title is given in an indictment heard before a commission, including amongst its justices, Nicholas Radford (KB9/275 m137). John Whitechurch, Simon Hogge, and Thomas Davy, also appear in the Radford petition (SC8/138/6864) but only Davy re-appears in the Radford indictment (KB9/16 m50).

Not so for John Gille, yeoman of Chittlehampton. Gille was a minor participant in Radford's murder, appearing on the petition but not the indictment. He did not have the benefit of a jury to formally condone his execution following his brief appearance before the Bar in Trinity term, 1463.⁶⁶ If the other sources give us the impression that justice for Radford was perfunctory, the rolls of King's Bench show how long the memory of the court could be and how ungenially it handled the ignoble accused.

'[T]hat the brayne felle oute of his hede': Imagining the worst of elite violence

Returning to the narrative from the petition: we cannot be sure what is true, what is fiction, or what is exaggerated, invented, or re-imagined, and we only have the retelling of the first, persuasive version of events and no other perspective.⁶⁷ We also cannot know how much of the story was believed by those who heard it, or if that was even especially important to those involved. But it does tell us a great deal about the way contemporaries interpreted the meaning of violence, particularly the normative values that this event violated. Radford's murder was a crime against the normative rule of violence, defined and upheld by the social elite.

These messages of violation are most obvious in the juxtaposition of Sir Thomas Courtenay's casual familiarity with Radford and his host's accommodating hospitality, while Courtenay's criminal band robs the old lawyer behind his back. Radford is both pathetic and dignified while the young Courtenay's courtesy is shallow and his assurances of safety meaningless. This interaction violated the foundations of elite social norms and exploited the deep fear that those values could be so easily discarded by a noble such as Courtenay. Even the formulas of legal indictments are manipulated in the petition to exaggerate or emphasise that sense of violation and immorality. The blow to Radford's head does not simply penetrate to the brain; the

⁶⁶ KB27/809 *rex*2. Richard Bertalot may have suffered a similar fate, as he is marked *mortus est* in a *controlment* roll entry for Michaelmas, 1457 (KB29/87 *rot*.9). No record of his execution has yet been located.

⁶⁷ The reasons for suspecting the accuracy of the account have been noted already but the key evidence is the stubborn consistency of the narrative, which was fixed in all but names as early as 28 October, and never changed or appeared from any independent source. One might expect the narrative to change, as time progressed, and new information appeared but later versions only add to the chronology, making no substantive changes to the narrative itself.

blow causes his brain to fall out.⁶⁸ The mock inquest is the culmination of this nihilistic pantomime of dignity and legality in its attack on Radford's social-self after death.⁶⁹ Killing an associate of one's rival was bad enough, but to do so in such a brazenly unlawful way was far more damaging to Courtenay's reputation than it would have been in other circumstances. Sir Thomas is not just a murderer employing murderers; he is duplicitous, cowardly, cruel, and makes empty promises. If one were to ask any gentleman at Westminster in 1455 to describe behaviour unfit for a knight and noble heir, he would write something very much like this petition. It is unlikely that those who handled the case at King's Bench were unaware of the polemical function of the charges or the challenges the case presented to the legal system itself. It is also clear that the case was taken more seriously by the courts than historians have thought, particularly the handling of the Earl and his two sons who were held in custody for most of 1456. They did avoid the worst of the possible legal penalties for the guilty, but they were not simply released and forgotten with the end of York's second protectorate. If we unpack the overlapping issues of factionalism, legal technicalities, and the unrecorded processes of mediation and negotiation, we see that the response of the court is more coherent and rational, and much more lawful, than the histories have implied.

Radford had been junior steward of the Earl's household during his minority and they probably enjoyed a kind of friendship.⁷⁰ Radford had been a close associate (professionally, if not personally) of Lord Bonville since the early 1430s. If Radford had become estranged from the Courtenays in recent years, it was not because of any overt conflicts between Radford and the Earl.⁷¹ But the men who were named as Radford's killers also knew him, if not personally then professionally, as a commissioner of the peace, justice of gaol delivery, or manorial or city magistrate. Men like John Amore and the Philip brothers were named in indictments before

⁶⁸ A typical Latin rendering would be 'super capud suum [...] percussit usque ad cerebrum,' (Sayles, *King's Bench* VI, 154).

⁶⁹ The subtext is, of course, disturbing in itself, since the perpetrators are not compared *to* Saracens or Jews, rather it is Radford's corpse, and its callous treatment, is thought fitting *for* a Saracen or Jew. Coincidentally, a separate petition was read into this parliament complaining of thefts from the recently dead, by former servants, which likely added resonance to this episode (*PROME*, XII, 432-3).

⁷⁰ *Chancery Case*, xxiv-xxv, mentions an early-morning visit by the young Earl to a drowsy Radford, who was invited to join in a fox hunt. Radford was not so tired, or bookish, to turn it down.

⁷¹ 'Radford', *HoC 1386-1421*, 169-70.

Radford from 1451 onward, and many of them were outlaws by early 1455.⁷² It has been suggested that Courtenay targeted Radford out of greed, given the charges of theft of Radford's cash and goods held by Exeter Cathedral, but this was an insignificant sum given the risks involved, and killing Radford would not make his title to Radford's stolen chattles or lands, any more secure.⁷³ The Earl's actions after Radford's death, and after it became public knowledge at Westminster, appear more like desperate attempts at exerting local power and gaining some leverage against prosecution rather than a deliberate campaign against Bonville. In fact, Bonville is largely absent from proceedings until early December when he appeared to challenge Courtenay outside Exeter. No mention is made of the Earl's disruption of the autumn session of the peace for Exeter in late September 1455 until it appeared amongst other charges in the August 1456 indictments.⁷⁴ Neither this incident, nor Radford's murder, nor the alleged theft of his property is mentioned in the strongly worded but still courteous exchange between Courtenay and Bonville before the battle of Clyst.⁷⁵ Perhaps it was implied when Bonville called the Earl's men 'arraunt theves, houseberners and murderers' but he may have had the Earl's assault on Philip Courtenay's property at Powderham in mind, and not the murder of Radford.⁷⁶ When the Earl asked the city councillors for their assistance, he portrayed himself as a supporter of peace and order, working against the disruptive influence of Bonville. He was also careful not to speak threateningly but framed his request with hypotheticals such that the mayor and councillors could grant or deny the request without overtly contradicting the Earl.⁷⁷ The people of Exeter did not seem overly alarmed by the Earl's 'occupation' and he was allowed within the city after the confrontation at Clyst, with due

⁷² See in particular those named in KB9/275 m137, which lists half a dozen indictments heard before the same commission.

⁷³ Storey, *House of Lancaster*, 170, observed that the thefts in Exeter occurred well after the Earl's arrival in the city and that monetary gain was not 'the ruling motive' but rather a step necessary for paying his followers. Cherry, 'Struggle for Power', 136, takes a similar stance. It is equally possible that the thefts, like the murder, were motivated by his followers' initiative, without his open consent.

⁷⁴ KB9/16 m65.

⁷⁵ Hicks, 'Idealism and Late Medieval English Politics', 48-9. The theft of Radford's goods stolen in Exeter are listed and valued in KB9/16 m66.

⁷⁶ *John Vale's Book*, 261.

⁷⁷ Courtenay's words to the mayor are partly reproduced in Radford, 'The Fight at Clyst', 262-5.

courtesy.⁷⁸ It is my opinion that Radford's murder was not 'so obviously premeditated' as Storey maintained, but Earl Courtenay's course of action after the fact certainly was a thought-out plan of self-preservation.⁷⁹

In the previous chapter it was suggested that violence, performed according to the normative rules of social elites, could occur without serious legal repercussions to performers and was not automatically considered an unacceptable breach of royal authority. Local peacekeeping, while never overtly sanctioned by the central courts, was something they recognised, and so long as they relied on local jurors to bring verdicts, there was always a chance that murderers would go free. William Denys and his men never appeared before King's Bench for the murder of John Hoyer on charges similar to those made against Radford's killers, but that seeming injustice cannot be interpreted as further evidence of violence-prone retainers and a dysfunctional system of bastard feudalism. They were exonerated by the law because doing so was seen as the best means of maintaining local peace and order. Earl Courtenay's men were, by contrast, a nucleus of disorder and violence, and it was the Earl's failure to restrain them that gave greater legitimacy to his opponents' claim to local authority. But why kill Nicholas Radford in the first place? There are features in the petition that have parallels with modern patterns of disorganised violence by groups against isolated and weak victims. These include the unnecessary damage to property, the indignities they forced on Radford and his invalid wife, the excessive, exaggerated violence of his death, and the grotesque carnival of the funeral procession and burial. Radford was not, however, a wholly pathetic figure at first but rather one that could be described as situationally weak. As the significant local gentleman and representative of the law, Radford was a powerful figure to those who suffered his judgments before his sessions of the peace. But woken in the dead of night by the

⁷⁸ Radford, 'The Fight at Clyst', 262-5, notes that city accounts contain payments for possible building repairs, which Radford attributed to depredations committed by the Earl's men, but this is purely speculative and may have had nothing at all to do with the Earl's short 'occupation' of the city, and if he was responsible for damage, the city made no attempt to pursue legal with the central courts. See also the city's response to Lord Dynham and Fitzwaryn in early 1471 (H. Kleineke, "'De Kynges Cite": Exeter in the Wars of the Roses', *The Fifteenth Century VII* (2007), 143-4).

⁷⁹ Storey, *House of Lancaster*, 167.

flames of his own burning gatehouse and dragged outside in his bedclothes, he was transformed into a weak and easily abused victim.⁸⁰

Close-reading of the murder of John Hoyer, the affray between Pierpoint and Green, and the sensational death of Nicholas Radford does not obviously challenge this image of the period as one of endemic violence. However there is a sense that these men had more agency over their actions than this model allows. Christine Carpenter's exhaustive study of the gentry communities in Warwickshire during the fifteenth century uncovered many incidents of middle and upper-gentry acting independently of or contrary to the interests or concerns of the greater nobility who were often their direct patrons and lords. In some cases this independence was a result of some weakness in the upper strata of the social or economic hierarchy at the time and has the air of opportunism, while other incidents are more clearly deliberate and calculated acts of self-assertion of rights, influence, and power.⁸¹ It was also in the interests of the establishment (be they Yorkist or Lancastrian) to exaggerate the threat of men like Courtenay or their supporters as a means of shoring up their own claims to authority and control. Much of what was claimed to have happened in and around Exeter in the winter months of 1455-6 no doubt happened, but not on the scale reported.

The Denyses, Pierpoints, and Greens were nowhere near as influential or well-connected as the Mountforts and Sudleys of Warwickshire, but their actions are just as personal in their motivations and as indifferent to higher, devolved interests. It is not so much that the magnates could not restrain their retainers from using violence independently; rather the problem was that no magnate could afford to hold his affinity on so short a chain and infringe on what the gentry felt was an inalienable right to self-defence and self-assertion. Further, the notion that the violence of the incubation period of the Wars of the Roses was fuelled by idle soldiers is difficult to maintain.⁸²

⁸⁰ Collins, *Violence*, 135.

⁸¹ The Staffords of Grafton and Simon Mountfort are examples of powerful gentry, actively seeking advantage over rivals after the fall of the Duke of Clarence (Carpenter, *Locality and Polity*, 516-521), while the tangled disputes of Thomas Burnet, Richard Verney, and Mountfort, played out several phases under the watchful, but largely passive, eye of Earl Warwick, who often found it difficult to identify who it was that owed him support, or not (*ibid.*, 495-505).

⁸² None of the men named as killers of John Hoyer have documentable military service, except William Denys, *sr.* (in addition to the planned service in 1453, he is likely the William Denys, man-at-arms, who

Besides, soldiering was as much an obligation of the gentry as it was an opportunity for their advancement, but men did not need any direct experience of combat to accept a militarised worldview. That perspective had been established decades before the loss of English Normandy through the literature of social elites. Likewise, the restorative value of war, so easily rationalised into personal and local conflicts, was uncritically accepted by many men who saw themselves as part of a wider community of martial elites (or who aspired to join it). Courtenay and Bonville are better examples of the problems facing all magnates, and men of property and temporal power. Their control and influence over others was conditional, and when their subordinates violated the law and social propriety, others looked to their superiors for redress or to assign blame.

served on John Bourchier's retinue in 1441: E101/53/33 m8). William Whitechurch, named in some of the indictments related to the Courtenays, may have mustered under Sir William Peyto in 1449 for Somerset's expedition (E101/54/11 m5).

Chapter 8

Organised, militarised, and public demonstrations of force followed the *idiom* of legitimate violence, which was based not on the reason of law but rather on the fundamental rights and obligations of a governing class that carried with them a belief in their own access to extrajudicial powers. Violent self-help was not always treated as unlawful even when it was illegal, and while some may have exploited this selective application of the law, others found themselves locked into confrontations because the desire to preserve or enhance one's worship placed them in situations where violence was very likely or even inevitable. *Worship*, in the English context, was more than a synonym for honour, rather it was a '*public recognition* of the power that a person is thought to have.'¹ Honour and worship was not a passive trait but a 'process, manifest in acts and words, in gestures. [...] Good name and repute *follow* the doing.'² In this way, 'social success was getting other people to act out your honor.'³

This chapter will discuss two cases of this kind: the Pastons' defence of the fortified manor at Caister against the Duke of Norfolk in August and September 1469, and the fight between Lord Berkeley and Viscount Lisle on Nibley Green, 20 March 1470. These two incidents are often understood within the context of Edward IV's deteriorating hold on the throne, and a distracted nobility and judiciary, following the return of Henry VI.⁴ Certainly, Warwick took advantage of pre-existing disputes between regional magnates and Edward's supporters to undermine the Yorkist's grip on authority and amplify popular opposition to the regime (legitimate, and sometimes manufactured).⁵ There is an impression from the historiography, assisted by the partisan tone of petitioners to parliament and Chancery, that this new crisis precipitated a wave of violence

¹ Shaw, *Necessary Conjunctions*, 31.

² *ibid.*, 32.

³ *ibid.*, 34.

⁴ See Ross, *Edward IV*, pp. 134, Carpenter, *Wars of the Roses*, 175, Goodman, *The Soldiers' Experience*, 36-71, 75.

⁵ The dispute between Sir Thomas Burgh of Gainsborough and Richard, Lord Welles of Willoughby, is the commonly cited example of Warwick's exploitation of regional animosities (M. A. Hicks, *Warwick the Kingmaker* (Oxford: Blackwell, 2002), 283-4, Scofield, *Edward the Fourth*, I, 509-10).

and the settling of private scores.⁶ However, the conditions that led to the siege of Caister and the affray at Nibley Green were present before Edward's crisis of authority. The difference was that there was no third party of sufficient influence to intervene and limit the escalating violence once Edward and his supporters were too occupied with their own survival to act as arbitrators between others. The key point is that the Duke of Norfolk would have made his move against Caister anyway, but the siege would not have lasted as long as it did, had the King been able to intervene. Royal supervision would not have made any difference to Viscount Lisle or Lord Berkeley as their confrontation occurred so quickly (and may have been covertly planned well in advance) that no intervention to stop it would have been likely. Still, the parties involved acted in ways that showed how deeply invested they were in the norms of martial culture, even in situations where no legal defence could sanction their behaviour. Violence, no matter how illegal, could still be a worshipful act, so long as it was performed in accordance with the norms and not against them. Any argument in support of illicit violence could invoke the familiar language of divine law to make their own conflicts into a defence of order, since 'every Christen man is bonden to revenge Goddes quarelles.'⁷

Caister, 1469

'The siege of Caister is one of the set pieces of the Paston Letters: a set piece about a showpiece.'⁸

The fortified manor at Caister was conveniently sited near the market town of Great Yarmouth, routes to the sea, and London. It was comfortable, reasonably defensible (being modelled on the continental style of walled manors), and, most desirable of all, 'it was bang up to date.'⁹ Sir John Fastolf began work on the complex in the 1430s and he spent most of his final years at this property rather than his second home in Southwark. The buildings consisted of two walled

⁶ For example, the murders of Richard Williamson and John Glyn (*PROME* XIV, 83-5, 78-81).

⁷ From the preamble of a text on legal reform associated with Edward IV's 1472 parliament (Westminster Abbey Muniments 12235, transcribed in *PROME* XIV, 341).

⁸ Richmond, *Fastolf's Will*, 192.

⁹ *Ibid.*

courtyards with corner towers, complete with crenelated walkways and dozens of apertures cut through the red brick outer walls, and only a few of these were decorative. The interior spaces prioritised comfort over defensibility, and it was certainly comfortable.¹⁰ Fastolf's deathbed changes to his will in November 1459—whispered in the ears of his last attendants—gave Caister into the keeping of John Paston I, a gift that contradicted his written will made earlier that summer. Paston spent the few remaining years of his life fighting for the inheritance he thought he had been given.¹¹ That this fight could involve violence would not have surprised the Pastons: they were familiar with it already from the hands of Duke of Suffolk's most unsubtle retainers in the region, and they understood that even the most legally sound claims were worthless if they were unenforceable.¹² But Caister was special in that the legal claims were particularly thin, and the place was coveted by powerful men with more resources and political favour than the Pastons could possibly counter. John Mowbray, Duke of Norfolk, had designs for seizing Caister even before the old knight had died, and when Norfolk followed him in death, he passed his desire for Caister to his heir. Two generations of Pastons and Mowbrays would fight over Caister for more than twenty years.

Norfolk had tried to purchase Caister from Fastolf but to no avail, and as soon as he became aware of John Paston's insecurity as its recipient from the will, Norfolk resolved to take it by legal and illegal means concurrently. Believing that possession *in fact* was almost as good as possession *in law*, Norfolk sent men to occupy the manor in the summer of 1461.¹³ They held it until Norfolk's death in November that year, when it reverted to the control of the Pastons.¹⁴ When

¹⁰ A. Hawkyard, 'Sir John Fastolf's "Gret Mansion by Me Late Edified": Caister Castle, Norfolk', *Fifteenth Century Studies V* (2005), 39–67.

¹¹ Castor, *Blood and Roses*, 120-7, *PL I*, nos. 54 (John I's statement on Fastolf's nuncupative will), 61, 70. Fastolf had tried to secure a licence for his college before it was left to his executors but for various reasons, it was unresolved at his death (Richmond, *The First Phase*, 256-7). Ironically, John I had steadfastly refused to honour the similar deathbed emendations that his father William made to his will (Richmond, *Fastolf's Will*, 172-84).

¹² This included the seizure of property at Drayton by men under the Duke of Suffolk, who also demolished the buildings at Hellesdon (Richmond, *Fastolf's Will*, 140-54). William Yelverton and William Jenny (Fastolf executors) threatened the manor of Cotton, which was also desired by Norfolk (*ibid.*, 114-21, 148-9). See also Richmond, 'Identity and Morality.'

¹³ Castor, *Blood and Roses*, 146-7.

¹⁴ Richmond, *Fastolf's Will*, 114 (the exact date and circumstances of the recovery from this occupation is unclear, but this seems likely).

John Paston I died in 1466, the titles to Caister and many of Fastolf's other lands were still in dispute and his sons inherited the tangled knot of conflicting interests. They also maintained links of service and patronage with the new Duke of Norfolk but they were soon in conflict over Fastolf's legacy once more.¹⁵ 'Norfolk regarded Caister as his; he had bought it for 500 marks in October 1468 from those who reckoned they had every right to sell it, namely Sir John Fastolf's executors.'¹⁶ The executors had split over John Paston I's claims to certain properties and Norfolk was able to gain title from Paston's rivals, including the Judge, William Yelverton.

By 1469, Norfolk felt he had every right to dispense with the legal route and apply force to gain Caister. The Pastons were realistic about their chances against the Duke and, anticipating the use of force, they hired a small garrison of experienced men including four 'well assuryd *and* trew men' to supervise the preparations for an armed defence. Given their resources, the defences would have been formidable, at least in regards to equipment if not manpower.¹⁷ If the Pastons were still in possession of even half the ordnance Fastolf once kept at his Southwark home, by the summer of 1469, Caister would have bristled with guns—far more than their servants could have manned.¹⁸ Diplomatic preparations were under way as well, in hopes of heading off an armed confrontation by seeking the intercession of significant persons, such as Lord Scales, who was approached in April 1469. Scales was cordial but evasive, and Edward IV's deteriorating grasp on the throne was not helping matters.¹⁹ Norfolk, for his part, was unconcerned, not just because he saw little risk of outside intervention, but also because he believed the rightness of his claim was self-evident and

¹⁵ Caister was seized again in 1465, not by Norfolk, but by Anthony Woodville, Lord Scales, who was seizing other goods and property of John I on behalf of Edward IV (*The Records of the City of Norwich*, W. Hudson, J. Cottingham Tingey, eds. (Norwich: Jarrold, 1906), 286-7). The occupation appears to have been brief and did not seriously harm the Paston relationship with Woodville (Richmond, *The First Phase*, 15-16).

¹⁶ C. L. Richmond, 'Mowbray, John (VII)', *ODNB* (2004). The first attempt to take Caister from the Pastons, by virtue of this transaction, occurred on 25 October 1468 (KB27/842 *rex22-d*).

¹⁷ *PL I*, no. 238 (John II to John III, 9 November), Castor, *Blood and Roses*, 195-6.

¹⁸ In 1462, much of Fastolf's ordnance dating from the 1430s, and was stored in his London property in Southwark (*PL I*, no. 64). This included at least twenty-five gunpowder weapons and some of these guns may have been lost to the Duke of Suffolk's raid at Hillersdon, 1465, where he was accused of taking away two guns and one 'stokke gounne,' along with bows, miscellaneous armour, and jakkes (padded jackets worn alone, or under armour), one of which was valued at 26s /8d (*PL I*, no. 195).

¹⁹ *PL I*, no. 201 (Margaret to John II), 333 (John III to John II).

that any third party was (he felt) likely to decide in his favour.²⁰ Edward IV may have thought little of Norfolk's strength of character, but lesser men could find him unmovable and this was certainly the Pastons' experience.²¹ Norfolk chose to seize Caister in late August and by the 23rd his men had effectively surrounded the castle with an almost watertight blockade.²²

Read against the backdrop of Warwick's rebellion against Edward, and the weakness of the restored Henry VI, Norfolk's siege of Caister looks like an opportunistic move to take advantage of a distracted Crown and a fundamentally powerless local authority. However, Norfolk's bluster was not based on the sure knowledge that he could act with impunity. To that end, he took pains to seek support outside his immediate servants and tenants. He approached the city fathers of Norwich to supply troops (a request they seem to have rejected), and he gave his actions the flavour of legitimacy by employing a former sheriff of Norfolk, Sir John Hevenyngham, in his retinue and as a mediator of sorts. The councillors of Norwich avoided taking sides but they did not stand idle, facilitating mediation between the Duke and potential intercessors to end the violence.²³ Hevenyngham acted with remarkable tact during the preparations for the siege and in its aftermath, seeking to maintain local order while limiting the harm he could not actually prevent.²⁴ Margaret Paston even asked Hevenyngham, as a captain during the siege, if he would weaken his guard of the place and allow messages through to the defenders. This he would not allow but he still offered possible routes for negotiation with the Duke and recommended approaching third parties who

²⁰ *PL I*, no. 202 (Margaret to John II). Davis has dated this letter to 10-11 September 1469, placing it at the start of the Duke's assault on Caister, which he based on his reading of a reference to attempted negotiations with the Duke (*PL II*, 47-8). However, Margaret's great concern over Caister, and John III, which dominates letter 203 (12 September) is absent here. It seems more likely to come from May or June that year, around when John III wrote *PL I*, no. 332, although this alternate date has not been suggested elsewhere.

²¹ K. B. McFarlane (*England in the Fifteenth Century*, 253) called him 'both obstinate and weak-willed;' and one's place in relation to Norfolk would determine which of the two traits would present itself.

²² The exact date on which the siege began is unclear. Worcester, writing in 1478, called 15 August the anniversary of the siege, but went on to describe the duration of the siege as '5 weeks and 3 days.' Counting back from the date on which Caister was handed over to Norfolk (27 September) places the start on the 21st of August (*Itineraries*, 187). Never the less, the siege was well established by 24th, which Worcester called 'a cruel day with guns at the castle' (*crudelis dies cum gonnys ad castrum*, *ibid.*).

²³ Norfolk's appeal to the city of Norwich (Norfolk Record Office, NCR 16d, ff. 82, *Norwich city assembly book*) is mentioned, but not transcribed, in C. E. Moreton, 'Anthony Woodville, Norwich, and the crisis of 1469', *Much Heaving and Shoving*, 66. The letter was a point of discussion by the assembly on 20 August, and it seems they did not agree to the request. I have not found any published transcriptions of this letter, nor was I able to see the original in the NRO, therefore I cannot comment on Norfolk's exact words. Never the less, the City councillors were active in mediation between Norfolk and others, during the siege (Richmond, *Fastolf's Will*, 202-3).

²⁴ Richmond, *Fastolf's Will*, 198-9, Worcester, *Itineraries*, 191.

could intervene.²⁵ John II, trapped in London during the course of the siege, was not entirely powerless, and despite the rapidly changing political landscape at the centre, he was able to obtain the services of Walter Writtle, Sheriff of Essex and Hertfordshire, and servant of the Duke of Clarence, to act as a mediator between the Crown, the Pastons, and Norfolk.²⁶ Writtle had been granted limited powers to treat with Norfolk on behalf of his Lord and others in hopes of a peaceful resolution, although his letters make it clear that the crisis in the North was an obstacle when the opinions of higher authorities were needed.²⁷ Roger Ree, the current Sheriff of Norfolk, came to Caister in the days before the siege ‘to se that goode rule be kept’, although it is not clear if he was acting for the county, Crown, or Norfolk.²⁸ Mediation was eventually successful, and despite the Duke’s reported contempt for all authority save that of the King, he did stop fighting during negotiations and played the magnanimous victor when Caister was handed over to him.²⁹

But the Duke’s victory was not decisive and his hold on Caister was only temporary. John II, ‘ever the pragmatist,’ sought a compromise with the remaining executors of Fastolf’s will, but Norfolk, obstinate as ever, held onto Caister until his death in 1476.³⁰ Later that year the property reverted to the Pastons, thanks to Edward IV’s preference for local peace and order, in exchange for lucrative property.³¹ If Norfolk did take advantage of a distracted Edward IV when making his move against Caister, it was not out of animosity or disloyalty to the King or the Yorkist regime. Warwick imprisoned Norfolk during the crisis of 1470-1, and over the duration of the readeption. Upon release, he was quick to lend support to Edward upon his return to the throne, which the King rewarded by using a light hand in his legal affairs and granting Norfolk admission to the Order of the Garter in 1472.³²

²⁵ *PL I*, no. 202.

²⁶ Writtle became involved sometime after 24 August (Richmond, *Fastolf’s Will*, 202-3, Castor, *Blood and Roses*, 207). Writtle drafted the formal agreements between Norfolk and the defenders (Gairdner, *PL* no. 726), and letters survive from John II to Writtle (*PL*, I, nos. 241, 242), Writtle to John III (*PL I*, no. 785), and Writtle to Norfolk’s men (*PL II*, no. 907, 908).

²⁷ *PL I*, no. 785, *PL II*, nos. 907, 908.

²⁸ Quoting *PL II*, no. 764. See also *PL II*, no. 766, p. 405, *PL I*, no. 238 (where he is thought well of).

²⁹ *PL I*, no. 203 (Margaret to John II, which Davis dates to 10 or 11 Sept.) expressed the opinion that Norfolk was intent on seizing Caister and would not be dissuaded ‘fore no duke in Ynglond.’

³⁰ Castor, *Blood and Roses*, 221-4.

³¹ *Ibid.*, 260-3.

³² Scofield, *Edward the Fourth*, I, 568, 588, II, 182, 203.

The Pastons faced new legal challenges after the siege, which occupied them for several years, but even here third parties acted to limit the damage by exploiting their own authority and the technicalities of the system to delay and block actions against the Paston brothers. Attempts at indicting the Pastons for trespass and other felonies stalled at Norwich assizes, and when attempts were made to continue prosecution through King's Bench, Hevenyngham, on his own initiative it seems, delayed the enforcement of writs of arrest and exigent at the risk of significant fines.³³

As a comment on English martial culture and the normative values of violence amongst the social elite, Caister is an example of how personal, largely legal, disputes were so easily reframed into the semi-heroic and *sacralised* idiom of right-violence. That the Pastons' small garrison held out against the Duke's uncountable (or uncounted) forces for more than five weeks is not so remarkable, given the very short list of casualties and the manifest lack of experience of the commanders involved.³⁴ John III had been in the service of the young Duke from 1461-2 and again in 1465, accompanying him on several military missions to the North and Wales, but neither he nor the Duke saw any action worth recording.³⁵ Johns II and III may have served at sea in Anthony Woodville's bloodless expedition to Jersey, where they finally relieved the island of French

³³ A Commission of the Peace sitting at Norwich did bring an indictment against John Pampyng and Edward Brome for the death of John Colman, naming John Paston II as accessory (KB27/327 m16). The indictment is filed with a writ out of Chancery dated 7 July 1470, inquiring into all indictments concerning John II, although there is no evidence that this charge progressed beyond Norwich. If the indictments, and the two civil appeals cited below, have come to the attention of previous historians, the present author has failed to locate such references. Hevenyngham was Sheriff of Norfolk from on 5 Nov. 1469 (*CFR 1461-71*, 254), and it was to him that writs of attachment and arrest were issued out of King's Bench in 1470 (KB27/838 *Just.25-d*). Remarkably, his assistance to the family is not singled out for praise in the extant letters (*PL II*, no. 766), perhaps because Hevenyngham complained about the 45s/8d, that the exigent required of him.

³⁴ Worcester (*Itineraries*, 191) claimed that the Duke had over 3,000 men at his command which is an obvious exaggeration, but it is otherwise impossible to say with confidence how many men the Duke could have gathered, and maintained, during the siege. Raising men for a local operation, of short duration, was certainly easier to accomplish than campaigns abroad, or even outside the recruiting county (Goodman, *Wars of the Roses*, 134-5). Worcester (*Itineraries*, 189) lists William Brandon and Sir Gilbert Debenham amongst Norfolk's captains. Brandon contributed 1 man-at-arms, and 20 archers for Edward IV's 1475 campaign in France (Wedgewood *Biographies*, 103) while Sir Gilbert Debenham was capable of raising 400 archers out of Chester in 1471 (*ibid.*, p. 265). However, these were not equivalent circumstances to that of Caister, but they do give some idea of possible numbers available to Norfolk's supporters. Based on the indictment made at Norwich, 10 January 1470, there were at least 39 defenders at Caister (KB9/327 m16). Worcester (*Itineraries*, 191) names 27 defenders, while Richmond (*Fastolf's Will*, 194-5) names another six. KB records add four more named defenders (KB27/839 *just.69*: Edward, or Edmund, and John Mason, William Bedford), for a total of 36, named individuals.

³⁵ Richmond, *Endings*, 133-6, Crawford, *Yorkist Lord*, 37-40. Norfolk ended his minority at 21 in 1465 ('Mowbray, John').

occupation, but the hard fighting was over by the time Woodville arrived.³⁶ What the Pastons lacked in experience, they compensated for with learning and social connections with the martial elites. John II owned a copy of the English prose Vegetius, collected with other works on heraldry, history, chivalric romance, and accounts of deeds of arms, and both brothers likely read martial literature extensively. It may have had little value at the tactical level, but this literature and these experiences gave them the language of martial culture and an awareness of its values and norms, and it is through that lens that their actions were given meaning.³⁷ No one was *playing* at soldiers at Caister, no matter how light the casualties were. Restraint was a practical consideration during the siege since the Duke wanted the place whole and as intact as possible, and therefore he avoided more destructive methods of reducing the defences and increasing the risk of fatalities, but fatalities were expected and both sides believed that holding or gaining land was worth the lives of others. The first fatality was probably the long-time servant of the Pastons, John Daubeney, killed on 9 September.³⁸ The following day, two of the Duke's men—John Colman and Thomas Mylys—were struck by a single stone shot, fired by a gun manned by John Pampyng and others. Colman died 16 September while Mylys languished until 16 November.³⁹ If there were other casualties, they were not fatal and too insignificant to find mention in the extant letters.

We do not have much to work with so far as the performance of violence is concerned, but the Pastons wrote about the siege, and it is the language they use to describe it and themselves that shows how they understood the place of violence in their lives. That this was a siege, conducted

³⁶ Richmond, *Endings*, 136. Most of the hard graft of besieging the French forces at Jersey, was accomplished before Woodville arrived (Scofield, *Life of Edward the Fourth*, I, 478-80).

³⁷ BL Lansdowne MS285. On the provenance and contents see *Sir John Paston's 'Grete Boke': A Descriptive Catalogue, with an Introduction, of British Library MS Lansdowne 285*, G. A. Lester, ed. (Cambridge: D. S. Brewer, 1984).

³⁸ Daubeney (called *gent.* or *esquire* in sources) who had been a close associate of the Paston family since at least 1461 and had considerable experience defending Paston property over the years, made his will on 21 August (prompted by a suspicion of his mortality, and not following a mortal injury), but nowhere in the Paston letters or elsewhere is his date of death mentioned specifically (*PL I*, lxxvi). Based on probabilities Richmond located his death on the 9th (Richmond, *Fastolf's Will*, 198-9). There is no evidence that anyone made an appeal over his death.

³⁹ John III dates this to August and appears to describe a single shot as the cause (*PL II*, nos. 342, 343). Records from King's Bench date the event to 3 p.m., 10 September (KB9/327 m16). A single stone projectile struck Colman in the right arm, and Mylys in the left, suggesting the two men were grouped closely together, providing an attractive target for inaccurate guns. Colman is said to have died at the village of Caister (KB27/839 *just.*67), while Mylys died at 'Blaksale' Suffolk (KB27/839 *just.* 69).

behind fortifications and at some distance from their antagonists, made it easier to see themselves as part of a wider, more universal fraternity of veteran gentlemen. Siege warfare was also the most familiar experience of warfare for several generations of Englishmen, and pitched battles were uncommon.⁴⁰ Significantly, the morality of elite martial culture permeated the thinking of the entire Paston family, not just the boys. The death of a devoted family friend did not shake Margaret Paston's resolve to preserve their claim on Caister, or at least their good name. Margaret wrote to John II, reminding him of the perilous situation his brother and their servants faced in Caister, and what it would mean to their good name if John failed to render aid. 'And if thei haue hasty help it shall be the grettest wurchep þat euer ye had, and if þei be not holpen it shall be to you a gret diswurchep, and loke neuer to haue favour of your neybores and frendes but if this spede wele.'⁴¹ By 12 September, Margaret was more emphatic about the preservation of their worship and good fame: 'the grettest rebuke to you that euer came to any jentilman, for euery man in this countré marvayllyeth gretly that ye suffre them to be so longe in so gret joparté wyth-ought help or othere remedy.'⁴² How exactly Margaret thought that anyone would think it strange that a Norfolk gentleman would struggle to resist the gathered forces of a Duke as powerful as Norfolk is beside the point. Worship was as much an inheritable family legacy as land or income. Margaret hoped to salvage both, but if she had to choose she would rather have worship. And in this drama of honour and worship, everyone played to type, acting out the recognisable tropes of formal, legitimate, and morally sanctioned warfare in defence of material and abstract investments at the cost of human lives.

But the Pastons were not idealists, naive, or ignorant to the internal contradictions of martial culture, Christian morality, and the practicalities of everyday life. Self-destructive honour

⁴⁰ I owe this distinction to a comment by Dr. Gunn. On the ubiquity of the siege during the English wars in France, see *Arms, Armies and Fortifications in the Hundred Years War*, Anne Curry, Michael Hughes, eds. (Woodbridge: Boydell Press, 1999).

⁴¹ *PL I*, no. 202.

⁴² *PL I*, no. 204. Margaret's stronger words in this letter were likely prompted by reports that Daubeney and Osbert Berney were dead. John II's reply (*PL I*, no. 243), written on 15 September, is equally misinformed, stating that both men were, to his knowledge, alive on 9 September. Richmond worked out, by process of elimination that Daubeney's death occurred on the 9th. Two of Norfolk's men were fatally wounded on the 10th, which may have accelerated negotiations for a truce that (likely) began on the 18th. (*Fastolf's Will*, 200-1)

had its limits. Caister was handed over to Norfolk on 26-27 September, giving the Duke an opportunity to play both aggrieved victim and merciful victor, writing a letter of safe conduct for John III and his men as if he had just seized a French bastion. Legally, the document was meaningless, but it may have been written with a wider audience or future litigation. Such an act of martial formality could improve Norfolk's image as virtuous lord.⁴³ Of course, the letter did not protect the Pastons or their men from legal actions initiated by the Duke.⁴⁴ A session of the peace at Norwich in June 1470 brought an indictment against the Pastons and others for the killing of John Colman.⁴⁵ In the same month, an indictment for Mylys's death came out of Suffolk (because it was there and not in Norfolk where he eventually died).⁴⁶ Norfolk was not content to leave the issue to local juries, and before these summer indictments were filled with Westminster, the Duke persuaded (or coerced) the widows of Colman and Mylys to submit civil appeals into King's Bench. These legal threats would occupy the Pastons into 1473.⁴⁷

⁴³ Gairdner, *PL* no. 730 (copied from the 1787-89 edition of Fenn, the original having since disappeared: see headnote, *PL* II, no. 909). Letters of protection typically applied to those traveling abroad, in service of the Crown (directly or indirectly) or for victuallers operating within the realm on official business (Baker, *Reports, Henry VIII*, II, 292-4).

⁴⁴ An indictment was brought against John Pampyng and Edmund Brome for the death of John Colman, at a session of the peace held at Norwich, 10 February 1470 (KB9/327 m16), but no corresponding case appears in the KB roll, likely because of the private appeal of Colman's widow, which took precedence over the Crown's suit.

⁴⁵ KB27/842 *rex*21. The indictment was made before Justice Henry Spelman, on 26 June 1470. It names John Pampyng and Edmund Brome as killers, with John Paston II, as accessory. The substance of the indictment is identical to the one cited above.

⁴⁶ KB27/842 *rex*20. Dated 22 June, this indictment was made before John Heveningham, at Ipswich, and names John Paston, esq., John Pampyng, Edmund Brome, William Bedford, Edmund Mason, John Mason, and Alex[ander] Cok (likely the 'Sander Cokby' from Worcester's *Itineraries*, 191), as killers, with Sir John Paston, William Paston, and Ralph Lovell as accessories. Both this and the Colman indictments give the total number of persons holding Caister, as 37.

⁴⁷ *PL* II, no. 766 (letter from James Gresham, April 1471) abstracts several cases against the Pastons, including KB27/839 *just.*67, 69. John III (*PL* II, no. 342) writing to John II, explained that an attempt to find indictments against the defenders at a session of the peace at Norwich had failed and he thought it likely that the Duke would try and convince the widows to enter appeals in King's Bench. Appeals were entered in the Hillary term, 1470, and the Duke's involvement was an open secret. Margaret Paston wrote to John III, that one of the widows (unnamed) had her travel expenses paid by the Duke (*PL* I, no. 215, which Richmond, *Fastolf's Will*, 230, re-dates to 1470). Our sympathy for the Pastons is undermined by John II, who demonstrated that 'chivalry and courtesy had strict sexist limits' (*ibid.*), when he wrote that 'I holde the hoorys weddyd,' and asked John III to make inquiries about them (*PL* I, no. 264). The re-married widow was probably Christine Mylys, since John II learned this information from William Bedford, who was amongst those named in her appeal, and thus invested in sorting out her current marital status (*PL* II, no. 788). John II appeared before KB in Hillary term, 1471, to enter not-guilty pleas in both cases, entering into recognisances to appear in Easter term. He was bailed to George Brown, armiger, of Southwark (Elizabeth Paston's second husband). There is no further process for these cases in the KB roll. John Daubeney had no heirs and no spouse, so there could be no civil appeal against Norfolk, although the family did make efforts to honour his will and ensure his property and debts were managed appropriately (Richmond, *Fastolf's Will*, 201n).

Legally and financially, the loss of Caister was a serious one for the Paston family but it was not so great a loss in social capital as the matriarch had feared—not for her sons, at any rate. The two eldest brothers spent some uncertain time avoiding the legal threats of Norfolk and Margaret sent them warnings of possible conspiracies of assassins, but both of them survived Norfolk's plots (real or imagined) and only John III was hurt at Barnet.⁴⁸ They were careful to watch their language, following Edward IV's restoration, that 'noo man *parceyue þat ye fauor any person contrary to þe Kynges plesure*.'⁴⁹ Eventually, the brothers obtained places in the Calais garrison, making important and stable connections with Lord Hastings and others in positions of authority and 'worship.'⁵⁰

The endurance of the Pastons through the unpredictable period of the redeption and Edward's return is less remarkable than the enduring relationships, even friendships, between members of their social group. Thomas Wingfield, one of Norfolk's captains, travelled with John III the year after the siege, fought in support of Edward at Tewkesbury, assisted in securing John III's pardon, and was deeply mourned by the brothers following his untimely death.⁵¹ John II's former tournament companion, John Parr, was knighted by Edward IV at Barnet but maintained connections with the Paston brothers in later years.⁵² Sir George Browne, second husband of Elizabeth Paston, the brothers' aunt, served the Duke of Clarence during the *redeption* and when the Duke changed sides, Browne would fight for Edward IV at Tewkesbury. Later, he would stand surety for John II over the KB appeals and gave him good company in the Christmas season.⁵³ The Paston brothers also felt a strong obligation to those who supported their defence of Caister regardless of their social standing or companionability. John III wrote with genuine affection and pride of his motley band of lesser gentlemen, soldiers-for-hire, and his own loyal or foolhardy

⁴⁸ *PL I*, no. 213 (Margaret to John III, December 1471). John II, III, John Pampyng, John and William Mylsent, all fought at Barnet, where John III was wounded, and John Mylsent, killed (Richmond, *Fastolf's Will*, 201n, *PL I*, no. 261: John II to Margaret, April 1471).

⁴⁹ *PL I*, no. 263. While the Duke of Norfolk supported Edward IV, some of his captains at Caister, did not, including Sir William Calthorpe (Wedgewood, *Biographies*, 149).

⁵⁰ See Richmond, *Endings*, 144-8.

⁵¹ Worcester, *Itineraries*, p. 189, *PL I*, no. 248, Richmond, *Fastolf's Will*, 208n, *PL I*, no. 568.

⁵² Richmond, *Endings*, 147, 152. John II, ever suspicious, expressed some concern over the depth of Parr's friendship, when writing to John III, in 1472 (*PL I*, no. 268).

⁵³ Richmond, *Fastolf's Will*, 233. *PL I*, no. 266.

family servants, who he called ‘as good menys bodys as eny leue.’⁵⁴ And John II complained bitterly that one former servant and veteran of Caister, who swore to John that he ‘wold neuer goo from me,’ decided to part ways. Still, John II was prepared to take any of his former servants back so long as they had ‘quytte them weell’ in the service of others.⁵⁵ They clearly enjoyed the gentleman-soldier’s life at Calais, where the brothers served into 1479.⁵⁶ John II died in November of that year, and the remaining John carefully avoided the greatest dangers of Richard III’s short reign but he would take advantage of opportunities for martial gain when they presented themselves.⁵⁷ The restored Earl of Oxford brought a restoration of the Paston fortunes, and on 16 June 1487, John finally lived out a chivalric fantasy of sorts by seeing victory in battle at Stoke and receiving his knighthood on the field from Henry VII.⁵⁸ These were the rewards for investing in aspirational violence.

Nibley Green, 1470

‘And keepe thy day, And the trouth shall be shewed by the marcy of God.’⁵⁹

J. R. Lander did not have much confidence in the credibility of seventeenth-century antiquarians with their catalogues of local anecdotes, folk-memory, and abstracted documents, now lost. That distrust coloured his treatment of the ‘battle of Nibley Green’, fought in Gloucestershire between William Berkeley, Lord Berkeley, and the young Thomas Talbot, Viscount Lisle (and their respective armies of local tenants and servants) on 20 March 1470.⁶⁰ Most of what we know about

⁵⁴ *PL I*, no. 335 (to John II, 5 October 1469).

⁵⁵ Called John III’s man, ‘Platyng’ (*PL I*, no. 275). John wrote of Platyng and Pytte (another inconstant friend, *ibid.*, no. 277), who left his service without permission. A month later, the two men were back, excusing their absence with stories of naval engagements. John II asked Edmond Paston to confirm their story (*ibid.*, no. 278).

⁵⁶ Richmond, *Endings*, 151-2.

⁵⁷ *Ibid.*, 161-5.

⁵⁸ *Ibid.*, 170. Sir John also participated in the disciplinary campaign in the North, following the murder of the Earl of Northumberland, 1489, and he may have gone with the Earl of Oxford in his expedition to Picardy (*ibid.*, 171-2).

⁵⁹ William, Lord Berkeley, to Viscount Lisle, 19 May 1470 (from John Smyth, *The Berkeley Manuscripts*, II, ed. by J. Maclean (Gloucester: J. Bellows, 1883), 111).

⁶⁰ J. R. Lander, *Conflict and Stability in Fifteenth-Century England*, 2nd ed. (Gloucester: Sutton, 1977), 14-15, repeats Smyth’s error (or lack of clarity) in placing the event in 1469 (see also Scofield, *Life of Edward*

the battle comes from the compiled notes of seventeenth-century antiquarian John Smyth and his biography of the Berkeley family, begun in the late-1590s and completed in the 1630s.⁶¹ Lander was not particularly concerned about the historical fact that this ‘so-called battle’ took place at all, but he did not believe that it took place in the manner described by Smyth.⁶²

Within two pages [Smyth] identifies this particular brawl with the hardly synonymous titles of ‘riot’, ‘battle’, and ‘skirmish’. Readers of a credulity even greater than his own have turned into a pitched battle a not uncommon, but unusually magnificent, riot.⁶³

Lander wrote that:

Continental experts of the day, who wrote in a well-developed military jargon, would have called Hedgeley Moor and Hexham (1464), which [...] were more or less chance encounters between at most a few hundred men, ‘besognes’, ‘rencounters’ or ‘melees’ rather than battles.⁶⁴

Lander felt that because these actions did not exhibit any original or compelling tactical innovation, and were small in scale and strongly influenced by the force of accident, they could only hold limited historical relevance. The numbers mattered to Lander, and it was scale that turned a ‘magnificent brawl’ into a significant battle.⁶⁵ Lander can be forgiven for dismissing Nibley Green as irrelevant because he was not very interested in following up on Smyth’s sources, and he did not think there was much value in picking apart one more instance of social elites killing each other for

the Fourth, I, 510, J. Blow, ‘Nibley Green, 1469’, *History Today* 2 (1952), 598-610). T. H. Crofts, *Malory’s Contemporary Audience* (Woodbridge: Boydell, 2006), 1-2, repeats the error, and cites Smyth only, but gives the casualty figure which Smyth does not. Smyth’s wording confused the regnal years, and he wrote that the writs of *diem clausit extremum*, were dated the 20th of March (*Berkeley Manuscripts* II, 113). Readers have interpreted this as the date of issue, thus the need to back-date the event to the previous year. However, the writs were actually issued by Chancery on 28 March 1470, in which the Viscount’s death is itself dated to 20 March (*CFR 1461-71*, 260). Also, Lisle’s entry into his inheritance is securely dated to 14 July 1469 (*CPR 1467-77*, 166-7).

⁶¹ Smyth (d.1641) was trained in law at the Middle Temple and owed much of his career to the Berkeley family and made extensive transcriptions of private Berkeley archives and legal documents in the central courts, for a biography of the family (Andrew Warmington, ‘Smyth, John (1567-1641)’, *ODNB*, 2004). Selections from his notebooks (Gloucestershire Records Office, Smyth of Nibley Papers, D8887) were edited and published in 1883 in three volumes, by J. Maclean.

⁶² Lander, *Conflict and Stability*, pp. 15-6 implied that Smyth claimed to have interviewed eyewitnesses to the affray, but this is misleading. Rather, Smyth described gathering information from locals at Nibley and Wooton, conducted in late 1590s, who recalled the oral history passed down from their own relatives who were born ‘in the time of Edward the fourth. ‘To support their credibility, Smyth sought out proofs from his subjects that their relatives had been locally ‘born in the time of king Henry the seventh, as their leses and copies declared.’ Smyth was not speaking to eye-witnesses, but second and third-generation locals, who repeated the ‘reports of their parents kinsfolks and neighbours,’ to Smyth. One named source was a great-grandson of Jacob Hyot, one of Berkeley’s men who was said to have been indicted for his participation in the affray. Significantly, Smyth represents these accounts with a note of caution (*Berkeley Manuscripts* II, 114-5).

⁶³ Lander, *Conflict and Stability*, 15.

⁶⁴ *Ibid.*, 158.

⁶⁵ *Ibid.*, 159.

foolish reasons or no reasons at all. But contemporaries took the affray seriously and Smyth did not conceal the fact that a significant amount of his material came directly or indirectly from the documents of the central courts of law, which meant that the courts took it seriously as well. Like the murderers of Nicholas Radford, the perpetrators of the Nibley Green ‘battle’ did not escape all legal or social punishment even if the formal processes did not work as one would expect.

Nibley Green was the most violent episode in a multi-generation dispute between the Berkley and Talbot families, which is about as close to a classic feud as one will find in England, after the Norman Conquest.⁶⁶ Space allows only the most cursory review of the tangled legal and personal animosities that joined the Berkeley and Talbot affinities in endemic conflict. It began, as these things often do, with the uncertain disposal of a complicated estate left by the death of Thomas, Lord Berkeley in 1417. Early stages of the dispute involved powerful figures, including Richard Beauchamp, Earl of Warwick, Humphrey, Duke of Gloucester, and the Earl’s daughters, one of whom married John, Lord Talbot (later Earl of Shrewsbury). By 1442, Margaret Talbot, Countess of Shrewsbury, resorted to force to seize disputed property from James, Lord Berkeley, precipitating a series of armed evictions and grossly partisan commissions of *oyer* and *terminer*, which shot indictments back and forth for the rest of the 1440s. In 1451 the Talbots seized Berkeley Castle by plot or treachery, but both families shared losses at the 1453 battle of Castillon.⁶⁷ The widowed Countess Margaret did not pause in her grief and continued to pursue the Berkeleys, but in 1457 a strategic marriage was thought to conclude matters. However, the confusion over titles to land only grew more complex.⁶⁸ When Margaret died in 1467, the new Lord Berkeley, William, took back Berkeley Castle, but five other manors, still claimed by Berkeley, descended to Margaret’s grandson, John, Lord Lisle, a ward of William, Lord Herbert.

⁶⁶ The following account is paraphrased from Peter Fleming, Michael Wood, *Gloucestershire’s Forgotten Battle: Nibley Green, 1470* (Stroud: Tempus, 2003), 21-50.

⁶⁷ Extensive testimony, recorded in English, survives in a King’s Bench civil case entered in 1452 (KB27/769 *Just.*40-41d).

⁶⁸ Fleming and Wood (*Gloucestershire’s Forgotten Battle*, 44), working from Smyth (*Berkeley Manuscripts* II, 106-8). The case came into KB in 1451, where the entries include extensive reported speech (KB27/769 *Just.*40-41d). The Chancery cases, cited by Fleming and Wood (C1/1/121-4), were brought in 1465. The Berkeleys were not prepared to forget the indignity of losing Berkeley Castle 25 years later, when they brought actions against some of their own men who they believed had assisted the Talbots in gaining entry back in 1450 (KB27/857 *Just.*66), which was stalled by one of the defendants’ actions in Chancery (C1/66/105).

In 1469, young (now Viscount) Lisle reached majority and entered into his lands and titles. He proved to be just as energetically troublesome as his grandfather. Smyth, working from Berkeley archives that do not survive, claimed that Lisle hatched another plot in the mode of the 1451 conspiracy to regain the castle, and it was this act that precipitated violence.⁶⁹ Apparently, Lisle had secured the cooperation of two Berkeley men by bribery to hand over the castle when an opportunity arose. One of the men turned informer and revealed the plot to Lord William in February 1470. With the subterfuge revealed, Lisle rightly expected Berkeley to move against him, but nothing happened. Apparently savouring the possibility of a confrontation, Lisle wrote an insultingly formal challenge to Lord Berkeley on 19 March. William Berkeley answered with his own letter, dispatched the same day, in language dripping with spite dressed neatly in the garb of chivalry and honour. Berkeley agreed to gather his host and meet for battle the following morning at some place between their respective seats. This turned out to be Nibley Green, a site roughly equidistant—an hour and a half on foot—between Berkeley Castle and Wootton Under-Edge (which was another of the manors Berkeley claimed as his own).⁷⁰

We can safely dismiss Smyth's claims that Berkeley fielded upwards of 1000 of his followers, called up on short notice, but the number can be taken as representing the significance of the event in local memory if not its actual scale, and there was nothing trivial or frivolous about this performance of chivalric theatre.⁷¹ Whatever their actual strengths, the two parties joined battle early in the morning of the 20th, over a patch of low ground near Nibley Church. Fleming and Wood make the useful observation that the geography favoured Berkeley, who would have approached from the northwest, screened by woods on the edge of the meadow. Lisle, on the other hand, would need to crest a rise from the east and traverse the exposed slope, making his force a good target for any archers concealed in the treeline and, given the local memory of the events, the

⁶⁹ Smyth, *Berkeley Manuscripts* II, 102-11.

⁷⁰ Fleming and Wood (*Gloucestershire's Forgotten Battle*, 51-3), point out that the plot involved two Berkeley men who had been in service with the family, and at Berkeley castle, since 1450 (Thomas Holt and Maurice King). King was made feoffee to Talbot property returned to Berkeley in 1472, which is an unlikely decision if he were a documented traitor.

⁷¹ Lord Berkeley had been on a commission of array the previous October, but he would not have kept men in arms about him until the following May, as he was unlikely to afford it, even if he had planned to move against Lisle, that far in advance (*CCR 1467-77*, 165).

archers were a significant factor in deciding the contest.⁷² This is the sort of place one arranges an ambush, not a pitched battle with even odds. At least four men were killed during the encounter and, if the court records are accurate, Viscount Lisle died around 10 a.m. and fighting lasted at least another hour.⁷³ Tradition holds that Lisle was killed by an arrow through the eye, mouth, or neck through his open helmet, which carries a poetic verisimilitude to other noble victims of anonymous projectiles. Lisle's widow ascribed his death to two arrows to the head, penetrating to the brain (fired by one John Beley) and a dagger thrust to the body (delivered by one John Bendell).⁷⁴ After the battle, Lord Berkeley, acting spontaneously or with forethought, made an unseemly progress to Wootton manor, which he proceeded to ransack in the presence of Lisle's heavily pregnant widow, taking away 'many of the Deeds and evidences of the said Viscounts own undoubted lands.' They made a special trophy of 'a peece of Arras, wherein the Armes of the Viscount and of the Lady Jone his mother [...] were wrought', which Smyth recalled seeing twenty years earlier, still hanging at Berkeley Castle.⁷⁵ It may have been tasteless of Berkeley to go this far, but he clearly felt it was within his rights as a noble wronged.⁷⁶

J. H. Cooke, writing in 1879, explained the significance of the incident within the context of the endemic violence and disorder that characterised the Wars of the Roses. The realm was 'at this period, in a very disturbed state, which, probably, accounts for such a serious breach of the peace passing unnoticed at the time by authorities.' It is an interpretation that is easy to maintain, so long as one does not look too carefully for other evidence to the contrary. Documentation shows that the official response to the violence was prompt if not comprehensive, and local officers of the law acted without specific direction from above.⁷⁷ Thomas Porter and Robert Kenyll, coroners of Gloucestershire, held inquests at Nibley on the 29th and returned indictments against Berkeley and

⁷² Fleming and Wood, *Gloucestershire's Forgotten Battle*, 68-70.

⁷³ Margaret's appeal contains a description of Lisle's death, composed in the style of an inquest, and gives the time of day (KB27/843 *just.*68). Agnes Lewys' appeal does the same and gives John Lewys' time of death as 11 am. (KB27/841 *just.*28).

⁷⁴ KB27/843 *just.*68. Smyth described the Viscount as fighting with his 'bever' open (*Berkeley Manuscripts* II, 114), although this usually refers to a piece of armour worn over the throat and lower face, fixed to the breastplate, but sometimes incorporated into the helmet, particularly the late-fifteenth century *armet*.

⁷⁵ Smyth, *Berkeley Manuscripts* II, 113.

⁷⁶ *Ibid.*, 110.

⁷⁷ *CFR 1461-71*, 260.

Talbot supporters.⁷⁸ Chancery acted promptly to protect the Crown's interests in Lisle's lands, issuing writs for an *inquisition post mortem* on 28 March. Additionally, there were at least three civil appeals of homicide entered before King's Bench, including that of Margaret, Viscount Lisle's widow.⁷⁹ The first appeal was that of Katherine Thomas, widow of William Thomas (a Lisle man), who named the Berkeleys and several of his followers as killers and accessories.⁸⁰ Viscountess Lisle's appeal named the Berkeleys and several of their servants, including one Jacob Hyot, grandfather of one of Smyth's sources.⁸¹ A further appeal was brought by Agnes Lewys against her husband's killers, who may have been Lisle's men, since the Berkeleys are not named in her suit.⁸² Lord Berkeley eventually cleared himself of the charges by entering into an agreement with Viscountess Lisle over the disputed manors, arranged by arbitration and affirmed through a joint petition to Edward's 1472 parliament.⁸³

The other appeals and indictments took twisting paths through the courts and other than one or two outlawries, the various accused obtained pardons or were released.⁸⁴ The unravelling of Edward IV's regime made an already cumbersome legal process even more unwieldy, and there

⁷⁸ KB29/100 *rot.*11d, lists two of these indictments. The first names the gentlemen, John Daunt (outlawed), Robert Tanner (*po. se.* Mich. 18 Edw. IV), Nicholas Jonys (pardon, Mich. 11 Edw. IV), and John Draycote *po. se.* Mich. 18 Edw. IV), were indicted for the death of John Lewys. David Jonys (pardon, Mich. 11 Edw. IV), Thomas Tanner (pardon, date incomplete), and Thomas Halyday (outlawed), were indicted separately for unspecified felonies. The original indictment in John Lewys' death is reproduced in KB27/869 *rex*8d (at the appearance of John Daunt and Robert Tanner). KB29/100 *rot.*11d also lists an entry against John Lewys, yeoman of Berkeley, for unspecified felonies by indictment. He may have been a son or cousin of the Lewys killed at Nibley, and a marginal note indicates he was outlawed, likely for non-appearance.

⁷⁹ These concern the deaths of William Thomas (KB27/839 *just.*20d), John Lewys (KB27/840 *just.*8), and Thomas Talbot, Viscount Lisle (KB27/840 *just.*8), which were entered in this order.

⁸⁰ KB27/839 *just.*20d, records writs of arrest for William Berkeley, for return in January 1471.

⁸¹ KB27/840 *just.*8 (writs of arrest). Her appeal named William, Lord Berkeley, his brothers Maurice and Thomas, Jacob Hyot, esq. (likely the 'James Hiatte' from Leland *Itineraries* IV, 105, 132, Smyth, *Berkeley Manuscripts* II, 114-5), John Body painter, John Beley, husbandman, Richard 'Hylper,' cordwainer, John Sawnders, cook, John Bendell, yeoman. Writs of arrest were issued in June or July 1470, under the seal of Henry VI. The Lewys appeal is entered on the same *rot.* as Margaret's. The full appeal in Lisle's death is KB27/843 *just.*68.

⁸² KB27/840 *just.*27d, 28f-d, KB29/102 *rot.*34. Fleming & Wood (*Gloucestershire's Forgotten Battle*, 78) are adamant that Lewys was a Berkeley servant, since some of the accused are named in another Berkeley lawsuit regarding the original plot to seize Berkeley Castle. It is possible that a John Huntley was another victim of Berkeley's troops, since an appeal brought by his son William names, amongst others, one John Hyott of Bristol, as his killer (KB27/840 *just.*18d, KB27/842 *just.*19). However, these are only writs of arrest, and do not provide details or dates.

⁸³ SC8/122/6089, *PRoME* XIV, 53-5. The settlement did not excuse Margaret from suffering a fine out of KB for non-suit of her case (see note added to the entry on her case in KB29/100 *rot.*39).

⁸⁴Record of writs and returns, dated 11 July 1472 (KB27/844 *just.*23). John Beley challenged Margaret's appeal on the grounds that one of the men named (Richard Helper) did not exist and in Mich. 1473, the case was thrown out (KB27/843 *just.*68).

was no intervention by Chancery or special commissions as one might expect in other situations. As an indication of the confusion within the administration, routine letters patent for commissions of array were issued by Edward IV (who was then at York) on 26 March for Somerset and Gloucester, which named both Lord Berkeley and Lisle as commissioners.⁸⁵ During Henry VI's brief return to the throne, Lord Berkeley was employed on commissions of *oyer and terminer* in January 1471, and his value to the restored Edward IV ensured that his pardon was granted on 20 January 1472.⁸⁶ This may not reflect well on the courts of law, but it is hardly atypical of the system and does not reflect any special treatment of the case itself or some fundamental breakdown of order stemming from Edward's crisis with Warwick and subsequent Readeption regime. But let us return to the letters, allegedly exchanged between Lisle and Berkeley, the day before they fought at Nibley Green.

The letters survive only as contemporary copies in the Berkeley family collection, along with material relating to the supposed plot of early 1470. They are all in a single hand and were likely compiled to support some legal action or petition that was planned but never executed.⁸⁷ Compared to the letters exchanged between the Earl of Devon and Lord Bonville, the correspondence of Lisle and Berkeley is very different. Bonville and Courtenay are formal in their incivility, inverting the standard greeting into a denial of familiarity: 'All due salutations of frendlihod laide aparte', begins Bonville.⁸⁸ 'All frendly greting stonde for nought' was Courtenay's

⁸⁵ *CPR 1467-77*, 219. On Edward's itinerary for March, see Scofield, *Edward the Fourth*, I, 510-15.

⁸⁶ *PRoME XIV*, 53-5.

⁸⁷ The letters and evidences of the conspiracy survive in a contemporary roll compiled in a single hand, sometime in the years following the events (Berkeley Castle Muniments, A1/1/60: SR137). However, all modern editions of this text derive not from this roll, but Smyth's transcription in his personal notebooks (Smyth of Nibley Papers, D8887 vol. 2, 572-5). Smyth's transcription was printed (without attribution) in J. H. Cooke, 'On the Great Berkeley Law-Suit of the 15th and 16th Centuries, A Chapter of Gloucestershire History', *TBGAS* 3 (1879), 313-15, and with very slight differences in Maclean's ed. of 1883 (*Berkeley Manuscripts II*, 110-11). The version printed in I. H. Jeayes (*Descriptive Catalogue of the Charters and Muniments in the Possession of Lord Fitzhardinge at Berkeley Castle* (Bristol: C.T. Jefferies and Sons, 1892), xxvi-xxix), is simply a transcription from the Maclean edition. On the Berkeley collection, and the likely origins of this roll, see David Smith, 'The Berkeley Castle Muniments', *TBGAS* 125 (2007), 13. A modern catalogue of the Berkeley manuscripts has been published as *A Catalogue of the Medieval Muniments of Berkeley Castle*, 2 vols. B. Wells-Furby, ed. (Bristol: Oberon Books, 2004), although this was not available for consultation for this thesis.

⁸⁸ *John Vale's Book*, 262.

reply.⁸⁹ Lisle is more personal and more offensive, addressing his letter to ‘William called Lord Berkeley,’ questioning his right even to this title. Lisle gives little indication as to what prompted his challenge, only an expression of surprise that Berkeley has not, as yet, taken up arms to right whatever wrong he has attributed to Lisle. There is a subtle accusation that it is cowardice that keeps Berkeley away by mentioning the rumours that Lisle was planning to ‘bring in Welshmen for to destroy and hurt my one nation and Cuntry.’ Lisle then directly appeals to Berkeley’s sense of chivalric honour, challenging him to meet and ‘there to try between God and our two hands, all our quarrell and title of right’ or, barring that, to ‘bringe the uttermost of thy power’ and fight it out ‘according to the honor and order of knighthood.’⁹⁰ Berkeley’s reply, supposedly composed and dispatched in a rush and sent back the same day, is more than twice as long. Berkeley writes to ‘Thomas Talbot, otherwise called viscont Lisle’, with surprise at ‘thy strange and lewd writing.’ He then names two of the men allegedly involved in the recent conspiracy and then briefly recounts the foundations of his family’s long quarrel with the Talbots. He explicitly claims the right to use force to answer Lisle’s insults, not only because of his obligations as a knight, but because of Lisle’s alleged contempt of lawful direction from his superiors. Having established his moral high ground, Berkeley gave his consent to meet Lisle at the appointed place and time to resolve the issue with force, which Berkeley boasted would not require even ‘the tenth part that I can make’ in men and arms.⁹¹

The story of the conspiracy and the exchange of challenges, as presented by the partisan Berkeleys, does not hold up very well to close scrutiny. There is nothing to corroborate the allegations contained in the Berkeleys’ roll of transcripts, but this is not to say that there was no pretext to the fight at Nibley, only that it need not have been this one specifically. Nor should we dismiss the letters, even if they were fabrications after the fact. Letters of challenge may have been exchanged and arrangements suggested for time and place, but, like those exchanged between

⁸⁹ Ibid., 263.

⁹⁰ Smyth, *Berkeley Manuscripts*, II, 109.

⁹¹ Ibid., 110.

Courtenay and Bonville in 1455, it was unlikely that the challenge and answer followed one and the other so rapidly or that battle was joined within 24 hours.

Still, the letters *feel* legitimate, and they should, given that they were expected to justify Berkeley's actions against long-suffered wrongs and the obligation of a Lord to protect his rights, which he knew full well could not be justified in any legal way. It was, however, a powerful moral argument and one for which most of his peers would have great sympathy. What these letters do is communicate one rationalisation for the use of force by appealing to the twin virtues of chivalric honour and noble self-assertion. This was far from an opportunistic move by Berkeley to take advantage of a distracted regime and a hot-tempered and easily provoked rival. This was calculated and planned and, like the siege of Caister, would likely have occurred no matter what the political climate.

But how did anyone not see through this facade of chivalric morality to the cynical, selfish violence of people like William Lord Berkeley and the Duke of Norfolk? Because there is no concealed cynicism, only a sincere belief in one's personal rights and obligations paired with a stubborn refusal to compromise that, combined, make force and violence seem justifiable and praiseworthy; to do otherwise would be legally safer but socially dangerous. If it was possible for the gentry to conceptualise their own petty and inglorious struggles as a subcategory of virtuous war and righteous justice, then it was also possible to rationalise and valorise the use of force for personal reasons. All of this was, fundamentally, supported by the logic of diffuse authority. We are accustomed to reading between the lines to find the real meaning in historical statements, but we are perhaps overthinking the problem when it comes to violence employed by social elites. The words attributed to Earl Warwick, in 'the excuse and answer' he gave Queen Margaret, at Angers, 1470, have no need of subtext. Asked to explain his many acts of aggression against the Queen and her husband, Warwick sidestepped any political rationale and answered with the most simple and unquestionable excuse he could give: 'he had a rightwus cause to labour their undoying and

destruccion and that therinne he had not doone but that anoble man outraged and dispeired oughte to have doone.⁹²

⁹² *John Vale's Book*, 216.

Chapter 9 An Accidental Monopoly, 1485-1532

The Tudor regime gets most of the credit for establishing the foundations for a state monopoly on violence or, in other words, they were the first to successfully enforce the claim. G. R. Elton thought this monopoly was to some degree deliberately envisioned and systematically implemented through a mixture of legal revisions, the imposition or threat of punitive fines, and more serious punishments including executions of subjects who could best act as good examples for others.¹ This was part of the ‘Tudor revolution in government’, consciously devised and implemented under Thomas Cromwell’s primitive police, and part of a wider and more comprehensive plan of government and institutional reform. This was accomplished (so the theory goes) by breaking the powerbase of over-mighty subjects, ruthlessly enforcing statutes against unlawful retaining and armed gathering, and extending the laws of treason to embrace treasonable words.² The Crown also consolidated and subordinated the means by which it granted regional authority and rights to offices, making the link between those authorities and the Crown more explicit. Patronage was still important, but it was increasingly the favour of the Crown, and not that of the local magnates and titled nobility, that attracted suitors. Elton’s theory was not uniformly accepted but it did allow the development of a long and largely productive debate on the origins of the Tudor state, nascent English nationalism, and the interconnections between culture, institutions, the law, governance, and religion.

Violence and the control of disorder (in all its forms) is a facet of this debate, and under Henry VIII a flood of new legislation appeared claiming to solve intractable problems through criminalisation of certain acts and a more determined spirit of enforcement of the law, especially in the border regions. Certainly, there was a measurable change in how the Crown responded to

¹ The outline of the theory appeared in G. R. Elton, *The Tudor Revolution in Government: Administrative Changes in the Reign of Henry VIII* (Cambridge: CUP, 1953), and was fleshed out in Elton, *England Under the Tudors*. A long-running debate, like that on violence, played out in the volumes of *Past & Present*, which includes G. L. Harris, ‘Medieval-Government and Statecraft’, *P&P* 25 (1963), 8-39, Penry Williams, ‘The Tudor State’, *P&P* 25 (1963), 39–58, and G. R. Elton, ‘The Tudor Revolution: A Reply’, *P&P* 29 (1964), 26–49. For a concise overview of the debate, see Gunn, *Early Tudor Government*, 2-8.

² Elton, *Policy and Police*, 293-326.

violence amongst its peers and the broader aristocracy, and it is perhaps more significant that violence (particularly armed, organised, and public, violence and demonstrations of force) grew increasingly difficult to accomplish without coming across as threatening the legitimacy of the Crown.³ The Tudors did promote a more inflexible interpretation of the law of homicide, which necessitated some changes to process and judicial discretion, but the courts performed more violence themselves as acts of retribution, correction, and public edification. Creating a monopoly on violence gave greater licence to the Crown to perform violence through executions and permanent mutilation.⁴ But threats and spectacles of suffering only go so far in making change in social values and actions, and there were more subtle ways in which the state drew towards itself the markings of legitimate violence while taking them away from those who had long held such marks as their own.⁵ And yet the gentry and nobility of the sixteenth century found ways to justify violence amongst themselves and to make those arguments withstand the scrutiny of the law, because some of the deeply held values of the social elite did not and would not change.

The sample survey of KB rolls from 1490 to 1560 proved to be very thin on violence involving social elites, which is not unexpected given the increasing importance of the assize circuit in the prosecution of criminal offences. There are, however, a few useful cases and some trends that can be identified over the period. In this final section, we will discuss these cases and trends as compared with what has come before, but first we must spend some time with the enigmatic affray at Westminster in 1532, which resulted in the death of Sir William Pennington. It is a case study in continuity and change in the role of violence in elite English social identity and in the law.

³ For example, Henry's response to the 1486 uprising of Viscount Lovell and Sir Humphrey Stafford (C. H. Williams, 'The Rebellion of Humphrey Stafford in 1486', *EHR* 43, no.170 (1928), 181-89), or the wording of the 1504 statutes that explicitly identified retaining as a privilege, granted by the Crown, not a right, protected by noble title (Sean Cunningham, *Henry VII* (Routledge, 2007), 209-11). Later this would extend to constraint of local law-enforcement itself, and the administration of justice (*Stat.* 26 Hen. VIII, c.6: act concerning murders and felonies in the march of Wales, 1534).

⁴ Wood, 'The Deep Roots of Albion's Fatal Tree', 3-17.

⁵ See in particular the work of Mervyn James 'English Politics and the Concept of Honour, 1485-1642', *P&P*, supp. 3 (1978), reprinted in James, *Society, Politics, and Culture*, 308-415, and Keith Thomas, *The Ends of Life*, 44-77, for treatments of this intersection of values and actions.

Pennington and Southwell, 1532

Amongst the various portrait sketches and paintings executed by Hans Holbein the Younger during his extended visits to the English court is the 1537 study of Richard Southwell, a courtier and administrator recently appointed to the new Court of Augmentations. A preliminary sketch on paper depicts a man in his mid-thirties with an ambiguous expression and equally ambiguous marks at his throat and jaw.⁶ The marks are not a flaw of the paper or a product of time and decay, as they appear again in the painting Holbein produced, now in the Uffizi Gallery in Florence. Southwell's past has given those marks a sinister meaning and his sleepy eyes are often read as those of 'a man both haughty and indecisive.'⁷ That face has been called 'imperturbable' by some, 'demonic' by others, and few question that the scars, preserved with such fidelity, were souvenirs of his murder of Sir William Pennington within the sanctuary of Westminster in April 1532.⁸ When an image, like a text, is *read* for meaning, we need to ask ourselves whether we are reading the same messages that contemporaries did or reading what we have come to expect. There is nothing about the scars themselves that can tell us what caused them. Perhaps the most relevant detail is that Holbein chose to seat his subject facing in a direction that reveals rather than conceals the scars.⁹ We know that nothing Holbein did was accidental and he was a keen observer of the social, political, and intellectual world where his subjects lived, so perhaps the visibility of the scars was deliberate.¹⁰ Contemporaries had little to say about the 20 April 1532 affray.¹¹ Carlo Capello, the Venetian ambassador to London, described the incident as fitting into the context of a larger magnate feud amongst Henry VIII's senior peers and suggested that this specific act of violence

⁶ The preliminary sketch survives as *Sir Richard Southwell, 1536* (Windsor, Royal Collection, RCIN 912242, 370 x 281mm, Black and coloured chalks, pen and ink, and metal-point on pale pink prepared paper). The oil portrait was complete in 1537. In 1620 the painting was given to Cosimo II de Medici, as a gift from Thomas Howard, Duke of Arundel, and now hangs in the Uffizi gallery (Gloria Fossi, *Uffizi* (Giunti Editore, 2004), 356). Howard commissioned a copy of the painting, before parting with it (now London, National Portrait Gallery, NPG 4912).

⁷ S. Lehmborg, 'Southwell', *ODNB* (2008).

⁸ Fossi, *Uffizi*, (356), called the expression 'imperturbable,' while Peter Erickson and Clark Hulse (eds. *Early Modern Visual Culture: Representation, Race, and Empire in Renaissance England* (Pennsylvania: University of Pennsylvania, 2000), 264), called it 'demonic.'

⁹ Susan Brigden (*Thomas Wyatt: The Heart's Forest* (Faber & Faber, 2012), 206) has no doubts as to the source of the scars.

¹⁰ See Kenneth Charlton, 'Holbein's Ambassadors and Sixteenth-Century Education', *Journal of the History of Ideas* 21 (1960), 99-109.

¹¹ Southwell, Richard', *HoC: 1509-58 III*, 352-4, Lehmborg, 'Southwell.'

was precipitated by insulting words against Lady Anne, the King's favourite, soon to become his new queen.¹² On the same day that Pennington died, Southwell and his accomplices fled into sanctuary, which the Duke of Suffolk would have broken to apprehend them if not for direct intervention by the Crown.¹³ Southwell eventually secured a special pardon, confirmed in parliament, which cost him some property but caused no long-lasting harm.¹⁴ In fact, his career flourished and there has always been a vague feeling about him that he and those around him knew they had gotten away with murder. Southwell proved to be a resilient and pragmatic administrator, often tasked with unsavoury missions against the court's enemies, but he never participated in naked violence again.¹⁵ He survived the downfall of his first patron, Thomas Cromwell, and weathered the succession of Edward VI and Mary surprisingly well, and seems the sort of man who was a pragmatist, capable of adapting to changing circumstances and moral values without much discomfort. Nor does he seem like the sort who would let vanity get in the way of a useful indicator of his potential for violence by concealing any scars he may have picked up from William Pennington's sword. He would show them without shame, and perhaps with some pride.

Capello's eyewitness account tells us more about his interpretation of events and the general political temperament at Westminster than the event itself. His letter of 23 April began with a brief account of his meeting with Thomas Howard, Duke of Norfolk, followed by the episode involving Southwell and Pennington:

At the moment of his [Duke of Norfolk's] arrival at the Court, one of the chief gentlemen in the service of said Duke of Norfolk, with 20 followers, assaulted and killed in the sanctuary of Westminster Sir (D'no) William Peninthum (sic) chief gentleman and kinsman of the Duke of Suffolk. In consequence of this, the whole Court was in an uproar, and had the Duke of Suffolk been there, it is supposed that a serious affray would have taken place. On hearing of what had happened, he (Suffolk) was on his way to remove the assailants by force from the sanctuary, when the King sent the Treasurer [Thomas Cromwell] to him, and made him return, and has adjusted the affair; and this

¹² *CSPVenice* IV, item 761.

¹³ Gunn, *Charles Brandon*, 138, *LPHE* V, 1183.

¹⁴ *Stat.* 25 Hen. VIII, c.32, entered in the 1533 sitting of parliament.

¹⁵ Considering that it was the unremarked and often forgotten Anthony, who actually killed Pennington, Richard's reputation for violence is rather overstated. Brigden (*Thomas Wyatt*, 533) calls him a 'scholar and hatchet man,' for the establishment. He did have a brief opportunity to exhibit personal bravery when he was called upon to command members of the Queen's household in defence of Westminster Palace during Wyatt's 1554 rebellion, but it remained a demonstration, never being tested by actual fighting (see Edward Underhill's account with the Gentleman Pensioners, summarised in D. Loades, *The Tudor Court*, rev. ed. (Headstart History, 1992), 92-3).

turmoil displeased him. It is said to have been caused by a private quarrel, but I am assured it was owing to opprobrious language uttered against Madam Anne by his Majesty's sister, the Duchess of Suffolk, Queen Dowager of France.¹⁶

Naturally, Capello's attention was fixed on the more important figures involved and the political undertones of 'opprobrious language' against Queen Katherine or the King's new favourite, rather than a trivial 'private quarrel.' Capello does not explain how the words of the Duke of Suffolk's wife could have led to a fight between his supporters and the servants of Norfolk, but he had little need to, since his audience was familiar with such proxy violence amongst their own nobility.¹⁷

Modern historians who choose to mention the episode usually agree with Capello's reading or they see it as part of a less political but still protracted struggle between Suffolk, Norfolk, and their supporters over local influence in East Anglia. Whatever the interpretation, Pennington and Southwell always appear to be actors in someone else's drama with little agency of their own.¹⁸

There is no hint of the political in the surviving indictment, but we should not expect to find it even if it was a part of the scene, not because the subject was sensitive but because it had no place in this kind of legal record. A close reading of the indictment and an awareness of Pennington and Southwell's social place and values suggest that Capello was looking too hard for a political motive. It is entirely possible, even likely, that these two men fought for their own personal reasons in defence of their public selves. The heated political environment at Westminster was a contributing factor but not in the way Capello imagined. If Pennington and Southwell had clashed anywhere else, violence would probably not have resulted. But before the audience at Westminster, violence was almost inevitable.

¹⁶ CSPVenice IV, item 761.

¹⁷ The differences between Suffolk and Norfolk are not straightforward, beginning with competition over regional influence, Crown offices, and eventually the King's divorce and his plans to marry Anne Boleyn, against whom Suffolk's wife, Mary Tudor, the King's sister and dowager Queen of France, held a deep animosity (Gunn, *Charles Brandon*, 112-4, 132-5). It was this political context that seemed natural to Capello, who would have been familiar with proxy violence through retainers (see *Words and Deeds in Renaissance Rome: Trials before the Papal Magistrates*, Thomas V. Cohen, Elizabeth Storr Cohen, eds. (Toronto: University of Toronto, 1993, and Daniel Lord Smail, 'Factions and Vengeance in Renaissance Italy. A Review Article', *Comparative Studies in Society and History* 38 (1996), 781-89).

¹⁸ Brigden, *Thomas Wyatt*, 205.

Sir William Pennington (sometimes Penyngton) came from a respectable Cumberland family, once close to the Percy dynasty.¹⁹ William established good foundations for his own career by marrying a cousin of Charles Brandon, Duke of Suffolk, whose own advancement under Henry VIII was meteoric. Pennington leased property from the Duke and farmed rents from the Duke's estates.²⁰ Suffolk knighted Pennington during the 1523 march on Paris.²¹ Named a gentleman usher of the King in 1526, he was one of the sheriffs of Cumberland in 1528 and began sitting on commissions of the peace for Cumberland and Norfolk in 1531.²² He was around 45 at the time of his death.²³ Richard Southwell came from a gentry family with deep roots in Norfolk and equally deep connections of service to the Mowbray and Howard Dukes of Norfolk. His father, Francis, had been a royal auditor, and his uncle, Sir Robert, was an important servant in Henry VII's administration. The notable uncle died without heirs and, after the death of Francis, a substantial inheritance fell to young Richard, who began his formal education in law at Lincoln's Inn around 1526.²⁴ He was first named a justice of the peace for Norfolk in March 1531 (sitting on the same commission with Pennington) and he and Pennington certainly moved in similar circles in Norfolk and Westminster. They would not have been complete strangers to each other.²⁵ Richard and his brothers would later enjoy (for so long as it was expedient) a close association with Thomas Cromwell. However, in the spring of 1532, there was little evidence that the Southwells were close to Cromwell, who at this time was a rising member of the King's Privy Council.²⁶ Richard was at

¹⁹ James, *Society, Politics and Culture*, 100.

²⁰ Gunn, *Charles Brandon*, 67.

²¹ J. Foster, *Pedigree of Sir Josslyn Pennington, Fifth Baron Muncaster of Muncaster and Ninth Baronet* (Privately printed, 1878), 46.

²² *LPHE* IV.i, 1526 (p. 868), IV.ii, 2375.4, 4835, IV.iii, 5952, 6803.6, V, 166.12.

²³ Foster, *Pedigree*, 46, cites an inquisition *post mortem* that gives his age as 40 in October 1527.

²⁴ 'Southwell, Richard', *HoC 1509-58* III, 352-3. Richard entered his inheritance in July 1526 (*LPHE* IV.i, 1533.12, Baker, *Men of Court*, II, 1433-4). On the Southwell family's extensive service to the Crown, and regional lords in East Anglia, see Gunn, *Henry VII's New Men*, 11-12, 108-9.

²⁵ *LPHE* V, 166.12.

²⁶ The connection is often made by citing Richard's diligent tutoring of Cromwell's son, Gregory, before mention of the Westminster affray (Southwell, Richard', *HoC 1509-58*, III, 352, Lehmborg, 'Southwell,'). Cromwell had actually hired Peter Valens, pensioner of Gonville Hall, Cambridge, and chaplain and almoner to Bishop of Ely, in December 1534, as tutor for his son, and it is in Henry Doves' letter of 30 April 1535 (*LPHE* IX, 618), written while Gregory was living in Richard Southwell's home at Rising, Norfolk, that one hears of his interest in the young man's learning. Richard was Sheriff of Norfolk at the time, and Doves' description of Richard's broad pedagogy is largely to praise him as a responsible host, rather than a dedicated instructor (for Valens, see M. L. Robertson, 'Thomas Cromwell's Servants: The Ministerial Household in

least 15 years Pennington's junior, and what he may have lacked in landed credentials he compensated for with the inheritance of diligent royal service. Shannon McSheffrey, in the most detailed study of the incident, identified Pennington as a representative of the traditional, late-medieval landed gentry while Southwell represented the secular, administrative professionals with new money, threatening his social and economic place in the local and central hierarchy.²⁷ However, the social place of the two families was not so fundamentally incompatible. Both Penningtons and Southwells held secure pedigrees of gentle birth and respectable local lordship, but the Southwells enjoyed a far greater reputation as servants to the nobility and the Crown, while the Penningtons' influence was confined to the North, and William's participation in the wider political world was a recent development through his association with the Duke of Suffolk. Pennington, the aging soldier, did have a far greater personal link with traditional martial service and experience, but even here, Southwell could still point to his ancestors' extensive military service, particularly his uncle Sir Robert.²⁸ Both men were accompanied to Westminster by servants and friends. Richard was accompanied by two of his three brothers (Robert and Anthony) and several servants, while Pennington had an unknown number of supporters in tow.²⁹ It was, however, the great crowd that filled Westminster Hall and the grounds that formed the most important group in the resulting affray.

The events of 21 April are preserved (selectively, of course) in a coroner's indictment made before a jury that sat the same day, and later copied into the KB roll. These sources had not been used in previous discussions of the case, perhaps because the inevitable pardon suggested

Early Tudor Government and Society' (PhD thesis, University of California, 1975), 473-4). Cromwell's relationship with Robert Southwell was, eventually, much closer (*ibid.*, pp. 563-5).

²⁷ Shannon McSheffrey, 'The Slaying of Sir William Pennington: Legal Narrative and the Late Medieval English Archive', *Florilegium* 28 (2011), 169-203. McSheffrey's essay is dated 2011 but the journal has been publishing with a backlog, such that this issue did not appear until 2014.

²⁸ Gunn, *Henry VII's New Men*, 108-9.

²⁹ The brothers Robert (b.c.1506) and Francis (b.c.1510), went on to similar careers in royal service as their elder brother (*HoC 1509-58 III*, 351-2, 354-6). Anthony, occasionally identified as a cousin (David M. Head, *The Ebbs and Flows of Fortune: The Life of Thomas Howard, Third Duke of Norfolk* (Athens, GA.: University of Georgia, 1995), 258), may have married a daughter of Sir Thomas Strange (*The Visitations of Norfolk, 1563, 1589, 1613*, W. Rye, ed. (Harleian Society, 1891), 259, 273) An Anthony Southwell was listed with the esquire Grooms of the Privy Chamber, on the King's reception of Anne of Cleves, at Calais, 1539 (*The Chronicle of Calais*, J. Nichols, ed. (Nichols and Son, 1846), 179). He may have had a minor, clerical, position in Chancery, where we find a 'Southwell' as a clerk in the 1540s (Baker, *Men of Court II*, 1435).

there was nothing there to find, until it was published by McSheffrey. The description of the affray is uncommonly rich with recorded speech and a careful narrative that reads as credible, if certainly tailored in the way legal narratives tend to be. Like all legal records, it is mediated and not impartial or objective, but it gives uncommon insight into the way interpersonal friction, especially between social elites, could escalate towards violence. There are also several inconsistencies in the narrative that suggest a difficult dialogue between jurors, legal counsel, and the coroner in the construction of the charges. In this way, the Pennington and Southwell case comes as close as possible to telling us how someone could justify violence, in defence of the social-self, and how third parties supported or condemned such behaviour.

‘If thow kytt my flesshe I shall kytt thy flesshe ageyn’

‘Not violent individuals, but violent situations [...]. It is a false lead to look for types of violent individuals, constant across situations. A huge amount of research has not yielded strong results here.’³⁰

The indictment begins in the usual manner, naming the coroner, the place the inquest was held, the date, and the names of the jurors who gave their consent to the narrative that follows. That narrative is worth the space that a close-reading requires.³¹ The Easter term at Westminster began on 17 April, and the first few days of each term were reserved for the issuance of writs and other administrative matters, so that the first day where new business was likely to appear (the first *appearance* day) was the 20th.³² Westminster would have been crowded, and the atmosphere, tense.³³

[The jurors say] that on 20 April in the twenty-third year of the reign of the aforesaid king, it happened that Richard Southwell, late of London, esquire, was walking back

³⁰ Collins, *Violence*, 1.

³¹ This translation is based on that of McSheffrey, ‘Slaying’, 195-9 (which is based on the version in KB27/1087 *rex*8) and the indictments file (KB9/520 m12). Notes will indicate deviations from McSheffrey. Pennington is spelled ‘Penington’ in the original, but it has been regularised here to follow that of the other references.

³² On the internal structure of the week-long ‘return days’, see Sayles, *King’s Bench* II, lxxv-lxxx.

³³ The indictment is not specific on the time of day for either the initial confrontation or Pennington’s death. This was far from trivial and the indictment could have failed if it were challenged before the accused entered pleas, on the basis of that omission alone (eg. KB27/838 *rex*5d, which failed to name the place sufficiently, and KB27/937 *rex*11d, which did not give the date in the proper form).

and forth in the hall called Westminster hall³⁴ [...] when along came John Peryent, esquire, intending to pacify certain grievances and disputes moved by William Pennington against Richard Southwell.

John Peryent was an auditor for both the King and the Duke of Suffolk, and there is reason to believe that he married Francis Southwell's widow, Dorothy, making him stepfather to the Southwell brothers and a natural intermediary in any dispute involving his close relatives.³⁵ What these 'grievances and disputes' were is not stated. They could have been legal, personal, or both.³⁶

And as John Peryent was urging Richard Southwell to have an amicable conversation with him, the a-forenamed William Pennington, knight, came up to John Peryent and Richard Southwell, saying the following words 'Southwell, you intimated to John Grey that you had a quarrel with him. And if you did not, you said that Pennington is a liar.'³⁷

The syntax makes it difficult to know who Pennington meant by 'him'—Pennington himself, or Grey—and Pennington's accusation is equally confusing. He could mean that Grey (likely John Grey, esquire, of Horsham, Norfolk) told Pennington that Southwell had a quarrel with himself, or that Southwell believed Grey had a quarrel with Pennington, but whatever the intended meaning, Pennington was accusing Southwell of planting lies and that any denial was an affront.³⁸

Southwell's reply is a gem of passive-aggression. It infuriated Pennington.

³⁴ The indictment does not state the time of day for the encounter, or the killing of Southwell (half an hour later) which is an omission that could have troubled the prosecution if the courts were prepared to listen to objections of the technical sort.

³⁵ Gunn, *Charles Brandon*, 79, 243, 'Ministers' Accounts: 1516-1537', in *Cardiff Records*, John Hobson Matthews, ed. (Cardiff, 1898), I, 198-206, *LPHE* III.ii, 2486, Baker, *Men of Court*, II, 1223. Dorothy's remarriage is noted in J. G. Nichols, *The Topographer and Genealogist* (J. Bowyer Nichols and Sons, 1853), ii, 561, and he is named as such in a chancery complaint over her father's property (C1/744/10).

³⁶ Pennington was quite prepared to mix litigation with threat, having been involved in his sister's dispute with Thomas Dykes, gent., of Cumberland, over inheritances from their father (C1/498/8, C4/118/115, C1/495/39). Pennington and Dykes were held by the sheriff at Carlisle (11 Oct 1528), to await an assize 'touching riots' committed by them and their servants, but no verdict was reached and the two were released without authorisation from Chancery (*LPHE* IV.ii, 4835). Pennington was a mediator (alongside Thomas Cromwell and others) in an arbitration involving Norfolk properties in Aug. 1526, which makes it likely that Cromwell knew who Pennington was, just as well as Southwell did (*LPHE* IV.ii, 2375.4).

³⁷ 'Southwell, vos intimastis Johanni Grey quod vos habuistis querelam ad ipsum. Et si non, vos dixistis quod Penyngton mentitus est.'

³⁸ Given the context, this could be the John Grey, lawyer of Thavies Inn, who came from a Northumbrian family, but worked primarily in Essex (Baker, *Men of Court*, I, 785). McSheffrey identified one John Grey of Norfolk, who had business scheduled at Westminster at the same time, as the Grey in the indictment ('Slaying', 189, likely referencing CP40/1072 rot.635). Pennington (CP 40/1072 rot. 177d) and Peryent (CP40/1072 rot.72) each had business scheduled for the Easter term, but both of these cases were handled by legal counsel, and neither was required to appear in person. Since most of Southwell's landed interests were in Norfolk, and Pennington's contacts with the county were largely on behalf of his patron, it is likely that Grey was an associate of Southwell, and therefore an antagonist to Pennington.

At this, William Pennington, with a flushed countenance and great malice, then and there swore by God's blood (et ibidem iuravit per dei sanguinem) and spoke to Richard Southwell these words in English *Yf thaw wyll abyde by the wordes I shall kytt thy knaves flesshe*. And Richard Southwell then and there answered, *Yf thaw kytt my flesshe, I shall kytt thy flesshe ageyn lyke a knave*.

An exchange of insults threatening violence did not signify that violence was likely (at this stage, at least), but rather that this is the start of a ritual of insult and counter-insult (what Collins called an 'interaction ritual chain' in confrontational situations). Typically, these exchanges de-escalate the tension as the parties grow tired of the stalemate, or are interrupted by a third party who provides the means of separating without loss of face.³⁹ Here, as elsewhere, Pennington addresses Southwell with the informal *thaw* and *thy*, rather than the more formal *you*. *Thee* could indicate either close familiarity or disrespect depending on context, and here the context is clearly insulting. If we pay attention to this feature in the indictment, we will see that this word choice was not an accidental or arbitrary decision of the scribe, but a reflection of the mental state of the two antagonists.⁴⁰ Here, separation occurs through a carefully recorded piece of stage direction:

At these words William Pennington, in a great fury and passion,⁴¹ felt around his midriff for his dagger to stab Richard Southwell, and when he realized that he did not have his dagger, he retreated.

Pennington is able to increase his threat towards Southwell without having to deliver, if the bluff was called, by reaching for a weapon he knows is not there. In the indictment, Pennington's retreat is made to feel temporary and that violence remained a serious risk when the time comes for Southwell to leave the relative safety of the Hall.⁴² As expected, Pennington returns (one presumes, still unarmed, as they are still in the Hall):

³⁹ Collins, *Violence*, 19-20, 79-82.

⁴⁰ It could even be used as a verb, as when Edward Coke addressed Sir Walter Raleigh during his 1603 trial, saying 'I thou thee, thou Traitor' (Terttu Nevalainen, *An Introduction to Early Modern English* (Oxford: OUP, 2006), 78-80).

⁴¹ *in magna furore et passione*.

⁴² Swords were prohibited at Westminster, for anyone not an officer of the court or the Crown, in a proclamation of 18 Oct. 1524 (London, BL MS Harley 442, f.28, and listed in *Tudor Royal Proclamations*, P.L. Hughes, F. Larkin, eds. (New Haven, CT: Yale, 1964) I, 145). This injunction probably did not extend to the knives that almost everyone carried, so it is unlikely that Pennington was entirely unarmed. However, when referring to Pennington's weapon, the indictment uses the uncommon *armicudium*, typically translated as 'dagger,' rather than *cultellus*, for a generic 'knife.' This suggests that when Pennington made his gesture, he (or the later jurors) wanted everyone to know that he was looking for a certain kind of weapon, rather than the first sharp instrument at hand. *Armicudium/o*, does not appear in indictments very often, but when it

Afterwards, within the space of a quarter of an hour, William Pennington approached Richard Southwell, who was still in Westminster Hall and disdainfully said to him, *Thow cowardly knave, if thaw wyll not mete and also fight with me att Totehyll wither I wyll ymmedyaty go, I schall reporte where so ever I schall hereafter com that thow art the sterkest coward knav on lyve.* With this, William Pennington went towards the aforesaid Tothill.

‘Knave’ was an unambiguously pejorative term at the time, implying a lack of discretion and maturity, a powerful rebuke to make against an adult male of gentle status. Men suspected of unfair practices, untrustworthiness, or duplicity were called knave.⁴³ And this was an insult that ignored social rank. Anyone could find offence from being called ‘knave.’ Thomas Wyngfeld, Comptroller of the King’s works, remembered one ‘Barly,’ a minor supervisor at Dover, ‘bragging with his sword and buckler, and calling the workmen knaves.’ Wyngfeld wrote that if he had not been there, the men would have ‘broken his head.’⁴⁴ In more politically charged circumstances, ‘knave’ was the epithet for the King’s councillors and officers. Sir Edward Neville, of Birling, Kent, and London, indicted for treasonous speech in December 1538, was quoted as saying, amongst other intemperate words against the king, that ‘I trust knaves shall be put down and lords reign one day, and that the world will amend one day.’⁴⁵

In this, the second confrontation and separation, there is no violence, but Pennington has escalated tensions such that the next step would be either shameful for one or violent for both. Everyone knew that the field at Tothill, a short distance to the west of the abbey yard, was not just some open space where men could have a fair fight; it was the traditional place of judicial duels fought by approvers of the court and where some convicts were executed.⁴⁶ This placed a great deal of pressure on Southwell to respond, but his options were very limited. If Pennington was any lesser man, throwing insults in the market square in Norwich, his threat to spread ill fame would mean little, but Pennington was a knight and servant of the Duke of Suffolk and these words were uttered in the literal centre of the English government. To be painted a coward (even a rational one)

appears in wills and inventories, editors translate it as ‘dagger’ (*Cornish Wills: 1342-1540*, N. Orme, ed. (Cornwall: Devon and Cornwall Rec. Soc., 2007), 83).

⁴³ David Postles, *Social Proprieties: Social Relations in Early-Modern England (1500-1680)* (Washington, DC: New Academia Publishing, 2006), 5, 96-9.

⁴⁴ *LPHE XI*, p. 115 (letter of 11 Aug. 1536).

⁴⁵ *LPHE XIII.ii*, p. 425.

⁴⁶ Edward Walford, *Old and New London*, (Cassell Petter & Galpin, 1873) IV, 14-19. The ground to the immediate South of the Palace was also largely unoccupied and may have been identified as Tothill as well.

was too great a threat to Southwell's social-self, and to take that risk in this of all places was to tie his hands to his sword. Only the intervention of a more powerful third party could permit an escape without loss (for both men). We do not know what the crowd thought or did as this drama unfolded, but we know what they did not do: no one with sufficient influence intervened. They may have even fed the tension towards a violent resolution.

The wording in the indictment implies that Southwell and his party had decided to follow Pennington to Tothill, but given that there was only one practical exit from the sanctuary yard, the two men would have to go the same way simply to leave.⁴⁷ This exit was the Great Gate, leading out of the western end of the Outer Ward, north of the Great Hall. There was no other exit from the grounds, other than the Water Gate to the east or some circuitous path through the palace grounds towards the south.⁴⁸ The Great Gate sat in the corner where King's Street, and the ditch that ran along its eastern edge passing from the north, met the Abbey grounds and turned west into Tothill Street.⁴⁹ It is here that we have our third confrontation.

As Richard was going there, and before he reached that place, William Pennington, accompanied by six men, stood on the bridge at the end of a certain causeway in Westminster which goes from the monastery of St Peter, Westminster, to Tothill. When William Pennington saw that Richard Southwell was on the causeway, he called *Here comes Southwell*⁵⁰ and with great anger he advanced on Richard Southwell.

We also have a second attempt at mediation which gave both Pennington and Southwell opportunities to speak their minds to an interlocutor (or it gave the jurors the opportunity to place important words in the mouths of the parties). Thomas Belle, presumably one of Pennington's servants, tries to speak reason to his lord:

seeing his master's great malice [Belle], said to him *Sir, there be many more then we be, therefore a nother day schalbe better then nowe*. William Pennington replied *If thaw be a ferd go thy wey orellis do as thy harte serveth the for my wey lyeth thys wey*. And thus William Pennington went towards Richard Southwell.

⁴⁷ The men were Matthew Fraunsham, Richard Wood, William Bofeld, and David Lloyd, all identified as 'of London.' It has not been possible to identify any of these men with certainty but a brief search in King's Bench and Common Pleas rolls of this term locates one Richard Wood of Norfolk at Westminster at the time (CP40/1073 *att.rot.3*). An additional servant is listed in the parliamentary pardon: John 'Garard', or Gerard of London and Wood Rising (*Stat. c.32, 25 Hen. VIII*).

⁴⁸ The grounds of Westminster were likely more crowded, and routes of access more limited, than usual, since extensive building works were underway on the Royal Palace, south of the Great Hall (*LPHE, V, 952*).

⁴⁹ See the plan in John Steane, *The Archaeology of the Medieval English Monarchy* (Batsford, 1993), 74).

⁵⁰ 'Ibi venit Southwell.'

Pennington dismisses him with the disrespectful *thaw* and an accusation of cowardice.⁵¹ This helps to show Pennington's single-minded intent on aggressive confrontation and his naked contempt for Belle's words of moderation. John Peryent acts the part of sober council for Southwell:

similarly considering the danger that could come from this [Peryent], went running after Richard Southwell and took him by the elbow, saying to him: *Richard Southwell, for the passion of Cryste, be content. What wyll yow doo wyll yow undo yowre self and all yowres?* To this Richard answered and spoke these words. *Sir wyll ye hold me tyll I be slayne? I pray yow suffer me to be at large and stay Penyngton, and yow shall ordre me.* And with these words, John Peryent, as much as he could, went between them to keep the peace.

Southwell's respectful answer allows him to articulate his genuine fear that to choose flight over fight would be to risk irreparable harm to his social self. Southwell is calm, rational, and dignified, answering Peryent's advice with an appropriate *yow*, explaining that facing Pennington is his only option, but after that Southwell would be content to do whatever Peryent might 'ordre'. These signposts point to Pennington as the instigator of a confrontation that Southwell could not reasonably be expected to avoid. Southwell could also claim that he was standing up to a violent bully who needed restraining and, being a Northerner, Pennington easily fits the type.⁵² The mediators failed in their task. According to the indictment it is Pennington who swings first.

William Pennington, persevering in his said malice, came with a sword, which he then unsheathed, and struck Richard Southwell. [Then,] Richard Southwell, with a sword worth five shillings which he then held in his right hand, giving and parrying blows, gave William Pennington then and there two separate wounds, that is one on the face and the other on his arm. And William, sensing himself to be gravely wounded, was

⁵¹ Counting Pennington, the party blocking the exit was 7 strong, while Richard, his 2 brothers, and the 4 servants, also makes 7. Even if we include John Gerard (named only in the pardon), the odds are not so unequal. We might count Belle amongst Pennington's men, but we should exclude Peryent from Southwell's party, just as the indictment does. McSheffrey ('Slaying', 186), noticed this and thought it 'suggests that Southwell's party was at least somewhat bigger than the indictment indicates', but one extra man, is hardly a significant imbalance. Capello's claim that Southwell had around 20 men, is more a reflection of a perceived imbalance of power between parties, and that Southwell was the instigator, than an accurate account of the respective forces (ibid.).

⁵² The Northern counties had always appeared to Londoners as a place full of hot-tempered, criminally inclined people that were a constant trouble for the Crown and it this stereotype would have only helped Southwell's case in the public eye. (For examples see R. B. Smith, *Land and Politics in the England of Henry VIII: The West Riding of Yorkshire 1530-46* (Oxford: Clarendon Press, 1970). 144-60). This is not to say that men from Norfolk were thought of as pure as driven snow. Justice Fairfax reminded his colleagues that 'Norfolk people are full of whites,' and were notorious for their ruthless application of legal technicalities (*Caryll's Reports*, I, 29).

greatly enraged and struck at Richard Southwell until Richard staggered and almost fell into a ditch next to the causeway.

The inquest does not tell us if Richard was wounded. McSheffrey thinks that it does, or at least wounding is implied by translating *percuciendum* as ‘thrust.’⁵³ *Percutere*, and its conjugations, are common in the language of coroner’s reports. They are used ambiguously to identify any blow which may or may not have connected and may or may not have caused a wound.⁵⁴

Because Richard Southwell’s sword is valued, we expect the following lines to describe the fatal wound it caused, but they do not.⁵⁵ Instead, an exchange of blows is given until Richard loses his balance and seems to fall. At the last moment the jurors stop short of making an argument for justifiable homicide since Richard does not actually fall, thus preserving his capacity to flee without certain death.⁵⁶ But Anthony, thinking his brother’s death was imminent, makes his dramatic appearance:

And as William Pennington prepared himself to strike Richard Southwell, his brother, seeming to be, [Anthony] then and there feloniously struck William Pennington on the left side of his head with a sword worth four shillings. Anthony Southwell gave William Pennington a mortal wound from which he immediately died. And thus, Anthony Southwell, on the day and year and at the place and time abovesaid, on the aforesaid causeway, feloniously slew and killed William Pennington, against the lord king’s peace and his crown and dignity. And the aforesaid Richard Southwell, Robert Southwell, Matthew Fraunsham, Richard Wood, William Bofeld, and David Lloyd, each of them helping and maintaining the others, fled to the Westminster sanctuary in the aforesaid county of Middlesex and there they remain, etc.

While the conclusion is that Anthony was responsible for Pennington’s death the interpretation of felony law meant that all the participants were parties to the murder and not merely accessories after the fact.⁵⁷ The killers’ flight to sanctuary did not help their legal defence but the implications are ambiguous, given the selective application of the rules concerning the

⁵³ McSheffrey, ‘Slaying’, 198.

⁵⁴ We can think of the distinction as a difference between striking *at* someone and *striking* someone. The first emphasises the attempt to strike, while the second indicates that the strike was successful.

⁵⁵ This was a habit of the *Deodand* aspect of accidental, or felonious, deaths whereby the objects that produced the fatal injuries were forfeit to the Crown (or rather, their value was). Thus, Richard Southwell’s sword ought not to be treated as such, since no fatal wound is attributed to it.

⁵⁶ Any claim of self-defence, had to appear in the indictment, since one could not enter such a plea in court (since a plea of not-guilty would contradict claims of self-defence), but one could argue that whatever the circumstances, this killing was not murder, *per se*. For the legal test allowing pleas of self-defence, see Green, *Verdict*, 37-8.

⁵⁷ *Spelman II*, 307-9.

legality of sanctuary.⁵⁸ That omission meant that Anthony could safely plead not guilty on the grounds that he acted in defence of his brother and, therefore, killing Pennington did not count as *murder*, per se. There was, at the time, a legal principle that close family and servants could (or even should) defend their superiors against physical violence, including the use of deadly force, but it was not the sort of thing one could use to avoid indictment and there may have been a good deal of judicial flexibility in applying the principle.⁵⁹

While Suffolk's threat to violate sanctuary in apprehending Southwell should be taken seriously, it does not appear that much was done to keep the killers from justice once tempers had cooled. The first writs of arrest related to the case were actually issued against John Peryent, on suspicion of felony, based on a request through Chancery by Thomas Cromwell. This may have been a move to placate Pennington's family, or the Duke of Norfolk, but Peryent was soon released once his good name was established.⁶⁰ Writs of arrest for the Southwells and the men named with them on the indictment were issued in the Trinity term, but their appearance before King's Bench in April 1533 was at their own initiative. McSheffrey made much of the flight to sanctuary but it seems likely that their stay was temporary and that it was not necessary in the long term to remain there to avoid arrest.⁶¹

The argument that Southwell and his men obtained their pardons through external influence on the Court of King's Bench and a deliberate manipulation of the narrative in the indictment is not overwhelming but finds support easily when one has a low opinion of Tudor legal ethics and a suspicion that Thomas Cromwell was already dipping his fingers into many pies. McSheffrey pointed first at the apparent delay between the coroner's inquest of 20 April and the filing of the indictment with King's Bench on 20 June, arguing that this was more than

⁵⁸ McSheffrey, 'Slaying', 179-180.

⁵⁹ *Spelman* II, 315. Justice Tremayle, cited in a yearbook entry (Seipp1505.050), made the comment that *que servant puit occise un in sauvant la vie s'Maistre, si il ne puit auterment escape* (that a servant can slay one in saving the life of his master, if he [the master] cannot otherwise escape).

⁶⁰ KB29/165 rot.10d, McSheffrey 'Slaying', 187.

⁶¹ McSheffrey 'Slaying', 177-80. The writs of arrest were recorded in KB29/165 rot.15 (Trin. 1532) which McSheffrey mistook for a record of their appearance at KB. Also, while the entry has had some text removed, and cancelled, these appear to be incorrect versions of personal names, made by the original clerk, at first entry. Additional notes provide cross-references to the later KB27 entry of the case and notes the transfer of the indictment from the Trin. 1532 return file to that of *Pasc.* 1533, all of which is standard process in KB29 entries.

enough time for third parties to shape a narrative that would more easily obtain pardons when presented to the Crown. For her, this explained the odd tone of the indictment and the unnecessary details because it had been written for an ‘extra-curial’ audience, that is to say, readers close to the king but outside the court of law.⁶² But a delay between the composition of the indictment and the filing of the formal copy means little since the entering of returns was made when the clerks came to log business in the relevant term and not on the exact date of receipt.⁶³ Perhaps the strongest argument that the indictment is legitimate and not the ‘careful drafting’ of a political operative is what a poor job it does as a defence of the accused.⁶⁴ Anyone with some familiarity with the argument of self-defence would know that any narrative that met only half the test failed the test entirely, and that the more complicated the narrative the harder it would be to craft a plea without contradiction. The only way this indictment could have helped the Southwells is if it were crafted such that it would inevitably fail if brought before the justices, and it certainly would have failed. What it does resemble is a confused attempt to mediate between two lines of argument that could not be used together. Yes, the Southwells were responsible for Pennington’s death. No, it was not strictly an act of self-defence, but neither was it really murder (whatever the law may have said it was). Southwell was standing up for his good name against a bully, and while the death was regrettable it was not his fault. No jury or coroner could reasonably expect to make such an argument in an indictment, but this tangled attempt is as close as they ever get to it.

And this was the abiding problem with social norms that made one’s public fame more important, more valued, and more threatened than one’s own life or limb. The early Renaissance culture of honour taught its courtiers a set of values that were easily contradictory. The courtier had to be courteous and agreeable to a fault, but he also had to

⁶² McSheffrey, ‘Slaying’, 183-4.

⁶³ Items in KB9/520 are dated within a few days of each other, irrespective of the actual date of the inquest or other business the documents described. This suggests that the dates for receipt indicated when the document was processed by the office, not when it was physically received. It is also worth considering that if this was the work of a conspiracy by Cromwell or others, they exhibited meticulous attention to detail in ensuring their bespoke indictment was written in the correct hand, employing the clerk who issued memoranda and other writs in the name of the coroner and Justice of the Peace for Middlesex (see the matching hand in KB9/520 m1-3).

⁶⁴ McSheffrey, ‘Slaying’, 181.

respond to insults and slights rapidly lest the easy manner be mistaken for genuine weakness.⁶⁵ The language was different, but the message was largely unchanged from that of the thirteenth century and the legal treatises that stressed the need to enforce one's own rights (with force, if necessary) or stand to lose them. Honour was, as it likely always had been, 'reactive' in that one could not preserve it passively.⁶⁶ How dangerous then to have thrown insults between men such as Pennington and Southwell in the literal centre of English elite society?

'The law does not compel a man to be a coward'

Standing between Pennington and Southwell and our historical empathy is more than just the passage of time. There are the innumerable changes in moral, ethical, and legal values and norms, which make it difficult for us to accept that these two men (members of the social and political elite of their time) could have contemplated violence over insulting words and that those around them appear to have let it happen. That this violence was also condoned, or at the least not condemned, is even harder for us to rationalise. Political violence by proxy makes more sense to us. Political or factional rivalries between the powerful, acting through their subordinates, also made sense to contemporaries, although it is unlikely that this was the real reason why Southwell, his brothers, and servants were spared any formal punishment.

Pennington and Southwell knew that their actions were constrained by a set of values and social norms that, under certain conditions, demanded violence if the other means of resolution violated those norms. Worse still, violence had its own charms for those who considered themselves men of honour. Violence had a place in protecting, restoring, advancing, and enlarging one's honour and therefore was not always a destructive or disruptive force.

Violence could make and unmake. Mervyn James explained that this form of honour 'emerging out of a long-established military and chivalric tradition, is characterised above all by a stress on competitive assertiveness; it assumes a state of affairs in which resort to

⁶⁵ Markku Peltonen, *The Duel in Early Modern England: Civility, Politeness and Honour* (Cambridge: CUP, 2003), 37-43.

⁶⁶ *Ibid.*, 41.

violence is natural and justifiable; the recurrence of personal and political situations in which conflict cannot be otherwise resolved than violently.⁶⁷

How difficult it must have been for jurors to hear the circumstances of Pennington's death and see in this defence of a man's public self a felony they had to condemn. They could not call it justifiable homicide or duress, and they did not call it manslaughter. Instead, they called it murder, which they (the jurors and the coroner) knew a trial jury was unlikely to accept as true. It is rare when the practitioners of the law admit that their interpretation and application of it is determined largely by their shared social norms and values and not by the logic of legal reasoning. John Port, later a justice of King's Bench, in his notes on a discussion of the legal definitions for 'riot' and 'rout', recorded that there was nothing inherently unlawful in someone taking precautions by arming himself and his servants 'in order to guard his money or his body' against perceived threats and that 'this is not a riot or assembly, but a lawful deed.' The rationale was not a legal one but a moral one, 'for the law does not compel anyone to be a coward.'⁶⁸ How far one could take this approach to justifying violence before the courts is hard to know, but the point remains that Port's contemporaries understood that preservation of the social-self followed different rules than the preservation of one's life.

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And what about Southwell's scars: an irregular, sunken patch of skin between his eyes could be the product of almost any injury caused by natural, accidental, or deliberate forces. Called the 'glabella' by dermatologists, the skin here is highly elastic and even small injuries can heal into large, visually discomforting features.⁶⁹ The two horizontal, almond-shaped scars, staggered one above the other just below the jawline, are more suggestive of deliberate human agency. Incisions that pass below the first few layers of skin into the sub-dermal areas result in

⁶⁷ James, *Society, Politics and Culture*, 308-9.

⁶⁸ Likely from a reading at Lincoln's Inn, 1503 (*Port's Notebook*, 122).

⁶⁹ Atrophic scars in this area, or on the face generally, are usually the result of lesions caused by skin infections, acne, or related conditions (Igor Safonov, *Atlas of Scar Treatment and Correction* (Berlin: Springer-Verlag, 2012), 43-8).

the cut surfaces separating, leaving an open wound, but without any loss of tissue.⁷⁰ Suturing such wounds was common practice in the early sixteenth century, and the experienced knew not to close up a wound tight, leaving some slack in the stiches to allow for swelling, and natural effusion of fluids from the healing wound. The resulting scar would not resemble a clean, straight, line but a filled-in area, where new flesh grew across the wound left open during healing. All we can say is that the scars in Southwell's portrait *could* be souvenirs of the affray and that Holbein chose to paint the side that showed them, and that is probably all we need to know.

⁷⁰ Skin has a kind of natural grain (sometimes called Langers lines) and cuts that follow these lines can produce very narrow wounds that match the profile of the cutting edge, whereas cuts that cross the lines, are likely to gape open at different angles, obscuring the shape of the cutting edge. Wounds perpendicular to these lines are likely to produce more significant and noticeable scarring (*Roenigk & Roenigk's Dermatological Surgery: Principles and Practice*, 2nd ed. K. Roenigk Randall, ed. (New York: Marcel Dekker, 1996), 195).

Chapter 10

The political insecurity of the Tudors stigmatised militarised public displays of force and consequently private or local disputes brought a more aggressive response from the Crown and its officers. Henry VII's need for security against local and foreign threats by pretenders and rivals made even small-scale gatherings of armed men appear suspicious. The Tudor regime was also keen to relocate the symbolic basis of the Crown's power within the figure of the sovereign and his immediate officers, rather than through the greater magnates and their affinities. Greater scrutiny over illegal retaining helped in this regard, if only because it made the lesser gentry and yeomanry more aware of the shifting balance of power higher up in the social hierarchy.¹ Social elites still exercised their claims to diffuse authority in personal disputes, but they had to be more cautious in their choice of tactics as the Crown was not so easily reassured that local conflict would be self-regulating. Some of these reactions were largely practical, such as the handling of Sir William Lisle, Lord of Felton, and his followers who made a very public show of repentance for their disorderly behaviour and submission to the will of the Crown before the sixth Earl of Northumberland in 1528.² Social status and local traditions of violent self-help were no longer a secure defence against the law.

This is not to say that with the coming of the Tudors, the gentry and nobility lost their habit for private violence. Occasional violence was still a part of the social world of elites, although its form had begun to change. The survey of the KB rolls from 1520-60 contains few incidents describing militarised violence. We still find charges of armed trespass but they are rarely described as being 'in the manner of war.'³ We find rather more cases that successfully claim self-

¹ A. Cameron, 'The Giving of Livery and Retaining in Henry VII's Reign', *Renaissance and Modern Studies*, 18 no.1 (1974), 17-35. On the changing attitudes towards retaining, amongst those most often retained, see James, *Society, Politics and Culture*, 51-5.

² James, *Society, Politics and Culture*, 56-7.

³ See KB27/1037 rex13, which does not call a gathering with military arms as 'in the manner of war' and KB27/1077 rex13, which does. The difference could be that the first involved only a few men under a gentleman while the second accused the Abbot of a monastery at Tavistock who led a much larger group.

defence and some cases that resemble the spontaneous, alcohol-fuelled violence stereotypical of all classes at the time.⁴ This trend may be illusory as the increasing importance of the assize system in the handling of criminal matters obscures the fuller picture, but from the KB rolls the impression remains that social elites were beginning to change the way they used violence.⁵ The nature of that change is certainly more complex than this brief description and it is necessary to focus on one element of change and continuity amongst many. In this final chapter we will discuss one of several developments in the performance of violence in the mid-sixteenth century, namely the *privatization* of violence.

The *privatization* of violence

Mark Cooney, working from the perspective of modern criminology, explored the question why modern violence is 'largely confined to low-status people' while historically it was 'found throughout the status hierarchy.'⁶ This is an issue that the civilizing process does not account for, given that a state monopoly of violence obtained through coercion and punishment, and the cultural shift towards internalised self-control should work just as well amongst the poorest and least influential members of a society as it would amongst the most significant and powerful. This is accomplished by institutional forces and the influence of changing social norms amongst the upper-elite, which trickles down through the class structure. But this seems to break down at the lowest end of the social scale where violence remains a significant problem in developed societies.⁷ Superficially, Cooney's explanation seems intuitively straightforward: 'violent conflict is a function of the unavailability of law.'⁸

⁴ Cases claiming self-defence include KB27/1017 *rex*4, 14, /1037 *rex*4, 6, 1073 *rex*2. KB27/1136 *rex*9 records an indictment for a murder in a London tavern, involving a servant of Sir Richard Rich.

⁵ Some indication of the relevance of the assize is the difficulty in locating court records for cases documented elsewhere, such as the affray involving Thomas Wyatt in 1534 (Brigden, *Wyatt*, 206-7) or the murder of 'a master of fence' by one Wolfe, servant of the Earl of Hertford in 1538 (SP3/14).

⁶ Mark Cooney, 'The Decline of Elite Homicide', *Criminology*, 35 no.3 (1997), 381. On the historical decline of elite violence, through quantitative studies, see Edward Green and Russell P. Wakefield, 'Patterns of Middle and Upper Class Homicide', *The Journal of Criminal Law and Criminology*, 70 no.2 (1979), 172-181.

⁷ Ray, *Violence*, 50-53.

⁸ Cooney, 'Decline', 381.

As the state and its institutions established their credibility in dispute resolution, people were more inclined to seek redress through legal means. So far, this seems to support the argument that it was the weakness of the English legal system that allowed social elites to use illicit force, but this does not explain why violence is still prevalent amongst the poor and marginal. What Cooney is referring to is the relationship between status and the law, and ‘in modern societies, low social status and the law are antagonistic,’ discouraging those at the ‘bottom of the social pyramid’ from seeing the law as an ally.⁹ As we have seen, England’s social elites, as violence specialists, were part of the mechanisms of order and justice which made their use of force natural and expected, and denying them that power and influence was not easily done. However, the state’s monopoly on force did not happen primarily through coercion of the social elites, but rather by reassuring the social elites that the institutions were acting in their best interests. Previously, the English nobility and the upper gentry could have thought of themselves as above or equal to the law simply because they were able to exercise the same authority but with greater certainty of its outcome. As the courts grew in influence, social elites found that they could prosecute their own conflicts through the courts with less risk of loss or harm than on their own. This also made legal action more attractive to lower-status gentry who otherwise would not have used force in their own disputes anyway.¹⁰ The result was a dramatic increase in litigation amongst the upper classes during the early sixteenth century.¹¹ However, the difference in power status between law enforcement and low-status people only increased such that the poor and marginal continue to see the law as a greater threat to their interests and safety than illicit self-help.¹² This approach to the problem of violence in this period has more potential for explaining change and continuity than space allows but it fits with the arguments already made to explain violence in the fifteenth century.

Cooney explored the changing social characteristics of violence further in a paper that argued that ‘as intimate social ties weakened and the state strengthened, collective and nonintimate

⁹ Ibid.

¹⁰ Ibid., 394-6.

¹¹ Stone, *Crisis*, 240-2.

¹² Cooney, ‘Decline’, 395.

forms of (nonpolitical) violence declined significantly.¹³ At the same time ‘violence increasingly became less public, more private.’¹⁴ Studies had already noticed that the social elite did not see as much of a decline in their participation in domestic violence and this was an issue that the civilizing process also failed to account for.¹⁵ Privatization refers to the theory that where ‘individuals replace groups in conflict, for example, the number of injuries and deaths likely to result diminishes.’¹⁶ In practical terms, this is the difference between an affray between armed groups and the heated exchange of formal threat and challenge that identifies the private duel.¹⁷ This is not to say that violence was less likely or that privatization decreased the incidence of violence in this period in any measurable way, but it does account for the changes in the way violence manifested itself.¹⁸ This also corresponds with the appearance of the duel, which in one way preserved the social elite’s connection with the militarised language of the past, while combining it with the individualism and internalised concepts of honour and the self of the English Renaissance.¹⁹ Partly obscuring this change is the continuity in how the courts handled violence performed by social elites and the problem of the law’s incompatibility with right-violence. It is this issue that our final case study illustrates.

The Cole brothers: ‘similitude and its discontents’²⁰

‘But in the murderer, such a murderer as a poet will condescend to, there must be raging some great storm of passion,—jealousy, ambition, vengeance, hatred,—which will create a hell within him; and into this hell we are to look.’²¹

In the Michaelmas term of 1560, Robert Cole, gentleman of Shropshire, and heir apparent and ‘filius naturalis’ of Edmund Cole, late MP for Shrewsbury, appeared before the justices of King’s

¹³ Mark Cooney, ‘The Privatization of Violence’, *Criminology*, 41 no.4 (2003), 1377.

¹⁴ *Ibid.*

¹⁵ Cooney, ‘Decline’, 388.

¹⁶ Cooney, ‘Privatization’, 1377.

¹⁷ Defining the duel is only slightly easier than defining feud (see François Billacois, *The Duel: Its Rise and Fall in Early Modern France*, Trista Selous, trans. (New Haven, CT: Yale University Press, 1990), 12-30.

¹⁸ Cooney, ‘Privatization’, 1380.

¹⁹ Space does not allow for any exploration of this theme, but important parallels are found in Peltonen, *The Duel*, 17-78, James, *Society, Politics and Culture*, 308-415, and Thomas, *Ends of Life*, 44-77.

²⁰ Quoting Jacoby, *Bloodlust*, 132.

²¹ [De Quincy] ‘On The Knocking At The Gate, In Macbeth’, 353.

Bench on a charge of murder.²² The indictment was made at a general session of the peace in Shropshire and alleged that on 21 October 1555, Robert struck one Fulk Cole with a ‘pyked staff’ below his right eye, and that from this wound Fulk died the following Wednesday. Rather than entering a plea, Robert pointed out that while the indictment did specify the year, day, and place of the incident, it did not say at what time of the day the wound was given, or the time of day when Fulk died. This was accepted as a valid challenge to the indictment and Robert was released *sine die*.²³ This does not sound like a case with much potential, but the names of the perpetrator and victim draw the eye.

Robert and Fulk were half-brothers, both sons of Edmund Cole. Robert was the son of Edmund and Anne Churchyard.²⁴ When Anne died, Edmund married Alice Foster and Fulk was their first son. On Edmund’s deathbed, ‘by the *persuasion*’ of Alice, he declared that the first marriage never happened and that Robert was a bastard, making Fulk the heir.²⁵ Edmund’s biographers note his ten illegitimate children between the two partners, which could have only aggravated an already complicated situation for a presumed heir. Robert filed a complaint in Chancery over his disinheritance, citing witnesses to the first wedding who were too elderly to travel to Westminster but were willing to provide depositions to the court.²⁶ It seems that the issue was resolved a different way.

The brothers were not always estranged since they were both participants in some of Edmund’s earlier legal disputes and Robert was by this time a middle-aged member of the local gentry.²⁷ The Cole family was an old and respected part of the local community and this dispute could not have gone unremarked or unnoticed.²⁸ But given the course of the case, there was little

²² Robert Treswell, Vincent Augustine, *The Visitation of Shropshire [1623]* (Harleian Society, 1889), dates Robert’s birth to 1513-14 (125-6). An extended tree calls him ‘nothus’ or illegitimate but does not give a date of birth for Fulk (127).

²³ KB27/1196 *rex*9.

²⁴ Anne was likely a relation (either elder sister or aunt) to Thomas Churchyard, the author and military theorist (Matthew Woodcock, *Thomas Churchyard: Pen, Sword, and Ego* (Oxford: OUP, 2016), 21).

²⁵ *HoC 1509-58*, i, 672, suggests that Edmund died in 1556, but the charge in KB locates the death earlier. Robert’s complaint places the marriage, and his birth, ‘xl’ years previously (C1/1344/30), which fits with the date of birth given by the 1632 visitation.

²⁶ C1/1344/30.

²⁷ C1/661/8.

²⁸ Woodcock, *Thomas Churchyard*, 21-2.

enthusiasm to hold Robert to account by official means. We know that the rules governing due process and proper form in the criminal courts were largely a matter of context. If justices wanted an indictment to pass to trial, they were more than capable of overlooking almost any errors of form or presentation and fielding arguments to support those decisions. Likewise, they could accept very superficial challenges as grounds for dismissal if the accused was considered worthy. Justices were able to act on their own ideas of justice before a case ever came before a jury, and in the sixteenth century, justices were steadily undermining the traditional flexibility of action by juries in the interpretation of the law.²⁹ In this case, it is very easy for us to assume that the charge against Robert Cole failed because his actions were tacitly seen as appropriate to secure what he and the relevant third parties thought he was entitled to.

But we are reading this motive for the crime, and its interpretation, largely from our own preconceptions. That we are likely correct is more an issue of how we rationalise and empathise with this situation (which is different from accepting or approving of it) than an issue of our understanding of the case itself. What makes sense to us is what makes the ‘narcissism of minor differences’ theory of conflict so intuitive. The Chancery dispute concerned allegations threatening Robert’s legitimacy, which complicated his inheritance but also threatened his social standing and worship. Sensitivity over one’s social reputation was always part of the world of social elites, but this concern became more pronounced in the middle of the sixteenth century. Status was becoming much more fluid, creating opportunities for advancement amongst the lowest ranks of the hierarchy while diminishing the relative status of the titled nobility. They were already starting to lose their monopoly on political and military authority as well as their advantages in landed wealth.³⁰ However, even if one were able to maintain one’s place within the social, political, or economic hierarchy, the value of that place might seem diminished by the advancement of others, relative to one’s own status. Violence was a high-risk method of conserving or gaining social status, although it was often short-sighted and situational in its application. Aspirational violence is easier to identify in the actions of magnates and their followers over identifiable goals or disputes but even

²⁹ See Cockburn, *Assizes*, 104-5, 111-16.

³⁰ Stone, *Crisis*, 21-128.

violence between close family members can be aspirational—a desire for change, or continuity, through a performance of force. By the end of our period, the morality of aspirational violence was growing more ambiguous, but it remained attractive to those who lacked other means of reaching the same goals through service, landed wealth, or litigation.

Conclusion

‘As you see it it is, while the seeing lasts, dark nightmare-history, time-as-coffin.’¹

‘Does that make all history bad? Yes, I fear it does. But all times are not equally bad [...] It is the Historian’s task to sort out the bad from the less bad.’²

Violence is a challenging topic for any discipline because it is a concept that is always changing with the social environment in which its scholars are raised and educated. Violence is something which we cannot observe without causing it to reflect our own perspectives or feel the influence of our own judgements. Attempts to fix violence in some way and grant its study some solid basis for analysis are, while noble, ultimately futile and counterproductive. Valentin Groebner has argued that this search for a theoretical foundation has created an academic discourse on violence that is ‘almost infinitely elastic.’³ Abstraction makes violence easier to talk about but the talk quickly becomes superficial or meaningless. In this way violence becomes a framing device to make familiar sources or methods seem new and challenging without appearing to take risks or challenge established paradigms. And in this way, violence is no longer the focus of attention; rather attention rests on what it frames. ‘To put it concisely and harshly: an over-stretched definition of violence serves as a trendy label under which harassed doctoral candidates can dutifully rehash the classic themes and texts of their own disciplines.’⁴

Few scholars feel it is possible to study violence exclusively or for its own sake, despite the abundant evidence that violence is often performed for that very reason. And this is why we forget that violence was never a central topic of scrutiny even for scholars as influential in its study as Norbert Elias. He created a conceptual framework for historical violence that was compelling enough to attract the attention of other scholars but vague enough in its details to accommodate a variety of sources and interpretations without constraint by an overly detailed

¹ John Gardner, *Grendel*, Vintage ed., (New York: Vintage, 1989), 170.

² Colin Richmond, *Doing History* (Raleigh, NC: Lulu Publishing, for Colin C. Richmond, 2012), 218.

³ Groebner, *Defaced*, 158.

⁴ *Ibid.*, 159-60.

theoretical structure.⁵ Elias never really understood the violence he studied because he either felt its meaning was self-evident, or because he saw no reason to confirm or deny one's intuitive reading of it. Violence defined itself, or so it seemed.

Groeber located the roots of paralyzing abstractions in the otherwise laudable goals of scholars seeking interdisciplinary methods which were essentially ahistorical—blind to the influence of modern conceptions of ethics, aesthetics, and normative values—which obscured or distorted the authentic meaning of actions and past actors.⁶ That being said, mixed methodologies have managed to circumvent some of the obstacles that have trapped historians by shifting the focus of analysis away from social, political, economic, or legal aspects of violence and towards 'the characteristics of violent situations' and distinguishing these characteristics 'across different kinds of violence.'⁷ In this way it is possible to see how violence is contextual and conditional without the need for blanket generalisations about people and communities or reduction of its performances to quantitative variables. Violence involves individuals and actions, and this thesis has tried to study violence as it was performed and as it was interpreted in that microcosm of place and time, and not as abstractions. Context matters.

During the English Civil War, youthful bourgeois supporters of the Parliamentarians were told that they were rightful heirs of England's heroic past and that the nobility was spoiled and corrupt. Blood was still important (as it separated the gentlemen soldiers from the mercenaries, just as it separated the good man-at-arms from the soldier who fought for pay), but in 1642, as in centuries past, honour and virtue was something you could earn through the worship of prowess.⁸ What had changed, and would continue to evolve, was the acceptable ways in which prowess could be displayed or how virtuous violence was to be signalled. Violence itself never lost its place or its value as a means of protecting, building, or changing identity, status, and social worth in the performer, victim, and third parties that witnessed and defined its meaning. Arguably, it is

⁵ See in particular, Cooney, 'Privatization', 1377-80.

⁶ Groebner, *Defaced*, 159-60

⁷ Collins, *Violence*, 1.

⁸ William Hunt, 'Civic Chivalry and the English Civil War', *The Transmission of Culture in Early Modern Europe*, A. Grafton, A. Blair, eds. (Philadelphia: University of Pennsylvania, 1990), 204-7.

this shift in the relationship between legitimacy and force that moved the social elites towards proxy violence in the courts or public opinion. As we have seen, while many forms of violence were criminalised for centuries, their prosecution was largely contingent on the moral virtue of the performer. As institutional structures became the arbiters of moral legitimacy, violence performed outside those structures could no longer appeal to the same moral values. We can take our view of violence from many positions and scuttle about its edges; we are unlikely to see all its facets at the same time, but we can be sure that it will always remain in some recognisable form at any angle.

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KB 27 Court of King's Bench: plea and Crown sides, Coram Rege rolls

KB 29 Court of King's Bench: Crown side controlment rolls and other memoranda rolls of the Clerk of the Crown

KB 145 Court of King's Bench, *recorda* and *precepta recordorum* files

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